# LEGISLATIVE COUNCIL

## Wednesday 15 May 2013

**The PRESIDENT (Hon. J.M. Gazzola)** took the chair at 10:02 and read prayers.

### SITTINGS AND BUSINESS

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (10:03):** I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers, question time and statements on matters of interest to be taken into consideration at 2.15pm and that notices of motion and orders of the day, private business, be considered after government business.

Motion carried.

### BALUCH, JOY

**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) (10:04):** I seek leave to make a brief statement about the passing of mayor Joy Baluch.

Leave granted.

**The Hon. G.E. GAGO:** It is with great sadness that I learnt of the passing last night, 14 May, of mayor Joy Baluch AM. Joy was an outspoken advocate for the Port Augusta community and for over half of her life dedicated herself vigorously to serving the council and its constituents. Those who had seen her recently would be well aware that she was ill and she was certainly very frail, but her appearance was deceptive, Joy remained a formidable advocate for her community right up until the very end.

With what I am told was over 30 years of serving her community in local government, Joy blazed a path for women in leadership. I do not think Joy ever considered herself to be a feminist; however, she was extremely supportive of women, particularly women in leadership positions. I recall very clearly one occasion many years ago when I had only just become a minister; it was a particularly difficult time and I was having a pretty hard time of it. Joy arrived in my office with a small gift and as she thrust the gift into my hands she said, 'Don't let those mongrel bastards get to you.' So, she was, as I said, very supportive. She was certainly very kind to me and very supportive of me.

She became Australia's longest serving female mayor, while also building a reputation as a fierce defender of the interests of her community. Joy was never shy about speaking up and never held back when working towards getting the best for her community. You always knew exactly where you stood with Joy and exactly what she wanted from you: the list was always extensive but achievable.

Joy believed in Port Augusta. It is important as a vibrant regional town in our state as the crossroads between east and west. Not only was she a vigorous advocate but she certainly encouraged others, as well. I recall a meeting she attended where she arrived with a group of delegates. After a brief introduction by Joy, she handed over to the delegates. They must have been somewhat shy about being in the meeting with me and were not all that forthcoming. With that, Joy raised her voice and said, 'Well, you're always whinging in my ear about everything. Here's a minister—go on, have a go,' so she thrust the delegates forward and away they went.

She was occasionally a very controversial figure, and I certainly did not agree with all her ideas or all her points of view by any stretch of the imagination; in fact, we had some pretty fierce disagreements on a number of things. However, on many things we did agree and share. She was always a compassionate leader in her community and, while always mindful of the big picture future for Port Augusta, she never lost sight of the local people and local issues. She never forgot that the most important role of an elected official was to improve the lives of those you served, and I believe that the Port Augusta community was extremely well served by Joy in this regard.

Joy Baluch's lengthy time as mayor will forever stand as a testament to her strength, her intelligence and her commitment to her community. I am sure history will remember her as one of

the great female leaders, and I certainly extend my sympathy and the sincere condolences of members here in this chamber to her family and her friends.

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (10:08):** I seek leave to make a few remarks.

Leave granted.

**The Hon. D.W. RIDGWAY:** I rise on behalf of the opposition just to make a few brief comments in support of the statement the minister has just made about the passing of mayor Joy Baluch from Port Augusta. My earliest recollections of Joy Baluch are of when she was elected as mayor and my father as chairman of the Tatiara District Council. Dad came home from an LGA meeting talking about this woman from Port Augusta who, as we all know, was very forthright and occasionally used very colourful language. He often spoke about her after LGA meetings and indicated that she would have a very long and successful career in local government—and she did. I think she spent 30-odd years as mayor and, as the minister said, she was the longest serving country female mayor.

I heard on radio this morning that she was always having almost the last word, and I heard a little piece that obviously she had recorded sometime relatively recently about her calling to the job in Port Augusta and some words about a time to sow and a time to die. I think, to the very end, she was in control of what was happening in her life.

She was always a great advocate for Port Augusta. As the minister said, she gave the minister advice, and she gave members of this party advice, whether or not we wanted it; but, again, you were always left in no doubt as to her views, and she was a passionate advocate for Port Augusta.

At one stage, she sought preselection for the Senate for the Liberals, and I think South Australia may have been better off with someone like Joy Baluch representing us in the Senate. That did not happen but, certainly, Port Augusta was the winner in her not being successful in being preselected because she devoted her life to serving her rural community, and I think we all agree she served with distinction. I think she will be well remembered by all South Australians as a great contributor to her local community and one of South Australia's outstanding women.

## MOTOR VEHICLE ACCIDENTS (LIFETIME SUPPORT SCHEME) BILL

Adjourned debate on the question:

That this bill be now read a second time.

which the Hon. A.M. Bressington has moved to leave out all words after 'That' and insert 'the bill be withdrawn and referred to the Legislative Review Committee for its report and recommendations.'

(Continued from 14 May 2013.)

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (10:12):** I rise to close the debate and make some closing remarks. I would like to thank honourable members for their contributions on this important bill that provides for two very important reforms: first, changes to tort law regarding awards of damage under the compulsory third-party insurance scheme (which will enable more affordable premiums for South Australian motorists); and, secondly, the introduction of a no-fault lifetime support scheme for people who are catastrophically injured in major vehicle accidents.

As a former minister for disabilities, I am very pleased to hear the indications from both Family First and the Greens which mean that people who are catastrophically injured in motor vehicle accidents, and their families, will benefit from comprehensive lifetime treatment care and support. This will provide certainty of care for those who have previously had coverage under the fault-based scheme and, for the first time, provide assistance to those who currently have a no-fault based claim under the CTP scheme.

This is also a reform that tackles cost of living pressures for all South Australians who register motor vehicles. I note that SACOSS, in its most recent cost of living report, said that, on average, insurance accounts for 6.6 per cent of expenditure in South Australian households. This is more than domestic fuel and power, which is 3.3 per cent.

This bill seeks to reduce that cost by addressing minor injury damage awards. These changes will see a reduction in the CTP premium on class 1 car registrations of over $100 this

coming financial year and an ongoing benefit of over $40 per annum in real terms after the lifetime support scheme starts on 1 July 2014. This bill has the rare benefit of delivering both a major social reform as well as providing some cost relief to the wider community.

The government has consulted widely on these changes. The bill reflects changes that were made to the government's original proposals after consultations with the legal profession. Following those changes, the representatives of the legal profession have given a commitment they will not oppose the bill or seek any further amendments. The Hon. Ms Franks asked whether that would preclude the legal profession from supporting or opposing further amendments to the bill. In response, I can indicate that the government has provided the Hon. Ms Franks' amendments to the legal profession and the government will be supporting those amendments.

The Hon. Robert Brokenshire asked what the funding structures will be, if any, for linking the lifetime support scheme with the NDIS in the future. The lifetime support scheme established in this bill is complementary to but separate from the NDIS. The lifetime support scheme is a state-based legislation that will assist people injured in motor vehicle accidents and will be funded by a levy on motor vehicle registrations.

The NDIS is established under commonwealth legislation and will assist disabled people and is co-funded by contributions by the state and commonwealth governments and now also, latterly, a levy. The Hon. Robert Brokenshire also requested that the actuarial figures in relation to the lifetime support scheme be tabled. The advice provided to the government has previously been supplied to the Economic and Finance Committee, I am advised, and I now table a copy of the advice today.

PricewaterhouseCoopers has estimated the funding requirements for the LSS drawing on their considerable experience as actuaries to the New South Wales scheme. They have estimated that about 37 people will become eligible for the lifetime support scheme each year and that there will be around a further eight interim participants each year. The scheme costs assume that the care and support needs of those 37 participants will be met for life. I note that the estimated number of people entering the scheme each year is significantly more than suggested by the Hon. Ms Bressington in her contributions.

The Hon. Mr Rob Lucas sought clarification about the arrangements in the future for persons who are catastrophically injured in non motor vehicle accidents, such as falling off a horse or a skateboard. This issue is dealt with in a heads of agreement on the National Disability Insurance Scheme that was recently signed by the Premier and the Prime Minister. The heads of agreement, which is publicly available, notes that the state and federal governments are continuing negotiations regarding how care and support schemes can be established for those people who suffer catastrophic injuries as a result of medical or general accidents.

The Hon. Rob Lucas also asked about the governance of the lifetime support authority and its relationship to the Motor Accident Commission and what similar arrangements exist interstate. In most other states, I am advised, compensation for injuries arising from a motor accident operates through a single scheme that is either a fault-based or a no-fault scheme. The reforms contained in this bill create a hybrid system, with no fault treatment, care and support for those with catastrophic injuries and children, and everything else is fault-based. The only other Australian jurisdiction which has this type of hybrid system, I am advised, is New South Wales.

Recently New South Wales created a single governance structure for the New South Wales WorkCover Authority, Motor Accident Authority, Lifetime Care and Support Authority and Sporting Injuries Fund. Each of these authorities remains separate, but they are managed by a single board, chief executive and government agency that reports to one minister.

However the New South Wales system is quite different from South Australia's in a crucial respect. The New South Wales CTP scheme is underwritten by private insurers who defend and manage the claims. The New South Wales Motor Accident Authority is the regulator of the CTP scheme, not an insurer.

This government intends to ensure that administrative costs associated with the new lifetime support scheme are minimised. The lifetime support authority will have functions that are much more akin to health and disability support agencies than to the Motor Accident Commission, which is an insurer and defends claims through negotiation and sometimes court proceedings. The most important contracts and services provided by the lifetime support authority will be similar to those provided by disability agencies, not by the Motor Accident Commission.

Discussions will be held with other government entities that hold contracts for services, such as attendant care, so that the lifetime support authority can benefit from economies of scale through joint purchasing and resource sharing with such agencies.

During the development of the bill, the Motor Accident Commission and its officers were consulted on a regular basis and their recommendations taken into account. At one stage the Motor Accident Commission expressed concerns that the lowering of the threshold for access to damages for future loss of earning capacity in line with the agreement with the legal professional associations could undermine the reductions in CTP premiums.

The government sought expert actuarial advice regarding this threshold change from the Motor Accident Commission's scheme actuary. The premium reductions that have been announced reflect this expert advice. These findings have also been peer-reviewed and confirmed as reasonable by PricewaterhouseCoopers.

The Hon. Kelly Vincent asks why the latest version of the ISV table is not being used, while the Hon. Ann Bressington read into *Hansard* a letter from one lawyer stating that the ISV table will be far more draconian than that which exists in Queensland. I will explain briefly to the council what has been done in this matter. The latest version of the Queensland injury scale value has been used as a starting point for the South Australian injury scale value. The Queensland table was published on the Motor Accident Commission's website last November as a consultation draft, I am advised. The Queensland table applies to personal injuries claims generally, not just claims arising from motor vehicle accidents.

Some changes have been made following consultations with the medical and legal professions to adapt it for use in this state for motor vehicle accidents and to align it with the revised thresholds proposed in the bill. On 8 April, a draft of the ISV table was sent to the representatives of the three legal professional associations for consultation. The government has since been discussing the detail of the content of the table with them, and a number of changes have been made to address concerns they have raised. I am advised that a copy of the latest draft was sent to members yesterday, and I am advised also that it is not more draconian than the Queensland version, as was suggested.

The Hon. Kelly Vincent asked why the government wishes to change the current system for assessing damages. The current CTP scheme is expensive, and the rising costs of the scheme have resulted in premiums growing well in excess of inflation. Relative to average weekly earnings, it is the most expensive CTP scheme in Australia. For a two-car family in the metropolitan area, the CTP insurance costs are over $1,000 per annum, I am advised. If the government only introduced the lifetime support scheme and made no other changes to the CTP scheme, it would become even more expensive. The class 1 premium would have to rise by $60 per vehicle, which would be a significant impost on many families, particularly those with more than one vehicle. Premiums would also keep rising in excess of inflation every year.

The Hon. Ann Bressington has stated that 75 per cent of claimants will no longer be eligible for compensation and that between 4,000 and 6,000 people will have no ability to access adequate medical treatment or rehabilitation. This is simply not true. It is important to be clear about what the changes to the law regarding the damages will mean. No-one will lose a right they now have for compensation for the costs of their medical treatment and other special damages. People who have a common law claim because they can prove that someone else was at fault will still be able to obtain the same compensation for their medical treatment and care costs. The thresholds in the bill will not apply to these.

In fact, for some people the bill provides greater entitlements to compensation for these costs because the catastrophically injured and children will no longer need to prove someone else was at fault. They will also still be able to obtain compensation for their past loss of income, although there will be a discount. Subject to their injuries being assessed as being above the relevant thresholds, they will still be entitled to damages for pain and suffering and for the future loss of earning capacity, gratuitous services and loss of consortium. I emphasise that, given the concerns raised by the Hon. Ms Kelly Vincent, the compensation people receive for their medical treatment and care costs will not be based on the ISV table but will be awarded in the same way they are now.

The Hon. Ms Bressington made a number of remarks about legal costs and legal representation. This bill will not prevent anyone from hiring a lawyer. The clauses about costs are different from those that were in the public consultation draft of the bill. That is because the

government accepted a suggestion from the legal professional bodies that the costs provisions in the bill should align with the changes that have been made to the jurisdiction of the Magistrates Court.

Those changes, which were brought about by the Statutes Amendment (Courts Efficiency Reforms) Act 2012, mean that the Magistrates Court does not normally make orders for costs for money claims for less than $25,000. When the bill came before this parliament, the government had proposed that this amount would be $12,000, but the opposition moved an amendment that was accepted by this council to raise it to $25,000. Despite these restrictions, the bill gives the court a discretion to award costs in small motor vehicle injury claims in exceptional cases.

Further, there is an exception in relation to the third-party costs of obtaining the court's approval to a compromise of a claim by a child or other person under legal disability. A letter was read into *Hansard* from a law firm practising in this area. That letter used derogatory language regarding people who support these changes. Members should be aware that in 2011-12 around $49 million was paid out of the CTP scheme in legal costs—$49 million. This is a substantial amount of money. If it can be reduced, it will make the CTP scheme more affordable.

The Hon. Ms Bressington commented on the proposed medical accreditation scheme which the government intends to establish in the CTP scheme. She drew analogies in her contribution with the WorkCover system and suggested that only doctors who have a history of writing favourable reports for the insurers will be recruited into this new system. I am advised these arguments are not correct.

The proposed new system is very different from the medical panels which operate in the WorkCover system. The medical reports to be provided through this system are a step in the process of determining entitlements to damages. Unlike WorkCover medical panels, there is no requirement for anyone to treat the reports of accredited medical specialists as final and conclusive.

The system is designed to give the courts access to expert medical opinions that are independent of either the plaintiff or the defendant but, ultimately, the opinions expressed in the medical reports will still be weighed by the court and the parties. The medical practitioner writing the report has a duty to the courts—not to the plaintiff, or to the defendant. The minister will enter into a contract—

**The Hon. A. Bressington:** Obviously the legal profession missed all this.

**The PRESIDENT:** The Hon. Ms Bressington has been heard in silence and the minister will be heard in silence.

**The Hon. I.K. HUNTER:** The minister will enter into a contract with an independent body that will accredit medical practitioners who are willing to participate in the system. This body will also refer claimants to medical practitioners using a cab rank rule.

This bill will deliver a very different system to the workers compensation system. For the vast majority of those injured in motor vehicle accidents, a CTP system will continue to provide lump sum compensation based on the legal principles of negligence. There will still be access to legal representation to negotiate with the claims manager and access to the courts where a settlement is not reached.

For a small number of people who are in the unfortunate situation of suffering a life-changing, catastrophic injury in motor vehicle accidents, the system will be quite different. It will be far better than the existing system. It will provide certainty of care and support for life for those who need it—all of those who need it, not just some. Unlike WorkCover, this scheme will not provide income support. The scheme will provide care to people who clearly need that care for life and has been costed on that basis.

The Hon. Ms Bressington also referred to suggestions that the reforms were motivated by the government wanting to access funds held within the Motor Accident Commission—that is clearly not true. The Motor Accident Commission does not currently pay dividends to the government and the government is not seeking any returns to the budget as a result of the reforms contained in this bill. In response to concerns expressed by the legal profession regarding this issue, the government has provided written advice from Brett & Watson Pty Ltd (the actuaries for the CTP scheme) confirming that the expected CTP premium for a class 1 registration of $408 reflects the full amount of the expected savings arising from the proposed reforms.

The Hon. Mr John Darley has said that the success of the scheme will rely heavily on the quality and expertise of the management implementing it. The government agrees. We will be looking closely at how the New South Wales scheme works. The lifetime support scheme is based on the New South Wales system, not a Victorian system, as suggested by the Hon. Ms Bressington.

We have provided honourable members with a copy of the New South Wales Lifetime Care and Support Scheme Guidelines, which provide guidance as to the eligibility criteria and benefits that will be available under the lifetime support scheme. The LSS rules will be similar to the New South Wales guidelines, but, in developing the rules, we will seek to consult with local medical and disability experts. We have invited a number of experts to be on the advisory group for this purpose, including, I am advised:

- Dr Ruth Marshall, Medical Director, Orthopaedic, Amputee and Spinal Injury Service at the Hampstead Rehabilitation Centre;
- Associate Professor Bill Griggs, Director of the Royal Adelaide Hospital Trauma Service;
- Dr Miranda Jelbart, Medical Director of the SA Brain Injury Rehabilitation Service at the Hampstead Rehabilitation Centre;
- Associate Professor Ray Russo, Director of the Paediatric Rehabilitation Department at the Women's and Children's Health Network;
- Dr Anthony Sparnon, head of the Burns Unit at the Women's and Children's Hospital;
- Associate Professor Robyn Young from the School of Psychology at Flinders University;
- Ms Mariann McNamara, the Executive Officer of the Brain Injury Network of South Australia (known as BINSA);
- Ms Sharron Neeson, the Manager of Support Services at PARAQUAD SA;
- Mr John Brayley, the Public Advocate;
- Mr Alan Lindsay, a barrister, I understand; and
- disability experts from our own Department for Communities and Social Inclusion

In addition, the legal professional associations have also been asked to nominate a representative to this group. We believe that this is a good starting point for building the new lifetime support scheme system.

The Hon. Mr Lucas has tabled two amendments relating to the start date of sections of this legislation. The first amendment is to bring the lifetime support scheme into operation by 1 October 2013 rather than the foreshadowed date of 1 July 2014. The government opposes this amendment. We do not believe that the LSS Rules which establish eligibility and entitlements, the staffing and the systems (including the IT systems) can be established with that amount of lead time. Furthermore, the Department of Planning, Transport and Infrastructure will not be able to implement the necessary changes to create a levy on all motor vehicle registrations in that time frame. CTP premiums are adjusted annually on 1 July each year. They should not be changed in a shorter time cycle than this, otherwise there will be significant inequity between motorists depending on when their vehicle registrations fall due.

The second amendment of the Hon. Mr Lucas seeks to commence the lifetime support scheme and the reforms to entitlements under the CTP scheme on the same date. The government also opposes this amendment. The government believes that the commencement date for the lifetime support scheme needs to be 1 July 2014 in order to allow time to establish the scheme and put in place the levy which funds the scheme. There is no reason at all to delay the introduction of the reforms to the CTP scheme. They can and should be implemented immediately. Those reforms are designed to address the high cost of the scheme and deliver improved affordability for South Australian motorists.

In moving this amendment, the opposition is seeking to stop this parliament from delivering a significant cost of living benefit to the South Australian community. The government believes that this is a cynical move and will strongly oppose it. For these reasons the government believes that the timetable which has been foreshadowed for these reforms is the most appropriate. The lifetime support scheme should come into effect as at 1 July 2014. In the interim, all South Australian

vehicle owners should receive the benefit of the cheaper premiums which will be the product of the tort law reforms.

As I mentioned previously, the Hon. Ms Franks has filed amendments to the bill. They reflect some submissions made by the South Australian Council of Social Service, as I understand it. The government has given careful consideration to these and following discussions with the Greens has indicated the government will support those amendments. One of these amendments will give the courts discretion to award damages for loss or impairment of future earning capacity where the injured person has an ISV rating of seven or less but the consequences of the injury to the person's future earning capacity is exceptional and application of the threshold would be harsh and unjust.

The government agrees that limited discretion in exceptional cases is an appropriate mechanism to deal with the rare instances where an otherwise relatively minor injury impacts significantly on earning capacity because of the peculiar requirements of that occupation. The Hon. Ms Franks' amendments would also include in the bill rules for applying the ISV table in cases of multiple injuries. The government had, like Queensland, intended to deal with this in the regulations. However, the government will agree to them being in the act.

The Hon. John Darley is moving two amendments. One is intended to give the courts a discretion towards damages for non-economic loss (i.e. pain and suffering) to people whose injuries are assessed at 10 or less on the ISV scale. The second is to give the courts a discretion to award damages for impairment of future earning capacity to people whose injuries are assessed at seven or less on the ISV scale. The government will be opposing both these amendments.

The first of the Hon. John Darley's amendments would allow the court to exercise its discretion in favour of awarding damages for non-economic loss when the person's ISV is assessed at being below the threshold of 10 if the injury is severe. This and the second amendment are very difficult to interpret and are very likely to result in several cases going on appeal to the Supreme Court to obtain court rulings on their meaning. The drafting of these amendments does not fit in well with the draft ISV table, and they are likely to produce confusion in their application.

Furthermore, it is arguable that the amendment to the non-economic loss provision would allow the court to order any amount it considered appropriate once it had found that the plaintiff's injury is severe as defined in the amendment i.e., without regard to the additional scale in the bill that specifies the amount to be awarded for each point on the ISV scale up to a limit of $300,000 (indexed).

The second amendment, like the first Franks amendment, is to amend the clause about damages for impairment of future earning capacity. It would give the court a discretion to award damages of future earning capacity if an injury is 'severe'. The amendment is also very difficult to interpret. The definition of 'severe' appears to be influenced by a definition in the Victorian Transport Accident Act of 'serious'. However, that definition is used for a different purpose, I am advised: applying to a court for leave to issue proceedings for damages in an otherwise no-fault compensation system. Further, it is used in the context of injuries that result in at least 30 per cent whole person impairment.

The Motor Accident Commission CTP scheme actuary advises that the amendments would create a risk for the CTP scheme resulting in higher premiums and that the interpretation and therefore the impact of such narrative conditions may well vary over time. As such, the government intends to oppose the Hon. Mr John Darley's amendments.

The Hon. Ann Bressington has moved an amendment to withdraw the bill and send it to the Legislative Review Committee. I remind honourable members that this bill has been the subject of a green paper and a white paper process; that the reforms have strong support from numerous groups, including the RAA; that the government has consulted and listened to many groups, including making significant changes in consultation with legal professional associations; and that the reforms have been costed and peer reviewed by respected actuaries.

The people of South Australia are concerned about cost of living pressures, and SACOSS reported in its most recent cost of living report that insurance costs have been rising well above the average inflation rate. This is particularly true for CTP insurance, which every motorist must have and cannot reduce without the assistance of this parliament.

The government strongly opposes this or any other move (such as the amendment proposed by the opposition) which is designed to deny or delay the relief to households on CTP insurance premiums that this bill in its current form will deliver. I commend the bill to the council.

Amendment negatived; bill read a second time.

In committee.

Clause 1.

**The Hon. R.I. LUCAS:** The minister has just responded to a number of issues raised during the second reading stage of the debate. There are a couple of issues that I want to pursue with the minister as a result of his response. In particular, I seek further clarification of the position put to the government by the Motor Accident Commission on the final state of the bill after the deal the government did with the legal professional associations. I have heard what the minister has said but it does not actually answer the question I put during the second reading stage of the debate.

Has the Motor Accident Commission continued to express concerns to the government about the deal that the government did with the legal professional associations? Can I just at this stage note briefly that it is entirely within the prerogative of the government to make whatever decisions it wishes to. I certainly do not challenge that position, but I think it is important for this chamber, given the resident expertise within government generally on this issue rests with the Motor Accident Commission, to know what the final position of the Motor Accident Commission is in relation to the bill that is currently being put to the chamber.

**The Hon. I.K. HUNTER:** My advice is that the Motor Accident Commission has been given advice from their own actuaries, which the government has obtained, which indicates that the changes proposed should not adversely impact on premiums. As far as I am aware, the Motor Accident Commission is not objecting any further.

**The Hon. R.I. LUCAS:** That is essentially what the minister said in reply to the second reading, so I just want to clarify that the minister is indicating to this chamber that the Motor Accident Commission has withdrawn the concerns it has expressed about the deal and is now supporting the current legislation before the house.

**The Hon. I.K. HUNTER:** My advice is that MAC has not used the terminology as the Hon. Mr Lucas has put it.

**The Hon. R.I. Lucas:** Has or hasn't?

**The Hon. I.K. HUNTER:** Hasn't used your terminology, but following the advice presented to it it is no longer objecting.

**The Hon. R.I. LUCAS:** Let me put on the record that my understanding is that the Motor Accident Commission has expressed significant concerns to the government about the nature of the deal that they did with the legal professional associations. My understanding is that officers of the Motor Accident Commission have met with the government advisers in relation to the deal. As I said in the second reading, the Motor Accident Commission was the original, so I am advised, catalyst or initiator of the package that we have before us. It certainly supported the original bill. The significant concerns it has expressed to the government, I am told, have been in relation to the deal that the government negotiated with the legal professional associations.

That is the advice that I have been provided with by the government. The government has partially conceded that in its reply at the second reading, when it said in its response that at one stage the Motor Accident Commission expressed concerns that the lowering of the threshold for access to damages for future loss of earning capacity in line with the agreement of the legal, professional associations could undermine the reductions in CTP premiums. My understanding was that the Motor Accident Commission did more than that, but that certainly was part of its concerns in relation to the deal that had been negotiated.

I am advised that certainly key people within the Motor Accident Commission were not privy to the negotiations conducted with the legal professional associations, and that is why they expressed significant concerns about the deal. I have invited the minister (and the minister can obviously act only on the advice he is given—I accept that), and the word 'advisedly' he is using means he is not in a position to say that the Motor Accident Commission now supports the

legislation that is before the house. He quite pointedly uses the words 'is no longer objecting' to the bill proceeding or the bill as it is.

As I said, my understanding, which is not allayed by the words the minister has been provided with to respond, is that the resident experts within government collectively (and that is the Motor Accident Commission) do have significant concerns with the bill as it is before us at the moment. A number of members have raised the issue about the fact of the difficulties the government has got into with the WorkCover scheme in terms of its financial viability, and they have raised concerns in relation to whether or not the financial viability of this scheme will be as rosy as the government is indicating it to be. A number of us have expressed reservations and concerns about that but, as we have indicated, we are not in a position to second-guess from the opposition benches the actuarial advice that has been provided to the government.

I do not intend to delay the proceedings on this particular issue at this stage, other than to say 'mark our words', I guess, that a number of members have expressed concern about the financial viability of the scheme and whether or not the claims about premium reductions and costs will be as the government has claimed, particularly in this period leading up to the March 2014 state election. It certainly will not surprise me (or, I suspect, a number of others) if, post the 2014 election, whoever is in government, after a number of years we find that the financial situation is significantly different from what is being outlined here today.

I think that is supported by the very significant concerns I understand the resident experts within the Motor Accident Commission are expressing about the nature of the deal the government has done with the legal professional associations on this particular issue. I put those views on the record. I think it is clear from the minister's advice, which indicates that he is not in a position to indicate that the Motor Accident Commission supports this piece of legislation. He cannot use those words, yet they are the resident experts in government in relation to this issue.

**The Hon. I.K. HUNTER:** I will comment on the events as the Hon. Mr Lucas portrays them: I do not know whether or not they are accurate, but the Hon. Mr Lucas is concentrating on half of my explanation, that being that the Motor Accident Commission no longer objects. The other half, the first half, is that that follows from the provision of data and information provided to them by their own actuaries. They now have this position.

Clause passed.

Clause 2.

**The Hon. R.I. LUCAS:** I move:

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Line 6—Delete 'This' and substitute:

Subject to subsection (2), this

After line 6—Insert:

(2) Sections 5 and 6, and Parts 2, 4 and 6 of Schedule 2, must be brought into operation on the same day.

These two amendments are part of a package. This was an issue of much discussion during the second reading debate, and essentially it relates to the start-up of the scheme. As I outlined in the second reading on behalf of the member for Davenport and the Liberal Party, our position essentially is that we can see the political logic of what the government is seeking to do but we cannot see the reality of what the government is seeking to do in relation to the differential timing of the start-up of elements of the package before us.

Essentially what the government is seeking to do, in the period leading up to the state election, is to implement changes which it claims will lead to a short-term reduction in the cost of CTP and then, of course, the bulk of that is whipped away immediately after the state election. Surprise, surprise—for the period leading up to the state election the government says, 'Okay, we'll give you a financial benefit from this particular reform', and then, of course, after the election the bulk of that particular benefit will disappear as the second element of the scheme starts. The blatant cynicism of that arrangement I think is apparent to everyone who has had a look at the scheme.

As the member for Davenport, and others, put eloquently, essentially what the government is saying is that it is prepared to delay the start of the scheme until 1 July so that 10 or 15 or

20 catastrophically injured persons in South Australia—whatever that number happens be—will not get the advantages of this particular scheme because they have structured the start-up dates in this particular way.

That small number of people—and this scheme was always intended to cover a small number of people, and we accept that—between when the scheme could have started up in this financial year and 1 July next year, who might have attracted this particular benefit, will be left to, in essence, suffer as a result of the political machinations of the government's pre-election manoeuvring.

The opposition's position, as the member for Davenport has put it, is that if you can get something as complicated as an ICAC up and going in six months, with all the complications of an ICAC, then surely to goodness you can get the arrangements that relate to this particular scheme up and going in that period or better. I understand, although it has not been said to me, that the government is running around saying, 'Well, that's impossible,' and giving all sorts of reasons. If the government wants to achieve something it will achieve it.

You can get this sort of advice from public servants and bureaucrats who support whatever argument you wish to put. I accept the argument that there are complications and there will be a time period that is required. However, the government could say to all those involved, 'Look, six months to get an ICAC up; six months to get this particular scheme up—that's it; let's devote the resources to get this particular scheme up and going in six months.' I do not accept, having been in government, that you cannot and you could not get this scheme up and going so that that small number of people between, say, January 2014 and July, who are going to miss out as a result of the government's arrangement, might be included in an early start-up to this particular scheme.

Why this government, supposedly a government that represents Labor values, as it claims, would seek to deny a small number of people who might benefit from this between, say, January and July of next year for purely political purposes, I cannot accept and I just do not understand. I think it is for those sorts of reasons, sadly, that the people of South Australia have lost faith in this government. They see a government more interested in political machinations and political manoeuvring rather than genuinely delivering on reforms when they know that they could deliver on those particular reforms within a reasonable time frame.

I have withdrawn the original amendment as canvassed by the member for Davenport because of his discussions with other non-government members in this chamber to look and see whether there is an alternative amendment which may well meet a compromised position, and that is what this particular amendment is seeking to do. It is basically saying, 'Look, rather than doing what the government is doing, which is splitting the start-up dates, why not drive this reform to have both elements started as soon as possible and at the same time?' As I said, and say again, for the life of me, if you can start an ICAC in six months why can you not do this in six months, so that by the end of November, the six-month period, or seven months, which is the end of December, you could say, 'We are going to start all elements of this particular scheme by 1 January 2014.' I just cannot understand why a government would not be prepared, in essence, to do that.

That is what this amendment is seeking to do. It is ultimately leaving the decision in the hands of the government in terms of the timing. Our original position was to try to lock them into a particular date—whether it be in October, November or December, whatever it might be—but, essentially, we are saying, 'We still think you can do it by November or December but, if it has to be January or February, but earlier than July, then why not put the package together and get everything going so that the benefits to the small number of catastrophically injured can start ASAP, rather than waiting until 1 July because that suits the government's political convenience?'

So, that is the proposition that the member for Davenport and the Liberal Party wish to put to this chamber. With this first amendment, which is a package of two, clearly, this first vote I will accept as a test vote for both. We seek the chamber's endorsement of this new amendment.

**The Hon. R.L. BROKENSHIRE:** You have two amendments for clause 2, page 5: are you moving both?

**The Hon. R.I. LUCAS:** I am happy to move both amendment No. 1 and amendment No. 2. They relate to exactly the same discussion.

**The Hon. R.L. BROKENSHIRE:** Family First has deliberated on this for a couple of weeks now and there is no doubt that this is a cynical exercise. The fact of the matter is, as I said to the government yesterday, the government could have simply chosen to reduce registration fees

per se by $104 or $105. They can do that without anything having to come through this house. The intent of the bill is to assist people who are tragically and permanently injured in horrendous situations with lifetime support, and we have always said that we support the principle of the lifetime support scheme. We have further deliberated on it in the last 24 hours and, notwithstanding what the Hon. Rob Lucas said, which I personally agree with, it is a cynical, political, base, pointscoring exercise.

Having had further discussions, as I said, with the government yesterday, it is not prepared, from advice given to us, to assure us that it can get this scheme through any sooner than as far out as 1 July 2014. I suggested to the government that when other difficult schemes like the emergency services levy were brought into place, which I had the privilege of being minister for, that was very complicated too. In fact, I would suggest that it was as complicated as the procedures that have to be put in place for this scheme but, through pushing them, including setting up enormous databases, they were able to come in at a reasonable timeframe on that scheme, and I believe the government is probably not pushing and challenging and testing the department and those officials responsible enough to bring the scheme in earlier.

Having said all that, just so that the council knows, the one concern with this that we have had is that, if we are to support this amendment, then the reality is that a lot of families are going to miss out on a one-off reduction, and I want to reinforce that it is only a one-off. It is not permanent; people might think they are getting a permanent reduction, but they are not. There will be $60 coming back into the scheme the following year.

Notwithstanding that, from all the people we are working with across the state, they are hurting very badly at the moment. We are the highest taxed and charged state in Australia and we finally made a decision that we could not accept the fact that those people—based on an average of two vehicles per family—would miss out on a saving of $200 to $208 or $210 or thereabouts in that first year.

For that reason, whilst we are reluctant to accept that the government is working hard enough to bring this in simultaneously—which is what should have happened, because the intent is lifetime support, not a one-off rebate—we believe those families are hurting so much that they need that reduction now, and I think they will actually still consider the state of South Australia on the second Saturday of March next year and vote accordingly. In the meantime we have decided that we will support the government to ensure that these people do get the one-off rebate on their registration next financial year.

**The Hon. I.K. HUNTER:** The government also opposes this amendment. As I said in the contribution I just made, the government believes that the commencement date for the lifetime support scheme needs to be 1 July 2014 to give us time to establish the scheme and put in place the levy that funds the scheme. There is no reason to delay the introduction of reforms to the CTP scheme: they can and should be implemented immediately. Those reforms are designed to address the high cost of the scheme and deliver improved affordability for South Australian motorists.

In its most recent cost of living report, SACOSS identified that on average insurance was 6.6 per cent of expenditure for all South Australian households, and this bill seeks to reduce that cost. In moving this amendment, the opposition is seeking to stop this parliament from delivering a significant cost of living benefit to the South Australian community. The government believes that this is the cynical move that the Hon. Mr Lucas was speaking about, and we strongly oppose it.

**The Hon. T.A. FRANKS:** I rise to indicate that the Greens will be opposing this amendment. We do think there may be some truth to the accusations of it being a cynical, political manoeuvre. We also think the same thing of this amendment put by the Liberal Party, and we think that we will take the advice of the public servants about the implementation of this new act and act accordingly by not buying into the politics.

**The Hon. K.L. VINCENT:** I just quickly indicate that I will be supporting this amendment. It could be seen as a cynical move, but I think I have made it pretty clear in my second reading speech that, in fact, I see this entire bill as a very cynical move. It is in fact aiming to fix a system that is fundamentally not broken and strip people of very important fundamental rights because of that. For that reason, I will support this amendment.

**The Hon. A. BRESSINGTON:** I indicate that I will also be supporting the amendment for the same reasons that the Hon. Kelly Vincent mentioned. I would also just point out that whether or not this is a political manoeuvre is irrelevant. I have canvassed many people in the community

about this so-called $100 saving on their registration, and the fact of the matter is, they would much prefer to be guaranteed protection and cover if they, or one of their family members, were unfortunate enough to have a motor vehicle accident.

Regardless of what the Hon. Ian Hunter said in his summing-up speech, the figures that I quoted in my second reading speech came from the legal profession. Some 4,000 to 6,000 people will be detrimentally affected by this bill and by the way the assessments are going to be done, so you can spin it whichever way you like. As the Hon. Kelly Vincent said, this is a cynical move; it is unnecessary, the system is not broken. Why are we fixing it?

*An honourable member interjecting:*

**The Hon. A. BRESSINGTON:** Well—supposedly claiming to fix it. I will be supporting this amendment and I do believe, as the Hon. Robert Brokenshire said, this bill was about providing care to catastrophically injured people and we are delaying that by almost 12 months while the government can get the kudos for cutting a lousy $100 off people's registration.

*An honourable member interjecting:*

**The Hon. A. BRESSINGTON:** As a one-off, yes.

**The Hon. J.A. DARLEY:** I will be supporting this amendment. During my discussions with the government they suggested that it was going to take 40 or 50 weeks to implement this system. I have had experience in major computing systems in the government that are more complicated than this, and I do not see any reason why they could not get their act into gear and bring it in on 1 January.

**The Hon. R.I. LUCAS:** Just to briefly conclude my comments on the amendment, I thank other members for their contributions. It is a difficult issue and I accept that, but I support what the Hon. Mr Darley has just said from his position as a former senior officer within the Public Service and, as I put earlier, my position as a minister in a former government. It is just incomprehensible that you can accept the argument that it is going to take a year to put something in on this basis when much more complicated things are put in place in much shorter periods, as much as six months.

To that end, just to follow up the point, the position that we are putting in this amendment is not that the one-off $100 benefit that the government is talking about would be removed, because, clearly, if you can get the scheme in and operating within six months then there would be a pro rata impact in terms of that $100, so there could still be a saving that could be offered on a one-off basis during that particular financial year, depending on when you start the scheme and what the calculations are. It is impossible for us from opposition to say what they would be, but it certainly is not as black and white as: if you support this particular amendment you are supporting taking away the $100 that is being talked about. Part of that would certainly disappear but certainly not all of it. I have nothing further to add to those comments.

The committee divided on the amendments:

AYES (9)

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

NOES (10)

| | | |
|---|---|---|
| Brokenshire, R.L. | Finnigan, B.V. | Franks, T.A. |
| Gago, G.E. | Hood, D.G.E. | Hunter, I.K. |
| Kandelaars, G.A. | Maher, K.J. | Parnell, M. |
| Wortley, R.P. | | |

PAIRS (2)

| | |
|---|---|
| Dawkins, J.S.L. | Zollo, C. |

Majority of 1 for the noes.

Amendments thus negatived; clause passed.

Clauses 3 to 24 passed.

Clause 25.

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

Page 14, line 20—Delete 'LSS Rules' and substitute 'Authority'

I understand that this amendment is technical in nature. It is an amendment to clause 25(6)(b) of the bill, and I understand that it is to improve the efficiency of the operation of the bill.

**The Hon. R.I. LUCAS:** The member for Davenport advises that he accepts the government's argument that it is a technical amendment. We support the amendment.

Amendment carried; clause as amended passed.

Clauses 26 to 32 passed.

Clause 33.

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

Page 18, after line 29—Insert:

(ab) a determination of the Authority that results in the suspension of the participation of a person in the Scheme; or

This is an amendment to the lifetime support scheme part of the bill. It was suggested by the opposition during debate in committee in the other place that a decision of the lifetime support authority to suspend a participant should be subject to review and a right of appeal. This suggestion will be taken up by this amendment. It will be done by expanding the definition of 'relevant determination'. This will give a participant in the lifetime support scheme who has been suspended from participation a right to a review of the suspension determination and then a right to appeal to the District Court.

**The Hon. R.I. LUCAS:** As the minister has indicated, this is an issue raised by the member for Davenport. As I indicated in the second reading, I again congratulate the member for Davenport on his handling of the bill on behalf of the Liberal Party. There are a number of issues that he raised during the House of Assembly debate which the government, to give it credit, has acknowledged were deficiencies in the original draft legislation and, with the agreement of the member for Davenport, the government is moving these amendments.

I congratulate the member for Davenport on this issue and a number of others. I think it also highlights the importance of having two chambers of parliament because, clearly, it has given the government the opportunity to reflect on the bill in its passage between the House of Assembly and the Legislative Council, to consider the position that has been raised by the member for Davenport and to see its worth and the need for an appropriate amendment. The government, as I said, to its credit, has acknowledged that now and moved this particular amendment. For those reasons, the Liberal Party will support the government's amendment.

Amendment carried; clause as amended passed.

Clauses 34 to 54 passed.

Clause 55.

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

Page 30—

Line 31—Delete 'the WorkCover Corporation' and substitute 'a prescribed authority'

Line 35—Delete 'the WorkCover Corporation' and substitute 'the prescribed authority'

Page 31—

Line 3—Delete 'the WorkCover Corporation' and substitute 'the prescribed authority'

Lines 4 and 5—Delete 'the WorkCover Corporation' and substitute 'the prescribed authority'

Line 10—Delete 'The WorkCover Corporation' and substitute 'A prescribed authority'

Line 11—Delete '112(2)' and substitute '112'

After line 15—Insert:

prescribed authority means—

(a) in relation to a person who suffered a compensable injury as a worker of a self-insured employer under the Workers Rehabilitation and Compensation Act 1986—that self-insured employer; and

(b) in any other case—the WorkCover Corporation;

Amendments Nos 3 to 9 are all related. Amendments Nos 3, 4, 5, 6, 7 and 9 are to give effect to a suggestion made by the opposition during debate in committee in the other place. They are to allow self-insured employers to enter into agreements with the lifetime support authority for the provision of services to catastrophically injured workers. This is in addition to WorkCover Corporation.

Amendment No. 8, I am advised, is a technical amendment for clarification to avoid any arguments about which is the relevant provision of section 112 of the Workers Rehabilitation and Compensation Act 1986 in the context of 'catastrophically injured workers'.

**The Hon. R.I. LUCAS:** Again, as the minister has acknowledged, all these amendments are a result of suggestions made by the member for Davenport in another place to correct inadequacies or deficiencies in the government's original legislation. To the government's credit, it has acknowledged those deficiencies and is now moving these amendments. For those reasons, the Liberal Party will support the government's amendments.

Amendments carried; clause as amended passed.

Remaining clauses (56 and 57) passed.

Schedule 1.

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

Clause 6—

Page 34, line 33—After 'possession' insert ', custody or control'

Page 35—

Line 5—After 'possession' insert ', custody or control'

After line 11—Insert:

(4a) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (4).

Maximum penalty: $5,000.

Amendment No. 10 will amend clause 6(1)(b) of the schedule which provides for powers and procedures on referral of a dispute to an expert review committee. The amendment is a technical one to ensure that an expert review panel's power to ask a relevant person to supply copies of documents cannot be interpreted narrowly.

Amendment No. 11 is to insert after 'possession' a similar phrase, namely, 'custody or control'. This will amend clause 6(3) of the schedule. This is also a technical amendment. Like amendment No. 9, it will ensure that this provision that obliges a person referring a dispute to an expert review panel to submit copies of all documents relating to the referred question cannot be interpreted narrowly.

Amendment No. 12 at schedule 1, clause 6, page 35, is to insert subclause (4a). With the consent of an injured person, an expert review panel can request a treating health professional to meet with a panel and answer questions and supply relevant documents. This amendment is to ensure the cooperation of treating health professionals and to make it consistent with the review of disputes by a review officer under clause 34 of the bill.

**The Hon. R.I. LUCAS:** The member for Davenport has indicated that the Liberal Party is prepared to support these particular amendments. The Liberal Party supports the proposition that the amendments are largely technical in nature for the reasons as outlined by the minister. We accept the government's contention that, on reflection, the bill could be improved in this particular way. For those reasons, we are prepared to support the amendments.

Amendments carried; schedule as amended passed.

Schedule 2.

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

Page 36, lines 23 to 27—Leave out all words in these lines after '0 to 100'

I am advised that this amendment is a technical one. It will not in any way change policy. The words that appear in the parentheses were copied from the existing section 52 of the Civil Liability Act and they are necessary for the existing provisions that require the court to assign a numerical value on a scale from zero to 60, reflecting six degradations of seriousness of the injury.

They were in the consultation drafts of the bill that were published with the white paper and no-one critiqued them then. However, it has been realised that these words are not really appropriate for the way the injury scale value table will be structured, with a range of values for different types of injuries, and might cause confusion with the system used for the current 60-point scale, which will continue to be used for non motor vehicle injury claims. The amendment will make the intended operation of clause 52 clearer.

**The Hon. R.I. LUCAS:** The member for Davenport advises that the Liberal Party accepts that this is a technical amendment and the Liberal Party is prepared to support it.

Amendment carried.

**The Hon. J.A. DARLEY:** I move:

Clause 3, page 37, after line 16—Insert:

(4a) However, a court may award damages for non-economic loss in a case that would otherwise be excluded by the operation of subsection (4) if satisfied that the personal injury is a severe injury.

(4b) For the purposes of subsection (4a), an injury is a severe injury if the consequence of the injury with respect to non-economic loss is fairly described as being—

(a) more than significant or marked, and at least very considerable; and

(b) more than serious to the extent of being severe,

when judged by comparison with other cases involving the same injury.

The amendment relates to damages for non-economic loss; in other words, pain and suffering. Members will note that section 52(4), inserted by clause 3 of the bill, provides that:

A person who suffers personal injury arising from an MVA motor accident may only be awarded damages for non-economic loss if the injury scale value that applies under subsection (3)(a) in relation to the injury exceeds 10.

The injury severity value is a mechanism by which damages are effectively dumbed down and the impact of an injury on a person is given far less weight than what a court could otherwise award, taking into account all of the circumstances of the case. The scale attempts to categorise injuries into levels of severity from which you then obtain a narrow band of compensation, particularly in respect of injuries that are not very severe.

It is still unclear as to how multiple injuries will be affected under the new scheme. It is still unclear whether the example of the hairdresser who breaks an arm and cannot return to hairdressing or the winemaker or chef who loses their sense of taste and smell are covered under the scheme. The proposed amendment provides the court with the discretion to award damages for non-economic loss in a case that would otherwise be excluded by the operation of subsection (4) if satisfied that the person's injury is a severe injury.

An injury is a severe injury if the consequence of the injury with respect to non-economic loss is fairly described as being more than significant or marked and at least very considerable and more than serious to the extent of being severe when judged by comparison with other cases involving the same injury. Both the first and second amendments are modelled on the Victorian narrative test. That test was introduced into Victorian legislation after it was deemed that it was too harsh and limiting in effect. It is intended to ameliorate losses in situations where a person does not meet the injury scale value, which in this case is 10, but nevertheless suffers serious injury.

The government has indicated that it will be opposing this amendment and the second amendment that I intend to move. The reasons for this are outlined in a letter provided to my office by the minister yesterday evening at 7.48pm. They include that the amendment is inconsistent with the government's policy of preventing the award of damages for pain and suffering for minor injuries, that it would be difficult to interpret and would be very likely to result in several cases going on appeal to the Supreme Court to obtain rulings on their meaning, that arguably the amendment

will allow the court to award any amount it considered appropriate once it had found that the plaintiff's injury is severe as defined in the amendment thus potentially threatening the viability of the scheme.

The government has also expressed concern about situations where a court exercises its discretion to award damages for injuries that would otherwise fall below the scale that are in excess of what another person would get in accordance with the scale itself. Further, the minister advises that in Victoria the experience has been that the narrative test has moved from being under 30 per cent of successful common law claim applications in 1996 when it was introduced to over 80 per cent of claims and that this has been associated with a significant increase in severe injury claims.

In addition, the Motor Accident Commission scheme actuary has advice that gives the different applications. There is no relevant experience from which the potential impact of the amendments on the recommended premium may be assessed. Therefore, the actuary would need to include an as yet unqualified contingency margin and this would mean that CTP premiums would be more expensive in 2013-14 than anticipated.

The same arguments have also been raised in relation to the second proposed amendment which deals with awards of damages for economic loss. I have to say that I am not the least bit surprised by the minister's response to the amendments. They do, after all, try to address some of the vast inequities that the government is proposing in its bill. It should come as no surprise that the Victorian experience has been that the narrative test has resulted in a significant increase in injury claims.

As mentioned earlier, the reason for the introduction of the test in the first place was to deal with the harshness of the Victorian scheme. That same harshness would apply equally in this jurisdiction without a similar amendment. It is absolutely crucial to consider situations which will undoubtedly arise due to the harshness of these reforms. The amendment would allow the courts the discretion to award non-economic loss in situations that simply do not fit within the restrictive confines of the ISV chart.

Whilst I accept that the legislation in South Australia is markedly different from that in Victoria, it is appropriate to have provisions in the bill which will enable the court to undo the injustices which will ultimately arise from not awarding damages for non-economic loss in situations where justice will cry out for a remedy. Every other bill we introduce into this place seems to adopt this approach. It gives the court the ultimate discretion to deal with exceptional cases.

The lack of appreciation for these sorts of cases is understandable when you consider the minister with carriage of the bill suggests that going to court for a non-economic loss is a bonus. It is not a bonus; it is an entitlement, an entitlement which the government has deemed fit to remove for a huge number of injured persons. What the minister is essentially suggesting is that damages for emotional, mental and physical distress are not something an injured person deserves by virtue of their injuries; it is a windfall.

I remind the minister that our courts do not award damages for pain and suffering lightly. They do so by comparing the severity of the loss sustained with the most and the least severe loss which anyone could suffer. Nor do injured persons generally seek handouts for their injuries. They seek what they are legally and rightfully entitled to.

This amendment and indeed the subsequent amendment are necessary and vital in ensuring that our system is fair and just to the extent that it can be, given the draconian reform that the government is imposing on the very people that it calls its constituents. This is not about the legal fraternity and money hungry lawyers: it is about those people who through injury or disability are often unable to fend for themselves. It is about protecting the rights and entitlements of people to recover damages commensurate with the level of injury they have sustained.

That being said, in the event that this amendment is not supported, I will be moving an alternative amendment, which is yet to be filed, based on the Hon. Tammy Franks' approach with respect to economic loss. Whilst this is by no means my preferred position, we are basically at the point where some exception to the general rule, no matter how watered down it is, is better than what the government is proposing.

The alternative amendment would give the court the discretion to make awards or damages for non-economic loss in cases where the consequences of the injury sustained are exceptional when compared to other cases involving the same injury. The only proviso would be

that an assessment of damages for non-economic loss must be based on an injury scale value that should rarely be higher than the injury. The reason for this relates to the government's concerns over situations where a court exercises its discretion to award damages for injuries that would otherwise fall below the scale that are in excess of what another person would get in accordance with the scale itself.

As I mentioned, the best outcome would be to support the first proposed amendment. However, if that is not achievable, I would ask honourable members to support the alternative position. Mr Chairman, I seek your advice on the fact that my alternative amendment has yet to be filed. We have been working with the government overnight and this morning, negotiating the second amendment. Could this clause be recommitted at a later stage?

**The CHAIR:** The Hon. Mr Darley, I have been advised that, if it is acceptable, we use this one as a test. Your alternative is pretty close to being filed as we speak. Are you happy to proceed with this at this stage? Should it fail, then you can move the one that is coming hot off the presses. Is that all right?

**The Hon. J.A. DARLEY:** Yes.

**The Hon. I.K. HUNTER:** In moving the amendment, the honourable member will be, I think on your guidance, moving this first amendment [Darley-1] 1, as a test amendment. Is it his intention that, if that fails, he will not be moving [Darley-1] 2?

**The Hon. J.A. DARLEY:** I was going to move amendment No. 2, but I can understand the situation that it will not be supported by the government.

**The CHAIR:** Minister, are you making a contribution to [Darley-1] 1?

**The Hon. I.K. HUNTER:** The Hon. Mr Darley has indicated that he has two amendments: the first is being treated as a test amendment; should it fail he will not proceed with the second amendment, I understand. However, should it fail, he has another amendment that has just been filed. The government opposes the [Darley-1] 1 amendment, which he has outlined admirably for us, on several grounds, but let me recap.

Our legal advice is that the amendment is very difficult to interpret and will lead to significant litigation, the outcome of which is very uncertain. Depending on its proper interpretation, it could result in people with injuries that fall below the threshold of 10 on the ISV being awarded more damages for non-economic loss than are people above the threshold. This would be patently unfair. The drafting is not consistent, I am advised, with the ISV table and will lead to confusion. The ISV table sets bands of ISVs for each type of injury based on minor, moderate or serious. This amendment would require the courts to superimpose a decision about whether an injury is more than serious to the extent of being severe.

It is very difficult to see how the courts will be able to interpret this in the context of a scheme that is quite different from the Victorian scheme, which appears to have influenced the idea. The Victorian scheme is primarily a no-fault scheme. It allows for common law damages only in the case of quite serious injuries based on whole person impairments and not an injury scale value system taken from Queensland, for example.

The amendment does not require any reference to the points scale that other amendments to this bill require. Therefore, it may be interpreted as allowing the court to reward any amount it considered appropriate without regard to the additional scale in the bill. This could possibly mean that people with minor injuries receive more than those with more serious injury. The approach is inconsistent with the government's policy of preventing the award of damages for pain and suffering for minor injuries.

Whilst the wording is similar to that used in the Victorian narrative test, its role here would be in a very different context and for a different purpose. In Victoria, an injured person cannot apply for common law damages unless they have an injury of over 30 per cent whole person impairment or a severe injury under this narrative test. A 30 per cent whole person impairment is between three and four times more severe an injury than the thresholds to which the Hon. Mr Darley's amendments would apply under this scheme, I am advised.

I am also advised that in Victoria the experience has been that the narratives test has moved from being under 30 per cent of successful common law claim applications in 1996, when it was introduced, to around 75 per cent of claims currently, and this has been associated with a

significant increase in severe injury claims. For all these reasons, the government will oppose the amendment.

**The Hon. J.A. DARLEY:** I just want to clarify the point that I do intend to move the alternative amendment, but it has not been filed yet, and I understand the government will support it.

**The CHAIR:** It has just been distributed, thank you.

**The Hon. R.I. LUCAS:** This is an extraordinarily complicated stage of the debate. My first question is really to the minister: the Hon. Mr Darley has indicated that he and his officers are in negotiation with the government and its officers in relation to what I will refer to as Darley 3. I suppose, although it is not Darley 3 but rather an amendment to be moved by the Hon. John Darley MLC [2], which has just been filed, and the timing of the preparation is 11.22am by parliamentary counsel. Can the minister indicate, from the government's viewpoint, whether it is correct that the government and its officers are in negotiation in relation to what I have referred to as Darley 3 on this particular issue?

**The Hon. I.K. HUNTER:** I am advised that the minister in the other place and the government have been in consultation with the Hon. Mr Darley on the preparation of his Darley 3, to use the Hon. Mr Lucas' terminology—and I think that makes clear to us what we are working on. Our original opposition to Darley Nos 1 and 2 is that they were so drafted as to be unclear legally and actuarially uncertain in terms of their impacts. However, the new draft version in Darley 3 is, I understand, very similar to the drafting used in the Hon. Ms Tammy Franks' amendment which we are yet to deal with.

We have fewer concerns about the Darley 3 amendment now. It is, we believe, actuarially certain and legally a lot clearer. With some small concerns, which I think can be accommodated if we look at the Hon. Ms Franks' amendment No. 5 which calls for a review, this may be an appropriate time to review the Hon. Mr Darley's amendment No. 3. With those brief comments, my advice is that the government will be supporting Mr Darley on No. 3.

**The CHAIR:** Before I call the Hon. Mr Lucas, we keep referring to 'Darley 3'.

**The Hon. R.I. LUCAS:** That is just my shorthand, Mr Chairman. That is the amendment to be moved by the Hon. John Darley MLC [2] which has 11.22am on the bottom of the sheet, but it is actually the third amendment in a sequence of three.

**The CHAIR:** We will keep referring to 'Darley 3' but the Hon. Mr Darley has only moved—

**The Hon. R.I. LUCAS:** He has only moved [Darley-1] 1.

**The CHAIR:** That's right.

**The Hon. R.I. LUCAS:** That is all we are discussing at this stage but my colleague the Hon. Mr Wade may well be able to weigh in too, in a more legalistic sense, with some of the legal aspects of these different provisions. However, we are dealing with [Darley-1] 1 at this stage.

If I understand the government's potential position—and I accept that the minister has not locked in a final position—is that we have three Darley amendments and is it fair to say that in the package we also have a Greens amendment? My understanding originally was that the government was opposing Darley's amendments Nos 1 and 2 and was supporting the Greens' amendment. However, if the government is potentially supporting Darley 3, where does that leave the Greens' amendment?

I am assuming the government cannot support both the Greens' amendment and the Darley amendment. They would seem to fill the same space and address the same issue. As I said, I have been led to believe that the government's position, up until this debate, was to oppose [Darley-1] 1 and 2—and the minister has confirmed that—but that the government was going to support the Greens' amendment. Now the minister has just said that it is potentially going to be the case that the government will support Darley 3. Does that mean that the government will still be supporting the Greens' amendment and Darley 3, or does it change the government's position on the Greens' amendment?

**The Hon. I.K. HUNTER:** To assist the committee, can I just advise that my understanding is that we will be supporting the Hon. Tammy Franks' amendments. They are, of course, related; they address the same issue but they address, I am advised, different heads of damage. The Hon. Ms Franks' amendments go to future loss of earning capacity; the Hon. Mr Darley's

amendment goes to non-economic loss. Whilst they do address the same issue they are different heads of damage that are being addressed.

**The Hon. R.I. LUCAS:** So you potentially might support both?

**The Hon. I.K. HUNTER:** Potentially. When they are moved we may support both.

**The Hon. J.A. DARLEY:** The minister has clarified the position. They are two separate issues. My amendment is concerned with non-economic loss whereas the Hon. Tammy Franks' is economic loss.

**The Hon. R.I. LUCAS:** This adds an additional complication in terms of the process and how we proceed through the committee stages. The Hon. Mr Darley indicated, when he said he was in negotiation with the government over what we are referring to as Darley 3, that he would be seeking approval to recommit the clause for consideration of it, and that has now been circulated. From the Liberal Party's viewpoint, we are not party to the discussions or the debate and we would need some time to have a discussion with the member for Davenport and go through a process in terms of our own party. I indicate to the Hon. Mr Darley that we would certainly, at the appropriate stage, support a recommittal to allow consideration of Darley 3. We would trenchantly oppose a forced debate on Darley 3 now because we have not even seen it and we are not aware of the debate and the discussion on Darley 3.

At the appropriate stage, if the Hon. Mr Darley is proceeding with Darley 3, we will certainly support either a recommittal or a reporting of progress, or both, to allow the member for Davenport on our behalf to at least consider what this particular amendment is about so that we can come to a judgement as to what our position will be.

We do not think that that need delay further consideration of this issue and the other issues during the process that we are going through at the moment because, as members will know, a recommittal will allow us to proceed through the committee stages of the debate and then recommit the schedule or the clause that is required. We can do that at some later stage either today or tomorrow, depending on the consultation the member for Davenport will need to undertake with all of the interested parties in relation to the amendment.

As I said, that is an additional complication that we were not aware of, and I outline what our position will be in terms of allowing us to at least reflect on the particular debate. The position that I am authorised to put on behalf of the party in relation to what we were aware of is that, having looked at the range of issues, we intended to support the Greens' amendment, on the undertaking that we had been given, that the government, having taken advice from its experts, was going to support the Greens' amendment.

Similarly, my instructions from the member for Davenport, on behalf of the party, were that we had been advised that the government was not supporting [Darley-1] 1 and [Darley-1] 2, based on the expert advice that we have received, as I outlined before, because, obviously, from opposition, we are not in a position to second-guess the expert advice. We were going to accept the government's position in relation to [Darley-1] 1 and [Darley-1] 2.

Without locking in a position, if the government is going to—potentially; it has not finalised its position—support Darley 3, or some version of Darley 3, then, obviously, we would give that sympathetic consideration, given our general position on this range of amendments, as I have outlined, and that is that with a number of them, essentially, we have accepted the expert advice provided to the government and to the parliament from its advisers on these issues and the potential impact on the scheme. For those reasons, our position is to oppose the one amendment that we are discussing which is [Darley-1] 1.

**The Hon. J.A. DARLEY:** I respect the opposition's point of view on this in view of the late filing of the amendment, but I would be prepared to recommit this clause as long as it was today.

**The CHAIR:** We have only dealt with your first amendment, and it would be the recommittal of the whole schedule, so I need advice as well.

**The Hon. I.K. HUNTER:** The government's position is that we should vote on [Darley-1] 1 and see where that takes us. If it fails, then [Darley-1] 2 will be withdrawn and then we should deal with Darley 3 and come to a position then.

**The Hon. S.G. WADE:** I would urge the committee to pause and reflect here. The government has engaged both the Hon. Tammy Franks and the Hon. Mr Darley on a range of options which we have made clear the opposition is open to. As the Hon. Rob Lucas has indicated,

we are supportive of the Franks amendment. Clearly, therefore, as he said, we are sympathetic to consideration of the Darley amendment.

Yesterday, the opposition was vigorously defending the right of the Hon. Kelly Vincent to have a briefing and supported the pausing of the consideration of this bill to allow that to happen. The government has had all the benefit with the Hon. Mr Darley and the Hon. Tammy Franks to consider these issues at length and then suggests that an amendment that was filed at 11:22, and made available in this committee about 11:30, should suddenly be considered when it is dealing with significantly different issues—non-economic loss versus future loss of earnings.

Let us remind this committee that this opposition puts itself forward as an alternative government: we have to live with the legislation that this house passes in the next term. The Hon. Mr Darley's position was that he was seeking a recommittal. I believe a recommittal should be done in an orderly way.

I do not believe that the opposition is in any way being unreasonable by asking for at least some hours to consider this matter. If the Hon. Iain Evans has other duties in the house, it may not be possible today, but I would ask this house to show respect to all the participants. We have shown our bona fides by showing our support for the Franks amendment. We have shown our bona fides by saying we are sympathetic to the Darley amendment. Give us a chance to give them due consideration.

**The Hon. T.A. FRANKS:** For the record, the Greens will be opposing the amendment we are debating, [Darley-1] 1. We understand and sympathise with the intent of the mover, and we also welcome the fact that, in terms of his recognition of the non-economic losses, he is prepared to, if you like, crack the nut in a different way by moving another amendment—the amendment he has just now filed. It is not a new issue. It is simply a new amendment with different wording to, as I say, crack that same nut. It is no new platform to the debate, and we certainly indicate that will be supporting not Darley 3, because there is no such amendment, but [Darley-2] 1.

**The Hon. A. Bressington:** He hasn't moved it yet.

**The Hon. T.A. FRANKS:** I know he hasn't moved it yet, but we have all been talking about that particular amendment, so I am just indicating that it is not a new issue. We will not be supporting the amendment before us that has been moved, which is [Darley-1] 1, but we will be, as the Greens, supporting the future amendment, which does approach the exact same issue but with a different wording, and we commend him for being prepared to work with the government on that.

**The CHAIR:** Therefore, only one amendment has been moved.

**The Hon. K.L. VINCENT:** Just to flag my thoughts at the current time, my original position as Dignity for Disability rep was to oppose the Hon. Mr Darley's amendments. Like the Hon. Ms Franks, I am certainly onside with what they were seeking to achieve, but my original advice was that, as they were originally drafted, they would have been legally difficult to interpret. Now having a newly-amended amendment before us, that situation may well change, but originally my position was to oppose the Hon. Mr Darley's amendments. Again, I appreciate what they are trying to do. My advice was that both the government and SACOSS supported the Hon. Ms Franks' amendment, so that is what I originally intended to do.

**The Hon. T.A. Franks:** It sits alongside mine; it doesn't replace mine.

**The Hon. K.L. VINCENT:** Yes, I'm getting to that. Being now in a position where I may be able to support both Mr Darley's and Ms Franks' amendments, I am very willing to do that.

**The Hon. R.L. BROKENSHIRE:** Just to help clarify the position, Family First had decided some time ago to support the Hon. Tammy Franks' amendment. We actually are sympathetic to and will support the foreshadowed amendment from the Hon. John Darley. I did have discussions with the minister initially on this matter but, given the fact that there has been a problem in drafting, I think it is fair that the opposition is given a short period of time to consult with their shadow minister but with the understanding that we do need to get this bill debated and finished today.

**The Hon. I.K. HUNTER:** I have listened intently to the debate about the foreshadowed amendment. If the opposition was ready to give a commitment to this chamber that we will complete this debate today, the government is happy to pass this bill now and recommit to allow the Hon. Mr Darley to put his amendment at a later stage in this day's sitting.

**The Hon. R.I. LUCAS:** You cannot pass this bill today and then recommit.

**The Hon. I.K. HUNTER:** Well, get to the stage where we recommit.

*The Hon. R.I. Lucas interjecting:*

**The Hon. I.K. HUNTER:** Yes; so we can pass all schedules and clauses.

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

**The Hon. I.K. HUNTER:** That's right. If the opposition is willing to commit that we will address the Hon. Mr Darley's amendment No. 3 by recommitting the bill today, we are prepared to allow them to have that time to consult.

**The Hon. R.I. LUCAS:** That is very magnanimous of the minister. Ultimately, it is not his decision—he, of course, can express a view—it is a decision for the majority of members in this chamber. I remind members that this bill on the government's schedule is, I think, priority one, which they wish to have concluded by tomorrow. This is the government's own priority listing that it wants this bill, together with a number of others, to be concluded by tomorrow.

I am not in a position to be able to give a commitment on behalf of someone I have not even spoken to in relation to being able to recommit it today. If that is possible, the opposition has demonstrated on this issue that it has been supportive of its passage through the parliament, particularly in relation to the debate in this chamber.

I will not enter into some of the shenanigans that have been going on in relation to requests for pairs and other issues—that will be for another day and another time—and the ramifications of that will be felt by a number of members in this chamber further down the track.

*The Hon. G.E. Gago interjecting:*

**The Hon. R.I. LUCAS:** I am hearing squalling and squeaking coming from the minister over there, and I am just waiting for her to stop. Is she finished, Mr Chairman?

**The CHAIR:** You need to finish, Hon. Mr Lucas.

**The Hon. R.I. LUCAS:** Well, I couldn't hear myself from the squalling and squeaking from the minister over there, Mr Chairman.

**The CHAIR:** I could hear you quite clearly. Get on with it.

**The Hon. R.I. LUCAS:** The opposition has demonstrated its willingness to comply with the government's request in relation to the passage of this bill this week. The minister says that if I can get up now and indicate that this will be considered today, and we can conclude our negotiations and discussions with the member for Davenport and whomever he needs to consult with today.

I have not even had a discussion with the member for Davenport. I am just not in a position to give a guarantee on his behalf. He is handling the bill; he has been involved in all the negotiations. The parliament is sitting in the House of Assembly today. He may well be able to do that and come to a quick recommendation in the absence of a party meeting, but he might not.

We accept that the government's request is to conclude this debate by tomorrow. Certainly from our viewpoint, we would be prepared to stick with that request and commitment and, if we have not arrived at a position tomorrow, we would obviously have to vote against the amendment on the basis that we have not had the opportunity to be able to consult.

From my viewpoint, all I can indicate is the opposition's bona fides in relation to this; that is, the government's request was to have this bill debated by the end of this week, which does include tomorrow. If it is possible to form a view on Darley 3 (as we are referring to it) by tonight and the member for Davenport can do that, certainly I have no objection to that position, but it just might not be possible for the member for Davenport to have the negotiations and discussions with the government advisers and the lawyers and anyone else he needs to consult in relation to what is known as Darley 3.

I repeat that our position will be that we will support, at an appropriate time, a recommittal of this clause. It is then the prerogative of the government to indicate it will do so on motion and, when it seeks to bring it back on, we will either oppose that—for today, that is—or support it, depending on where we arrive at with the member for Davenport. If we were to oppose it being brought back on tonight, it would only be on the basis that we would accept that we are prepared to do it tomorrow, which would then give the member for Davenport some time to form a position on Darley 3.

I just want to say that this is an extraordinarily complicated bill and this particular provision is one of the more complicated provisions. Secondly, the ramifications of what we do may well be felt for years or decades hence in terms of the drafting of this amendment, the legal interpretation of the amendment and court decisions that might eventuate. To jam it through (potentially) today, before everyone has had the opportunity to at least hurriedly consult within a 24-hour time frame and to pass the legislation tomorrow, as was requested by the minister and the government, is foolhardiness in the extreme.

We have had nothing from the government and the minister at the start of the week in terms of priorities saying that this has to be done by Wednesday lunchtime or Wednesday evening. The request was for the Legislative Council debate to be concluded by Thursday. So, we, at the appropriate time, will put a very strong position to other non-government members. As the Hon. Mr Wade has indicated, on a number of occasions we have supported the position of non-government members who have not been ready to proceed either at a particular stage or with a particular debate.

Non-government members have enjoyed the support of Liberal members in terms of agreeing to reasonable and appropriate either delays or deferral of consideration, and all we would be asking for from the non-government members in relation to this is to maintain the quid pro quo to give the member for Davenport and the Liberal Party a reasonable opportunity to consult on what is a complicated amendment—not only complicated but also, potentially, with long-term implications for the financial viability of the scheme.

I cannot give a commitment in the terms that the minister demands at this particular stage but I have outlined what I feel I can do, which goes very substantially towards the position that the minister is talking about without giving that absolute commitment.

**The Hon. I.K. HUNTER:** Let me assist the house, perhaps. Putting aside the veiled threats the Hon. Mr Lucas has made to the crossbenchers in terms of their support into the future—

*Members interjecting:*

**The Hon. I.K. HUNTER:** They weren't particularly veiled—let me say this, to assist him. The early ask was that he have some hours to go off and consult and now it is turning into 24 hours. I propose that we proceed with the bill with the amendments that have been lodged and deal with those today. I will then move to recommit this bill later today and test the support of this house if we have the ability to do that later on.

Amendment negatived.

**The Hon. T.A. FRANKS:** I move:

Clause 4, page 37, after line 37—Insert:

(2a) However, a court may award damages in a case that would otherwise be excluded by operation of subsection (2) if satisfied—

(a) that the consequences of the personal injury with respect to loss or impairment of future earning capacity are exceptional; and

(b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.

This amendment covers cases giving the courts discretion where the cases are deemed to be exceptional—that is the wording we have used here in the amendment itself—and goes to addressing future earning capacity. I did cover this amendment in my second reading speech and we have briefed members, as have SACOSS, where these amendments were first suggested.

I credit the work of Hannah Corbett and Greg Ogle at SACOSS for putting in the effort and providing us with direction. We have worked with SACOSS, with the government and with parliamentary counsel to arrive at this particular wording. It ensures that, in those exceptional circumstances which for one particular person may not damage their future earnings but for the example of a chef who loses their taste, for the example of a hairdresser who loses ability in a hand or for the example of somebody who is already blind in one eye who loses sight in the other, those people are served by the system we are going to be introducing. With that, I commend this amendment to the committee.

**The Hon. I.K. HUNTER:** I rise to support the amendment in the name of the Hon. Tammy Franks. Can I just say briefly, given the earlier comments by the Hon. Mr Lucas about concerns raised by the Motor Accident Commission, I note that those concerns related to the threshold under

this section of the bill. I reiterate for the record that the government made a decision to lower the threshold for damages under this clause based on expert actuarial advice. The Motor Accident Commission's concerns were heard by the government, but in the end we made a call based on the expert actuarial advice of MAC's own actuary.

**The Hon. R.I. LUCAS:** Can the minister outline what the actuarial advice indicated in relation to the implications of this particular provision?

**The Hon. I.K. HUNTER:** My advice is that the actuarial advice is that the figures the government quoted will be consistent with the new threshold.

**The Hon. R.I. LUCAS:** Having been privy to actuarial advice in relation to these particular schemes before, I am specifically asking whether the actuaries, in looking at this provision, did provide cost estimates to the government of the impact of the amendment on the scheme. To explain that, on previous occasions when actuaries have looked at changes to the CTP scheme, they have provided advice to both the Motor Accident Commission and to the government to say, 'Okay, if you amend this provision, our estimate of the cost impact on the scheme is $1 million to $2 million,' and they have given some ballpark range of what the impact will be, and the government may still say that that is consistent with the premium reductions the government was talking about.

But certainly actuaries in the past in relation to CTP scheme amendment bills have provided specific advice in relation to the potential impact on the financial viability of the scheme. The minister has given the final conclusion, and that is, 'Okay, you can still go ahead and give your premium reduction,' but what I am specifically asking is: what was the nature of the actuarial advice in relation to the potential range of dollar impact on the scheme of this particular amendment?

**The Hon. I.K. HUNTER:** I am advised that the original changes were in the threshold from 15 points to seven points. On that basis, the actuary advised us that the savings on 15 points would be $110. Subsequent to negotiations with various people, which we have talked about in previous parts of the debate, those savings have come down to $104 based on the actuarial advice.

**The Hon. R.I. LUCAS:** I understand that particular aspect of the actuarial advice but what I am specifically asking is: has the actuary provided advice to the government in terms of the dollar impact—not the premium impact but the dollar impact—in terms of the scheme? That is, the estimated cost of that in terms of payouts will be $2 million or $5 million on an average year. The minister then goes to the end line of that which is that, therefore, the premium impact will be $104 instead of $110. My specific question is whether the actuaries have provided to the government and to MAC an indication that the impact on the scheme will be $5 million or $10 million as opposed to the premium impact issues which are already on the public record and the minister has just repeated.

**The Hon. I.K. HUNTER:** My advice is that the actuary provided that information to us in terms of dollars per vehicle.

**The Hon. R.I. Lucas:** Are you going to provide that?

**The Hon. I.K. HUNTER:** My advice is that is the answer I have previously given about the premium.

**The Hon. R.I. LUCAS:** To be clear, the minister is indicating that the actuaries have not provided any advice in terms of the overall dollar impact on the scheme. I understand that is the import of what the minister has just said. If that is wrong, he can correct that in a moment. I ask the minister whether the government is prepared to provide a copy of the actuarial advice to the opposition.

**The Hon. I.K. HUNTER:** The Hon. Mr Lucas has implied, I think, that the actuary has not provided the information Mr Lucas seeks in total numbers. In fact the actuary has, but he has provided it in a different format. I am also advised that that information Mr Lucas has asked for has been provided already to the Economic and Finance Committee of the parliament.

**The Hon. R.I. LUCAS:** So if that is the case, is the minister prepared to have a copy made available to me? I am not a member of the Economic and Finance Committee of the parliament. I take it the minister is quite happy, given this is going to be recommitted some time either later today or tomorrow, to get me a copy of that during the luncheon break; I would appreciate that. Is the minister prepared to undertake to make that available?

**The Hon. I.K. HUNTER:** My advice is that that will not be a problem.

**The Hon. R.I. LUCAS:** Just to clarify, are we still on Franks?

**The CHAIR:** Yes.

**The Hon. R.I. LUCAS:** Can I indicate that the instructions I have from the member for Davenport, as I think I indicated in the earlier debate on [Darley-1] 1, is that the Liberal Party will support the amendment being moved by the Hon. Tammy Franks, essentially on the understanding that the government's advice has led it to support the Hon. Tammy Franks' amendment and that the potential impact on the scheme is not as significant perhaps as some might have suspected.

Can I just offer a personal note? That is the Liberal Party's position; we are supporting the amendment. Whilst I am not a lawyer, this is an issue that I have some significant personal concern about in terms of where ultimately it might lead. I have seen so many assurances in relation to these types of issues in terms of how the courts will interpret various provisions in the legislation, and then ultimately the lawyers and then the courts do interpret them in a significantly different way.

This whole area that we have entered into I think has that potential concern, that is, we are being advised by lawyers and actuaries—and I accept that that is the best that we can do in terms of providing advice on the scheme—that it is going to be interpreted in a certain way. My experience in the past leads me to be a bit sceptical as to whether in the end the assurances that we are being given will be proved to be correct.

It may well be some years down the track that a future government will be left to inherit what might be a complicated mess on the basis that we thought it was going to operate this way, but ultimately the courts have determined to interpret in a different way, with potential financial implications to the financial viability of the scheme, and therefore with potential implications in terms of the premiums that might need to be charged to drivers.

As I said, the Liberal Party's policy position is, for the reasons that the member for Davenport has indicated to me, that we will support the amendment being moved by the Hon. Tammy Franks.

Amendment carried.

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

Clause 4, page 38—After 'is based' insert:

(but nothing in this subsection gives rise to an entitlement to damages beyond damages awarded for loss or impairment of earning capacity)

I am advised that this is a technical amendment; it does not change policy. The new section 56A of the Civil Liability Act is about economic loss arising from injuries resulting from motor vehicle injuries. Subsections (4) to (7) are about the effect of loss or impairment of earning capacity on superannuation. Subsection (5) is intended to ensure that self-employed and employed people are treated equally with regard to losses and superannuation that are consequent upon their loss or impairment of earning capacity.

The Motor Accident Commission was concerned that subsection (5), as drafted, might be interpreted as giving self-employed people a right to damages that does not already exist. The amendment is to ensure that this does not happen.

**The Hon. R.I. LUCAS:** The member for Davenport has advised me that the Liberal Party's position is that we accept the government's arguments for support of amendment No. 14 and we will be supporting it.

Amendment carried.

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

Clause 8—

Page 41, after line 34—Insert:

(aa) authorise an insurer or the nominal defendant under Part 4 of the Motor Vehicles Act 1959 to require a claimant to submit to an assessment or examination of a prescribed kind; and

Page 42, line 3—Delete 'the' and substitute 'an'

Amendment No. 16 is consequential on amendment No. 15, and No. 15 is an amendment to schedule 2, clause 8, page 41. These amendments are related. The bill provides for the establishment of a system for accrediting health professionals and referring claimants to them with a view to improving the objectivity and quality of reports, and limiting the number and cost of reports, which at present can be excessive.

However, it will take time to accredit health professionals in all disciplines, and it might turn out that it is not practical to maintain the accreditation and referral system for professionals of some disciplines whose reports are needed very infrequently. This amendment is to ensure that a regulation can be made to deal with circumstances where examination and report is needed but there is no suitable health professional who has been accredited to do this.

**The Hon. R.I. LUCAS:** The member for Davenport advises that, for the reasons the minister has just outlined, the Liberal Party is prepared to support these two amendments.

Amendments carried.

**The Hon. T.A. FRANKS:** I move:

Clause 8, page 42, after line 41—Insert:

(3a) The rules that are to apply for the purpose of assessing injury scale values ('ISVs') for multiple injuries must include 1 or more provisions that adopt the following principles:

(a) a court must consider the range of ISVs for the dominant injury of the multiple injuries;

(b) in order to reflect the level of adverse impact of multiple injuries on an injured person, a court may assess the ISV for the multiple injuries as being higher in the range of ISVs for the dominant injury of the multiple injuries than the ISV that the court would assess for the dominant injury only;

(c) if a court considers that the level of impact of multiple injuries on an injured person is so severe that the maximum ISV for the dominant injury is inadequate to reflect the level of impact, the court may make an assessment of the ISV for the multiple injuries that is higher than the maximum ISV for the dominant injury, subject to the following qualifications:

(i) the ISV for multiple injuries cannot exceed 100;

(ii) the ISV for multiple injuries should rarely be more than 25% higher than the maximum ISV for the dominant injury.

(3b) In connection with the operation of subsection (3a), a dominant injury, in relation to multiple injuries, is—

(a) subject to paragraph (b)—the injury of the multiple injuries having the highest range; or

(b) if the highest range for 2 or more of the injuries of the multiple injuries is the same—the injury of those injuries selected as the dominant injury by a court assessing an ISV.

(3c) Subsections (3a) and (3b) do not limit any other principle or provision that may apply under the regulations in relation to the assessment and determination of an ISV for a particular injury.

This amendment was a suggestion from the South Australian Council of Social Service and simply provides greater certainty by inserting within the schedule the ISV table The reason for doing that is to provide that clarity and to ensure that when we debate this bill we know what we are signing up for, to use the colloquial language. With that, I commend it to the committee.

**The Hon. I.K. HUNTER:** The government will be supporting the amendment.

**The Hon. R.I. LUCAS:** I am advised that the Liberal Party will support the amendment as well.

Amendment carried.

**The Hon. T.A. FRANKS:** I move:

Clause 8, page 43, after line 38—Insert:

(6a) A regulation under subsection (1)(d) may only be made on the recommendation of the designated Minister.

(6b) Before the designated Minister makes a recommendation under subsection (6a), the designated Minister must consult with—

(a) the Attorney-General; and

(b) The South Australian Branch of the Australian Medical Association Incorporated; and

(c) The Law Society of South Australia.

(6c) If an association referred to in subsection (6b) objects to any matter contained in a regulation under subsection (6a), the designated Minister must, at the request of that association, prepare a report that—

(a) provides information about the consultation that has been undertaken; and

(b) sets out the objection that has been made (including the reasons put forward by the association for its objection).

(6d) The Minister must cause a copy of a report under subsection (6c) to be laid before both Houses of Parliament as soon as is reasonably practicable after the request is made.

(6e) In addition, a regulation that would have the effect of changing the injury scale value applying with respect to a particular injury so that a person who suffers that injury (and no other injury) would, on account of that change, no longer have a right to damages for non-economic loss under section 52(3) and (4) cannot come into operation until the time for disallowance of the regulation has passed.

This amendment seeks to ensure that this scheme is reviewed with a view not just to the financial impacts of its implementation but to the social impacts of its implementation. Sorry, I am speaking to the wrong one. I will just check which one it is.

**The Hon. I.K. HUNTER:** If I can assist the committee, I believe this amendment is about the changing of the ISV table, and on that basis I can indicate that the government will be supporting the amendment. It is also a regulation under subsection (1)(d), I understand.

**The Hon. T.A. FRANKS:** This does indeed, as the Hon. Rob Lucas made note, go to the consultation processes in regard to the ISV table. I certainly strongly advocate consultation and reviews, which is why our further amendment will seek to review this, and it ensures that the most appropriate people are in fact part of this process.

**The Hon. I.K. HUNTER:** I understand that it is about the table that we mentioned: (6a) a regulation under subsection (1)(d). Subsection (1)(d) is to prescribe rules that are applied with respect to the determination of injury scale value under this act and it cannot be done without the consultation of the bodies prescribed and, on that basis, we support it.

**The Hon. R.I. LUCAS:** I am not an expert in this, but my understanding is that this amendment dealt with another important issue—that there could not be any change to any regulation which changed the ISV values operating before the time for disallowance of the regulation had expired. I thought this amendment was not just simply about consultation but it is actually quite an important issue in relation to the powers in terms of disallowance and when something can operate from. That issue does not appear to have been canvassed either by the mover or the minister, so can I just clarify whether our understanding of the amendment is in fact correct?

**The Hon. T.A. FRANKS:** Given the extensive consultation we had prior to this amendment being moved in this place, the Greens certainly concur with the interpretation of the Hon. Rob Lucas and commend him for having done his research and the Liberal Party room for having considered this matter so fully. We are certainly not putting this issue up today on the floor of the house and expecting members to understand that. A lot of work has gone into this particular aspect and, again, I commend SACOSS for much of that and also members of the legal fraternity. The Hon. Rob Lucas is, indeed, correct.

**The Hon. I.K. HUNTER:** Regarding the issue that the Hon. Mr Lucas raises, I understand that it will pertain to future changes and not to the first ISV table.

**The Hon. R.I. LUCAS:** I am assuming that the minister is comfortable and is accepting that particular aspect of the amendment as well?

**The Hon. I.K. HUNTER:** The government does accept it.

Amendment carried.

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

Clause 14, page 46, after line 9—Insert:

(3a) An insurer or the nominal defendant must, within 21 days of receiving any record or other information under subsection (2)(d), send a copy of the report or information to the claimant (or a legal practitioner engaged by the claimant).

This will amend the clause for a new section 126A(2)(d) of the Motor Vehicles Act. New section 126A provides for the procedures for making a claim against the CTP scheme. Subsection (2)(d) would require the claimant to authorise the insurer in a form prescribed by regulation to have access to records and other sources of information relevant to the claim. The amendment is to require the insurer or nominal defendant to send copies of material obtained under the authority to the claimant or the claimant's lawyer within 21 days.

For some claimants it will be beneficial to have the insurer obtain information. Often the insurer will have systems and contacts that will make it quicker and more efficient for the insurer to obtain the information than the claimant. It will relieve the claimant of having to go to the trouble of obtaining it or paying their lawyers to get it for them, and it is fair and reasonable that claimants be given promptly the information they have authorised the insurer to obtain.

**The Hon. R.I. LUCAS:** My advice is that this particular amendment had been requested by the legal fraternity for the reasons that have been outlined by the minister on behalf of the government, and the Liberal Party will support the amendment.

Amendment carried.

**The CHAIR:** It has just been brought to my attention, and I apologise for this, that there is a Bressington amendment No. 1.

**The Hon. A. BRESSINGTON:** I move:

Page 44, after line 25—Insert:

8A—Insertion of section 4A

After section 4 insert:

4A—Commission to behave as model litigant

(1) The Commission must behave as a model litigant in the conduct of litigation.

(2) Any model litigant guidelines applicable to the Crown Solicitor apply also to the Commission.

This is a simple amendment which requires the Motor Accident Commission to conduct all matters fairly and honestly by requiring MAC to adhere to the model litigant code. This amendment creates a requirement that MAC will act fairly and consistently and handle matters promptly. They will be required to pay legitimate claims without litigation, to act consistently in the handling of like claims, whilst keeping the costs of litigation to a minimum. Accordingly, under this code, MAC cannot require the other party to prove a matter which MAC knows to be true. The code also requires MAC to be courteous and professional when dealing with witnesses, parties, and their representatives.

This amendment is about protecting the injured person, especially in light of the significant power imbalance which exists between the injured person and the large, legally-astute insurance corporation. There has been some suggestion that this amendment is unnecessary. However, I have taken advice from those within the industry and I am assured that it is absolutely necessary.

**The Hon. I.K. HUNTER:** I am advised that as a statutory authority, MAC should, in any event, be acting as a model litigant, but we have no concerns with it being put into the act and we support the amendment.

**The Hon. R.I. LUCAS:** Can the minister outline the nature of the legal expertise that the Motor Accident Commission utilises? Does it utilise private sector legal firms or does it use the crown in terms of prosecuting its cases?

**The Hon. I.K. HUNTER:** My advice is, in terms of litigation and defending of claims and such, MAC uses private firms, but there are occasions when it requires statutory interpretation from the Crown and it will seek that interpretation from that source.

**The Hon. R.I. LUCAS:** My learned colleague the Hon. Mr Wade tells me that the Crown officers are evidently covered under similar provisions anyway, but my question relates to the private legal firms that are utilised by the Motor Accident Commission. Can the minister indicate

how these particular model litigant provisions would apply to private legal firms acting on behalf of the Motor Accident Commission?

**The Hon. I.K. HUNTER:** My advice is that private legal firms acting for MAC act on instructions from MAC, who will give them directions.

**The Hon. S.G. WADE:** I would ask the minister to reflect on that response because MAC, presumably, is not lawyers. MAC is financial people; they are administrative people. They know how to run a CTP scheme, but how would they know the intricacies of the concept of the model litigant as it applies to the Crown? I would have thought it would have been more reassuring to tell us that somebody was telling these private lawyers what the Crown expected, not what their financial managers expected.

**The Hon. I.K. HUNTER:** My legal advice, in this case—well, my advice—is that the litigant is a party to the proceedings and MAC stands in the shoes of the natural person. I am sure that will make sense to the Hon. Mr Wade. MAC should be telling its lawyers to behave as model litigants and the Hon. Ms Bressington's amendment will ensure that that happens.

**The Hon. R.I. LUCAS:** On the basis of the government's support for the model litigant amendment from the Hon. Ms Bressington, our position is that the party room has not formally considered this particular amendment but, in general principle, we are sympathetic to the notion, obviously, of the commission behaving in an appropriate fashion. Our position is that, if the government's advice is that that is to be accepted, then we will support the amendment on that basis as well.

I might just say, in response to the comments from the Hon. Mr Wade, that the MAC is comprised essentially of financial and other people, other than legal people. I might say, in more recent times, it has increasingly been comprised of former ministerial advisers from ministerial offices, but that is a debate for another day as well.

**The Hon. S.G. WADE:** I thank the minister for his responses. I should not indicate my scepticism. The fact that members of the legal community have felt it necessary to approach the Hon. Ann Bressington and suggest this amendment suggests that they, at least, think that the MAC could do a better job at explaining to their legal representatives what is expected of a model litigant. I dare to share the hope of the minister that this amendment might lead to better instructions to lawyers, so that they can be better aware of their obligations.

Amendment carried.

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

Clause 17, page 47, after line 35—Insert:

(6) If a person suffered the bodily injury as a result of or partly as a result of the fault of another person (the wrongdoer), the insurer is entitled to recover from the wrongdoer as a debt due to the insurer such proportion of the present value of the insurer's treatment, care and support liabilities in respect of the person's bodily injury as corresponds to the wrongdoer's share in the responsibility for the injury.

(7) The present value of the insurer's treatment, care and support liabilities in respect of a bodily injury is the sum of the following amounts—

(a) amounts already paid by the insurer under this section in respect of the treatment, care and support needs associated with the bodily injury; and

(b) the present value of the amounts that the insurer estimates will be payable by the insurer in the future under this section in respect of the treatment, care and support needs associated with the bodily injury.

This is to amend the clause that provides for new section 127B of the Motor Vehicles Act. New section 127B will provide for a no-fault compensation scheme for the treatment, care and support of children who are injured in motor vehicle accidents when they are under the age of 16.

The insurer or nominal defendant will have a statutory liability to meet those costs regardless of fault, like the lifetime support authority. This is similar to a provision in the lifetime support scheme part of the bill. It will enable the insurer or nominal defendant to seek contribution from a person whose negligence, or other tortious act or omission, caused or contributed to the accident.

**The Hon. R.I. LUCAS:** The member for Davenport advises that, for the reasons the minister has outlined, the Liberal Party will support amendment No. 18 from the government.

Amendment carried.

**The Hon. I.K. HUNTER:** With the concurrence of the committee, I move amendments Nos 19, 20 and 21; they are related:

Clause 17, page 48—

Line 20—Delete 'insurer' and substitute 'defendant'

Line 22—Delete 'insurer' and substitute 'defendant'

Line 28—Delete 'insurer' and substitute 'defendant'

Amendment Nos 19, 20 and 21 are to amend subsection (2) of new section 127C of the Motor Vehicles Act. That subsection is about party-party costs in claims where the total amount recovered does not exceed $25,000. The amendments are all the same, and they are purely technical, I am advised. They will substitute the word 'defendant' for the word 'insurer' in each of the subsections.

**The Hon. R.I. LUCAS:** The Liberal Party supports these amendments, which we agree with the government are technical amendments.

Amendments carried.

**The Hon. T.A. FRANKS:** I move:

Clause 20, page 50, after line 26—Insert:

(5) To avoid doubt, section 76(6e) of the principal Act (as enacted by this Act) does not apply in relation to a regulation that prescribes the injury scale values that are to apply on the commencement of section 52(3) of the principal Act (as enacted by this Act).

This amendment seeks to clarify that the provisions we have now accepted with regard to consultation and the processes around the ISV table do not apply to the inaugural table but to future incarnations.

**The Hon. I.K. HUNTER:** The government will be supporting the amendment.

**The Hon. R.I. LUCAS:** The member for Davenport has advised me that the Liberal Party will support this amendment as well.

Amendment carried.

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

Clause 21, page 50, after line 32—Insert:

(2a) An amendment made by this Act to section 127 of the principal Act does not apply in relation to any claim in relation to bodily injury that results from an accident occurring before the commencement of the amendment (and so a paragraph or subsection to be deleted by such an amendment will continue to operate in relation to such a claim including a claim made after the commencement of the amendment).

This is a transitional provision to make it clear that the changes to be made to section 127 of the Motor Vehicles Act will not affect claims for accidents that occurred before the date of the commencement of the operation of the section. The current provisions of section 127 will continue to apply to those accidents.

The common law is, I am advised, that, in the absence of express provisions in an act, amendments that affect only procedural matters apply to things that occurred before the amendment comes into force, whereas amendments that affect substantive rights and obligations apply only to things that occur after the amendment comes into force.

It is not always clear whether an amendment is merely procedural or affects substantive rights and obligations. There have been many court cases, I am advised, some going to the High Court, about whether an amendment is procedural or substantive. This amendment will avoid any argument about it, one hopes.

**The Hon. R.I. LUCAS:** The member for Davenport has advised that the Liberal Party, for the reasons the minister has outlined, will support the minister's amendment No. 22.

Amendment carried.

**The Hon. T.A. FRANKS:** I move:

Page 51, after line 28—Insert:

Part 7—Review

23—Review

(1) The designated Committee must review the operation of this Act (including the amendments made by this Act to other Acts) as soon as practicable after the expiry of 3 years from its commencement.

(2) The review must include an assessment of—

(a) the extent to which this Act has provided an effective and fair scheme to assist people who have been catastrophically injured in motor vehicle accidents; and

(b) whether it would be appropriate to extend the Scheme established by this Act to people who have been catastrophically injured due to other causes, and the issues associated with implementing such a reform; and

(c) the operation of the provisions for the assessment and awarding of damages under section 52 of the *Civil Liability Act 1936* with respect to MVA motor accidents (as defined under that Act) enacted by this Act, with particular reference to—

(i) whether the exclusion of a right of recovery for non-economic loss if the injury scale value that applies in a particular case does not exceed 10 has resulted in cases of substantial hardship; and

(ii) whether the rules and principles applying to an injured person who has suffered multiple injuries have—

(A) provided reasonable compensation within the scheme established under that section; or

(B) caused a change in the manner in which such persons claim compensation that has or could lead to an increase in premiums payable under Part 4 of the *Motor Vehicles Act 1959*; and

(d) the operation of the other amendments to the *Civil Liability Act 1936* enacted by this Act, with particular reference to the introduction and effect of thresholds under various heads of damages; and

(e) the effect that the amendments to the *Motor Vehicles Act 1959* enacted by this Act have had on the handling and settlement of claims under Part 4 of that Act,

and may include any other matter that the designated Committee considers to be relevant to a review of this Act.

(3) In this clause—*designated Committee* means—

(a) unless paragraph (b) applies—the Social Development Committee of Parliament; or

(b) if both Houses of Parliament have, before the third anniversary of the commencement of this Act, by resolution, designated another Committee of Parliament to conduct the review envisaged by this clause—that Committee.

This amendment seeks to ensure that we review the operation of this act, not simply for the financial impact it has but for the social implications. It ensures that we are looking not only at the bean-counting side of things but also at how this will operate in the real world. After consultation with the member for Davenport and members of the crossbench and the government, it seeks to ensure that that review in the first place may be done by the Social Development Committee of this parliament. However, it provides for alternative arrangements should that not be possible under their workload at that stage.

I understand it has been widely consulted on with all members and certainly hope that members will look favourably on ensuring that the impact of this scheme is accounted for, as I say, not only financially but also socially.

**The Hon. I.K. HUNTER:** The government indicates it will be supporting the amendment.

**The Hon. R.I. LUCAS:** The Liberal Party will support this amendment, for the reasons briefly outlined by the Hon. Ms Franks.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendment.

## LEGAL PRACTITIONERS (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 April 2013.)

**The Hon. S.G. WADE (12:47):** I rise on behalf of the Liberal opposition to indicate our support for the Legal Practitioners (Miscellaneous) Amendment Bill 2013. The Liberal opposition, as I said, supports the bill. However, in some respects we do not consider that the bill adequately addresses public disquiet about the regulation of the legal profession in South Australia. Two very public cases are directly in point—firstly, the Eugene McGee case and, secondly, the Magarey Farlam case. Both have significantly undermined public confidence in the current model to regulate, supervise and discipline members of the legal profession.

This bill was tabled on 19 March 2013 in the House of Assembly. However, it was preceded by two draft bills. One was tabled in the parliament on 13 March 2012 for consultation; the second was sent out to a select number of legal sector stakeholders for further discussion earlier this year.

This bill seeks to reform and harmonise the regulation of the South Australian legal profession with laws of other jurisdictions. That harmonisation process has been progressing across Australia over the past decade.

The second round of reform towards a national legal profession has largely failed with only Victoria and New South Wales pursuing a uniform approach. In that context, South Australia was one of the early jurisdictions to opt out of the national legal profession reform but, unlike other jurisdictions, South Australia had not completed the first round, so this bill is a substantial bill. The Legal Practitioners (Miscellaneous) Amendment Bill includes reforms to trust accounts, lawyer disciplinary action, cost disclosure, incorporated legal practices, community legal centres, practising certificates, the scope of professional misconduct, investigatory powers of the commissioner and the guarantee fund.

In relation to the scope of professional misconduct, the bill proposes to replace the definition of professional misconduct in the Legal Practitioners Act, which is currently unsatisfactory conduct and unprofessional conduct by a lawyer, with a broader definition of unsatisfactory professional conduct and professional misconduct. These definitions are based on the 2007 bill, definitions which are used interstate and the proposed national law. The new and broader definitions are intended to capture behaviour not directly related to a lawyer's practice of law which may impact on their standing as a lawyer, including criminal and non-criminal behaviour. In our opinion, this will go some way to addressing the limitations highlighted by the Eugene McGee case.

I note that there are provisions in the bill that differ from the draft national law. The bill provides that the charging of excessive legal costs may constitute unprofessional conduct or professional misconduct. Since 2007, the national model law has continued to develop in consultation with states, territories and the commonwealth. The latest public version of that bill, which I have as at May 2012, provides a lower threshold, that being 'charging more than a fair and reasonable amount for legal costs in connection with the practice of law'. To do so could constitute unprofessional conduct or professional misconduct. The legislation of every other Australian jurisdiction uses the higher threshold of charging 'excessive' legal costs, as contained in this bill, rather than the lower threshold contained in the national model law.

The Law Society of South Australia supports the bill's use of 'excessive costs' as the threshold rather than 'fair and reasonable'. It is the society's view that the term 'excessive' has been extensively judicially considered and is clearer. I suspect that may be true of the word 'fair', but I doubt if it is true of the word 'reasonable'. While supporting national consistency on this threshold, the opposition will maintain a watching brief, particularly in the light of any changes made by other jurisdictions.

I turn now to the issue of oversight of professional conduct. Oversight of lawyers has become extremely controversial as a result of the McGee case. The case highlighted that the focus of oversight, in the community's view, was too narrow and that the government's half-hearted approach in pursuing the processes under the act has caused significant disquiet in the community.

The Legal Practitioners Act 1981 provides for the Legal Practitioners Conduct Board—an independent body responsible for handling complaints about lawyers. The act empowers the board to pursue disciplinary action with respect to professional misconduct before the Legal Practitioners

Disciplinary Tribunal and the Supreme Court. Under the 1981 act, three of the seven members of the board must not be lawyers.

The Legal Practitioners Act 1981 also provides for the Legal Practitioners Disciplinary Tribunal which determines whether lawyers are guilty of unprofessional or unsatisfactory conduct. Charges of unprofessional or unsatisfactory conduct may be laid before the tribunal by the Legal Practitioners Conduct Board, the Attorney-General, the Law Society or by any person, whether a client or otherwise, who is aggrieved by the conduct of a lawyer. Currently, all 15 members of the tribunal are legal practitioners.

The National Legal Profession Reform envisaged a national legal services board which would not be controlled by the legal profession. This bill proposes to replace the Legal Practitioners Conduct Board with a legal profession conduct commissioner who must be a legal practitioner. The government's model in the bill will completely remove consumer input to the oversight and discipline of legal practitioners because it abolishes a conduct board which, as I said, has three out of the seven members who must not be lawyers with a commissioner who under the legislation must be a lawyer. Thereby the government is leaving the oversight of the professional conduct of lawyers completely in the hands of fellow lawyers.

The Law Society supports the replacement of the Legal Practitioners Conduct Board with the legal profession conduct commissioner on the understanding that that person is a legal practitioner. Given the ongoing community disquiet at the government's handling of the McGee case, it is beyond belief that this government is trying to remove the community voice that is currently present. The Liberal opposition is committed to strengthening the public's confidence in the legal profession. The Labor government's proposal does exactly the opposite. Removing consumer input can only undermine public confidence.

I note that if the government succeeds in removing lay involvement, South Australia will be the only state where lay involvement in the legal profession is not possible. Other states have legal profession conduct commissioners. New South Wales, Victoria and Queensland, for example, all allow for a non-lawyer to be appointed as the commissioner, and I understand that a number of non-lawyers have been so appointed.

It is accepted that to be effective as a conduct commissioner, a lay person would need to have significant understanding of the legal profession. Not only does the role have overtones of consumer protection, it is also very important that the commissioner support the ethical framework which is so important for the operation of the legal profession within our legal and justice systems.

In that regard, New South Wales and Queensland require that the person be 'familiar with the nature of the legal system and legal practice, and possess sufficient qualities of independence, fairness and integrity.' Victoria requires that the Attorney-General appoint a person they consider has sufficient knowledge of legal practice and the legal system to be able to perform the functions of commissioner.

I note that other states have deemed it appropriate that the commissioner could be a lay person. Only the Weatherill Labor government is ruling out that possibility. In terms of the Legal Practitioners Disciplinary Tribunal, I note that like South Australia Tasmania has a 15-member tribunal. However, unlike the model proposed by this bill, Tasmania requires that one-third of the members of the Legal Practitioners Disciplinary Tribunal be non-lawyers. By analogy that reminds me of the Medical Board of South Australia which provides that a third of its membership comprise lay members.

I appreciate that the medical profession and the legal profession are very different professions but they both are very rich in ethical issues and strong in professional culture, so I find it noteworthy that it is deemed appropriate that the Medical Board of South Australia involve a third lay people. It is our view that a similar practice in relation to the tribunal is appropriate. In our view, the government should not cut consumers out of the regulation of the profession because by doing so the government is actively damaging public confidence in the commissioner and in the processes. On behalf of the opposition I will be moving amendments to the bill to enable a non-lawyer to be appointed commissioner and to ensure a third of tribunal members are non-lawyers.

I now turn to the investigatory powers of the commissioner. Schedule 4 of the bill provides for the legal profession conduct commissioner's investigatory powers. I understand these provisions are largely based on the national model law, although there are some variations. Both the Law Society of South Australia and the Liberal opposition are of the view that the investigatory powers of the commissioner are very strong. However, the society has not proposed any change.

The opposition, as we have on numerous other bills before this council, will be opposing the clause which derogates from the individual's privilege against self-incrimination. We believe that even lawyers are entitled to that privilege.

This Labor government has repeatedly included provisions which undermine the privilege without strong policy grounds for doing so. We do not support that approach. I seek leave to continue my remarks.

Leave granted; debate adjourned.

*[Sitting suspended from 13:00 to 14:16]*

### PAPERS

The following papers were laid on the table:

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

Independent Gambling Authority 2011-2013 Codes of Practice Review—Inquiry Report
Determination of the Remuneration Tribunal—No. 1 of 2013: Auditor-General, Electoral Commissioner, Deputy Electoral Commissioner, Employee Ombudsman and Health and Community Service Complaints Commissioner

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

Upper South East Dryland Salinity and Flood Management Act 2002—Report, 2012-13
Upper South East Dryland Salinity and Flood Management Act 2002 Quarterly Report dated 1 October 2012 to 19 December 2012
Government Response to the Statutory Authorities Review Committee's Inquiry into the Environment Protection Authority

### LEGISLATIVE REVIEW COMMITTEE

**The Hon. G.A. KANDELAARS (14:18):** I bring up the 26th report of the committee.

Report received.

### FEDERAL BUDGET

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:18):** I table a copy of a ministerial statement relating to the federal budget made by the Premier, Jay Weatherill.

## QUESTION TIME

### GREAT AUSTRALIAN BIGHT MARINE PARK WHALE SANCTUARY

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:18):** I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions regarding a tax on the sky.

Leave granted.

**The Hon. D.W. RIDGWAY:** Last sitting week, the opposition exposed that the state government was imposing a sky tax, charging planes to fly through the air above the Great Australian Bight. The right whales are in the water, the planes are in the air and never the twain, we hope, will meet.

Since then political commentators have questioned the constitutional validity of the tax. I understand that the minister believes that he has the power to raise this tax under the National Parks and Wildlife (Protected Animals—Marine Mammals) Regulations, which fall under the National Parks and Wildlife Act 1972. In 1972 planes, such as the Vickers Viscount, had propellers. McDonnell Douglas was producing the DC-8, which first flew in 1958. In 1972, right whales were still being harpooned for their blubber in Australian territorial waters by Australians. As I understand it, the commonwealth, not the state, has the power to impose aviation fees and taxes, certainly those which relate to interstate aviation. My questions are:

1. Is the minister's sky tax to fly over a state marine park constitutionally legal?

2. Would the tax be legal if the operator made an interstate flight? Could the operator nip into Western Australian airspace for a few seconds, touch a wing into the sky above WA, to escape Labor's sky tax?

3. What is the tax status of cheilopogon spilopterus, which also takes to the air in the Great Australian Bight Marine Park? The minister might know it as the many-spotted flying fish.

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:20):** Can I say that the only thing the opposition exposed is itself, and it wasn't a very pleasant experience, I can say. On FIVEaa that day, the Hon. Mr Ridgway exposed himself to the public, and I don't think they took a very charitable view of his understanding of the situation. So, let me give him some further advice to what I gave him on the day.

Chinta Air is one of many important nature-based tourism businesses that provide the public with an opportunity to view South Australia's wildlife; they are not alone in this. The business operates over the Great Australian Bight Marine Park Whale Sanctuary, which was established under the Fisheries Act in 1995. The Great Australian Bight Marine Park Whale Sanctuary is an important breeding area for southern right whales. The southern right whale is listed as endangered under the Australian government's Environment Protection and Biodiversity Conservation Act 1999 and is listed as vulnerable under South Australia's National Parks and Wildlife Act 1972.

To ensure a coordinated approach to the recovery of the southern right whale across all jurisdictions, the Australian government developed the Southern Right Whale Recovery Plan 2005-2010. This plan included an action to manage the potential impacts of tourism through the application of consistent commonwealth and state tourism and whale watching regulations. To ensure a coordinated approach to the regulation of whale watching across all jurisdictions, the Australian government developed the Australian National Guidelines for Whale and Dolphin Watching.

These guidelines, I am told, were jointly developed by the relevant Australian state and Northern Territory government agencies and were endorsed by the Natural Resource Management Ministerial Council at its meeting on 22 October 2005. Each of the relevant agencies subsequently committed to the development of state-based regulations to achieve a consistent regulatory approach to whale watching as guided by the national guidelines.

To give effect to these guidelines in South Australia, regulations on the National Parks and Wildlife Act were created by the South Australian government in 2010. Four prescribed areas under the National Parks and Wildlife (Protected Animals—Marine Mammals) Regulations 2010 provide the highest level of protection for marine mammals in South Australian waters. They are: the Great Australian Bight Marine Park Whale Sanctuary Restricted Area, the Encounter Bay Restricted Area, the Adelaide Dolphin Sanctuary, and the Adelaide Metropolitan Beaches Restricted Area.

The management of air space is subject to regulations and policies administered by the Australian government's Civil Aviation Safety Authority; however, the protection of whales in South Australian waters is subject to the South Australian law. The South Australian regulations ensure that marine mammals are protected against human disturbance in South Australian waters. This includes imposing limits on how close people and vessels may approach marine mammals, including in relation to altitude of aircraft.

These regulations mean that commercial tour operators cannot undertake aircraft-based whale watching tours within the Great Australian Bight Marine Park Whale Sanctuary unless they have a marine mammal interaction permit. In 2012, Chinta Air was granted a permit to conduct commercial whale viewing in this area. This permit expired on 31 March 2013. I understand they have recently applied to renew this permit.

The granting of the permit enables the Department of Environment, Water and Natural Resources to properly manage and monitor the level of tourism activity at this important whale calving site to ensure that it is not detrimental to their welfare. It also enables the department to work collaboratively with tourism operators, such as Chinta Air, to ensure that tourism practices are consistent with the national guidelines. These permits enable a tour operator to undertake aircraft-based whale watching over a whale sanctuary which otherwise would not be permitted.

A condition of such permits is that they comply with altitude restrictions as set out in the regulations. Advice given to me is that the cost of a standard annual marine mammal interaction permit is $350. This fee was established in the regulations in 2010 and partially covers the costs incurred by the department in reviewing, preparing and granting a marine mammal interaction permit. The fee is not associated with covering any monitoring or compliance costs.

I understand that several commercial tour operators provide scenic aircraft tours over parks elsewhere in the state. These businesses are not required to have a mammal interaction permit or pay a fee as they do not run tours that impact on marine mammals. It is all about the marine mammal, not about the air.

**GREAT AUSTRALIAN BIGHT MARINE PARK WHALE SANCTUARY**

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:24):** I have a supplementary question. How is the activity of an air operator monitored in the Australian whale sanctuary?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:25):** I am not quite sure what the honourable member is asking for in terms of activity.

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

**The Hon. I.K. HUNTER:** I understand there is a thing called radar that monitors aircraft heights.

**GREAT AUSTRALIAN BIGHT MARINE PARK WHALE SANCTUARY**

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25):** I have a further supplementary. I didn't realise he was an amateur pilot, but I can see him in a Biggles outfit.

**The PRESIDENT:** Have you got a question?

**The Hon. D.W. RIDGWAY:** How does the department monitor whether operators are complying with the guidelines the minister has just outlined?

**The PRESIDENT:** All airspaces. Minister.

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:25):** It never ceases to amaze me how ignorant some members opposite can be of normal government business activities. Interactions with marine mammals are not permitted unless you have a permit. You must fill out the forms and you must apply the regulations as they have been imposed by the feds and the states. My department monitors those and adheres to those policies. Anyone who doesn't that we come into contact with, that are reported to us, will be asked the questions about why they did not.

**GREAT AUSTRALIAN BIGHT MARINE PARK WHALE SANCTUARY**

**The Hon. M. PARNELL (14:26):** I have a supplementary question. Does the minister have any concerns for the viability of the whale watching industry on the West Coast as a result of today's announcement that BP is now formally proceeding with its offshore oil exploration activities in the Great Australian Bight in the whale habitat area?

**The PRESIDENT:** It's a long bow but, minister.

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:26):** We are in the same geographic area, I suppose.

**The PRESIDENT:** Yes.

**An honourable member:** There's whales in the bight.

**The Hon. I.K. HUNTER:** Yes, but the original question was about air and fees. It had nothing much to do with BP.

*Members interjecting:*

**The PRESIDENT:** Minister, it is happy hour, so let's go for it.

**The Hon. I.K. HUNTER:** It is a long bow. Of course, the state government is concerned for the benefits for marine mammals wherever they are in South Australian waters and we will do our utmost to ensure that they are protected.

## ARSENIC CONTAMINATION

**The Hon. J.M.A. LENSINK (14:27):** I seek leave to make an explanation before directing a question to the Minister for Sustainability, Environment and Conservation regarding arsenic contamination at the Goodwood worksite for the Seaford and Belair rail corridor.

Leave granted.

**The Hon. J.M.A. LENSINK:** For months, local residents in Goodwood have been concerned about the harmful nature of dust landing on their homes, vehicles and window seals as a result of the removal and transportation of soil at the Goodwood railway worksite. Despite these concerns, knowledge of any contamination of soil has been denied.

On 30 January, the *Eastern Courier Messenger* reported that SA Health authorities have declared that the level of arsenic in the soil at the Goodwood railway worksite posed no threat to residents. However, a document entitled 'Goodwood grade separation—soil contamination assessment', of 27 July 2012, which was obtained through freedom of information, revealed that very high levels of arsenic were detected in samples taken from bore logs—levels of 910 milligrams per kilogram. It has been reported that this soil was transported through the local area in uncovered trucks. My questions for the minister are:

1. Is the minister aware of this issue?

2. When were the EPA and/or Health advised of carcinogens found in the rail corridor?

3. What preventative actions were taken to ensure the soil was removed and disposed of safely?

4. Did the minister or any of his agencies advise residents of possible risks during the 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) (14:29):** I thank the honourable member for her most important and intriguing question. It does go to a multiagency approach, I would imagine, including my own agency and perhaps the EPA, Health and the Department of Transport, so I will undertake to take the question on notice and bring back a response.

## LITTLE PENGUINS

**The Hon. S.G. WADE (14:29):** I seek leave to make a brief explanation before asking a question of the Minister for Sustainability, Environment and Conservation regarding the Granite Island little penguins.

Leave granted.

**The Hon. S.G. WADE:** As the minister would be aware, little penguin numbers on Granite Island have been slowly declining since the early 1990s. Unfortunately, little penguin colonies are already extinct on West and Wright islands. In 2012 a Friends of Encounter Seabirds survey reported population numbers had decreased from an estimated 1,600 to 1,800 penguins in the year 2000 to approximately 20. The little penguins are a valued fauna asset of South Australia. They support Victor Harbor's tourist scene and are also an important part of the environmental wellbeing of Granite Island. My questions are:

1. Has the minister reviewed the current situation with respect to the Granite Island little penguins since becoming minister?

2. Has the minister consulted stakeholders regarding the issue and has the minister taken any actions as a consequence?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:30):** I thank the honourable member for his most important question about the little penguin. I understand there are about 90 little penguin colonies in South Australia. These colonies fluctuate from year to year in response to numerous environmental influences. The scale of recent declines

near Victor Harbor and Kangaroo Island are too great to be explained simply, though, by changing seasonal conditions. Some people have linked the decline to fur seals, but I am advised that there is not sufficient data to support that hypothesis.

New Zealand fur seals are known to kill and eat little penguins. However, I am advised by my department that penguins are not a significant part of their diet. New Zealand fur seals are native to South Australia and have a national distribution that coincides relatively closely with that of the little penguin. This is likely to have been the case prior to European settlement (although we cannot know), suggesting strongly that the two species have always coexisted.

Little penguin colonies at Granite Island, West Island, Penneshaw and Kingscote are subject to a wide range of threats, both on land and at sea, yet some other little penguin colonies are stable despite coexisting with large populations of New Zealand fur seals. I am advised that recent commissioned reports recommend that current management programs at these little penguin colonies should continue to focus on threat abatement activities on land and that these be revised to include more effective land predator control, revegetation of nesting habitats (including the provision of artificial nests), and the protection of nesting/burrowing habitat from coastal developments to maintain spatial extent of colonies.

I know that local declines of little penguins at Victor Harbor and Kangaroo Island are of great concern to many in the community. I would like to assure the community that there is much happening around this issue. A number of government agencies are working together to investigate the extent of and contributing causes to localised declines in little penguin colonies. Many research projects are being undertaken to gain a better understanding of the drivers of penguin colony dynamics and to determine what, if anything, can be done practically to address these local declines.

The South Australian Research and Development Institute has recently secured funds to complete a statewide assessment of the status and trends in abundance of the New Zealand fur seal colonies in South Australia. This survey will be completed in 2014 and will involve a statewide census of New Zealand fur seal pup production, including all colonies on and around Kangaroo Island.

The department is also partnering with another South Australian Research and Development Institute research project that will examine the diets of New Zealand fur seals using DNA testing of faecal samples. This will provide information on the frequencies of little penguins in the diets of New Zealand fur seals. Departmental staff and volunteers, I am advised, are working together to investigate the extent of and contributing causes to localised declines in little penguin colonies.

For example, monitoring of the declining colonies on Kangaroo Island and at Victor Harbor continues, and monitoring of other colonies on Kangaroo Island has been undertaken for comparison. Nesting burrows at a few locations on Kangaroo Island have also had camera traps established, I am told, at their entrances, to determine the frequencies of visits by potential land-based predators; for example, cats and rats. At the state and national level, the conservation status of little penguins is secure. It is not listed as threatened under state or federal legislation, is my advice.

## UPPER SPENCER GULF

**The Hon. G.A. KANDELAARS (14:34):** I seek leave to make a brief explanation before asking the Minister for Regional Development a question about developments in the Upper Spencer Gulf.

Leave granted.

**The Hon. G.A. KANDELAARS:** The Upper Spencer Gulf has been known as an area with tremendous potential for some time. Its development, based on mining and mineral related activities, has created three significant population centres at the head of Upper Spencer Gulf. Will the minister advise the house of a significant project which aims to capitalise on this potential?

**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 question and his ongoing interest in these matters. The South Australian government has recognised the potential of this area through a commitment of $4 million over four years to an Enterprise Zone Fund—Upper Spencer Gulf (USG) and Outback. I am very pleased to advise the

chamber that the Whyalla manufacturing and fabrication company, E&A Contractors, is on track to complete a significant upgrade after a grant from the Enterprise Zone Fund.

In January this year, I announced a commitment of $2 million from this fund to assist this business take advantage of opportunities to obtain contracts to supply the mining, renewable energy and defence sectors. The company has undertaken a $7.5 million project to upgrade existing buildings, refurbish facilities and acquire heavy engineering equipment, which is expected to create approximately 100 full-time jobs over four years.

A project of this size is obviously a significant boost to the regional economy of the Upper Spencer Gulf and outback, and the company has wasted no time to upgrade its plant. These upgrades include a specialist wind tower fabrication plant, with new heavy engineering equipment, including modern profile cutting and plate rolling machines and large mobile and gantry cranes, extension of the existing buildings and yard area, and refurbishment of blast and paint facilities. The development means the company can treat surfaces of large structures of up to 180 metres long, including blasting, metallising and also painting.

I have been advised that, through this investment in the new fabrication plant, the company has been able to gain international procurement, accreditation from Siemens, the principal supplier of wind towers, as well as comparatively position the business in the region. The project has not only helped build capacity for engineering and manufacturing in one of our regional areas but also has enabled an established business to diversify its offering to the market and help position Whyalla as a manufacturing and service hub for the renewable energy industry. It is an excellent example of how we are supporting businesses to progress the state government's growing advanced manufacturing priority.

I am advised that E&A Contractors are now due to begin manufacturing wind towers by late May for Siemens, and over the next four months is committed to deliver the Siemens contract, which, once completed, will firmly establish E&A Contractors as the key supplier nationally to the wind energy sector. The USG and outback regions are well placed to capture businesses from the expansion of the resources, energy and allied service industries. The $4 million Enterprise Zone Fund is a rolling fund available over four years and is aimed at catching the benefits of growing industries to further strengthen USG and outback communities, including capitalising on opportunities that are focused on the expansion of the resource and energy sectors and providing access to organisations in the USG and outback for projects that make a major impact on the region by changing competitive advantages in its favour.

The fund is accessible by organisations, including local governments, businesses and industry associations, in the region. The fund is aimed at capturing the benefits of growing industries to further strengthen the Upper Spencer Gulf and outback communities. Renewable energy is obviously a very important part of South Australia and Australia's clean energy future, and I congratulate E&A Contractors on their expansion. This significant upgrade will not only position E&A to take advantage of current and emerging opportunities to participate competitively in the mining and defence sectors but also will establish a local company in our region as a recognised supplier to the wind energy sector nationally. Supporting this project will also help build local capacity for engineering and manufacturing in the Upper Spencer Gulf, and I look forward to seeing this extensive facility firsthand.

## BIOSECURITY

**The Hon. R.L. BROKENSHIRE (14:39):** I seek leave to make a brief explanation before asking the minister for primary industries a question regarding biosecurity recovery costs.

Leave granted.

**The Hon. R.L. BROKENSHIRE:** One of the first jobs that minister Gago did when she became primary industries minister was to implement the Mutton review due to the serious concerns from primary industry animal husbandrists and also from the horse industry regarding full cost recovery. My questions to the minister regarding that review are:

1. Has the Mutton review been completed by the round table?

2. If it has, is the minister going to make the document public and put it out for further public comment?

3. Is the minister now ruling out full cost recovery?

4. Are there any legislative requirements regarding the minister's intentions about this matter and, if so, when will they be tabled in the council?

**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) (14:40):** I thank the honourable member for his most important questions and his ongoing interest in this particular area. Indeed, the South Australian government does have a policy of cost recovery which we attempt to put in place wherever we can.

We attempted to introduce it into the livestock industry. It has been present in our fisheries now for a number of years, and other sectors where it is well established. However, we were not able to do that; we were unable to progress the legislation through this place. There were also issues raised by the industry so I took steps to work with the industry on a position that we could land on. Part of that process was to request Dennis Mutton and a small group of industry leaders to put together a position paper, if you like, for government to consider. They did that but I cannot give you the exact date it was handed to me; it was some time ago. I have had a look at that and the government has responded to that report.

My understanding is that both documents have been on the website for a considerable amount of time. I am sure my trusty advisers will let me know if that is not the case. It was quite some time ago but I believe both documents are on the website and have been for some time. Yes, I have been advised they are both online and have been for some time.

I do not have the government's response here in front of me but the basic thrust of it was that the Mutton review did a very good job. It basically said they would prefer not to have any cost recovery imposts but then looked at a number of things that perhaps the industry could further consider. The government acknowledged those issues and has agreed at this point in time not to pursue cost recovery. However, we have said that we will continue to engage with the industry to work towards a better informed understanding around the issues to see if we can get the industry to come to an agreed position.

In effect, we do not have any cost recovery proposal before us either in legislative form or otherwise, other than, as I said, to discuss those matters that were raised in the Mutton review and engage in dialogue with the industry. At this point in time there is no legislation that we have planned to pursue cost recovery in the area of livestock. However, we will continue to engage with the industry around the issues that have been identified.

## MURRAY RIVER

**The Hon. K.J. MAHER (14:44):** My question is to the Minister for Water and the River Murray. Having seen the health of the Murray this weekend, will the minister inform the chamber of any improvement of vegetation conditions in the Murray-Darling 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) (14:44):** I wasn't aware that the honourable member had been viewing the Murray and the region this weekend. We could have connected up and had a look at some sights together.

**The Hon. D.W. Ridgway:** That would have been a sight in itself!

**The Hon. I.K. HUNTER:** Well, at least we weren't doing what you did, David—exposing yourself on statewide radio.

*The Hon. K.J. Maher interjecting:*

**The Hon. I.K. HUNTER:** Indeed!

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. M. Parnell:** You have a good face for radio.

**The Hon. I.K. HUNTER:** The Hon. Mr Parnell says I have a good face for radio and I'm sure he's right.

*The Hon. M. Parnell interjecting:*

**The Hon. I.K. HUNTER:** Oh, he was pointing at the Hon. Mr Ridgway, of course, I will accept that as pertaining to both of us. As honourable members would be aware, during the

drought of 2001-10 a lack of sufficient flows to South Australia and lack of over-bank flooding resulted in the decline in the condition of many long-lived vegetation types and species across large areas of the flood plains surrounding the river. However, in 2010-11 and 2012, South Australia experienced several high flow and flood events, the peak of which was recorded in February 2011. I am pleased to report that since then, the rehabilitation of long-lived vegetation, including iconic river red gum, black box, river cooba and lignum, has been observed across the basin.

The inundation of older and established species, particularly those located at high elevations on the flood plain, such as black box, has provided many positive benefits. Most importantly, there has been observed increase in new tip growth and reproduction growth such as buds and flowers on river red gums, black box and river cooba; and there has been plenty of new growth of lignum. I am also pleased to advise that, on many of the severely stressed river red gums, new growth is visible, and the majority are now showing an improvement in health.

Another development has been the growth in seedlings. In 2010-11, seedlings of long-lived vegetation species were observed growing across the flood plain for the first time in a long time. These seedlings benefited from additional high flows received in South Australia during 2012, and this has resulted in many of these becoming established saplings now fringing wetlands.

I recently had the opportunity to view the Morgan Conservation Park which was dedicated in 1979 for the protection of its wetlands. Portions of the park are regularly inundated and a large wetland in the centre of the park provides high quality habitat for waterfowl. Not far away at Ramco Lagoon, wonderful work is occurring which is being managed by Department of Environment and Natural Resources, SA Murray-Darling Basin, Riverland West Landcare and the Ramco Lagoon Wetland Group.

I also had the opportunity to meet with some of the hardworking members of the Landcare group who were monitoring the ecological health of the wetland. They advised me that increased flows in South Australia have led to a number of improvements, including a decrease in surface water salinity, increased vegetation growth, and frog species being recorded at the site where none had previously been recorded.

I am also pleased to inform the chamber that several projects are being undertaken within the Murray-Darling Basin region in order to maintain the improved condition of vegetation and to support saplings that have become established across the flood plain in this time. Recently, the watering of a mixture of black box and river red gum saplings has been undertaken at Whirlpool Corner, north of Paringa. This was a collaborative effort between the Murray-Darling Basin Natural Resources Management Board and the Renmark to the Border Local Action Planning. Water was provided through the Commonwealth Environmental Water Holder.

I am also advised that a project investigating the watering requirements of black box is currently being undertaken at Markaranka, north west of Waikerie. Over the coming year, a number of additional watering events are planned in order to continue supporting and maintaining growth and establishment of long-lived vegetation, and I am looking forward to hearing of their development. Maintaining the condition and varying age classes of these long-lived vegetation species is important for a number of reasons. Most importantly, species such as river red gums are iconic to the landscape but also they support many threatened species such as the regent parrot and the southern bell frog, both of which are listed as threatened species in South Australia. They also provide a number of other ecosystem benefits.

I am pleased to be able to report on this improvement to the chamber and I can advise that I will be monitoring their recovery closely. If the honourable member would like, we could perhaps go up together and look at how our revegetation and management of the system is improving for species.

**The Hon. K.J. Maher:** It's a date.

**The Hon. I.K. HUNTER:** It's a date, he says.

## APY LANDS

**The Hon. K.L. VINCENT (14:49):** I seek leave to make a brief explanation before asking a question of the Minister for Aboriginal Affairs and Reconciliation regarding governance issues in the APY lands.

Leave granted.

**The Hon. K.L. VINCENT:** I have met with members of the APY lands community over a period of several months, commencing with my trip to the APY lands in October last year. This included people who have previously worked for the Department for Communities and Social Inclusion (DCSI) about a range of problems with governance and services in these remote communities, including the failure of government to provide adequate services and support to people in these remote areas.

More recently, I have learnt of increasingly concerning developments. The cases and issues discussed recently with people from these communities include cultural insensitivity from government departments, lack of provision of suitable mobility equipment, no Indigenous staff actually employed by DCSI in the APY lands, and clients with disabilities being chewed by mice and infected with maggots. So fed up with the lack of response from the state government are these communities that they have decided to raise the flag, of course not just any flag but the Anangu traditional owners flag. Not just one Indigenous community has done this, but eight, reaching right across the north of South Australia. This is a very serious action. These communities say that this means that 'things are very wrong and it is time to come together and make things right'.

As I understand it, letters have been written to the Premier, Minister for Communities and Social Inclusion and the Minister for Aboriginal Affairs and Reconciliation by communities that have raised the flag. To date, they have not had a response. My questions to the minister are:

1. When is the minister intending to visit the APY lands and discuss the concerns communities that have raised the flag have raised with him?

2. Is the minister aware that raw kangaroo tail and uncooked vegetables were served to elderly, chronically ill and disabled community members in Mimili when they are supposed to be served hot meals by DCSI from Monday to Friday?

3. Is the minister aware that the Minister for Communities and Social Inclusion wrote back to communities about the raw kangaroo tail incident, effectively lecturing them about their own cultural practices?

4. Given the widespread problems in these communities, will the minister admit the need for intervention from himself in his capacity as Aboriginal affairs minister to help drive reform in this region?

5. Does the minister agree that DCSI staff need cultural competency training?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:52):** There are a lot of assertions in that explanation which I simply do not accept. The state government has invested heavily in improving the provision of services delivered to Anangu people on the APY lands in the areas of preschool facilities, family centres, education, vocational education, policing, youth, allied health services, home living skills and family wellbeing programs.

The state government continues to support community capacity building by funding the employment of up to eight community council support officers across the APY lands. I am told they are located at Amata, Fregon, Pukatja, Mimili, Indulkana, Pipalyatjara, Kalka and Nyapari/Kanpi. The CCSOs are supported by two DPC-AARD remote service delivery coordinators located at Umuwa and Pipalyatjara.

The state government has also taken positive steps to improve the delivery of essential services by transitioning the management of electricity and water supply to state government agencies (DMITRE for electricity and SA Water for water). These initiatives will lead to better long-term asset management of these essential services. This transition was supported with a significant increase in state government funding.

Community safety continues to be a strong focus on the APY lands and the government's commitment here has led to the construction of three new police stations located in Amata, Pukatja and Mimili. Since 2010, there have been 19 full-time sworn police positions on the APY lands. As at 27 March 2013, all of these positions were filled, is my advice. Under the Commonwealth-State National Partnership Agreement on Remote Indigenous Housing, introduced in 2009, 99 new community houses have been built on the APY lands to date, with a further 17 under construction. Additionally, 111 upgrades have been delivered, with a further 20 underway.

A state government procurement policy applies to all contracts awarded for the construction or upgrade of housing under that agreement. This requires that 20 per cent of total on-site hours be undertaken by Aboriginal people. Under this policy, approximately 40 Aboriginal people were employed during 2011-12. These workers also gained, I am told, certificates in civil construction. The policy continues to achieve strong outcomes, with the most recent quarterly report, ending December 2012, indicating that 26.2 per cent Aboriginal employment hours were achieved; that is, 4,961 hours out of 18,000-and-a-bit total workforce hours.

Providing employment and training opportunities for Aboriginal people in the resource sector is a high priority of the government, given the rapid growth in mining activity in South Australia. TAFE SA, in partnership with OZ Minerals, has administered pre-employment aptitude testing for 19 Anangu to date, which has led to full-time employment opportunities for a number of Anangu at the Prominent Hill mine. An exciting initiative in this field is the recent opening of the Trade Training Centre at Umuwa. This facility is now providing good quality, locally-based training in construction skills, in particular, the electrical, plumbing and roofing trades.

Finally, recent school enrolment data (2013, I believe) indicates that there are 614 students enrolled in schools in the APY lands. School attendance rates are also gradually improving: in 2012, the rate was 65 per cent, compared with 60.6 per cent in 2000.

The government is committed to improving services on the APY lands. We have been committed throughout our whole term in office, and we will continue to be committed to improving services to local Aboriginal communities in APY. I totally reject the assertions made in the honourable member's explanation.

## APY LANDS

**The Hon. K.L. VINCENT (14:55):** I have a supplementary question. Will the minister answer the question: when is he going to make contact with the Aboriginal communities that have raised the flag, and when is he going up to the lands so that he can experience these issues for himself? I believe that this is now the third time that I have had to ask him that question.

**The PRESIDENT:** The minister has answered the question.

## APY LANDS

**The Hon. T.A. FRANKS (14:56):** I have a supplementary question. How many community constable positions are currently vacant and for what period of time is the longest vacancy still standing?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:56):** I am happy to take that question on notice and bring back a response for the honourable member.

## STREETLIGHTING CHARGES

**The Hon. J.S.L. DAWKINS (14:56):** I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question regarding streetlighting charges for local government.

Leave granted.

**The Hon. J.S.L. DAWKINS:** Last year, the Department of Planning, Transport and Infrastructure (DPTI) undertook a review into the cost sharing arrangements with councils for streetlighting charges, including the methodology and process used to calculate monthly charges to councils for the powering, maintenance and installation of streetlights.

In November 2012, the Local Government Association was informed of the state government's decision to increase the monthly charges to councils from 1 January 2013. The LGA unsuccessfully lobbied DPTI to delay the increase until 1 July 2013 so that it would not impact on council budgets already determined for the 2012-13 financial year. My questions are:

1. Will the minister provide the details of the methodology change following the review into cost sharing arrangements with councils for streetlighting charges?

2. Will the minister confirm what impact the decision to increase the monthly charges to councils for the powering, maintenance and installation of streetlights from 1 January 2013 will have on the outcome of council budgets for 2012-13?

3. Will the minister also explain why the state government refused the request from the LGA to defer the cost increase for energy and maintenance charges to councils until 1 July 2013?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:58):** I thank the honourable member for his most important questions. I understand that there was recently a report on the issue of the Department of Planning, Transport and Infrastructure in relation to seeking a 50 per cent contribution from councils towards additional streetlighting on roads under the care, control and management of the Commissioner of Highways. I am advised that the matter was raised at the South East Local Government Association (SELGA) meeting that was, I understand, convened in February this year.

I am aware also that the LGA has previously lobbied the department on behalf of member councils in an attempt to defer the charges until 1 July 2013, which has been declined, I understand. The cost of the provision of streetlighting on roads under the care, control and management of the Commissioner of Highways, I have been advised, is generally shared with councils on a 50 per cent recovery basis, and this is in accordance with the provisions, I am advised, of section 26(11) of the Highways Act. The 50 per cent recovery is based on the provision that roadway lighting provides an amenity for local ratepayers, through the lighting of footpaths and adjacent areas, which can contribute to the safety and security of the community.

I am also advised that the department has offered, upon request, to provide further explanation to councils on how council contributions to the commissioner have been determined. Obviously, members will appreciate that the Highways Act is committed to the Minister for Transport and Infrastructure, the Hon. Tom Koutsantonis. That is the information that I have been advised.

## STREETLIGHTING CHARGES

**The Hon. J.S.L. DAWKINS (15:00):** Supplementary question: will the minister bring back the details of the change in methodology that has been offered to the Local Government Association?

**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) (15:00):** I am not too sure about what alternate methodology. I have been advised that the department has offered to provide further explanation to councils on how council contributions to the commissioner have been determined, and I am happy to refer those questions to the appropriate minister in another place and bring back a response.

## ADVANTAGE SA REGIONAL AWARDS

**The Hon. R.P. WORTLEY (15:01):** I seek leave to make a brief explanation before asking the Minister for Regional Development and minister responsible for agriculture, food and wine a question about regional South Australia.

Leave granted.

**The Hon. R.P. WORTLEY:** Held annually, the Advantage SA Regional Awards celebrate and showcase the achievements of organisations and individuals that have made considerable contributions to regional South Australia. My question is: will the minister inform the chamber on how the government recognises and supports South Australians who provide premium food and wine from our clean environment?

**The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:02):** I thank the honourable member for his important question about the difference that a Labor government is making to South Australians and to our state, including those South Australians who live in our regions.

The Labor government of South Australia has constantly advocated for and supported South Australians who work in the regions in our agriculture, food and wine industries. The government believes that it is important to also publicly recognise the hard work of South Australians in our regions and acknowledge the importance of the contribution our world-renowned food and wine industry makes to our state economy.

Our food and wine industry, obviously, is a very important sector to our state economy, generating around $16 billion in revenue annually, and it employs about 150,000 people, so it is obviously a very important employer as well. The government is pleased to continue its support to the industry and to regional communities and for that reason the government, through the regional development portfolio, is a major partner and a category sponsor for this year's Advantage SA Regional Awards.

The Advantage SA Regional Awards are designed to acknowledge the South Australians who have set the benchmark for excellence in their field in each of seven regions of South Australia. By supporting the Advantage SA Regional Awards, through the South Australian government's premium food and wine from our clean environment initiative, we are very proud to champion our food industry, one of the most dynamic and innovative, we believe, in the country.

The state government continues to fund the innovation category of the Advantage SA Regional Awards through the Department for Manufacturing, Innovation, Trade, Resources and Energy. Several of the innovation category winners in 2012 are leading food producers and key contributors to the government's key strategic priority of premium food and wine from our clean environment.

I am delighted to inform the chamber today that this year there will be two awards under a new category sponsorship by the Department of Primary Industries and Regions (PIRSA) to recognise contributions in regional South Australia to this most important government priority, premium food and wine from our clean environment. These are the Food SA Food Award and the PIRSA Wine Award. Both of these awards are open to all South Australian regional producing or manufacturing wine companies which have been established for over two years and where the head office of the business, including franchisees, or at least 50 per cent of business production is based in South Australia.

South Australian wine producers are incredibly proud of their industry and rightly so. One out of every two bottles of Australian wine is made in South Australia, and this wine is exported to more than 100 countries. South Australia also produces some of the most famous premium wines in the world and, due to the government's rigorous biosecurity measures, South Australia is free of the vine-destroying pest phylloxera and, obviously, because of that, we have some of the oldest grapevines in the world, and from those fantastically aged vines we produce some of the world's very best wines.

The fantastic achievements of our wine industry will be recognised through the Premium Food and Wine from our Clean Environment—PIRSA Wine Award. This new award aims to acknowledge those wine companies that are leaders in the industry in using their sustainability practices or environmental credentials to increase the credence values of their products.

The Premium Food and Wine from our Clean Environment—Food SA Food Award will see the winners from each category become automatic finalists in the highly acclaimed SA Food Industry Awards. Primary industries deliver enormous economic benefits to our state, along with maintaining its reputation for the best quality produce.

Nominations for the 2013 Advantage SA Regional Awards are now open and will close on 21 June 2013. As Minister for Regional Development, I am obviously constantly impressed when I visit regional areas in South Australia by the passion and enthusiasm of our local communities for their areas and produce from those areas.

Just as winemakers know the importance of their terroir to wine to create unique flavour, so too regional businesses know the impact that their particular combination of soil, water and specialist expertise bring to create South Australian products. It's this excellence which is celebrated by the Advantage SA Regional Awards. I encourage all of those who are eligible to nominate, and I look forward to being able to keep the chamber updated on the marvellous work in primary industries and regional communities being recognised and supported by the Jay Weatherill government.

## SHACK LEASES

**The Hon. J.A. DARLEY (15:07):** I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions regarding rents for shack sites on crown land.

Leave granted.

**The Hon. J.A. DARLEY:** As I have already stated several times before, my objection to the crown shack rentals was first raised in 2009. There has never been any objection to the method of determination of shack rents; that is, calculated on a rate of return on the current unimproved value of shack sites. The rate of return fixed by the former minister was 4 per cent. After a direction from the Premier, the then minister sought advice from the Valuer-General, who advised the rate of return should be 2.75 per cent. This is more than 31 per cent less than the rate of return originally used to calculate shack rentals, and therefore I contend that the shack lessees have been overcharged for their rents.

As honourable members would know, the Valuer-General is an independent statutory officer responsible to parliament. I requested the Valuer-General to provide advice to me on the appropriate rate of return for the years 2009, 2010, 2011 and 2012. The Valuer-General has recently advised me that, in her opinion, the rate of return is constant at 2.75 per cent for each of these years and at present.

I understand ministers are advised by their departments and contend that, since 2009, the department has either deliberately misled or has been completely incompetent in their advice to the minister on this issue. My questions are:

1. Does the minister continue to steadfastly hold the position that there has not been any error in the calculation of shack rents?

2. When will the minister correct the department's mistake and refund overpaid rents to shack lessees?

3. Is the minister going to review the unimproved values that have been used to calculate rents since 2009?

4. If so, when and, if not, why not?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:09):** I thank the honourable member for his most important question. I think I have advised the chamber previously of approximately 300 life tenure shack leases on crown land and 100 in national park reserves. Life tenure means that the lease expires when the last lessee passes away. By way of background, the crown land subject to shack leases has been assessed a number of times, most significantly in 1994 under the shack site freeholding policy. I am advised that the intention of this policy was to permit freeholding (that is, the purchase of land) wherever possible.

Most shacks on crown land were sold to occupants under this process. Six criteria had to be met for a shack to be eligible for freeholding. All shack sites were assessed to identify those suitable for freeholding, taking into account criteria including public health requirements, continued public access to the waterfront, flood and erosion issues, and planning requirements. Sites that met the criteria were sold to the occupant; those that did not meet the criteria were issued with non-transferable, life tenure leases, which I explained at another time as meaning that these leases expire when the last lessee passes away.

These leases carry an obligation to pay rent. The rationale for rent setting has always been that the state should receive a fair return for the private and exclusive use of its land assets. Lease conditions for non-transferable shack leases on crown land and in national parks provide for the periodic revaluation of the annual rent to be paid to the Crown for the right to occupy that land.

Shack rents are set by obtaining a land value from an independent valuer and applying a rate of return to that value. I am informed that for rents effective from 1 January 2012, the rate of return was set at 4 per cent. I am advised that this was based on independent advice from the New South Wales Valuer-General and a New South Wales valuer in private practice. For rents effective from 1 July 2013, the rate of return was set at 2.75 per cent. This was based on advice from the South Australian Valuer-General.

Throughout the history of setting shack rents, the rate of return has been adjusted periodically in response to local economic conditions. I am advised that rates of return applied by the Valuer-General over the years have ranged from 1.5 per cent to a mid-range of 3.5 per cent to a high 8 per cent. I can advise that the Department of Environment, Water and Natural Resources will seek advice on an appropriate rate of return for shack sites every two years.

Shack rents on crown land at Fishermans Bay, Glenelg River, Milang and in the Coorong National Park were determined using a 4 per cent rate of return to the unimproved land value of the

shack site effective 1 January 2012. Rents of shack sites in Innes National Park, including Pondalowie Bay and the remainder of the settlement of Fisherman Bay, were determined using a 2.75 per cent rate of return effective 1 July 2013.

Lessees have the opportunity to lodge an objection to the new rent within one month of being notified as part of their lease conditions. I am advised that objections to shack rental increases were received from shack lessees at Fishermans Bay, Glenelg River and Milang. The Department of Environment, Water and Natural Resources sought advice from the Valuer-General to determine some of these shack lease rent objections. I can advise that in all reviews completed to date shack rents were upheld.

I understand that the Hon. Mr Darley has a very keen interest in this matter. I have been having ongoing discussions with him regarding this issue and I assume I will have ongoing discussions with him about this issue into the future.

## SHACK LEASES

**The Hon. J.A. DARLEY (15:13):** I have a supplementary question. Does the minister not understand that I lodged the objection in 2009 with then minister Weatherill and does the minister not understand that the rate of return has not changed since 2009? In fact, on the Valuer-General's advice it is 2.75, not the 4 per cent set by the previous minister?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:13):** I certainly have heard what the honourable member has said.

## ORRoroo WATER SUPPLY

**The Hon. J.S. LEE (15:14):** I seek leave to make a brief explanation before asking the Minister for Water and the River Murray a question about the Orroroo water supply.

Leave granted.

**The Hon. J.S. LEE:** Orroroo residents have described their town's bore water supply as too saline to use, with reports of it killing garden plants, corroding house pipes and proving far too salty to drink. The high salinity of the town's water supply was first raised by the District Council of Orroroo Carrieton in 2000. The Orroroo town of 500 residents said that the main water supply of bore water is unpalatable and such levels of salt have been labelled as a huge risk to the health of those who regularly consume it, as quoted by Dr Jacqui Webster on the ABC on 7 March 2013.

The council CEO, Iain Wilson, reported that the council of the last two years has spent over $27,000 on researching and developing a business case, which was presented to SA Water, politicians and various bodies as a solution to better the water supply of Orroroo. Mr Wilson states:

> We've done most of the heavy lifting on the reports. We'd hoped that SA Water would now come on board and actually start to put some money into this project because at the end of the day Orroroo residents are not getting the quality of water they deserve.

My questions to the minister are:

1. What consultations has the Minister for Water had with the District Council of Orroroo Carrieton and their constituents?

2. With the local council active in finding solutions and spending $27,000 on the development of a business case, what actions and research studies has the government instigated to help this regional town in improving its water quality?

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:16):** I thank the honourable member for her most important question. I should ascertain whether she is suggesting in her question that in fact SA Water should embark on such enterprises without having a business case done. Surely she is not! I am advised that SA Water has held discussions with Orroroo council regarding water quality improvement. I understand that the Orroroo community has requested the assistance of SA Water and the construction of a desalination plant in the town.

Capital funding for improving the quality of Orroroo water supply is currently programmed in for 2018. I am advised that for SA Water to consider any contribution to the proposed capital works it requires a written business case. Well, of course, it does. I just cannot fathom how the

honourable member can stand here and suggest that SA Water should just stump up some money for a water desalination plant without having done the due diligence, without the council having done the due diligence—

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

**The Hon. I.K. HUNTER:** Well, you'll be eating your words! The next time this state faces a drought, the next time there are water restrictions in this place, you'll be in here congratulating us for doing what we have done. You will eat your words!

**The Hon. D.W. Ridgway:** You are an idiot.

**The Hon. I.K. HUNTER:** Mr President, they don't seem to understand that, when Western Australia built a 50 gigalitre desal plant, what did they do? They turned around and bought another one—and it cost them more. This government plans for the future: that is the difference. This government plans for the future—they have no idea about the future. They in fact have no plans whatsoever.

SA Water understands that the council is working with companies that deliver desal options using traditional and proven technology. I am advised that during the last financial year the Orroroo water supply has been compliant with the Australian drinking water guidelines. The Department for Health and Ageing considers the supply potable.

The council recently submitted two documents for SA Water's review: an integrated management plan for Orroroo and the Orroroo community desalination project business proposal. SA Water will now undertake an internal technical review of the council's proposal. SA Water will, of course, liaise with the council to obtain any additional information or clarification on matters such as water quality, capacity, technical standards, asset ownership, construction and funding. SA Water will continue to work with the council and the community to identify any alternative funding model that might bring forward a water quality improvement for the town, while meeting the Australian drinking water guidelines and other water quality requirements.

## MATTERS OF INTEREST

### GOODS AND SERVICES TAX

**The Hon. K.J. MAHER (15:19):** I rise today to speak on a matter of great importance to South Australia: the plans by Liberal MPs right across the country to change the way GST revenue is distributed that would slash about $1 billion in revenue a year from South Australia. There has been a great deal of debate about this issue, so it is worth laying out the evidence and looking at exactly what has been said. It was kicked off earlier this year in February by the federal Deputy Leader of the Opposition, Julie Bishop, who told *Sky News*:

> We agree that Western Australia should have a fair go. We'll certainly be looking at the GST in Government.

She said, 'We'll certainly be looking at the GST in government.' It does not get much clearer than that. The second in charge of the federal Libs is saying that they will certainly be looking at the GST in government because it is unfair for WA. The Premier of WA, Colin Barnett, just cannot help himself on this issue. He told ABC radio in early April:

> I have had a telephone conversation with Tony Abbott in the last week and we are talking about trying to fix the system...He made comments to me along the lines that, 'I don't think it's sensible to hold back strong parts of the economy to simply prop up weaker parts of the economy.'

Then to back that up, just so there could be no doubt, Tony Abbott told *The Australian* newspaper just two weeks ago:

> I think what ought to be very seriously considered by the government right now is the proposal that the Liberal states have put up, that the GST revenue should be distributed on what is closer to a per capita arrangement.
>
> This is the unified position of the Coalition premiers. I think it makes a lot of sense.

It is even more clear from the federal Liberal leader. He thinks the idea of per capita distribution that would rob SA of $1 billion a year 'makes a lot of sense'. Just last week, the ever-helpful Premier of WA informed his parliament of the views of all the Liberal premiers. This is what he told the WA parliament:

> Those four states' premiers and treasurers have a broad in-principle agreement that the GST should be progressively changed so that most of the money is allocated on a per capita basis.

The Liberal premiers have made a secret deal that would see South Australians completely and utterly done over. Let's remember what the would-be prime minister, Tony Abbott, thinks of this: he reckons it makes a lot of sense—a lot of sense for South Australia to be $1 billion a year worse off.

South Australians should rightly be very worried. It should send a shiver up the spine of every South Australian, including those opposite. What does $1 billion less a year mean? It would mean 756 fewer police officers; in addition to that, 677 fewer teachers; in addition to that, 4,000 fewer nurses; and, on top of all that, 1,300 fewer doctors. That is what the federal Leader of the Opposition is thinking about for South Australia.

South Australians cannot afford a Liberal prime minister and they cannot afford the risk of a Liberal premier who will not fight for South Australia. We saw it with the River Murray plan: the SA Liberals wanted to accept what they themselves called the 'Mazda plan', rather than trying for a Rolls-Royce plan, because they did not want to take on their Liberal premiers. Given their form, you would expect exactly the same thing on the GST—the SA Libs just to roll over, have another nice muscat at dawn at the Adelaide Club and accept second best from the Liberal premiers in the Eastern States. It is what they do; they have shown that.

Last year, an expert panel, including Nick Greiner, conducted a review of the GST. There were five submissions from the South Australian government, two submissions from Business SA, and guess how many submissions from the South Australian Liberal Party? Not one from the opposition, not a thing from the opposition—no ideas, no policies, no submissions, not good enough. If the SA Libs are fair dinkum, they would be advocating a vote against Tony Abbott and the $1 billion to be robbed from South Australia that he thinks 'makes a lot of sense'.

Then there is the self-proclaimed leader of the Liberals in SA, Chris Pyne. He is all over the shop on this issue. Earlier this month, he told ABC radio:

> Tony Abbott quite rightly is concerned that Western Australia gets a very small share back of its GST revenue, it's a very hot issue in Western Australia.

Chris Pyne has to come clean and unequivocally support South Australia. He needs to declare absolutely that if the Liberals win federal government he will make sure that there will be no change at all to the way GST is distributed. Chris Pyne has to declare whether or not he supports SA, if he is batting for our side or supports the other side—the Tony Abbott backed Liberal premiers—or is he just going to refuse to answer questions, as Tony Abbott has done here in SA?

South Australia cannot afford a Tony Abbott led Liberal government ripping $1 billion a year out of South Australia, and we simply cannot afford a state Liberal government rolling over, playing dead and letting it happen again.

## WATER CHARGES

**The Hon. J.M.A. LENSINK (15:24):** I rise to speak today about the horrendous water pricing that has taken place in South Australia courtesy of this Rann-Weatherill Labor government—whatever they happen to be calling themselves this week. I have always taken a keen interest in my utility bills. If we go back to 2002 when we used to have a two-tier pricing mechanism, we had this thing called excess water where, once you had exceeded your 120 kilolitres a year, you would go onto excess water. We now have three tiers and, for the basic one, the maximum is 30 kilolitres before you get bumped into the next range. The tier 1 or base price in 2002 was 38¢; it is currently $2.42. The top tier for excess water in 2002 was 92¢; it is now $3.73. The commercial rate is $3.45 per kilolitre, which is the highest in Australia.

We have also had changes to the fixed charge which, in 2002, was $1.25 and is now $293. These exorbitant prices are hurting all South Australians. When I was in Frome with our candidate, Kendall Jackson, last week, I heard that the sporting ovals are having trouble paying their bills, and we have industries such as the Clare wine grape growers who cannot afford to be viable if they have to pay $3,500 a megalitre.

The price setting is going to be interesting this year. This month we are due to have the ruling through ESCOSA, and I will predict—you have heard it here first—that the Premier will fiddle around with those figures so that he can give people a pre-election drop in their water rates. How is he going to do that? Well, I am glad you asked. There is a thing called the regulated rate of return on its regulatory asset base (RAB), and that is the fiddle that the Premier and Treasurer will work on because it is a number that they can change. That is rated against the proposed capital expenditure, which I also predict will drop in future years.

The reason that our water rates have gone up so much since 2008 is courtesy of the desalination plant. The thinking behind that—the rationale, the business case—was exposed very recently courtesy of the good work of Senator Simon Birmingham, and he referred this issue to the federal Auditor-General. What did he have to say about that? It failed the cost benefit test and the Auditor-General was highly critical. It has cost South Australian taxpayers $2 billion, and the two grants totalling $328 million were provided by the federal government. The reports states:

> Neither of the Adelaide Desalination Plant grants awarded under the National Urban Water and Desalination Plan demonstrably satisfied the program merit criteria.

Infrastructure Australia rejected the expansion—which was clearly Labor's decision in 2009—as it did not demonstrate economic merit. So, we are all paying for this exorbitant desalination plant and will be paying for it for generations to come. We are also paying, as was exposed through the Budget and Finance Committee, some tens of millions of dollars per year for green energy. There have been some sort of bonus payments made to the consortium about which we will never know the details, and it has just been an unmitigated policy failure in terms of planning for the future.

It was predicated on this figure that we were going to have this massive expansion of our population, which we have now discovered is not going to take place. Water is one of the big challenges for our state's future. Managing a price that is fair for industry and for households and one that people can afford is going to be one of the big issues going into the future, and I look forward to the Liberal Party announcing what we are going to be doing to assist people with managing water into the future.

## BYRON PLACE COMMUNITY CENTRE

**The Hon. D.G.E. HOOD (15:29):** I rise to speak about the valuable work done in the Byron Place Community Centre, which was operated by United Communities, an agency of the Uniting Church in Australia. As members may be aware, the centre, which is located in the city of Adelaide just off Grote Street, ceased operations and closed earlier this month. I will outline a short history of the centre and the plans of Uniting Communities to help those who were previously helped at the centre. The Uniting Church and Uniting Communities have a long history of gathering volunteers and funds in order to perform welfare work to assist the needy. Uniting Communities also operates Lifeline and Goodwill Stores, to name just a couple of their other arms.

The Byron Place Community Centre was opened on 6 October 1994 by then deputy prime minister the Hon. Brian Howe. The centre had taken seven years of planning, with Adelaide Central Mission spending over $1 million to establish what they described as 'a world-class centre for homeless women and men'.

The genesis of the Byron Place Community Centre was a drop-in centre called the Nazareth Crypt, which operated in the basement of the 10 Pitt Street building from 1961, with support from the members of the Maughan Church congregation at that address. As this service developed, it moved to a separate and more suitable location in Wright Street. From there, support was provided to homeless people. Later, the service expanded and used the more purpose-built facility which became known as the Byron Place Community Centre. The vision of the centre has been:

> We believe that people have a right to be respected, valued, acknowledged and safe and to be given the opportunity to make choices and preferred changes in their lives.

This vision is based on the strengths perspective, which recognises that every person has skills and a contribution that they can make to society. The Byron Place Community Centre operated as a community centre, providing a place for the homeless and at-risk people to go during the day when night shelters (so-called) were closed. The service provided a baggage room where baggage could be securely stored for short or even longer-term periods. Byron Place was also the home address used by many homeless people. Providing assistance to find more permanent housing and dealing with issues to prevent homelessness have always been central to the day-to-day work of Byron Place.

The services that the centre had been providing included: counselling; assessment services; luggage storage, as I mentioned; a health service through the visiting nurse and doctors; classes, including numeracy, literacy and life skills; mail collection; drug and alcohol assistance; bathroom and laundry facilities; access to visiting lawyers, on occasions; a telephone service was available; there were recreation groups as well; emergency clothing and blankets; and general advocacy. The services have been provided by a large number of dedicated staff and volunteers. Up to 100 people per day visited the centre to use its services.

Funding has come from Uniting Communities, formerly known as Adelaide Central Mission, as well as state and commonwealth government grants. The decision to close the centre followed a review of the allocation of resources by Uniting Communities over a number of months. With investment income curtailed as a result of the GFC, Uniting Communities had to ask how best to allocate available funds so as to maximise the services that could be provided. Maintaining its funding for services like Lifeline remained top priority.

Services to homeless people also remained a high priority, including the Homelessness Gateway service and the new short-term housing service for Indigenous people. Uniting Communities was aware of other community centres operating in the CBD and decided that the best use of resources was to focus on providing drug and alcohol services to the homeless and those at risk of homelessness, both in the CBD and in suburban Adelaide.

The Byron Place Community Centre previously provided a drug and alcohol service called the New ROADS service. This will now be run from 10 Pitt Street, which is less than a five-minute walk from the Byron Place site. I would like to take this opportunity, on behalf of Family First, to particularly thank the staff and volunteers who have contributed to the valuable work done at the centre over its 18-year history. We have all seen the benefit of its great work.

## WILSON, HON. I.B.C.

**The Hon. S.G. WADE (15:33):** I rise today to pay tribute to the life of Ian Wilson. Ian was born on 2 May 1932 and died in Adelaide on 2 April, just shy of his 81st birthday. Ian was a quiet man, a demeanour which often belied his passion. I want to highlight three of his passions today. Firstly, Ian Wilson was passionate about liberalism. He consistently advocated for respect for all citizens in one nation, for the equality of the sexes and for the need for accessible education. Ian's liberalism was rooted in a strong Christian commitment.

Ian's politics were liberal, not conservative. In this he was the son of Sir Keith and Lady Wilson, both in their own right leaders and pioneers in the political organisation of liberalism in South Australia. Ian continued in that tradition when he helped establish and was the inaugural president of the Young Liberal Movement in South Australia some 60 years ago.

In the early 1970s, Ian Wilson was active in the process of modernising the Liberal and Country League. Ian's close friend and historian, Baden Teague, summarised Ian's involvement in this period in an eulogy at his funeral. I quote from that eulogy:

> This initiative founded the Liberal Movement to reform and energise the Party. It included many refreshing liberals. Ian believed that enduring change in the Party would need to come genuinely from a broad spectrum of the Party and not be thrust upon it. This is what happened, but I also believe that it was Ian Wilson who fired up this liberal resurgence. This renewal led to winning the public support which soon made possible the Tonkin Liberal Government statewise and supported the Fraser Liberal Government nationally. Ian's leading contribution to this political revolution in the 1970s was as important as his service as a Member and a Minister.

Later, in the 1970s, it was my privilege to serve in Ian Wilson's campaigns for Sturt, and his encouragement and his passion for liberalism influenced me greatly.

Ian Wilson was also passionate about good policy. It was working in Ian Wilson's personal office in the mid-1980s that I became acutely aware of his passion for good policy. For Ian, policy was not an end in itself. His politics was rooted in his liberal values, and his goal was his commitment to better outcomes and to help people live a life of their choice and building a better nation. Ian was a man of great intellect. His qualities won him the 1955 Rhodes Scholarship, enabling him to travel to study law at Magdalen College, Oxford.

Ian served as the member for Sturt in the House of Representatives for 24 years. First elected in 1966, he was re-elected against the tide in the 1972 It's Time election. Ian served as the parliamentary secretary to the prime minister, the minister for home affairs and the environment, and the minister for Aboriginal affairs in the early 1980s. Ian worked with a wide range of people, including his political opponents, to deliver positive outcomes for South Australians.

In his office, I was struck by his capacity to engage political colleagues, parliamentary committees, academics and anyone else who was ready to join the task in developing high-quality policy, particularly in the area of tax and social security. Ian knew that Australians need support from time to time, but that support can become a trap if tax and social security regimes do not interact effectively to protect incentive and to promote opportunity. Ian was one of the strongest policy practitioners I have seen in any parliament.

Thirdly, Ian Wilson was passionate about family and community. Ian Wilson and his delightful wife, Mary, made a great team. Above all else, they provided a home of love and care to their sons Keith, Richard, James and Nigel and, in later years, embracing their daughters-in-law and their seven grandchildren. Together they worked tirelessly in the community, including on projects such as the May Gibbs Children's Literature Trust, promoting Australia's cultural heritage and providing opportunity for young writers and illustrators.

On 10 April, it was my privilege to join hundreds of others at St Peter's Cathedral at Ian's funeral. The funeral was a strong affirmation of Ian's Christian faith, the love of his family and his commitment to his community. At a personal level, I was there to acknowledge my personal indebtedness to Ian and Mary for their personal support since the 1970s. I regard Ian Wilson as a mentor. I seek to honour his life by working to see our shared values continuing to be realised in this city, this state and this nation. I express my condolences to Mary and the family.

## MACULAR DEGENERATION AWARENESS WEEK

**The Hon. R.P. WORTLEY (15:39):** I rise to draw to members' attention Macular Degeneration Awareness Week, which this year will run from 26 May to 1 June. As parliamentarians, we strive to serve the best interests of the community, and part of that service is an obligation to convey important health messages to the public, so I am glad to have the opportunity to deliver a message that is going to become all the more important as our population ages.

While there is as yet no cure for macular degeneration, early detection is the key to saving sight for longer. The macula is at the middle of the retina, situated at the back of the eye. It is the retina that makes it possible for us to see faces and read expressions, distinguish colours, read, drive and dispute the umpire's call when our team deserves a free kick. Macular degeneration causes loss of central vision, leaving the peripheral vision unimpaired. One in every seven Australians over the age of 50 evidences the disease to some extent and, according to a 2011 report by Deloitte Access Economics and Macular Disease Foundation Australia, its incidence increases with age. So, what are the risk factors?

Clearly the very fact that we are all getting older is one, direct family history is another, but there are lifestyle choices involved too–a diet high in saturated fats and cholesterol can increase the risk, as can smoking. We can try to avoid the onset of macular degeneration by having annual eye checks, protecting eyes from sunlight exposure (especially for the young), keeping to a healthy lifestyle and weight, exercising regularly, eating a balanced diet and, of course, not smoking.

As I mentioned, there is yet no cure for macular degeneration, but surely we can all consider the simple changes I have outlined to lessen the risk of its onset. Early diagnosis—now available even before symptoms are noted—is vital in terms of prolonging and, in some cases, saving sight and we can take heart in the fact that even if no cure presently exists, there are some treatments available. These depend on the type and extent of the disease and aim to keep the best vision possible for as long as possible.

Yesterday I talked about the motor vehicle accident lifetime support scheme and the impact of catastrophic injuries on victims, families, friends and communities. Macular disease, being in many cases gradual in onset, does not generally have the immediacy of a motor vehicle accident, but some of the results in terms of impact can be very similar. Families and carers bear the burden along with the patient. The sharing of common domestic tasks are no longer possible when one partner has impaired vision. The purchase of vision aids and appropriate technology can stress household budgets. Monthly injections are costly and can be very painful. As with a cause I have championed every year, that of juvenile diabetes, research is paramount in finding a cure for macular disease—a disease that will affect one in seven of us during our lifetime.

They say that eyes are the window to the soul, so I urge all present to familiarise themselves with the signs and symptoms of macular disease by visiting mdfoundation.com.au, to have regular eye checks, to move towards healthier lifestyle choices and to encourage family, friends, community groups and constituents to do so also.

## THE JADE MONKEY

**The Hon. T.A. FRANKS (15:42):** I rise to speak about the future vibrancy of Adelaide and the future of The Jade Monkey. Members would probably be well aware of The Jade Monkey as an institution within the live music culture of our capital city of this state and they would also be aware

that The Jade Monkey is currently closed; in fact, that is a situation that has been ongoing for almost half a year now.

In early 2012, The Jade Monkey found that its 10-year lease was not to be renewed and that its old site on Twin Street was to be the site of a development. At that point Premier Jay Weatherill actually took the step of going on triple j radio and commending The Jade Monkey for the role that it plays in the cultural life of our state. He said, and I quote:

> It's a fantastic entry-level venue for not only bands, but people watching bands that may not want to go to the really big venues. The prices are right for students and for a lot of bands just starting out. It's a fantastic entry-level institution.

There was a 4,300 strong (in fact, I think it was even greater than that) online petition, petitioning the Lord Mayor, Stephen Yarwood, to save The Jade Monkey. There was great community outpouring and public meetings. I commend the Premier for recognising that losing The Jade Monkey and the response to that is something to be taken seriously and for the work that they have done. In February 2012 the Premier said:

> There are a lot of buildings that I think they'd fit in, and we also need to clear some red tape, because they say the liquor licensing laws and some of the planning regulations can make it a bit hard for these venues. That's what we're talking about at the moment. To not only get The Jade Monkey to stay there, but to get more of these things happen.

Premier Weatherill went on to say on triple j that relocating The Jade to a more suitable location could kickstart a Laneway culture akin to Melbourne's. He said:

> This whole idea of getting a laneway activated, getting the small bars and the small live music venues, is an agenda we are trying to develop. That's why we've weighted into this. This is precisely the sort of thing we want to encourage. We don't want these [venues] closing down; we want more of these, rather than fewer of them.

Many people who were concerned about the closure of The Jade Monkey took great comfort in this, and I do commend the government for the work that they have done to try to help The Jade Monkey to find another venue, but what I would say is that, some six months on after the closure of The Jade Monkey and over a year since The Jade Monkey was slated for closure, The Jade Monkey is yet to be able to find a suitable venue. The liquor licensing laws and the Building Code have put up barriers that not even a small venue with the support of the government behind them can overcome.

They have looked at venues, and I believe the former Chesser Cellars was one that had previously been a small wine bar with an entertainment consent. They were unable to utilise that venue, which I believe is their preferred venue, because the upgrades that they would need to make to meet the same regulatory standards that would be required of them now, which were not required of Chesser Cellars, would cost some $50,000 and possibly up to $100,000. This is a prohibitive cost for a small business and is certainly something that they were not willing to take on in terms of their future commitments.

The government has actually identified the St Paul's site as a potential venue for them, but they have found themselves in a conciliation process which appears to be never-ending and this is one of the problems. There is a conciliation process that does not have time frames allocated to it and that, in fact, can be dragged on for the months and months that this is occurring. As a result of this, we have not had a live music venue of The Jade Monkey for over a year in this state, yet we talk about vibrant Adelaide, we talk about laneway culture and we talk about supporting live music. There is a problem here and the problem is within our current laws.

The current laws around liquor licensing need to be overhauled. We do not need a citizens' jury to tell us this, we do not need to wait another six months, we need to get in and we need to reform the liquor licensing regulations now and we need to address the Building Code prohibitions that make it impossible for a small business to activate unused, empty, derelict buildings.

## POSITIVE LIFE SOUTH AUSTRALIA INC.

**The Hon. K.L. VINCENT (15:47):** Today, I would like to speak about a community organisation that does some fantastic work on an incredibly tight budget for people living with HIV. The organisation used to be known as People Living with HIV/AIDS SA, or PLWHA-SA, but is now Positive Life, and I am very thankful for that because it is much easier to say. Positive Life SA is a small community organisation based in Glandore in the inner southern suburbs of metropolitan Adelaide.

I was very pleased to attend Positive Life's base at Glandore for an MP open-day session in February, and I met a number of paid and voluntary staff as well as board members. All Positive Life SA board members are HIV-positive themselves. I was really impressed with the professionalism, positive attitudes—pun intended—and work ethic of everyone I met.

At their modest Glandore premises, they run a range of programs and services. They connect with their community and provide peer support programs including Poz Day Out, HIV treatment forums, Planet Positive, Living Up, Poz on Poz and Chat Club. Their services include complimentary health services, an emergency food program called The Hive, a small loans program, a no-interest loans scheme and the Positive Speakers Bureau. They also have health promotion resources, short-term support, referrals to other support agencies, advocacy, treatment information and a community drop-in reading library, internet access, family spaces and games areas.

Positive Life SA Inc. evolved out of a history of community meetings held by HIV-positive community members and was incorporated in April 1995. The organisation thus became an independent voice for HIV-positive people in South Australia to ensure their lived experiences directed the provision of effective health and wellbeing support services and activities.

As a peer-driven organisation, Positive Life SA is led by a community-elected HIV-positive board of management and has grown from modest beginnings to become an integral provider of information, advocacy and support to HIV-positive people in South Australia. Since July of 2009, Positive Life SA has been reorienting its service provision from individual client case management to a population health promotion approach involving the delivery of lifestyle engagement and change management programs that build HIV-positive people's capacity for self-management and increased quality of life.

I was also really impressed when I attended a workshop Positive Life SA ran on 19 April this year with Victorian-based Dr Chris Lemoh about culturally and linguistically diverse communities in the HIV sector, health service provision and mental health. It was a great morning, and Dr Lemoh has a wealth of experience and research from his work in Africa around HIV/AIDS. With increasing numbers of people from Africa in Australia, it is great to see them working on specific cultural issues for Africans with HIV and AIDS and their families and communities.

As someone who is passionate about human rights issues, I was really pleased to see Positive SA adhering to the keystone principles and practices of the Ottawa Charter (1986) and the Jakarta Declaration (1997) and actively working to balance the wishes and needs of individuals with the longer term issues affecting the wellbeing, longevity and quality of life of all HIV-positive people. Additionally, Positive Life SA is committed to the principles underpinning the GIPA (Greater Involvement of People Living with HIV, UN 1994) and actively seeks to involve and sustain HIV-positive people across all aspects of the organisation.

I know that with cuts being made with the McCann review of health services, and overall budgetary belt tightening occurring in SA Health, community bodies that provide vital services to specific sectors are very nervous about funding. Whatever happens, I certainly hope that this organisation maintains funding into future years as it does a great job for the people that it provides services to—people who are already vulnerable and alienated enough. I certainly hope that governments will continue to support these people because they certainly need it.

## CHERRYVILLE FIRE

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:54):** By leave, I move my motion in an amended form:

That it be an instruction to the Select Committee into Community Safety and Emergency Services in South Australia that its terms of reference be extended by inserting new paragraph 1A:

1A Inquire into and report on the Cherryville fire in order to:

1. Determine the circumstances of ignition and immediate CFS response;
2. Evaluate the effectiveness of the deployment and procurement of aerial assets;
3. Assess the fire danger season process and other decision-making processes in relation to imposing interim fire bans or other fire controls; and
4. Evaluate the communication of emergency response.

As members would be aware, over the last weekend we had the Cherryville fire, and we are all very grateful for the fact that we have had some lovely rain now and that that fire danger, certainly

in that area but also right across the state, has passed. As members would know, this bushfire affected some 600 hectares of land. I also take the opportunity to acknowledge and thank all the volunteers and community members who worked tirelessly to ensure this fire was brought under control.

However, a number questions are yet to be answered, especially in relation to the aerial fire bombings: why they were not made available sooner, could they have been on standby, could other helicopters have been used—a whole range of questions have been posed. I do not intend to raise those questions and answer them in this brief contribution now, but we have an emergency services and community safety select committee. It was my initial intention to refer this to the Environment, Resources and Development Committee, which we know is a very hardworking committee with terms of reference and is often a bit cumbersome because it is a committee of the House of Assembly and Legislative Council members.

**The Hon. J.S.L. Dawkins:** A very awful chair.

**The Hon. D.W. RIDGWAY:** Other members of this chamber are reflecting on the chair: it would be inappropriate for me to reflect on the chair of the committee, but nonetheless we have a select committee here that probably would be able to look at this swiftly and come back with an interim report on the Cherryville fire. With those few words, I commend my amended motion to the house.

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

## CRIMINAL LAW CONSOLIDATION (DISHONEST DEALINGS WITH CHILDREN) AMENDMENT BILL

**The Hon. J.A. DARLEY (15:57):** Obtained leave and introduced a bill for an act to amend the Criminal Law Consolidation Act 1935. Read a first time.

**The Hon. J.A. DARLEY (15:58):** I move:

That this bill be now read a second time.

This bill is in honour of Carly Ryan, a beautiful girl taken tragically from this world well before her time. Members would be aware that Carly was the innocent victim of a perverted online predator who manipulated his way into her life through deception. On 20 February 2007 Carly, aged just 15 years, was brutally murdered at the hands of that predator, Garry Newman, who was subsequently sentenced to life imprisonment with a 29-year nonparole period.

Since her death, Carly's mother, Sonia Ryan, has campaigned tirelessly for changes to our legislation, and dedicated herself to the promotion of online safety in order to prevent the same thing happening to other vulnerable children. She has established the Carly Ryan Foundation which aims to educate young people, and old, about the dangers of online communications and offers counselling to victims of internet crime. I would like to read onto the public record Carly's story as depicted on the Carly Ryan Foundation's website and promotional material. It states:

In 2006 Carly Ryan thought she had met her dream boyfriend online. His name was Brandon Kane, a 20yr old musician from Melbourne. Brandon was in fact fictitious. An internet construct, the cyberspace alter ego of Gary Francis Newman, a 50yr old predator and paedophile. Carly fell in love with the Brandon construct during months of online contact and phone calls.

Gary Newman took on another identity when he attended Carly's 15th birthday that of Brandon's adopted father 'Shane'. In that guise he attempted to gain the trust of Carly's mum, Sonya, and continued to deceive Carly, buying her gifts and promising to bring Brandon to Adelaide to meet her.

Gary Newman spent months masquerading as Brandon Kane to win Carly's love. When he tried to seduce her in person pretending to be Brandon's father 'Shane' saying that Brandon wouldn't mind if his dad had sex with her, she rejected him. Angry, Gary Newman returned to Melbourne vowing to 'fix Carly up'. He used his alter ego to lure Carly to a final, fatal meeting.

In February 2007, Gary Newman convinced Carly to meet him. He took Carly to a secluded beach at Port Elliot, South Australia. There, he bashed her, pushed her face into the sand, suffocating her, he then threw her into the water to drown. She was only 15yrs old.

A local lady found Carly's body the next morning, covered in sand, her clothing in disarray.

Within 11 days, detectives located Gary Newman in Victoria. They found him at his computer, logged in as Brandon Kane talking with a 14yr old girl in Western Australia. They arrested him, charging him with Carly's murder. In a Supreme Court trial which continued for over three months, a jury found Gary Francis Newman guilty of murder. He was sentenced on March 31st 2010. South Australian Justice Trish Kelly ordered him to serve a life behind bars with a 29yr non parole period.

Justice Kelly said, 'Gary Newman deserves a life behind bars for his grossly perverted plan to deceive, seduce and murder Carly. It was a terribly cruel thing you did to this beautiful, impressionable 15yr old child.' Justice Kelly said, 'I say child because that's what she was, a child that fell in love with the idea of the handsome, musically inclined and rather exotic Brandon Kane, the real man was in fact an overweight, balding, middle aged paedophile with sex and murder on his mind.'

Justice Kelly said, 'You were sexually obsessed with Carly to the degree that when you couldn't get your own way, you prepared to and did kill her'. Carly was a beautiful, sensitive, loving and amazing young lady with her whole life ahead of her. For Carly, her dreams, goals and future were taken away by a selfish, twisted, deviant sex predator.

The Carly Ryan Foundation was incorporated by Carly's mum, Sonya. Her aim is to create awareness and educate children and parents using the Internet. She will work to expose the thousands of multiple identities paedophiles use to lure young children.

Cyber perverts will continue to prey on kids unless we wake up to the risks of various online mediums, chat rooms and social networking sites. What happened to Carly can happen to anyone. People that groom the young online are manipulating and controlling. They know exactly how to target a child. They become the most important person in that child's life, then use that trust to do whatever they like to their victim. The Internet is part of our daily lives, it is essential that children, teens and young adults learn how to navigate the worldwide web safely.

Unfortunately, Sonya Ryan has learnt in the most difficult and tragic way the dangers that our children are exposed to each and every time they go online. The bill is intended to further strengthen legislation so as to deter and punish those perpetrators who knowingly and wilfully pursue minors via electronic means, be it the internet or a telephone.

The bill is consistent with that introduced at the federal level by my colleague Senator Nick Xenophon which is the subject of an ongoing inquiry by a parliamentary committee. In short, the bill provides that a person who knowingly communicates with a child by means of the internet or some other form of electronic communication, makes a false statement as to the person's age or identity in such communication, and meets or arranges to meet with the child is guilty of an offence punishable by a maximum five years' imprisonment.

Further, the bill provides that a person who knowingly communicates with a child by means of the internet or some other form of electronic communication and makes a false statement as to the person's age or identity in such communication with intent to commit an offence is guilty of an offence, punishable by a maximum 10 years' imprisonment. Members will note that a higher penalty applies where a person makes a false statement with the intent of committing an offence. This is intended to cover cases like Carly's where there was a clear intention by Gary Newman to commit the most heinous offence.

I appreciate that there may be some concerns about the scope of the first subclause, given previous concerns raised not only by other honourable members but also by me in relation to cases of young love. The Law Society has prepared a submission in response to the bill introduced by Nick Xenophon which echoes these concerns. It is important to note that Nick Xenophon's bill is much wider in scope, so some of those concerns raised by the Law Society would not apply to this bill.

However, there are some situations that the Law Society raises that could potentially be covered by the provisions of this bill. For instance, the Law Society states that the Xenophon bill could capture instances where an 18-year-old male chats with a person whom he believes to be 17. The 17 year old may make comments along the lines that she prefers older males. Later, the 18 year old may misrepresent his age as slightly older by two or three years, in order to impress the 17 year old and with a view to encouraging a meeting.

I think we all accept that in many cases, if not most cases, this may be viewed as a bit of harmless fun which would not amount to any subsequent criminal behaviour. Unfortunately, however, there will always be those cases where older men or women intentionally misrepresent their age or identity in order to groom and manipulate their young victims. That was certainly the situation involving Carly. It is these cases that the bill is intended to cover.

Again, I appreciate that there may be some sensitivities around the scope of the first subclause of the bill, and I indicate to all honourable members that I am more than willing to consider an alternative approach that still achieves the desired outcome. It may be, for instance, that consideration be given to inserting an age limit with respect to the definition of a child so as to capture those children aged under 15 years. I am open to any suggestions.

In closing, there is simply no escaping online technology anymore. More and more, online mediums, chat rooms and social networking sites such as Facebook and Twitter are becoming a

normal means of communicating amongst people of all ages. A lot of children, young and old, have relatively unrestricted access to the internet and mobile phones. As a parent or caregiver, it is extremely difficult to monitor these communications.

Clearly, our legislation is struggling to keep up with the advances of online and mobile phone technology. As such, there is a growing number of gaping holes in attempting to deal with some online activities. Unfortunately, there are also those in the community with sick and twisted minds who are intent on using these sites to groom and lure young, impressionable children. No family should have to suffer the pain that Carly, her mother and her family and friends have endured. No other child should lose their life at the hands of a sick monster like Gary Newman.

Finally, I would like to thank Sonya Ryan for lending her support to this bill and for her tireless efforts in trying to better educate our children and young adults about the dangers of communicating with strangers. Before concluding my remarks, I seek leave to table a submission that Sonya Ryan has prepared for the Senate Legal and Constitutional Affairs Committee, which is currently inquiring into the bill introduced by Senator Xenophon at the federal level. This is a commendable piece of legislation which deserves bipartisan support. I urge all honourable members to support it.

Debate adjourned on motion of Hon T.J. Stephens.

## O'GRADY, MS K.L.

Adjourned debate on motion of Hon. A.M. Bressington:

That this council urges—

1. The Attorney-General to refer the untimely death of Kirbee Louise O'Grady, who died on 19 July 2012, to the Coroner for coronial inquest; and

2. The Attorney-General to request an inquiry into all the circumstances leading up to Kirbee Louise O'Grady's death including, but not limited to:

   (a) allegations of sexual assault;

   (b) issues pertaining to the investigation and case management of the matter by the police;

   (c) the decision of the Director of Public Prosecutions (DPP) not to proceed to trial;

   (d) effectiveness of the support and follow-up process of the DPP pre and post-trial, including when matters do not go to trial; and

   (e) any other circumstances that contributed to the death of Kirbee Louise O'Grady.

(Continued from 10 April 2013.)

**The Hon. G.A. KANDELAARS (16:11):** On behalf of the government I rise to provide a response to the Hon. Ms Bressington's motion concerning Kirbee Louise O'Grady. The private member's motion of the Hon. Ann Bressington urges the Attorney-General to refer the death of Kirbee Louise O'Grady to the Coroner for a coronial inquest into all circumstances leading to her death. Under section 21 of the Coroners Act 2003, if the Coroner decides that it is necessary or desirable to hold an inquest to ascertain the cause or circumstances of the death or the Attorney-General directs the Coroners Court to do so the Coroner must hold such an inquest.

Kirbee Louise O'Grady's death was reported to the Coroner on 20 July 2012. By letters dated 12 April 2013, the Coroner informed the parents of Kirbee Louise O'Grady that he had made a finding as to the cause of death and that it was not the intention of the State Coroner to hold an inquest into the death. The Coroner considered the circumstances surrounding the death of Kirbee Louise O'Grady in making his finding. The private member's motion of the Hon. Ann Bressington and the extracts from the Legislative Council *Hansard* of 10 April 2013 relating to the motion have also been brought to the attention of the Coroner. The Coroner confirms his finding and that it is not his intention to hold an inquest into the death.

The motion seeks the coronial inquest into the decision of the Director of Public Prosecutions not to proceed to trial. The decision whether or not to bring a prosecution in serious cases such as this is a matter for the Director of Public Prosecutions (DPP). The Attorney-General has received a briefing from the DPP on the matter. At the outset, it must be said that it is fundamental to the prosecution policy that a prosecution should not proceed if there is no reasonable prospect of a conviction.

A prosecution should not be instituted unless there is admissible, substantial and reliable evidence that a criminal offence has been committed by the accused. In criminal cases, the burden

lies with the prosecution to prove every element of the offence beyond reasonable doubt. The initial consideration is whether the evidence is sufficient to justify the institution of a prosecution. In 2002, the DPP determined that there was no reasonable prospect of a conviction with respect to the allegations of sexual abuse made by Kirbee Louise O'Grady. The decision was made after the proofing of Kirbee by the prosecutor in 2002 as part of the process of the DPP in determining whether charges could be laid.

In 2012, Kirbee provided a further statement to police. The police investigated the matter, and the matter was again referred to the DPP for advice. Kirbee was proofed on 8 March 2011 by the prosecutor responsible for the advice. Kirbee was accompanied by an investigating officer, the witness assistance officer, her mother and father, her stepfather and her friend. The proofing itself involved Kirbee, the prosecutor, the investigating officer and the witness assistance officer.

In the course of proofing, several inconsistencies become apparent in Kirbee's evidence. These inconsistencies were canvassed with Kirbee during the proofing. Following the proofing, with Kirbee's consent, the prosecutor, the witness assistance officer and the investigating officer met with Kirbee's parents and stepfather in Kirbee's absence. The prosecutor advised her parents that a number of inconsistencies had arisen between the accounts given at the proofing and the previous accounts, which were not minor in nature and which might ultimately lead to the conclusion that Kirbee's memory was not sufficiently reliable to put her forward as the sole witness to the allegations. At this meeting, there was also discussion about the potential detrimental effect upon Kirbee of putting her through a process involving cross-examination.

On 9 May 2011, the Office of the DPP met with Kirbee and other members of the family to inform her of the decision that there was no reasonable prospect of a conviction. The DPP's clear advice to the Attorney-General is that the matter was carefully considered in 2012 and 2011 and that on both occasions the appropriate decision was made. It is the advice of the DPP that the reasons for the decision are compelling.

The motion also seeks a coronial inquiry into the effectiveness of the support and follow-up process of the DPP pre and post trial, including whether matters do not go to trial. The DPP provided a detailed briefing to the Attorney-General on the level of support Kirbee and her family were provided by the staff involved in the matter. It is the view of the DPP that Kirbee and her family were provided with professional and appropriate information and support, and that all the dealings were appropriate and sensitively handled.

The Witness Assistance Service provides a service to ensure that all victims of crime, vulnerable witnesses and their families have access to information and support services, and that they are aware of their rights and responsibilities when dealing with the criminal justice system. The services include providing information about the legal process, updates on the progress of a case, support services, attendance and support during meetings with solicitors and prosecutors, crisis counselling, intervention and debriefing in relation to the legal process.

The Office of the DPP's statement of prosecution policy and guidelines stipulates that all children and young people under the age of 18 years be referred to the Witness Assistance Service. The witness assistance officer responsible for providing information and support to Kirbee and her family specialised in working with children and young people who are the alleged victims of sexual abuse.

The DPP advises that there were considerable dealings with Kirbee and members of the family during the course of 2011 and 2012. The services provided and offered to Kirbee involved the provision of information in writing and via telephone; active support to Kirbee and her family during the proofing and during the meeting to advise of the decision; discussions regarding counselling options; assessment of supports and networks, such as family friends and professional support; and follow-up after the final meeting with the DPP.

The DPP advises that Kirbee had an extensive range of resources available to her. Kirbee had four people from her family and friendship network attend to provide support on the two occasions she met with the DPP. Her parents and a step-parent attended these meetings. Kirbee had a long-term counsellor at Child Protection Services with whom she arranged appointments as required, in addition to a psychiatrist with whom she had an appointment scheduled on the Thursday after the first proofing on 8 March 2011.

Kirbee advised her witness assistance officer that she was studying year 12 and that she had friends who were aware of the alleged abuse and who provided support to her. Kirbee's partner also attended both meetings at the Office of the DPP and appeared to be providing positive

emotional support. It was noted that Kirbee had a significant network of supports, including friends, family and professional support, and the knowledge of how to access additional resources, if required.

Although clearly feeling under pressure due to the circumstances, and at times distressed and upset, at no time did Kirbee indicate to the witness assistance officer that she was having or had experienced suicidal thoughts. The witness assistance officer had provided Kirbee with her work mobile phone number and encouraged her to contact her if she had any questions or concerns or wanted information about other counselling options or resources. The witness assistance officer had extensive discussions with Kirbee's family members about the importance of focusing on Kirbee and her need for the family to support her and professional counselling, rather than the outcome of the legal process.

The witness assistance officer also encouraged family members to seek counselling to deal with their distress about the effects of the alleged abuse on Kirbee and the family, and their anger and frustration at the legal decision, and offered information about counselling options. The view of the witness assistance officer was that Kirbee was a well-supported young woman who had appropriate access to counselling services and supports.

The motion seeks answers, through the Coroner, to why Kirbee took her own life on 19 July 2012. The Coroner has considered the matter and determined not to conduct an inquest into the cause or circumstances of the death. The decision of the DPP not to lay charges in this case is not a matter for referral to the Coroner. Further, there is no basis for an inquiry into the support offered by the DPP in this matter. For these reasons, the Attorney-General will not be directing the Coroner's Court to inquire into the cause or circumstances of the death of Kirbee Louise O'Grady.

**The Hon. S.G. WADE (16:23):** This motion relates to the tragic death of Kirbee O'Grady—a much-loved South Australian. Kirbee was the victim of a sexual assault and in her speech on 10 April the Hon. Ann Bressington detailed the circumstances which led to Ms O'Grady taking her life in 2012. The key concern is that the management of the case by the police and the DPP contributed to Ms O'Grady's decision. On the evidence before us, the opposition is of the view that there are grounds to look further at these issues.

The Hon. Gerry Kandelaars referred to section 21(1) of the Coroner's Act which, as he said, provides:

> The Coroner's Court must hold an inquest to ascertain the cause or circumstances of the following events:
>
> (a) a death in custody;
>
> (b) if the State Coroner considers it necessary or desirable to do so, or the Attorney-General so directs—
>
> (i) any other reportable death...

I pause to note that that power is, in my understanding, a personal discretion under the act. Neither cabinet nor parliament could direct the Attorney-General to exercise that power, so my understanding of this motion, if we were to pass it, is that it would be an indication of the view of this council but that it would not mandate a referral in the way that, for example, a referral to the Ombudsman would be mandated.

Ms O'Grady took her own life and suicides are reportable deaths under section 3(1) of the Coroners Act 2003. The death was referred to the Coroner, who has advised the family that he does not intend to hold an inquest into Ms O'Grady's death.

As I said, the Attorney-General can direct the Coroner's Court to hold an inquest into Ms O'Grady's death by virtue of section 21(1)(b)(i). However, the opposition considers that the independence of the Coroner's Court should be respected and that this power should be used very rarely. My review of the Coroner's Court annual reports could not identify any examples of the Attorney-General having exercised this power.

The opposition agrees that the tragic case of Ms O'Grady's death warrants a review of the actions of the agencies of the state, in particular the police and the Office of the DPP, to see if any lessons can be learnt. However, we are not yet convinced that an inquest is the most appropriate form of such a review.

I have met with Ms O'Grady's mother and aunt and I am informed that the case is being looked at by the Police Ombudsman and that they will have a meeting with the Commissioner for

Victims' Rights shortly. The Liberal Party supports seeking an inquiry into Kirbee's death but not, at this stage, seeking a direction to the Coroner.

I note that the government's response focuses on the Coroner's and the DPP's reaffirmations of the decisions and the actions of their officers. I would urge the government to consider the value of some form of arm's-length reassessment of the handling. I respect the advice that the Attorney-General has received and has made available to this council and I appreciate it, but I think that, from time to time, for the sake of the reassurance of the community, for the sake of the reassurance of the parliament but, most of all, for the sake of the reassurance of the family, there is value in an arm's-length review.

In the context of the opposition's view that an inquiry is warranted, but our lack of confidence that, shall we say, calling on the Attorney-General to direct a coronial inquest is the appropriate course of action, I have filed an amendment to the motion, which would have this council calling on the Attorney-General to commission an inquiry. I am open to further conversations with the member, the government, the Commissioner for Victims' Rights, the State Coroner and others as to the most appropriate form of inquiry.

If the motion does proceed to a vote today, I will be seeking the council's support for the amendment standing in my name. I understand now would be an appropriate time for me to move that amendment. I move:

Paragraph 1—Leave out this paragraph.

Paragraph 2—Leave out the word 'request' and insert in lieu thereof the word 'commission'.

**The Hon. T.A. FRANKS (16:28):** I rise on behalf of the Greens to indicate that we will be supporting this motion today and our disappointment that the government has chosen simply to reiterate the words that it has presented to us today without due consideration to the independence of the advice that it has been given. Anyone who has read the files can see that Kirbee was not only failed by the processes, she was probably also failed by the existing laws.

There is clear need for particularly vulnerable children to be afforded better protections with regards to child abuse in this state. We have a long way to go. Yes, we have come some way but there is a lot that we could do a lot better, and the Greens believe that any such measures that are taken to keep us continuing down that path are worthy of support. We commend the Hon. Ann Bressington for raising these issues in this place, because we do not see these issues being addressed by government. While I welcome the opposition's support for some sort of an independent review, I challenge the shadow attorney-general to ensure, should he be the attorney in a year's time, that we are not here debating another Independent member's call for this to be looked at, but that in fact it is being led by the government of the day.

**The Hon. A. BRESSINGTON (16:30):** I have to say, again, that I am not one bit surprised by the government's response to this. It seems that all government members in this place are capable of doing is just repeating the diatribe that is written for them. Obviously, the Hon. Mr Kandelaars did not read the information that was circulated about Kirbee's case—or I will assume that, given his response. The fact of the matter is that, after Kirbee had given a statement to police, after she was guaranteed that this would actually go to trial, that her case was not in fact closed but was put on hold until she was stronger in herself to be able to appear in court and to continue to trial, she was given that assurance and then, when she was strong enough and felt she was able to pursue the matter, she was told that parts of her files had gone missing from the Elizabeth Magistrates Court and could not be located.

I am now just going over my second reading speech. She was also told that her files were being held in several police stations around the countryside, two of which were Port Augusta and Elizabeth, and it is unclear why the file from a matter which was almost ready to go to trial in Adelaide would then be separated and sent to different police stations around the state and not kept in one safe and secure location. The missing parts of the files were eventually recovered, but the family to this day has never been shown the file, so they cannot say assuredly that the file given to the DPP was complete. Tell me that that is the usual way to handle such a matter, that somebody's file is distributed around the countryside to different police stations, that the commitment given to take this to trial when the young girl was stronger was then all of a sudden cut off and that commitment was not met.

There are situations that happen to individuals in this state that require this parliament and members of this parliament to oversee that processes are not being abused, that processes are not

being overlooked. The fluffy answers that we get from the government over and over again, about how everything is fine and rosy in the state of SA, make me want to puke, because obviously that is not the case. There are people out there—individuals and families—who hurt, every single day, because of decisions to cut process short, to abuse process, or in fact to ignore it altogether; justice is not served.

The family of Kirbee O'Grady wants to see justice done. The idea of this is to bring a child abuser to justice. Nobody in this place on any of these levels ever seems slightly interested in pursuing a child sex abuser. With the other number of bills that I have put up here, for example, minimum mandatory sentencing, to try to bring child sex offenders to justice, to get them out of circulation, to bring them to account—no, not interested. This is just another case.

I will reluctantly accept the Hon. Stephen Wade's amendment, but I need time to consider whether I am going to further amend this motion as well. I do not believe that we need a blanket or open format for a commission of inquiry: I think we need to be quite specific about who will undertake that inquiry and, given that we have police procedures here being questioned, I do not believe that the Police Complaints Authority is the best body to undertake that inquiry.

On that, I will seek leave to conclude my remarks, and I will make my decision on whether I will further amend this motion or whether I will accept the motion of the Hon. Stephen Wade. I seek leave to conclude my remarks.

Leave granted; debate adjourned.

## PARLIAMENTARY COMMITTEE ON OCCUPATIONAL SAFETY, REHABILITATION AND COMPENSATION: ANNUAL REPORT 2011-12

Adjourned debate on motion of Hon. G.A. Kandelaars:

That the report of the committee, 2011-2012, be noted.

(Continued from 20 March 2013.)

**The Hon. R.I. LUCAS (16:37):** I rise to support the motion moved by the Hon. Mr Kandelaars to note one annual report covering two financial years of the work of the Occupational Safety, Rehabilitation and Compensation Committee. There are a number of different motions on this, one of which I intend to address at a later stage, that is, the report on the rehabilitation aspects of workers compensation; that is the subject of a separate motion, and I will reserve my comments in relation to that.

As the Hon. Mr Kandelaars has indicated, some evidence was received from the Age Discrimination Commissioner, the Hon. Susan Ryan, in relation to the issue of ageing; the committee did not take evidence on that particular issue but noted the evidence the Age Discrimination Commissioner gave and made no conclusions. We are, as the Hon. Mr Kandelaars has indicated, proceeding with some work on an inquiry into SafeWork SA, and that is a fair way down the road. We have commenced also work on another inquiry, which will be the subject of another annual report and a separate report at a later stage.

I join briefly with the Hon. Mr Kandelaars in congratulating other members who have worked on the committee and the staff. I want to point out that the Hon. Mr Kandelaars referred to the fact that the total expenditure of the committee, evidently, over the two financial years 2010-11 and 2011-12 was $3,461, which is not an extraordinary sum of money, one would have thought, for the work of the parliamentary committee over a two-year period—probably the cheapest committee this parliament has, other than perhaps the Printing Committee.

I want to clarify that when the honourable member said that he wanted to thank the staff of the committee, and then listed five separate staff members, I think to the uninitiated that might lead people to believe that we currently have five staff members working for the committee. I want to point out that that is not correct; those five staff members are just people who have replaced each other over that two-year period, and there is a single staff member currently with the committee. There are not five staff members that, as I said, some might be led to believe by the Hon. Mr Kandelaars' final statements. Nevertheless, I join with him in thanking each of those staff members who have worked with the committee over the two-year period.

**The Hon. G.A. KANDELAARS (16:40):** I thank the honourable member for his comments. The members of this committee, one should remember, do not receive any remuneration for participating; however, I think the committee does some very valuable work in relation to its inquiries. As the Hon. Rob Lucas mentioned, the return-to-work processes in relation to South

Australia are of considerable concern, as is the issue of an ageing workforce, which I think at some stage we will certainly have to deal with as legislators. With that, I will conclude.

Motion carried.

## WORKERS REHABILITATION AND COMPENSATION (PROTECTION FOR FIREFIGHTERS) AMENDMENT BILL

In committee.

Clause 1.

**The Hon. K.J. MAHER:** I rise to inform the honourable member who moved the bill of the government's view. Speaking in committee, I do not want to repeat what the government has already put forward in the second reading stage of this bill. However, I would like to say that, as honourable members would be aware, the Premier announced in November last year that South Australia would give additional protection to firefighters exposed to high risk cancers.

We know that firefighters are often exposed to dangerous chemicals and fire hazards in the course of their daily employment and that this exposure gives a greater risk of certain types of cancers. With regard to this bill, the honourable member would be aware of the work being undertaken through the Australian Firefighters' Health Study by Monash University. The study seeks to scientifically determine whether volunteer firefighters are at a higher risk of cancer than the general working public. The government will be providing support for this study, and strongly supports the work being done. The government expects this study will be completed in 2014, and we will consider the outcomes as a government in a diligent and thorough manner. Until we have the scientific evidence on this particular issue before us, the government cannot support the bill.

**The Hon. R.I. LUCAS:** I spoke at length a long time ago now, in the second reading stage of the debate, and indicated that the Liberal Party was prepared to support the second reading whilst reserving its position for the committee stage and the third reading because there needed to be further consultation with individual stakeholders about what is a complicated issue. Since that original debate, I no longer have responsibility for workers rehabilitation and compensation and, within the Liberal Party, Mitch Williams, the member for MacKillop, has taken over responsibility for that. He has now taken a position to our party room which has been endorsed in the last week, that is, the member for MacKillop has advised that the Liberal Party's position is that we will support this bill that has been moved by the Hon. Tammy Franks.

The member for MacKillop has outlined in his advice to me that the Tasmanian government has recently introduced a similar bill which includes their volunteer fire service. The member for MacKillop has also advised me that the Western Australian Liberal government made an election commitment to introduce similar legislation, although, as of last week evidently, that had not yet progressed through the Western Australian parliament. Nevertheless, the intention has been stated in Western Australia by a Liberal government, and the Tasmanian government is obviously a state Labor government as well. So this is a difficult issue and there are a variety of views, and that variety of views was mirrored within the Liberal Party party room as well, but the decision of the parliamentary party is to support the legislation and, as I said, the member for MacKillop has had carriage of the legislation for that party. I indicate that we will be supporting the committee stage and the passage at the third reading.

**The Hon. R.L. BROKENSHIRE:** As I indicated from day one to the Hon. Tammy Franks, Family First supports this. We would have moved a similar bill had the Hon. Tammy Franks not done that, and we congratulate her on doing it. It is paramount that volunteer firefighters are protected and treated in exactly the same way as paid firefighters, and they should be looked after if anything unfortunate occurs to their health as a result of them volunteering to protect life and property. So, we support the bill and look forward to its rapid passage through this house and the House of Assembly.

**The Hon. J.A. DARLEY:** I indicate that I will be supporting this bill.

**The Hon. K.L. VINCENT:** As Dignity for Disability has also said since day one, we will be supporting this bill. I have been very pleased to attend media conferences and other forums with Ms Franks indicating that support and it certainly has not changed. As I said in my second reading speech, there is a very simply reason for that: when the fires can discriminate between who is and who is not a volunteer firefighter then we have the right to. But, until then, we have a duty as members of parliament to protect all firefighters equally and, so, we support this bill very strongly indeed.

**The Hon. K.J. MAHER:** I thank the Hon. Rob Lucas for letting us know that the Liberal Party room supports this bill, so I take it that it is the case that the Liberal Party party room supports what this bill is seeking to do. I would not mind asking the Hon. Rob Lucas then, if the current bill fails and if it is the Liberal Party party room's view that they support what this bill seeks to do, and if they are elected in 2014, will they introduce a similar bill or the same bill, to do what this bill is doing?

**The ACTING CHAIR (The Hon. G.A. Kandelaars):** It is up to the Hon. Rob Lucas if he chooses to answer that.

**The Hon. K.J. MAHER:** The Hon. Rob Lucas can answer, if he wishes to. He has an opportunity to put on the record whether the Liberal Party would introduce a bill to do this if it was elected. So, I invite him to put it on the record. If he refuses to say that is what the Liberal Party will do that is fair enough. It is up to him.

**The Hon. R.I. LUCAS:** I would ask the member to speak to the shadow minister responsible.

**The Hon. T.A. FRANKS:** Unusually, because we stalled this bill at the second reading debate and then waited some time before resuming with the benefit of further information being provided and also, obviously, some considerable lobbying, I indicate that every single member of parliament, with the exception of the Weatherill government members, supports this bill. They support a bill which not only affords recognition to those who are in the MFS—and we still do not know whether the government's announcement actually did include retained firefighters, so I will consider that it only included full-time ongoing permanent firefighters in the MFS—but they also support retained firefighters and volunteer firefighters and they recognise the science of some decades from around the world which shows the causal link between firefighting and these particular cancers.

In fact, the list of cancers that we have are on the smaller side. We have gone on the conservative side with only 12 of the cancers. We have not included lung cancer because we thought that was a bridge too far to try to jump. We have not included many of the cancers that are in fact recognised overseas. What I would say is that overseas in the leading jurisdictions not only have they established that causal link for paid firefighters but also for what they call part-time and volunteer firefighters, who, I might add, are often paid to be volunteers. They recognise it because the science that we need to look at on this issue is the causal link between structural fires, fires with these toxins, and these types of cancers contracted in the work of fighting those fires. It is incredibly brave work, and this past weekend should have brought home to every member of this parliament just how important that work is.

The causal link of the science is what you need to be looking at here because when you look at the Monash survey, yes, they are looking at all the firefighters across the country, and you are looking at rates of cancer. I have never said that firefighters contract cancer at greater rates than the community because you need to take into account the healthy worker effect, the fact that most firefighters are fitter and healthier and less likely to contract cancers than the rest of the population, to start with. It is the act of firefighting and the causal link between the types of fires they fight that has been studied that is what the science the bill we have before us is based on.

The government has announced a scheme where it recognises that science, but it has only recognised it with regard to what it called, very disparagingly, I believe, professional firefighters in this state. It meant full-time permanent MFS when it said that. I would say that every other member of parliament has recognised the professionalism of our CFS and our retained firefighters when they have supported the bill. If the bridge of the science that you had to understand and accept was jumped for somebody who receives a salary on an ongoing basis then why is the science different for somebody who receives either a casual wage or no wage and, in fact, often pays out of their own pocket to help their particular brigade keep going? How is the science different? The science of causality here and the linkages between these types of structural fires and the rates of these particular cancers in firefighters is what you need to look at, not what the Monash survey is studying. I am well familiar with the Monash survey.

I also ask the Weatherill Labor government to explain why its position is now different to the Tasmanian position, which has recognised and announced a scheme for its paid and volunteer firefighters, recognising the science of the causality. They do not need to wait for the Monash survey. The WA government has, as part of the election, announced that it will pursue a similar scheme, it is not waiting for the Monash study.

Will the government be waiting for the Monash study before it implements a scheme, as promised by media release at the MFS 175th anniversary celebrations last year, for those full-time MFS firefighters by 1 July this year? Are we going to wait until the Monash survey reports back before the government introduces its own announced, promised and pledged scheme? Or is this simply a way of stalling to cover the government's shame that it should have included volunteers in the scheme in the first place and that it did not acknowledge the work of the Greens at a national level and, indeed, at a state level, to raise this issue, as we did behind the scenes when we sought to work with the government.

The government then announced a scheme which was faulty and which did not recognise all firefighters. The government seems to have done it without due regard to the impact it would have or, indeed, the lack of logic that accepting the science for somebody who is paid does not apply to the science for somebody who is not paid to fight the very same fires. This is not just bushfires we are talking about; these are structural fires. It is the type of fire these firefighters fight that we need to look at.

I challenge anyone to say that somebody in Salisbury on the weekend was fighting only bushfires. We know, and the records are well kept, that the incidents that the CFS fight are car fires, structural fires; they are standing shoulder to shoulder with their comrades in the MFS fighting down at the Wingfield industrial dump. They deserve that same respect—to have that science recognised, that the cause of their cancers can be linked to the type of fires they fight, not whether they get money in their pocket at the end of the day for having fought them.

The service the CFS provides you would say is priceless, but it is clearly worth a lot to this state. It has left a bitter taste in the mouth of many that the CFS was not given due recognition when the government made its announcement in relation to the MFS. I call on the government to now give clarity to whether or not its scheme will still be introduced by 1 July this year and whether or not its scheme will cover only permanent full-time firefighters in the MFS or whether it will cover retained firefighters.

I thank every other member of this parliament, with the exception of the Jay Weatherill government, for supporting this bill. I particularly thank the member for Morphett and the member Finniss, who have been very vocal in their support right from day one. Obviously, members of Family First, Dignity for Disability, the Independents—the Hon. Ann Bressington and the Hon. John Darley—have also been very vocal from day one. Another person who has been quite vocal is the member for Frome, Geoff Brock. He will, in fact, be introducing this bill into the lower house should it pass here tonight. I commend him for standing up for his local electorate but also for standing up for volunteers.

It is not lost on me that we have just had Volunteer Week events and that we have just had the volunteers charter re-signed. These are hollow words when you cannot even respect volunteer firefighters who put their life on the line by treating them with the respect they deserve rather than giving them rhetoric and trying to weasel out of your pledge on this issue for the MFS.

Clause passed.

Remaining clauses (2 to 5), schedule and title passed.

Bill reported without amendment.

**The Hon. T.A. FRANKS (17:00):** I move:

That this bill be now read a third time.

The council divided on the third reading:

AYES (13)

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

NOES (6)

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

PAIRS (2)

| | |
|---|---|
| Lucas, R.I. | Zollo, C. |

Majority of 7 for the ayes.

Third reading thus carried.

Bill passed.

**FOREIGN OWNERSHIP OF LAND BILL**

Adjourned debate on second reading.

(Continued from 18 July 2012.)

**The Hon. R.P. WORTLEY (17:06):** This bill relates to a land ownership and registration issue that requires a nationally consistent approach and an issue that is not a land-use planning issue. The bill does not refer to a land-use planning issue.

Foreign ownership of land in Australia is regulated by the Foreign Investment Review Board, which was established under the commonwealth Foreign Acquisitions and Takeovers Act 1975. As members may be aware, the powers for the commonwealth to legislate on such matters spring from section 51(xx) of the Constitution, which relates to foreign corporations. Matters covered in section 51 can be legislated on by states, but such legislation may be held invalid if it is inconsistent with, or if it is matter intended to be fully covered by, commonwealth legislation.

The bill mirrors the Queensland Foreign Ownership of Land Register Act 1988, which requires foreign landowners to be included on a register but is limited in that it is only intended to apply to farming land. While this bill deals with an important issue—one that some in the community feel government needs to regulate—such reform must, in the government's view, be undertaken on a national basis.

The establishment of a register maintained by the Registrar-General has obvious and significant resource implications which would need to be addressed and which may duplicate the existing register established under the Foreign Investment Review Board. The best and most appropriate means of achieving this is through the COAG process, possibly by increasing the role and reach of the Foreign Investment Review Board. That issue is one on which the government believes significant work would be required to ensure that legislative control and review of foreign investment is fair and equitable and does not unduly limit investment that would be beneficial to Australia.

Establishing different systems in each state will not achieve a system where the community can easily access information on foreign investment in Australia. This is a significant policy decision that requires a national approach if it is to deliver its objectives. For these reasons, the government opposes the bill.

**The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:09):** I speak on behalf of the opposition on the Foreign Ownership of Land Bill 2012. The state Liberal Party supports the Foreign Ownership of Land Bill 2012, which calls for a statewide register of foreign-owned farmlands. The bill simply seeks to provide some transparency for developing a foreign ownership of farmland database that is accessible and available to the public. Members would be aware that there is often quite a lot of coverage in the media when foreign entities buy South Australian or Australian land. The Foreign Ownership of Land Bill 2012 is a way to protect South Australia's sovereign interests, with the supporting argument that all South Australians would like to see water, land and food security being better protected in our state.

Currently there are foreign investment rules that require an investment in a state-owned enterprise to obtain approval by the Foreign Investment Review Board. However, no such requirement is needed for a state-owned enterprise or a sovereign wealth fund. That is, as long as

a single investment in agriculture is less than $244 million, there is no requirement for any approval by any investment board or any such equivalent. This bill will require foreign owners and foreign entities which acquire agricultural land in South Australia to complete notification of ownership with the register not later than 90 days after the date of acquisition. The penalties for noncompliance range from $2,500 to $75,000 for a person who contravenes the provisions of the bill.

I note that for the last 24 years Queensland has had in force the Foreign Ownership of Land Register Act 1988. The current bill is very similar to the Queensland equivalent; however, the South Australian bill will require non-residential commercial industrial land that is outside of townships and the metropolitan area to be registered. Essentially, the bill provides access to foreign ownership of agricultural farmland data which is not currently available from the lands title office.

I would like to make it clear that the Liberal Party acknowledges a great benefit of foreign investment in South Australia, both culturally and economically. I can recall from my days of farming in the South-East, and well before that, that a number of tracts of land were developed just north of where our property was, and that was done with foreign investment. The local economy benefited; there were jobs; there were young men (jackaroos) who had come to play footy, to join a youth club, and so there was a whole range of benefits.

In recent times, after I had reached adulthood, a German company bought a large area of cropping land in and around Wolseley and invested in some quite good infrastructure, sheds for storing fertiliser and grain, new houses—I think two new houses, but definitely one new house. Then, after about a 10-year period and a couple of crook seasons, they decided that it did not fit their investment profile any more and sold it, so it is now owned by Australian farming families who took an opportunity to acquire it after the foreign ownership had ceased.

I suspect that we will see, with foreign ownership of land, some churn when overseas investors see an opportunity and then their circumstances change, or we have a run of bad seasons. When things are looking good in a farming enterprise, the grass is always greener over the fence. I suspect what we will see over time is this evolutionary thing. We had big investment from English, American and European interests over the last century. Now we see it from China and the Middle East and other parts of the world, and I expect that we will continue to see that churn. However, the Liberal Party does support having a transparent way of knowing exactly what is going on.

I do not believe that there is really any greater percentage of land owned by foreign ownership today than there has been in the past. It may be different ownership, but it is important that we do keep an eye on what is happening in our community. The Liberal Party is very happy to support this bill.

**The Hon. A. BRESSINGTON (17:13):** I also rise to support the Hon. Robert Brokenshire's Foreign Ownership of Land Bill. This bill requires disclosure of present interests in land; disclosure of legal acquisitions of interest in land; notification of disposal of interest by a person who is listed as owner, trustee of the interest; foreign owners are required to submit a notice of ownership no later than 90 days post acquisition; persons are required to notify of changes ceasing to be a foreign person or becoming a foreign person; registering of all foreign ownership; access to be granted to register by application and payment of fee; and the registrar can require further information to ascertain liability of a person to lodge a prescribed form or to comply with the act. The registrar can require a person to give information or to attend before the registrar or authorised person, and the registrar may enter information they consider appropriate on the register. It creates an offence of not complying with requirements to produce information or attend with the registrar.

That is only some of the things this bill seeks to achieve. I have to say that I am very much aware of the level of angst in the community amongst people who are not inclined to be politically motivated about the amount of land, or the perception that there is more land, in the hands of foreign ownership now than ever before. In fact, some of the figures that the Hon. Robert Brokenshire gave in his second reading speech were quite disturbing, but we do not know whether this is any more or any less than has occurred in the past.

I do not see the harm in the openness and transparency of a local register. I remember a few months ago I went to a dinner at which Senator Barnaby Joyce was in attendance. I had a discussion with him at half time and asked what the federal National and Liberal parties are going to do about foreign ownership. He said to me, 'Well, you know, it's sort of a bit like this: the Chinese have got more guns than we've got, and they've got bigger guns than we've got, and if we are

going to kick their arse'—excuse the language—'they're going to kick ours 10 times harder.' That is a very concerning statement for a senator to make, given that this was an evening where he was addressing food producers. For him to say that we are fast becoming a foreign-owned country is very disturbing.

I know that people in South Australia want to know who owns the land but also what investment opportunity is being made in this state. There is a difference between foreign investment and foreign ownership. The Hon. Robert Brokenshire made the point that the Chinese were actually sending wool home to China to be processed in China rather than doing it here and us selling the end product. We have to see that, in the long-term, our manufacturing, our agriculture—everything—is being turned over to foreign powers. We are leaving ourselves with very little room to move to build a productive and expanding economy.

We have to come to terms with the fact that you cannot just expand an economy by imposing more and more taxes and not increasing productivity at the same time. This is a sensible bill by the Hon. Robert Brokenshire. I know that it would be supported in the community by the majority of people, if only to put their mind at ease and to show that the government is prepared to be open and transparent about the amount of land in the hands of foreign countries.

**The Hon. T.A. FRANKS (17:18):** The Greens also support the bill before us. It should come as little surprise to the mover, because in fact the Greens have moved for similar things at a federal level, working indeed with Senator Xenophon from our state. Currently we have a bill in the Senate, along with Senator Xenophon, to introduce a stricter legislated national interest test for the Foreign Investment Review Board's review of sales of agricultural land, and we are pursuing that issue.

In fact, the report from the Senate Regional and Rural Affairs and Transport Legislation Committee's inquiry into an examination of the Foreign Investment Review Board National Interest Test was indeed due to report today. I am not sure if it has been granted an extension, but certainly we will await the results of that quite eagerly.

With regard to that inquiry, we have actually heard witnesses provide evidence. One particular representative of a food company of the Qatari government said that its strategy was, as a small oil-producing nation, to buy up land around the world because they recognise that food will be the oil of this century, and that is the reality. The geopolitics of the world in the 20th century was based on oil; the geopolitics of the 21st century will be based on land and water for food production. That is coming straight from the mouths of those who are pursuing that policy.

Indeed, 2012 was the Year of the Farmer in Australia—an important year in a global context because it was an opportunity to reflect on the role of food policy and to get it right. I hope that in this state, while we talk about a clean and green food bowl being part of our principles and platforms for the future prosperity of this stage, we really do need to get it right.

There are two major issues globally; that is, we now have seven billion people on this planet, going into nine billion people mid-century. How are we going to sustainably feed, clothe and house those nine billion people in a way that is fair and sustainable, both ecologically and socially? That is, indeed, one of the great challenges we face as legislators.

There are reducing planetary limits of availability for food production and, of course, in regard to water and our marine environments as well. We know that countries such as China, Qatar, South Korea and the Arab states are recognising that they cannot produce enough food for their own people. They recognise that world trade is not going to be able to provide food security—accessible, affordable food—for their people, and there will indeed be other countries probably pursuing this in the future.

As we see more extreme weather events and climate change really kick in, it will not just be poor countries. Currently, as we heard from Professor Pinstrup-Andersen from Denmark, who came here for an agricultural conference in 2011, developing nations, Africa and Asia, have been leasing land to foreign governments and companies, often in secretive deals, and kicking small farmers off the land in those countries because there is no form of land title. The foreign investors then go in and develop that land and export the food back to their home countries, doing nothing to improve the food security of those nations.

It is not just those nations that are vulnerable; indeed, Australia is also vulnerable. In case you believe that that is a fear campaign, in an assessment last year a report for the government revealed that in Western Australia, for example, one-third of the water licences were already

partially or wholly foreign owned and that a large part of the Northern Territory was in that same category.

While there have been some words here of 'She'll be right,' I think this is certainly something that the honourable member and Family First are to be commended for in bringing this to the parliament. Certainly, the Greens are pushing for this at a federal level, so it is no surprise that we will be supporting this bill today.

**The Hon. J.A. DARLEY (17:22):** I would like to say that South Australia has been a leader in automated land information systems since the late sixties, and South Australia currently has the most comprehensive land information system not only in Australia but in the world. I believe that the sorts of changes that would be needed to accommodate this current bill are relatively minor and I therefore support the bill.

**The Hon. R.L. BROKENSHIRE (17:22):** I thank all honourable members for their contribution, and I want to say a few things in summing up. It is interesting that when you look at the submissions that were put to the commonwealth inquiry—which the Hon. Tammy Franks indicated the Greens had initiated as part of legislation federally—a submission was made by the Land Services Group of the South Australian government, through the Department of Planning, Transport and Infrastructure. That submission stated in one paragraph:

> I confirm that South Australia does not maintain a foreign ownership of land register. The Foreign Ownership of Land Bill 2012 is however currently before our parliament. It provides for a register administered by the Registrar-General very similar to that existing in Queensland.

It goes on, but I will not read the whole letter. However, I find it interesting, and it also confirms what the Hon. John Darley said about the database, whether it was a Torrens title system or the current database. We proudly stand as South Australians before the world, leading in all that land title information and associated technology. I cannot understand why the state Labor government is opposed to this because, if you go out there where people actually vote, I suggest that the majority of South Australians support some transparency when it comes to a register on which foreign ownership can be very easily identified—as the Hon. John Darley and other colleagues have said in their contributions—so that we actually know what is happening.

People want to know what is happening, and that is really all this bill is about. It mirrors the bill in Queensland, which was obviously put forward earlier on because Queensland was the initial target for foreign investment. It is not that we are opposed to all forms of foreign investment. As the Hon. David Ridgway, the leader of the Liberal opposition said, they support foreign investment but with some caveats, and one of those is that people be allowed to know what is happening with foreign ownership of our land so that a proper debate can occur.

I finish by saying that when I have FOI'd the LTO in the past, unfortunately, even though the Hon. John Darley has indicated that the sophisticated database would be easily amended, at this point in time they do not have that as individual information we could access. So, that is the reason for putting the bill forward.

I commend the absolute majority of the house for supporting me, and I look forward to the government waking up with some common sense to this bill as it, hopefully, proceeds to the lower house because, if a national register does get up, then whoever is in government at the time in each state will have to have to record this information anyway.

Bill read a second time.

Bill taken through committee without amendment.

**The Hon. R.L. BROKENSHIRE (17:28):** I move:

That this bill be now read a third time.

Bill read a third time and passed.

## MOTOR VEHICLE ACCIDENTS (LIFETIME SUPPORT SCHEME) BILL

Bill recommitted.

Schedule 2.

**The Hon. J.A. DARLEY:** I move:

Clause 3, page 37, after line 16—Insert:

(4a) However, a court may award damages for non-economic loss in a case that would otherwise be excluded by operation of subsection (4) if satisfied—

(a) that the consequences of the personal injury with respect to non-economic loss are exceptional when judged by comparison with other cases involving the same injury; and

(b) that the application of the threshold set by that subsection would, in the circumstances of the particular case, be harsh and unjust.

(4b) An assessment of damages for non-economic loss under subsection (4a) must be based on an injury scale value that should rarely be more than 25 per cent higher than the injury scale value that applies under subsection (3)(a) in relation to the injury.

This is an alternative to my previous amendment. It provides the court with the discretion to award damages for non-economic loss in cases that would otherwise be excluded if the consequences of the personal injuries sustained are exceptional when judged by comparison with other cases involving the same injury and the application of the ISV chart threshold would be harsh and unjust. The only proviso to this is that an assessment of damages for non-economic loss must be based on an injury scale value that should rarely be more than 25 per cent higher than the injury scale. The reason for this relates to the government's concerns over situations where a court exercises its discretion to award damages for injuries that would otherwise fall below the scale that are exorbitantly in excess of what another person would get in accordance with the scale itself.

As mentioned earlier, this amendment is consistent with the Hon. Tammy Franks' amendment in relation to economic loss. When dealing with my first amendment, the government indicated its preference for the Hon. Tammy Franks' amendment on the basis that it provides a much clearer test to protect against injustices caused by rigid application of the threshold test in relation to a person's future earning capacity. Whilst this is by no means my preferred position, we are basically at the point where some exception to the general rule, no matter how watered down it is, is better than what the government is proposing.

I remind members that the amendment reads that, and I quote, 'an assessment of damages for non-economic loss must be based on an injury scale value that should rarely be more than 25 per cent higher than the injury scale'. That does not mean that it can never exceed 25 per cent. In those cases where the consequences of the person's injuries are exceptional and the application of the ISV chart threshold would be harsh and unjust, the court is still well within its rights to award damages for non-economic loss over and above the 25 per cent. The question would come down to the individual circumstances of the case.

In closing, I have to express my disappointment with the way the government has handled this bill. Members of this chamber have effectively been backed into a corner and forced to make decisions on the run, which will have huge ramifications for persons injured in motor vehicle collisions. We have been asked to make decisions based on information that has been provided at the eleventh hour with very little opportunity for detailed and considered deliberation.

The ISV table draft, which is some 66 pages long and critical to the scheme, was provided to honourable members at 7.48 on Monday evening. I accept that the revised draft is a far cry better than the original draft, but it is still very unclear as to how it will apply with respect to many injuries that people sustain in motor vehicle collisions. In effect, what the government is saying is, 'Trust us. We've listened and dealt with all of the concerns raised by the legal profession and by members of parliament, and everything will be fine. If not, you can always move to disallow the regulations.' With respect, I think that this is a bad way of dealing with legislation, particularly when it is as important as this.

The bill will change and affect every person involved in a motor vehicle collision. It will, through the introduction of thresholds, reduce the number of people who will be able to avail themselves of compensation through negotiation, pursuant to essentially what is a common law scheme modified by statute over time and, in areas of dispute, determined independently by a court. The legal profession, although unable to speak openly, has done its absolute best and it is still trying to salvage some of those rights by negotiating the least draconian provisions out of what can be described only as draconian legislation.

Those negotiations have been ongoing throughout this whole debate. Rather than having the debate first, reaching a final position in relation to the negotiations and introducing into this place a position that is agreed to by all parties, the government is asking us to simply press ahead and that, if we choose not to do so, we run the risk of being outed as the member who chose not to support a $100 reduction in CTP premiums—never mind that this reduction will be a one-off that

will last for only 12 months. This is what the bill is really about; it has absolutely nothing to do with the merits of the legislation we are debating.

This bill will result in the diminution of a person's ability to seek appropriate compensation for at-fault accidents; there is no question about that. Damages for non-economic loss, economic loss and gratuitous services have all been in the firing line. Again, for the record, I support wholeheartedly the introduction of a lifetime support scheme, but this should not come at the expense of existing entitlements. We should not be forced to choose between the two.

I have to say that I think this is a very sad day for justice in this state. Whether or not this bill passes today or tomorrow, the outcome, in my view, would still be the same. We are essentially trying to claw back some of the entitlements the government has ripped away from injured persons. Do I think that it is a good outcome? Save and except for the lifetime support scheme, it is a far cry better than what the bill looked like originally but, no, I do not think it is a good outcome. However, I committed to dealing with the bill this week on the basis that we get something more than we would otherwise get for those injured persons. I commend this amendment to the committee.

**The Hon. I.K. HUNTER:** The Hon. John Darley's amendment will give the courts a discretion to award damages for non-economic loss, that is, damages for pain and suffering in a case in which the plaintiff's injuries are assessed on the injury scale values being below the statutory threshold. The court would have to be satisfied that the consequences of the injury with respect to non-economic loss are exceptional when judged in comparison with other cases involving the same injury and also that the application of the threshold would be harsh and unjust in that case. If the court is so satisfied, it can assess the damages as if the injury had been assessed at a higher ISV. However, the increase is rarely to be more than 25 per cent higher than the assessed ISV.

The government has obtained actuarial advice from the Motor Accident Commission's actuary about what effect this amendment would have on premiums. The opinion is that it would not impact on the recommended premium, based on the assumption that waiver of the threshold will occur infrequently and that there is no unexpected interpretation by the courts. The government has already today voted in favour of an amendment by the Hon. Tammy Franks to insert into the bill a review clause that will require a review after three years. On that basis, the government will support the amendment in the knowledge that any unexpected consequences of this amendment will be subject to review.

If the three-year review identifies that there are problems, or if it becomes apparent before that that this amendment has caused unexpected pressure on the CTP fund, the government reserves the right to seek to have the provision repealed or amended.

**The Hon. R.I. LUCAS:** Can the minister indicate for the sake of the record what was the actuarial advice in relation to the Hon. Tammy Franks' amendment? I assume it was exactly the same.

**The Hon. I.K. HUNTER:** I am advised that the actuary's advice is as per the letters sent to members of the Legislative Council, that is, if interpreted very broadly it may lead to an increase of up to $3 per vehicle, but he believes that is very unlikely.

**The Hon. R.I. LUCAS:** Just to that end, I seek leave to table a copy of the advice provided to the government on related issues. The government provided me with a copy of this advice and I think it provided it to the Economic and Finance Committee, which is the costings for proposed tort reform. I seek leave to table that advice.

Leave granted.

**The Hon. R.I. LUCAS:** I did that on the basis that I think it is useful for all members of the committee and those who follow us to at least see part of the actuarial advice that has been provided to the government in relation to this. The minister has just placed on the record further advice in relation to the Hon. Ms Franks' amendment and the Hon. Mr Darley's amendment. I repeat again the comments I made earlier in relation to this particular amendment, and that is that my experience in relation to these things is that invariably they end up differently to the way lawyers and actuaries predict and that inevitably future parliaments and governments come back to have a look at these particular issues and say, 'Hey, it wasn't exactly as we intended.'

I noted the words from the minister's advice that he put on the record. It was something like, 'unless there are unexpected legal interpretations', or words to that effect. Again, I just place on the record that in my experience in relation to these issues the unexpected tends to be more the

norm rather than the unexpected. I expect or suspect that a re-elected Labor government or a re-elected Jay Weatherill government, I should say, rather than a Labor government, or a newly elected Liberal government will have to revisit these particular issues because the advice is going to come back saying, 'Look, there were these unexpected legal interpretations by the lawyers and the courts in relation to these issues.'

The opposition's position is that we are very significantly hamstrung in relation to this issue. We do not have direct access to the actuary so that we can actually quiz them and ask them to pursue particular issues; what their assumptions are. I note in this advice that I have tabled that Brett and Watson say that these costings incorporate some changes to assumptions that have resulted from the merging experience of the scheme since the costings of the white paper were undertaken, but do not indicate what those changed assumptions were. I put a request to the minister not to delay the proceedings today, as to whether he is prepared to give an undertaking to provide advice to myself after the passage of the bill and as to what were the changes to assumptions that Brett and Watson and/or the government have made in relation to the costings for proposed tort reforms. As I said, I do not do that to delay the debate here, but I ask whether the minister is prepared to give an undertaking as to what those changes in assumptions have been.

As I said, we are largely hamstrung. We are not in a position to quiz the actuaries. The government gets the advice. The government gets the detailed legal advice and we are left in a position of having to respond by either accepting or not accepting the advice the government has received on those issues.

In relation to the Hon. Mr Darley's amendment, we are further hamstrung in that it was moved at 11.30 this morning and, at 5.30 this afternoon, we are voting on it. The government has now indicated it is supporting the Hon. Mr Darley's amendment. Our understanding is that other minor party and crossbench members are supporting the amendment so that the Hon. Mr Darley has the necessary support in the committee to see this progress, so we will not oppose it. We do not have enough evidence to oppose it. The numbers are there so, as I said, we will not be opposing or calling 'divide' in relation to this particular amendment.

I place again on the record, however, my concerns at these and related amendments and their potential impact on the scheme. I seek an undertaking from the minister as to whether he is prepared, after the passage of the bill, to correspond and provide an answer to the question I put.

**The Hon. I.K. HUNTER:** I thank the honourable member for his contribution. I think the most I can say is I will take advice on that and come back to Mr Lucas with a response.

Amendment carried; schedule as amended passed.

Bill reported with amendment.

**The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (17:46):** I move:

That this bill be now read a third time.

If I can take a moment of the chamber's time, I would like to thank honourable members for their contribution to the debate on this bill. In particular, I thank members for their bipartisan or multipartisan support for the introduction of the new lifetime support scheme.

From 1 July 2014, people who are in the unfortunate situation of being catastrophically injured in motor vehicle accidents in South Australia will benefit from comprehensive lifetime treatment, care and support. They and their families will be grateful for this parliament's efforts to put in place a scheme that will assist them from the moment they are injured in a vehicle accident and on the subsequent journey to rehabilitate themselves and maintain independent and dignified roles in the community, notwithstanding their injuries.

The reforms to the compulsory third-party insurance scheme have not been universally supported by members and the government understands the differing views that members hold in relation to these reforms. Ultimately however, this is a compulsory form of insurance for all South Australian motorists and we need to strike the right balance between compensating people for the effects of a motor vehicle accident injury and the need to ensure that the compulsory insurance premium charge to motorists is not excessive. This legislation tackles this problem by reducing damages paid out for minor injuries. However, it is critical to remember that no-one will lose a right they have now to receive compensation for medical treatment to help them heal from the accident.

Over recent years, we have witnessed rapid growth in CTP premiums, and the government reached the view that the scheme was not only becoming expensive it was not delivering value for money for South Australian motorists. The reforms will mean that all people who pay a CTP premium will receive a 20 per cent reduction next financial year and, after the lifetime support scheme commences, the combined CTP premium and lifetime support scheme levy will still see motorists experiencing cheaper registration costs than they do now.

These are far-reaching reforms and it will be important that the effect of the scheme on injured motorists is monitored. The Hon. Tammy Franks' amendment has ensured that the parliament will conduct a review in three years' time. The Hon. Tammy Franks, the Hon. Ann Bressington and the Hon. John Darley have all moved amendments to the bill, which the government has supported, and I thank those members for their efforts to work with the government to improve the legislation. I thank all members for accommodating the government's timetable in relation to the bill.

Finally, I would like to acknowledge the efforts of my colleague the Minister for Health and Ageing (the Hon. Jack Snelling from the other place) for his strong leadership and vision in championing these reforms. Without such a passionate advocate for a no-fault scheme, these reforms would not have succeeded. I would also like to thank most sincerely my advisers—Ms Lois Boswell, Mr Stuart Hocking and Ms Di Gray—for their efforts in bringing me up to speed and allowing me to take this passage of the bill through the house.

The council divided on the third reading:

AYES (18)

| | | |
|---|---|---|
| Brokenshire, R.L. | Darley, J.A. | Dawkins, J.S.L. |
| Finnigan, B.V. | Franks, T.A. | Gago, G.E. |
| Hood, D.G.E. | Hunter, I.K. (teller) | Kandelaars, G.A. |
| Lee, J.S. | Lensink, J.M.A. | Lucas, R.I. |
| Maher, K.J. | Parnell, M. | Ridgway, D.W. |
| Stephens, T.J. | Wade, S.G. | Wortley, R.P. |

NOES (2)

| | |
|---|---|
| Bressington, A. (teller) | Vincent, K.L. |

Majority of 16 for the ayes.

Third reading thus carried.

Bill passed.

## MAJOR EVENTS 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) (17:55):** 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.

Major events are a significant contributor to the State's economy in terms of bringing both business investment and visitors to South Australia. That expenditure is worth many hundreds of millions of dollars to the State and is spread across events as diverse as the Tour Down Under, Clipsal 500, the Arts Festivals and the Christmas Pageant.

It is through encouraging the private sector to invest in and sponsor major events that these events are able to be invited, established, flourish and grow. Without private sector involvement, many events would not survive or would only exist in a much diminished form. Major events bring life and vibrancy to the city, encourage community engagement and participation, and provide opportunities for South Australia to showcase a broader range of its assets to the rest of Australia and the world.

For the private sector to invest in a major event, the private sector has the right to expect that the integrity of its commercial investment will be protected and the management of the event such that the efficient and smooth running of the event is ensured.

The existence of legislation to facilitate major events and aspects of their operation may be a significant or determining factor in whether the private sector will bring a major event to South Australia. Increasingly, it is a requirement of international bodies, such as the International Cricket Council, the Commonwealth Games Association, the International Rugby Board, the International Olympic Committee and FIFA, that potential host cities provide protection against the infringement of certain activities associated with the event. It is a requirement of South Australia's 2015 Cricket World Cup bid that the protection that would be afforded by this proposed legislation be in place for at least 12 months prior to that event.

South Australia is one of the few mainland jurisdictions not to have some form of dedicated major event legislation regulating commercial activities (such as ambush marketing, ticket scalping, the sale and distribution of prescribed articles and the protection of broadcasting rights) and other activities (including entry to and exit from venues, possession of flares and explosive devices, obstruction or interference at major events and entering restricted areas at major event venues). The legislation of other jurisdictions is:

- the *Major Events Act 2009* (NSW);
- the *Major Sporting Events Act 2009* (Vic);
- the *Major Sports Facilities Act 2001* (Qld);
- the *Major Events (Aerial Advertising) Act 2009* (WA).

South Australia has a significant annual major events calendar in a growing competitive commercial environment. Given the appeal of these major events to the general public and the significant commercial benefits that can be derived from these events, it is necessary for us to enact specific legislation to attract, retain and facilitate major events. South Australian major events rely on both Government and commercial sponsorship. Without corporate sponsors it would be impossible to run major events, such as the Clipsal 500, the Santos Tour Down Under and the Adelaide Fringe. The introduction of major event legislation would provide a vehicle for event organisers to protect sponsorship arrangements and the future of the events.

The commercial issues commonly raised by commercial interests involved in staging major events everywhere include: ambush marketing, ticket scalping, unauthorised event association and unauthorised broadcasting. The behavioural issues include offensive and/or disruptive behaviour. A recent example of ambush marketing in this State involved a bank distributing promotional items at a stage start of the Santos Tour Down Under, despite the fact that another financial institution was a premier sponsor of the event. The premier sponsor had contributed a significant amount to the running of the event and sought advice on what the event organiser (the State Government) was doing to protect the financial institution's investment.

Currently, there is no specific legislation in place that would provide a mechanism to allow the State Government to declare an event a major event and thereby enhance the ability to regulate conduct at such events. There are public and commercial transparency benefits in listing and adding to the range of public conduct offences in the context of the staging of a major event. The Bill is designed to facilitate the holding and conduct of major events in South Australia; regulate and/or prohibit the conduct of specific commercial and non-commercial activities at major events; and regulate the behaviour of attendees at major events. The Bill gives the Government the ability to declare any event a 'major event' and, in making such a declaration, protect the integrity of the event and the safety and wellbeing of event attendees.

The Bill deals with:

- The regulation of certain commercial activities, including the sale and distribution of prescribed articles, ticket scalping and ambush marketing. For example, sponsors often invest large sums of money to support an event and have their brand associated with an event. Their money ensures that Government investment in an event is minimised. If a rival attempts to ambush the event by imposing their branding in and around the event, the official sponsor will lose some of the value of its sponsorship and be less inclined to invest in the future. This may take the form of marketing non-official merchandise through to a rival cola brand taking up key spaces in and around an event in an attempt to undermine another cola brand.
- Ticket scalping is a contentious issue, which is the subject of divergent opinions, often strongly held. The Bill adopts a compromise position. The prohibition now applies to (a) the unauthorised hawking of tickets inside the declared area(s) for the major event and (b) any unauthorised sale for more than 10 per cent of the face price outside of that area or those areas. This latter part of the prohibition is taken from the Xenophon Private Member's Summary Offences (Ticket Scalping) Amendment Bill 2006.
- The regulation of broadcasting, including unauthorised broadcasting. Like sponsors, broadcasters often invest large sums in winning the contract for the exclusive right to broadcast an event and the value of that will be diminished if other broadcasters attempt to broadcast all or part of an event. Once again, a broadcaster is unlikely to invest those sums in future if the value of its investment is not protected. For example if Channel X is the official broadcaster of the Santos Tour Down Under and Channel Y takes up a position on the course to provide some coverage, the value of Channel X's investment will be devalued.
- The control of airspace and, in particular, prohibition of certain aerial advertising.

- The use of official logos and official titles. For example, many events develop specific logos and branding to denote that merchandise being sold is officially endorsed by the event and the product will be of a certain quality. An opportunist merchandiser might apply the logo to their products and attempt to sell and distribute, eating into the sales of the endorsed products and reducing the official event profits and value of the investment.
- The regulation of other activities at major events, including entry to and exit from major event venues, possession of flares and explosive devices, obstruction or interference at major events and entering restricted areas at major event venues.

The benefits of the Bill include:

- protecting the State's investment in major events;
- ensuring South Australia can host matches as part of the 2015 Cricket World Cup;
- providing the best possible environment within which South Australia can attract new major events and grow existing major events;
- protecting the safety and enjoyment of patrons to major events;
- protecting the commercial interests of those who have invested in major events;
- providing appropriate powers to the police, event organisers and authorised persons to ensure the safety and enjoyment of patrons;
- providing penalties to ensure that unauthorised people and companies do not profit unfairly from major events.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Objects

This clause sets out the objects of this measure, being—

- to attract, support and facilitate the holding and conduct of major events in the State, in particular, events that are anticipated to be of a large scale with a significant number of participants or spectators (whether of a sporting, cultural or other nature);
- to increase the benefits flowing from major events to the people of the State;
- to promote the safety and enjoyment of participants and spectators at major events;
- to prevent unauthorised commercial exploitation of major events, including ambush marketing, at the expense of event organisers and sponsors.

4—Interpretation

This clause contains definitions of words and phrases for the purposes of this measure.

5—Meaning of major event venue

A *major event venue* is defined as—

- any of the following that has been declared to be a major event venue by the regulations:
  - a venue or facility used for the conduct of a major event;
  - a media centre or other communications facility for the media for a major event;
  - physical infrastructure associated with a major event; and
- a public place, or any part of a public place, that is within 50 metres of a major event venue, being a public place, or part of a public place, specified in the regulations for the purposes of this paragraph; and
- any other place prescribed by the regulations for the purposes of this definition,

but is only such a venue during the relevant major event period.

6—Meaning of ambush marketing

For the purposes of this measure, the following marketing activities constitute *ambush marketing*:

- taking advantage of the holding and conduct of a major event to promote a person, goods or services without the approval of the event organiser; and

- any other activity that would suggest to a reasonable person that a person, goods or services have a sponsorship, approval or affiliation that they do not have with—
    - a major event; or
    - the event organiser of a major event; or
    - any event or activity associated with a major event.

Part 2—Regulations declaring major events

7—Regulations relating to major events

This clause makes provision for regulations to be made for the purposes of this measure. Without limiting the generality of the provision, the regulations may—

- declare an event to be a major event; and
- specify the major event period for the event; and
- declare a major event venue for the purposes of the event; and
- designate a person as the event organiser for the event; and
- require the event organiser to prepare a major event plan in connection with the event; and
- provide for the admission, exclusion or expulsion of members of the public to or from the major event venue or a part of the major event venue; and
- prohibit disorderly or offensive behaviour at the major event venue; and
- prohibit or regulate eating, drinking (including liquor), smoking or the consumption of unlawful substances at the major event venue or a part of the major event venue; and
- prohibit or regulate any other conduct or activities for the purposes of maintaining good order, and preventing interference with events or activities conducted, at the major event venue; and
- close specified roads to traffic for a specified period—
    - for the purposes of the event; and
    - for the purposes of maintaining good order, or preventing interference with events or activities conducted, at the major event venue; and
- prohibit or regulate the driving, parking or standing of vehicles at the major event venue; and
- fix fees; and
- prescribe penalties not exceeding $1,250 for breach of any regulation.

In addition, regulations declaring an event to be a major event may—

- declare that Part 3, or a provision of Part 3, applies to any (or all) of the following:
    - the event;
    - the major event venue declared for the event;
    - a specified controlled area declared for the event; and
- declare an area shown on a map in the regulations to be a *controlled area* for the event; and
- declare an article of a prescribed class to be a *prescribed article* in relation to the event; and
- declare a prescribed period to be a *sales control period* in relation to the event; and
- declare airspace that is within unaided sight of a major event venue for the event to be *advertising controlled airspace* for the period prescribed by the regulations.

Part 3—Commercial activities, broadcasting and airspace controls

Division 1—Regulation of certain commercial activities

8—Sale and distribution of prescribed articles

This clause prohibits a person, without the written approval of the event organiser for a major event, from selling or distributing a prescribed article in a controlled area during the sales control period for the event. The penalty for such an offence is a fine of $25,000 (for a body corporate) or $5,000 (for a natural person). The clause also provides for authorised persons to give directions to persons who sell or distribute prescribed articles without such approval to remove those articles as directed. A refusal or non-compliance may constitute an offence and may result in the offending articles being seized.

9—Ticket scalping

This clause prohibits a person, without the written approval of the event organiser for a major event to which this clause is declared to apply, from selling or offering for sale a ticket for admission to the event in a controlled area for the event. In relation to a place that is not in a controlled area for the event, a ticket must not be sold or offered for sale at a price that exceeds the original ticket price by more than 10% without the written approval of the event organiser. The penalty for these offences is a fine of $25,000 (for a body corporate) or $5,000 (for a natural person).

10—Ambush marketing

This clause prohibits ambush marketing. *Ambush marketing* is defined as a marketing activity that is not part of the official sponsorship for the major event that takes advantage of the holding and conduct of the event to promote a person, product or service. The penalty for such an offence is a fine of $250,000 (for a body corporate) or $50,000 (for a natural person).

Division 2—Regulation of broadcasting

11—Unauthorised broadcasting

This clause provides that a person must not, without the written approval of the event organiser for a major event to which this provision is declared to apply—

- broadcast, telecast or transmit by any means whatsoever any sound or moving image of the event or any part of the event at or from a place within or outside the event venue; or
- make any sound recording or any visual record of moving images of the event or any part of the event for profit or gain, or for a purpose that includes profit or gain, at or from a place within or outside the event venue.

The penalty for such an offence is a fine of $25,000 (for a body corporate) or $5,000 (for a natural person). This clause does not apply to the use of a personal mobile electronic device to transmit or record any sound or image within limits of what would be generally accepted in the community as normal incidents of social interaction.

Division 3—Control of airspace

12—Control of airspace

This clause provides that a person must not, during a major event to which this provision is declared to apply and in the course of State air navigation, cause an aircraft to enter, or operate an aircraft within, controlled airspace or a restricted area that is over a major event venue unless permitted to do so by or under relevant Commonwealth law (including permission by or under an instrument given under such a law). The penalty for such an offence is a fine of $500,000 (for a body corporate) or $100,000 (for a natural person). *State air navigation* is defined as air navigation within South Australia to and in relation to which the *Air Navigation Regulations 1947* of the Commonwealth are applied as if they were State law by section 5 of the *Air Navigation Act 1937*. This clause does not apply to the operation of military aircraft, or a South Australia Police aircraft, when being operated for military, security or emergency purposes or to an aircraft when being operated exclusively for emergency purposes.

13—Prohibition of certain aerial advertising

This clause prohibits a person from displaying an advertisement, or causing an advertisement to be displayed, in advertising controlled airspace during the prescribed period, except with the written approval of the event organiser for the major event concerned. The penalty for such an offence is a fine of $500,000 (for a body corporate) or $100,000 (for a natural person).

Division 4—Use of official logos and official titles

14—Minister may declare official logo or official title

This clause makes provision for the Minister to declare official logos and official titles in respect of a major event to which this Division is declared to apply.

15—Event organiser may authorise use of official logo or official title

This clause provides that, for the purposes of this Division, the event organiser of a major event to which this Division is declared to apply may, by notice in writing, authorise a person to use an official logo or official title in respect of that event.

16—Minister may authorise non-commercial use of official logo or official title

This clause provides that the Minister may, after consulting with the event organiser for a major event to which this Division applies, by notice in writing, authorise a person to use for non-commercial use an official logo or official title in respect of the event.

17—Contents of authorisation

This clause provides that an authorisation under clause 15 or 16 is subject to any terms or conditions reasonably imposed on the authorisation; and any such authorisation will expire at the earlier of the specified expiry date or, if no date is specified, 12 months after the end of the major event to which the authorisation relates.

18—Register of authorisations

This clause requires an event organiser of a major event to which this Division applies to maintain a register of authorisations given under this Division. The clause specifies the information to be recorded in the register.

19—Use of official logos and official titles that does not require authorisation

This clause makes provision for the use of official logos and official titles without the authorisation of the event organiser of a major event to which this Division applies as follows:

- the event organiser;
- a person who has been authorised in writing by the Minister to use official logos or official titles under this Division.

The clause also allows the use by others without authorisation in certain other circumstances.

20—Offence to use without authorisation official logos or official titles

This clause makes it an offence for a person to use—

- official logos or official titles in relation to a major event to which this Division applies; or
- any thing that is substantially identical to or deceptively similar to official logos or official titles in relation to an event to which this Division applies,

if the use is for commercial purposes, for promotional, advertising or marketing purposes, or would suggest a sponsor-like arrangement to a reasonable person. The penalty for such an offence is a fine of $250,000 (for a body corporate) or $50,000 (for a natural person).

This clause does not apply to any authorised or lawful use of official logos or official titles.

Part 4—Miscellaneous

21—Entry to and exit from major event venue

This clause provides that a person must not enter a major event venue unless the person pays the entrance fee (if any) or has the consent of the occupier of the venue or the event organiser to enter. If the occupier of a major event venue designates points of entrance to and exit from the venue, a person must not, without reasonable excuse, enter or leave the venue other than through such a designated point. The penalty for an offence under this clause is a fine of $750 which may be expiated on payment of an expiation fee of $105.

22—Possession of flares and explosive devices at major event venue

This clause provides that a person must not, while in a major event venue, carry or be in possession of a flare or a firework or other explosive device unless authorised by the occupier of the venue or the event organiser. The maximum penalty for such an offence is a fine of $5,000 or imprisonment for 1 year.

23—Obstruction or interference at major event

This clause provides that a person must not, while in a major event venue, obstruct or interfere with the conduct of the major event or the reasonable enjoyment of the major event by a member of the public present at the major event venue. The maximum penalty for such an offence is a fine of $5,000 or imprisonment for 1 year.

24—Entering restricted areas at major event venue

This clause provides that a person must not enter into or onto—

- an area within a major event venue while the major event is occurring or on a day scheduled for its occurrence unless the person—
  - is officially involved in the event or in the preparation for the event; or
  - has the consent of the occupier of the venue or the event organiser to enter the area; or
- any other area within a major event venue to which access is restricted by the occupier of the venue or the event organiser unless the person has the consent of the occupier of the venue or the event organiser.

The penalty for an offence under this clause is a fine of $750 which may be expiated on payment of an expiation fee of $105.

25—Power to remove persons from major event venue

This clause provides the police with power to remove persons from major event venues if they are behaving in a disorderly or offensive manner or are suspected, on reasonable grounds, of having committed an offence at the venue.

26—Powers of authorised persons at major event venues

This clause provides authorised persons with powers relating to good order and conduct at major event venues.

27—Forfeiture etc of seized items and goods

This clause sets out the procedure relating to the forfeiture of any items or goods seized under this measure.

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

At 17:56 the council adjourned until Thursday 16 May 2013 at 14:15.