LEGISLATIVE COUNCIL

Thursday 17 October 2013

The PRESIDENT (Hon. J.M. Gazzola) took the chair at 11:32 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) (11:33): I move:

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

Motion carried.

ELECTORAL (FUNDING, EXPENDITURE AND DISCLOSURE) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.I. LUCAS: We had an extended debate last night on the interpretation of the provisions as they relate to the Legislative Council. At this stage, unless the Hon. Mr Parnell or someone else has further questions, I do not intend to prolong that debate other than to say I think it was particularly useful. The few minutes the committee spent further highlighted the importance that the drafting of this has for the future, given that we are going to buy some time in 2018. The contribution of those who have some experience of the Legislative Council campaigns will be of added benefit to whichever government after March 2014 is finally responsible for the drafting of the legislation.

I think a series of questions and issues was raised that will require further consideration. Certainly, the answers that were provided were informative from my viewpoint. I had gone into the debate assuming there was a $500,000 limit on the Legislative Council campaign. Clearly, as is indicated, that is not the case. The parties are able to adjust within the overall approximately $4 million cap. That will have some significance to the major parties, but it will obviously have significance to the minor parties, such as the Greens and Family First in particular, whose main reason for being is to be elected to the Legislative Council. I will leave it at that in relation to the Legislative Council $500,000 related issue.

The other two areas that I want to address, and the minister responded to in part and I had raised in the second reading, were again in relation to the issue of gifts. If you look at new section 130ZJ and related clauses, the intention of the legislation is that if somebody makes a gift of $200 or more, then there are certain clear and specific requirements; that is, it is unlawful for a candidate to receive a gift of more than $200 unless certain things happen. The certain things that happen, as I read them, are that as the person gives you the gift of $200, the person has to give you their name and address. I guess that is relatively clear.

If you are at a function, or whatever it is, and someone gives you a gift you are going to have to say to Bill Smith, 'Okay, what's your real name and what's your real address?' and you must have a genuine belief that that is true; if someone lies to you, the legislation covers you off on that particular point. That is relatively clear because ultimately, if we are going to track the $500,000 aggregate figure, the real name of Bill Smith and his address are going to have to be covered off by the responsible officer for the party to find whether he has been giving donations elsewhere and whether it takes him above the $500,000 level.

As I read this particular provision, it clearly covers circumstances like Bill Smith taking a candidate and paying for a meal, and related gifts like that. Could the government's advisers just clarify whether it is clearly intended to cover taking to a meal or, for example, to a sporting, music or concert event. Commonly, members of parliament are invited to attend those particular events. I am assuming the impact of the legislation is that those sorts of circumstances will be covered as well.

The Hon. I.K. HUNTER: My advice is that the legislation specifically excludes gifts that are given in a personal capacity. We are really looking at gifts that are meant to be given to a party for their benefit—so a gift to a member or a candidate, I suppose, of the like the honourable

member has raised of their being taken out for a meal, is not meant to be captured by this. But I suppose that, if the gift was an item of merchantable quality or merchantable value which could be turned into cash which could then be used for the benefit of a political party in a campaign, that would be captured. But a personal gift to a member is specifically excluded.

The Hon. R.I. LUCAS: When one looks at the definition of 'gift', on page 6 of the bill, it provides:

gift means any disposition of property made by a person to another person, otherwise than by will, being a disposition made without consideration in money or money's worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration...

I understand the point here; we are not talking about a personal friend. But let's talk about somebody who is talking parliamentary or political business: someone has taken you to a lunch, which has often happened, as a minister or a member of parliament and, during the course of that, you discuss political and parliamentary issues; for example, members of parliament are invited to a sporting event or a concert.

In the end, you might not discuss a lot of politics or parliamentary business at that particular event but, as has been evident from the travel allowance discussions at the national level, what is being raised now is people being invited to the AFL Grand Final or the NRL Grand Final or a variety of other issues. I am sure that, in many cases, political issues were not discussed, but bodies or individuals have chosen to entertain members of parliament and ministers, and the community and the media would see that as being, in essence, seeking to ingratiate themselves with members or ministers for, potentially, future discussions, and that is why the view is that that should be disclosable.

I would have thought that the impact of the definition of 'gift', and these clauses which relate to 'certain gifts not to be received', would be that, where you are taken to lunch by someone other than your personal friend of 30 years who has nothing to do to politics or parliament perhaps, these provisions would apply in those circumstances. I seek from the minister's advisers, given the definition of 'gift', further clarification of that.

The Hon. I.K. HUNTER: My advice at this stage is that the definition used for 'gift' in 130A is the definition used in other jurisdictions. Regulations will allow us to describe certain exclusions, and I am waiting for advice on the specific section which gives power to my statement made a little earlier.

The Hon. R.I. LUCAS: I am happy to wait for that further advice and proceed with other issues. Again, I do not intend to press further details in relation to this issue; however I want to raise it again. When we get to this real-time disclosure—that is, on a weekly basis during the election campaign period—my reading of this says that if our candidates and MPs, for example, are taken to the Hyatt or the Hilton for lunch and the value of the benefit is $200 or if they are taken to a football final or whatever it happens to be—I guess that is more defined in that you would have been invited to it, you would know it is coming up and you are likely to have accepted knowing roughly what the value of going to the football final might be (and that it is likely to be more than $200). I guess it is going to be arguable, when you get invited to certain events at Adelaide Oval, as to whether or not that is going to be above $200.

Clearly, the requirement is on the candidate to know in real-time the name, address and details of the person who is providing that benefit to you. Where that is an individual I think it is at least clearer than when we get to the next stage, which is much more complicated, where a body corporate is providing you with a benefit.

If my reading is correct, in cases where candidates are taken to a meal and the value of the gift is greater than $200, our candidates are going to be required to advise their state secretary or the state director of their party that day (or certainly within the seven-day period in an election period) that, 'Bill Smith has taken me to lunch and the value of that was $250'—or whatever it happens to be—so that that can be incorporated in the $5,000 rolling aggregate of donations from Bill Smith to the Liberal Party over the last 12 months in terms of the total cost. It is a similar situation with invitations to events, such as football finals, sporting events and entertainment events as well.

Minister, where it becomes much more complicated—and this is an experience that ministers will be very familiar with—is where, under the provisions of 130ZJ, you are getting gifts from a body corporate, in essence; that is, from a representative of a company. Let us not get onto the complication of when you have a lobbyist working on behalf of the company. Let us just take

the case where a company is wanting to put a particular point of view to you and takes you to a lunch or to dinner or takes you to an event or whatever it happens to be.

The way 130ZJ is currently structured, in essence, it is unlawful for you as a minister or as a candidate to receive a gift. It starts off from that structure: it is unlawful for you to receive the gift unless you do certain things. In the case of where a representative of a body corporate or a company takes you, you have to get the names and addresses of the members of the board of the body corporate. You also need to have the name of any parent, subsidiary or related body corporate of the body corporate.

If Shell, for example, takes you out for a meal and the value of that gift or event or function is greater than $200, then it is actually a gift. That is unlawful unless you get certain information. The representative of Shell, if my reading of this is correct, will have to provide to you obviously the name of the company, which is Shell, but also the names and addresses of the members of the board, and also the name of any parent, subsidiary or related body corporate of the body corporate, and you, I assume, having got that, have to provide that in real time to your state secretary as the responsible officer. I think the minister would realise the complexity and potential difficulties in relation to that.

My understanding is that this is modelled on provisions that exist interstate or elsewhere, but again, in the end, the letter of the law is the letter of the law. The way it is drafted, where it says it is unlawful for a member of parliament or a minister to do something unless you do certain things, there are some pretty strict requirements in relation to what might be required under these particular provisions. Again, there are dozens of other examples. I do not intend to delay the committee on this particular issue much further, other than to seek an initial response from the minister.

Are there any other provisions in relation to these, in essence, company representatives? As I said, I am not even going to ask you the question about lobbyists acting on behalf of companies; that is, do they have to give you the names of the members of their board and their subsidiaries or is it the company that they represent or is it both? We would know many prominent lobbying firms that are quite complex in terms of their legal structures as well.

Is the legislation going to require the lobbyist to give all the information about their board members, the subsidiaries of their companies together with the board members of the company they are representing at the time and the subsidiary companies of the company that they are representing at the time, all on the basis of having provided a gift or a benefit to you as a minister of something more than $200? Again, in this case, we are not talking about a cash donation towards your party fundraising but, in essence, a gift or a benefit such as an invitation to an event, such as a football final or something like that.

The other issue in relation to this, just to add additional elements of complexity, is that again some ministers will have enjoyed the benefit in the past of upgrades on flights from airlines and clearly, I am assuming, that would be, under the definition of gift, a benefit. It is certainly greater than the value of $200. The difference between an economy flight and a business class flight, particularly overseas, is significantly more than $200, and I am assuming it is intended that those sort of gifts or benefits would be caught up.

Again, in those circumstances, if you attended the airport and then someone upgraded your economy class flight to business class, under the drafting of the legislation, if that is a gift or a benefit, which clearly it would appear to be, then that person is going to have to provide the members of the board of the airline and any related subsidiary companies of the corporation and a variety of other issues like that, if that reading of the legislation is correct. I am really seeking an initial response from the minister in relation to that, but I do not intend to pursue interminably other examples of the complexity of this particular element of the legislation.

The Hon. I.K. HUNTER: In relation to the advice I was waiting on in terms of the specific clause, it was 130ZF(4)(b). I can imagine making some general remarks about the earlier conversation related to that, but if an MP or a candidate were to be invited to a function, such as a football match for example or a concert, you would know who the person is that is inviting you. You would have had some time to find out their details. If it was a donation of money that was being handed to you for political purposes, then obviously you would be wanting to hand over receipts for that and you would need to find out the personal details of that person as well. That is pretty much standard practice across political parties.

In relation to 130ZJ, which is I think what the honourable member has just been talking about, the intention and the difficulties that he foresees under (3)(c)(i), (ii) and (iii) in having to determine the name of corporate's names and address of board members and parents and subsidiaries and such, the intention behind the clause is to look behind who is genuinely making a donation to a political party or a candidate, so that donors cannot hide behind, particularly, other corporate fronts and that everything is transparent.

Obviously, we are asking for a significant amount of information. One would assume that most corporate bodies would be able to provide that information on request. They should know names and addresses of their board members. They should be able to supply that to you and they should also know the details about parent companies and subsidiaries, and would know, if they are in the business of making donations to political parties or candidates, that under this legislation that is information they will need to supply.

However, I understand the complicated nature of this that the honourable member raises and obviously we feel that the policy behind these clauses is appropriate for the reasons I have just outlined but, of course, if there are particular difficulties that are faced in applying it in practice, I am sure we will come back and reconsider it at some stage but, again, I am advised that these are very similar clauses to what is in practice elsewhere.

The Hon. R.I. LUCAS: The next broad issue I want to canvass is in relation to 130ZL, which is in relation to limitation on entry fees for certain events. This is the $500 maximum on, in essence, lunches and dinners, although it can be a variety of other functions or events as well. The definition of relevant event is:

(a) is intended to raise money for the benefit of a registered political party; and

(b) is advertised or promoted as an event at which, or in connection with which, attendees will be given access to—

(i) a Minister of the Crown or a Member of the Parliament of South Australia; or

(ii) a member of staff of a Minister of the Crown or a Member of the Parliament of South Australia.

I just want to clarify that the intent of the legislation and the effect of the legislation is that a political fundraising event for any political party which advertised a federal member of parliament or an interstate member of parliament—from the same political party potentially—or celebrities are not intended to be caught and would not be caught by the legislation. So a political candidate could raise money for the benefit of their registered political party by advertising that the federal minister from the same political party was the guest speaker. The definition of 'relevant event' is quite clear if it is just about advertising or promotion—the mere fact that a state candidate would still be there or that a number of other state ministers might also be there as long as that is not advertised or promoted.

I assume the government's intention in the legislation and the impact of the legislation is that federal members, interstate members of parliament, and celebrities could all be used to advertise or promote at an event irrespective of whether or not state members and state ministers happen to attend those particular functions as well, as long as they were not being advertised or promoted.

The Hon. I.K. HUNTER: My advice is that the Hon. Mr Lucas is correct. If you are using an interstate MP or a celebrity, they are not intended to be captured by this clause.

The Hon. M. PARNELL: Just on the same theme, the theme of access dinners, for some strange reason I appear to be on the mailing list for SA Progressive Business. In fact, they often come through the fax machine and we all jump. We are startled when the fax machine rings because it is so rare. Maybe I am on an indirect mailing list.

My recollection is that as well as access dinners there is another category of fundraising event that, working from memory (I have asked my staff if they can find the faxes) for a certain sum of money—$10,000 sticks in my mind—you could get the Prime Minister, for example, or the Premier to visit you in your boardroom if you are a corporation. Those events are private, so they certainly are relevant events in that they are intended to raise money for the political party but they are not advertised to the general public. Would they still be covered? I am just trying to work out 130ZL(b). Is it the fact of them having been advertised generally? Would those sorts of access arrangements be covered by this prohibition? That is my question.

The Hon. I.K. HUNTER: My advice is that if the invitation to host a dinner is advertised, it would be captured under part B that will apply as well.

Clause passed.

Clause 2.

The Hon. M. PARNELL: I move:

Amendment No. 1 [Parnell-1]—

Page 3, line 6—Delete '1 July 2015' and substitute:

31 December 2013 or on the day on which it is assented to by the Governor, whichever is the later

This amendment is designed to bring the operation of the act forward so that it covers the 15 March 2014 state election. I do not discount the difficulties that the Hon. Rob Lucas alluded to. He makes some valid points. Nevertheless, I will move the amendment but I certainly will not be dividing on it; I understand it does not have the numbers. However, I wanted to put on the record why I thought the government should have conducted itself in a more rapid fashion in bringing this bill into operation sooner than the 2018 election.

The Hon. Rob Lucas raised two main objections to the earlier implementation of the bill. One of them was the budget crisis. That particular argument does not hold much water because when the bill sets a date saying that it is going to come into operation on 1 July 2015, there is an assumption that there will never be another budget crisis, that we will never be short of cash, that it is only just now that we are short of cash, and I do not think that is a valid reason.

The administrative difficulties, on the other hand, that the member raised are valid. I understand his fervent desire to keep his state director out of gaol. He has effectively said that it will be impossible to explain to all the Liberal Party bookkeepers out there what the new rules are, and I am sure the honourable member was not criticising the capabilities or the intelligence of Liberal Party bookkeepers, but he was simply pointing out that they would have to learn some new tricks.

My disappointment in this being delayed is that I am disappointed also that the government did not even attempt to partially bring this bill into operation in time for the election. It would have been appropriate if the government had tried to split aspects of the bill so that we could, for example, have had the expenditure caps in place, even if the disclosure regime was going to take longer. We could have had the expenditure caps on the public funding. I appreciate that there are some threshold dates that have already passed but I think that with appropriate transition provisions we would have been able to get around that.

The implications people need to be clear about of not bringing this bill into operation by the next election are that the arms race that the government railed against nearly 12 months ago will continue. This next election will be the arms race. The other thing to say is that any donations received now—in fact, received any time up to the next state election—will not be disclosed to the people of South Australia until February 2015. Now, given my first formal discussion with the Deputy Premier was in February this year, we could certainly have done better than postponing the operation of this bill effectively until 2015 and the 2018 election.

I am disappointed that we are going to have to wait longer. I understand that, especially with the line of questioning that has occurred under clause 1, there may well be some more fix-ups. So whilst I am moving this amendment, I know that it does not have support and that we will have to wait until the 2018 election before it comes in, but I wanted to put those points on the public record.

The Hon. I.K. HUNTER: I thank the honourable member for his explanation of his amendment. The amendment will be opposed by the government. As members know, the government originally sought to commence this legislation, particularly the disclosure provisions, sooner in a similar way to the effect of this amendment, but the outcome of consultation was that the opposition was in need to commence this legislation at a later stage. For some of the reasons the Hon. Mr Lucas has already laid out for us, you might note that the initial bill as tabled had a schedule in it which included the details of a phase-in period. But the government accepts the view that there was a need to develop new systems and procedures and that sufficient lead in time is necessary. Also, the regulations for this bill have not yet been finalised. As I indicated earlier, there is yet considerable work to be done on this area.

The Hon. R.I. LUCAS: For reasons I have outlined in the second reading, the Liberal Party is opposing this particular amendment. I think the debate that has ensued in the committee stage is further reason, if anyone wanted it, as to why you could not and should not move this amendment. With the greatest respect to the Hon. Mr Parnell, I think that he realises that this amendment makes no sense, but he is publicly committed and already has the media for wanting to proceed with this in terms of transparency and accountability, and for those reasons he feels honour bound to go ahead but hastens to say that he does not expect it to pass, that he will not call a division and 'please don't let it go through', basically. I understand why it would not make much sense if it did go through.

However, on occasions we all play these sort of games, and each to their own. As it relates to the Hon. Mr Parnell's own party, the questions he was raising yesterday in terms of getting answers as to how the Legislative Council cap will be interpreted for his party, will be a critical issue that will have to be determined by whoever is in government after March, and it may well require review of the legislation and those particular provisions.

The final point I would make is that, in his valiant last attempt to salvage some reason for supporting this in part, the member said, 'Well, the expenditure cap should be ahead.' But, as we outlined in committee, that is probably the most complicated part of all this, because you are running this rolling calculation as to, first, how much is being spent in each electorate, what is counted as a House of Assembly expenditure and what is counted as Legislative Council expenditure. In the case of Mr Parnell's photo and the Greens photo on the leaflet that goes into every electorate, will that be counted solely or in part for the Legislative Council campaign or the House of Assembly campaign?

They will be important issues for the Hon. Mr Parnell and his party, as they will be for all other parties as well. That is almost as complicated a part of the provisions as anything else. The Hon. Mr Parnell's suggestion that the government and the Liberal Party should support partial start-up of expenditure caps, and leave everything else in the too-hard basket, misses the point of how complicated those provisions will be as well.

The Hon. D.G.E. HOOD: I briefly place on the record Family First's position, which is that we also will oppose the Greens' amendment. We are sympathetic to the Hon. Mr Parnell's position. If we wanted to and were really committed to it we could have had this provision in place for the upcoming election. However, I think the issues raised by the Hon. Mr Lucas at some length really are very significant, particularly the administration issues, and I do not think we can put this in place until we are absolutely certain it will work in practice.

The Hon. S.G. WADE: I concur with the comments of the Hons Robert Lucas and Dennis Hood. It is important for the house to remind itself that prematurely introducing reforms that have the broad support of the parliament does no credit to the parliament or to the concept. The fact of the matter is, as the Hon. Robert Lucas highlighted, a number of key milestones have passed in terms of time frame. There are still significant implementation risks involved. This will be not be the last element of electoral reform we will consider this year, and I urge the parliament, particularly where we have consensus on the principle, to realise that there is no virtue in recklessly trying to implement proposals that are not fully developed.

I actually see no virtue in the amendment being progressed when the member himself, as the Hon. Robert Lucas highlighted, fears that it might pass. If he honestly believed that a partial implementation was possible, then an amendment in that term should have been put. When we later this year consider matters in relation to optional preferential voting, I hope members will give due consideration to the risks of proposals being implemented without systems and procedures in place that will not risk significant damage to the electoral system. If it is true in this clause, it will be true in that bill as well.

Amendment negatived; clause passed.

Clause 3 passed.

Clause 4.

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

Amendment No 1 [SusEnvCons–1]—

Page 21, after line 42 [clause 4, inserted section 130Y]—After subsection (4) insert:

(5) If, after a certificate has been lodged by the agent of a party in accordance with this section, a candidate who—

(a) is a member of Parliament; or

(b) is a member of a group a member of which is a member of Parliament,

ceases to be endorsed by the party in relation to the relevant election, the agent of the candidate will be taken, for the purposes of this Part, to have lodged a certificate in accordance with this section at the time specified in subsection (2)(aa) unless the candidate, within 48 hours after ceasing to be so endorsed notifies the Electoral Commissioner (in a manner determined by the Electoral Commissioner) that he or she does not wish to be taken to have lodged a certificate in accordance with this section (in which case the agent of the candidate may not lodge a certificate in relation to the relevant election).

Amendment No 2 [SusEnvCons–1]—

Page 22, lines 39 to 43 [clause 4, inserted section 130Z(2)]—Delete subsection (2)

The two amendments filed address important issues raised in the other place relating to the operation of expenditure caps and the opting in element of the scheme in relation to a party candidate who is later no longer endorsed. As members would be aware, to opt in to the funding scheme a certificate must be lodged with the commissioner, for a party candidate by the agent 24 months in advance, and for an Independent candidate prior to the commencement of the capped expenditure period.

A number of questions were raised in relation to whether it was appropriate that a candidate no longer endorsed should be forced to remain in the scheme in addition to the application of the expenditure cap, and whether incurred expenditure follows the disendorsed candidate as opposed to the party. It was agreed that the bill does not sufficiently address the issues. Accordingly, the government has filed the amendments in consultation with the opposition.

The first amendment modifies section 130Y, providing that if no longer endorsed, a candidate will have 48 hours to essentially opt out of the scheme if they wish to do so, by notifying the commissioner that he or she does not wish to be taken to have lodged a certificate in accordance with the section. If no notification is received within that time, the candidate will be taken to have lodged a certificate and a relevant expenditure cap will apply.

This brings us to the second issue of the expenditure cap and whether expenditure incurred by a candidate whilst endorsed should follow the candidate or be attributed to the party's spending. Advice on this matter has been received by the government, and subsequently I can advise the council that this matter is to be addressed by way of regulation. I refer the council to the broad regulation-making power in section 139, which will enable us to do this.

The second amendment simply removes section 130Z(2) to allow for the matter to be addressed wholly by way of regulation. I confirm that the government has consulted with the opposition on this matter and I can again confirm that an agreement has been reached with the opposition that the regulations will only be introduced when the proposed operation of a regulation addressing this particular issue has been agreed to by both the major parties and has been subject to adequate consultation. This may occur either before or after the 2014 election, in either case prior to the commencement of the legislation in July 2015.

The CHAIR: The Hon. Mr Lucas. As the minister has moved both amendments, you will be speaking to both.

The Hon. R.I. LUCAS: I indicate my advice from the member for Davenport is that the Liberal Party will support both amendments. I thank the minister, who, on behalf of the minister in charge of the bill, in the last paragraph of his explanation has put on the public record private commitments and understandings between the Attorney-General and the member for Davenport in relation to the critical issue of regulations. In summary, that is that they will be the subject of wide consultation and then ultimately agreement between the government and the opposition. That will occur either before or after the 2014 election, and in either case prior to the commencement of the legislation in July 2015. In thanking the minister for that undertaking that he has given on behalf of the government and the minister in charge of the bill, I indicate again the Liberal Party's support for both amendments.

The Hon. M. PARNELL: I was just trying to think of an example where this provision might have some work to do. It is not that common that people jump ship, but I was reminded of our former colleague here the Hon. David Winderlich, who at one point resigned from the Australian

Democrats. I am not sure at what point he ceased to be endorsed, because presumably that is at the election of his party rather than his personal decision to resign.

I am trying to work through how this might happen. I understand the intention would be that in a situation like that if, for example, Mr Winderlich chose then to run as an Independent candidate, his cap would be $125,000. If the Democrats chose to contest a candidate as a registered party, they would have a higher cap. What would the situation be if a candidate was in a political party, had spent, say, $400,000, and then ceased to be endorsed, and had therefore already exceeded their cap? Is this provision designed to protect that candidate?

The Hon. I.K. HUNTER: My advice is yes. Essentially, because of the complexity in the hypothetical scenario the honourable member raises, that is, the purpose of dealing with these issues through the regulations, my amendment No. 2, I am advised, removes the prior expenditure, I suppose, the prior issues of fact, from consideration and would therefore protect the candidate who decided to go off and become another party candidate or an Independent perhaps.

Amendments carried; clause as amended passed.

Remaining clause (5) and title passed.

Bill reported with amendment.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (12:23): I move:

That this bill be now read a third time.

Bill read a third time and passed.

ABORIGINAL LANDS TRUST BILL

In committee.

Clause 1.

The Hon. I.K. HUNTER: I should report to the committee that a select committee of the Legislative Council was formed on this bill, as it was deemed to be a hybrid bill. The committee has met on four occasions, placed an advertisement inviting evidence from interested persons, and also heard evidence from a number of organisations. While there were no objections to the bill received by the committee, the committee was made aware of certain drafting omissions and has subsequently accepted to support my proposal to insert two amendments to deal with those issues, which I will explain when we come to them. The committee, therefore, is of the opinion that the bill is an appropriate measure and recommends that it be passed with those amendments.

The Hon. T.J. STEPHENS: On behalf of the Liberal Party, I would like to thank those people who made submissions to the hybrid select committee. Whilst a number of concerns were raised, the majority of people who did appear want us to pass this bill. The minister has indicated that he has some amendments, which we have been through and they seem sensible amendments. I believe that the Hon. Mr Parnell will move an amendment on behalf of the Hon. Tammy Franks and it looks as if it is our intention to possibly support that amendment.

Again, I want to acknowledge that this has been a long process. Again, we acknowledge that the bill is perhaps not perfect, but it is certainly an improvement, and we will continue to honour our commitment to support the government with its bill.

The Hon. M. PARNELL: I understand that South Australian Native Title Services has objected to the passage of this bill. Can the minister confirm whether a submission in those terms was received by the committee?

The Hon. I.K. HUNTER: The committee received a late submission from South Australian Native Title Services. I am not sure, from memory, whether they objected to the passage of the bill but they certainly did raise issues, and I think that is what the Hon. Mr Wade wants to speak about, so we will come to it shortly. They certainly raised issues about section 16AAA in the current act, so whether the Hon. Mr Parnell wants to deal with it now or when we get to clause 44—

The Hon. M. PARNELL: If it comes up, that is fine.

The Hon. I.K. HUNTER: Clause 44 then.

Clause passed.

Clauses 2 to 43 passed.

Clause 44.

The Hon. S.G. WADE: I specifically want to address the concerns raised by SANTS and other stakeholders. I should make it clear from the outset that this is an area of legal uncertainty, and the opposition will not be proposing an amendment to address the concerns but it wants to flag them and indicate that we need to be alert to the operation of this bill and that it may be necessary to revisit it.

As I said, the opposition wants to bring to the committee's attention the grave concerns of Aboriginal people, Aboriginal organisations and legal stakeholders in relation to the impact of the removal of section 16AAA in the Aboriginal Lands Trust Act. The reason I am speaking to clause 44 is that it specifically relates to the rights of native title holders, and section 16AAA of the act (which is being removed) relates to the same issue.

The concern in relation to section 16AAA was raised by the South Australian Native Title Services, the Aboriginal Legal Rights Movement, the Adnyamathanha Traditional Lands Association and the Law Society. If I could take the opportunity to address the Hon. Mark Parnell's query in relation to the position of SANTS, their submission to the select committee, dated 16 October states in part:

> SANTS does not support the Bill because of the uncertainty it creates with respect to native title determinations pursuant to the NTA and native title processes generally.

I will go on to highlight the issue and do the best I can to put the concern on the record and to provide to the house some clarification that the government has kindly provided to me.

Section 16AAA of the Aboriginal Lands Trust Act was introduced by the Liberal government in 1998 to safeguard the coexistence of rights between native title holders and the trust. The then attorney-general, Trevor Griffin, resolved the ambiguity in favour of native title holders. He moved to insert section 16AAA to ensure that where a grant was made under the lands trust act there would be no effect on native title rights. The Law Society, in its submission to the consultation on this bill, address this issue in the following terms:

> 7. Section 16AAA was inserted into the current act to 'clarify that future vesting of land in the Aboriginal Lands Trust, or dealings with the land by the Trust, will not affect native title in the land. Some native title claimants have expressed the fear that their native title rights may be affected by transfers to the Trust. This Bill makes it clear that future transfers to the Aboriginal Lands Trust, and dealings with land by the Trust, will not affect or extinguish native title unless specifically agreed to by the native title holders. The new section expressly recognises the potential for the Trust to enter agreements with the holders of native title (and the Minister) under which native title may be affected or extinguished.'

It quotes section 16AAA and then goes on to say:

> 9. The purpose of inserting s 16AAA was to clarify that native title continues to exist when land is vested in the Trust except if there is an agreement with the Minister and the native title owners. This prevents the possibility of unintentionally extinguishing native title on Trust lands. In 1998, the insertion of s 16AAA was supported by the major parties and in the absence of further clarity we do not understand why it is being deleted. The Society is concerned that deleting s 16AAA from the Act will create an undesirable level of uncertainty and in the absence of s 16AAA, there is a possibility that native title may be extinguished in certain circumstances.
>
> 10. In particular, the Society draws attention to clause 38 of the Bill, which provides for the transfer of certain land to the Trust.

South Australian Native Title Services (SANTS) has also, as I said, provided a submission to the committee and on this particular issue made the following comments:

> Clause 44 empowers the Trust to dispose of the freehold of Trust Land, where both Houses of Parliament agree and 'any other relevant requirements' under the NTA have been satisfied. It is not explicitly stated as to whether this is intended to mean there must be an ILUA when native title exists or may exist. Given that once land is within the Trust estate, any dealing with the land is not a 'future act'. The 'future act' regime provides a high degree of certainty as to when a 'future act' is valid (to the extent of affecting native title) and the consequences on native [title] of such an act in various different specified circumstances.
>
> This inadequacy, as indicated is in a very small way bettered by the consultation process. Again, the consequences for native title are not explicit.
>
> However the certainty (such as it was) offered by section 16AAA is not replicated in this Bill and this is a primary reason for SANTS to be concerned with the Bill. Section 16AAA of the Aboriginal Lands Trust Act 1966 (SA) (which was inserted into the Act and which commenced on 26/3/1998) provided that any freehold grant to the Trust after that date and any lease granted or other dealing by the ALT after that date (including a lease in relation to Trust land granted under freehold prior to that date) did not affect native title in any way.

Section 11 of the Native Title Act 1993 (Cth) states that 'native title is not able to be extinguished contrary to this Act.' The presence of this section does not necessarily provide a clear answer as to whether a new grant of freehold to the Trust as proposed under section 41 of the Bill or any subsequent dealing under section 44 (given they are not 'future acts') 'affects native title' (as defined in section 227 of the NTA), and if so, how e.g. by extinguishment, 'suppression' or otherwise.

They were indicative statements of a number we received in relation to a concern about the removal of section 16AAA. The government kindly provided members of the select committee a briefing note in relation to the government's view in relation to the effect of clause 44 and, if you like, the absence of an express provision in the bill protecting native title, such as section 16AAA in the Aboriginal Lands Trust Act. With the indulgence of the committee, I thought it would be helpful for that note to be put on the record:

- The legal interest in land vested in the trust by the Crown pursuant to the ALT Act 1966 is held by the trust for the benefit of Aboriginal people (including those living on those lands), some of whom are now identified as native title holders, but many of whom are not.
- The bill seeks to preserve all the concurrent multiple interests of Aboriginal people in the relevant trust land, namely, residents, traditional owners and native title holders.
- The provisions in the bill about dealing with land do not discriminate against any group on the basis of race. They seek to balance the various different interests of those Aboriginal persons in trust land, including native title interests.
- The existence of any native title interests in trust land and the ability under the Aboriginal Lands Trust Act 1966 to exercise those rights in relation to trust are not altered by the bill.
- The trust is the holder of the fee simple interests under the ALT Act 1966 and this will continue unaffected under the bill. However, the bill expressly requires the trust to consult with any persons with native title interest in the land. It is the state's view that this is not a diminishing of any native title interests in land for those under the 1966 act.
- The bill does not contain any provision extinguishing or purporting to extinguish any native title in relation to trust land.
- The bill is enabling, and it enables trust land to be transferred out of trust ownership on certain conditions; however, it is left to the Native Title Act 1993 to determine whether any particular transfer does or does not affect native title and, if it does, any relevant consequences.
- No provision or arrangements are in place for the purported extinguishment of native title rights and interests by virtue of the ALT bill.
- Section 16AAA was inserted in the ALT Act by an amendment that became operative on 26 March 1998. In the absence of clear law about the interaction of the 1966 ALT act with the relatively new Native Title Act 1993, the state was concerned to ensure that any transfers of land by the Crown to the ALT would not affect native title (refer subsection 16AAA(1)), nor would any dealing with land by the ALT while held by the ALT (16AAA(2)) irrespective of the nature of the transitions under the Real Property Act or any other law (refer 16AAA(4)) except by the agreement between the ALT, the minister and the NT parties (16AAA(3)).
- The position at law was subsequently overtaken by the commonwealth enactment of the Native Title Amendment Act 1998, which was assented to on 27 July 1998.
- This included what is now section 47, which clarified the status of native title in relation to trust land and provided that:
    - If an application for a determination of native title is made, any extinguishment of native title caused by the transfer of freehold to the trust must be disregarded; and
    - If native title is determined to exist in relation to the land, the non-extinguishment principle applies (section 238, Native Title Act).
    - The non-extinguishment principle provides that while the land is held for the benefit of Aboriginal people under the relevant specific legislation (in this case the ALT Act), any native title rights and interests are not extinguished, but to the extent of any act affecting those rights and interests, those rights and interests are ineffective.

The briefing note continues:

- It is the view of parliamentary counsel that the commonwealth law now deals with relevant matters (it covers the field) and section 16AAA no longer has any work to do and ought to be removed.
- There is no intention on the part of the government to act in ways that might extinguish native title, including by the use of this legislation. Certainly if the Crown did propose to transfer any land to the trust in the future, each of the trust, the Crown and the parliament would need to consider very carefully any possible implications and the consequences (e.g. if there was existing native title over the land). In any event, it would be the state's actions in any particular case and the operation of commonwealth native title law that would determine the legal effect of a transfer of land to the trust.
- Subclause 44(3): in relation to possible transfers by the trust of an estate in fee simple in trust land, the state has taken the position that, other than land with the special statutory status given it by the commonwealth Native Title Act 1993 as 'Aboriginal/Torres Strait Islander land or waters' where the 'non-extinguishment principle' applies by virtue of commonwealth law (i.e. the APY lands, the MT lands and the trust lands under the respective acts) no other land in the state should, under state law, be held as freehold subject to native title.

I thank the minister and the government for that briefing note. As I indicated in the select committee—and I understand that my colleague the Hon. Terry Stephens concurs—in the context of a lack of legal clarity, we accept that somebody has to make a decision. The government has made a decision on the best advice available to it that section 16AAA is not required. We will, as I am sure the government will, maintain a watching brief to see whether further clarification is required in the future.

The Hon. I.K. HUNTER: Thank you to the Hon. Mr Wade for reminding me of the terms of the SANTS submission and also for his learned explanation of the law in terms of section 16AAA. He did a far superior job than I could have done.

The Hon. S.G. Wade: I read your brief.

The Hon. I.K. HUNTER: Yes, but you did it so very well. I am not schooled in the law, as most members know, so I will just place on the record a few other remarks that I have been given advice on from my advisers in relation to clause 44.

The legal interest in land vested in the trust by the Crown pursuant to the ALT Act 1966 is held by the trust for the benefit of Aboriginal people living on those lands, some of whom are now identified as native title holders but many of whom are not. The bill seeks to preserve all the concurrent multiple interests of Aboriginal people in relevant trust land, namely residents, traditional owners and native title holders.

The provisions in the bill about dealing with land do not discriminate against any groups on the basis of race; they seek to balance the various different interests of those Aboriginal persons in trust land, including native title interests. The existence of any native title interest in trust land and the ability under the ALT Act 1966 to exercise those rights in relation to trust are not altered by the bill. The trust is the holder of the fee simple interest under the ALT Act 1966, and this will continue unaffected under the bill. However, the bill expressly requires the trust to consult with any persons with native title interests in trust land.

It is the state's view that this is not a diminishing of any native title interest in trust land for those under the 1966 Act. The bill does not contain any provisions extinguishing, or purporting to extinguish, any native title in relation to trust land. This bill is enabling. It enables trust land to be transferred out of trust ownership under certain conditions, but even then I understand that that transfer has to receive the concurrence of both houses of parliament. As the Hon. Mr Wade outlined, it is of course left to the Native Title Act 1993 commonwealth legislation to determine whether any particular transfer does or does not affect native title and, if it does, any relevant consequences.

Clause passed.

Clauses 45 to 48 passed.

Clause 49.

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

Amendment No 1 [AborAffairRec–1]—

Page 23, after line 27—Insert:

(f) prescribe expiation fees (not exceeding $315) for alleged offences against the regulations.

Amendment No 2 [AborAffairRec–1]—

Page 23, after line 29—Insert:

(2a) A person who contravenes a regulation regulating, restricting or prohibiting the sale or supply of regulated substances on Trust Land is guilty of an offence.

Maximum penalty: $2,000 or imprisonment for 6 months.

The bill is drafted to not allow for imprisonment for offences against the regulations, and properly so, as an offence with imprisonment as a penalty should be in the act. However, this was an oversight.

The amendments effectively move the offences of selling and supplying alcohol and other regulated substances and the relevant penalties into the act entirely, i.e. at clause 49. This is far more appropriate because offences against regulations should not carry terms of imprisonment. This leaves the regulations to deal with possession and consumption offences and the amendment provides that the regulations may prescribe expiation fees for these.

The Hon. T.J. STEPHENS: I indicate the opposition's support for the amendments.

Amendments carried; clause as amended passed.

Clauses 50 to 54 passed.

Clause 55.

The ACTING CHAIR (Hon. R.P. Wortley): This clause being a money clause is in erased type. Standing order 298 provides that no questions shall be put in committee upon any such clause. The message transmitting the bill to the House of Assembly is required to indicate that this clause is deemed necessary to the bill.

Clauses 56 to 60 passed.

Clause 61.

The ACTING CHAIR (Hon. R.P. Wortley): This clause being a money clause is in erased type. Standing order 298 provides that no questions shall be put in committee upon any such clause. The message transmitting the bill to the House of Assembly is required to indicate that this clause is deemed necessary to the bill.

Clauses 62 to 67 passed.

New clause 67A.

The Hon. M. PARNELL: I move:

Amendment No 1 [Franks–2]—

Page 33, after line 35—Insert:

67A—Review of Act by Aboriginal Lands Parliamentary Standing Committee

(1) Without limiting the *Aboriginal Lands Parliamentary Standing Committee Act 2003*, the Aboriginal Lands Parliamentary Standing Committee must, as soon as is reasonably practicable after the third anniversary of the commencement of this section, review the operation of this Act.

(2) The Aboriginal Lands Parliamentary Standing Committee must, within 6 months after the review is completed, report on the matter to both Houses of Parliament.

I move the amendment standing in the name of the Hon. Tammy Franks. For the benefit of members, I point out that there are two versions of this amendment. Version 1 can be discarded; version 2 is the one I am moving.

This is a very straightforward review clause. The reviewing body is the Aboriginal Lands Parliamentary Standing Committee. The period within which the review should take place is as soon as reasonably practicable after the third anniversary of the commencement of this section.

The entire act is to be reviewed and, following the review, the committee within six months should report on the matter to both houses of parliament. I urge all members to support this sensible addition, especially in light of the submissions that were received from South Australian Native Title Services and the Law Society. There may well be consequential amendments that are needed in the future, so this review clause is a sensible safeguard.

The Hon. I.K. HUNTER: I thank the honourable member for moving the amendment on behalf of the honourable member. The government's view is that this amendment is not necessary. The committee could do this of its own volition. Having said that, we will not be opposing it.

The Hon. T.J. STEPHENS: The opposition will be supporting the amendment but, like the government, we also think that the constant monitoring of the new act will be ongoing. However, the Hon. Tammy Franks representing the Greens has taken some comfort in this amendment and, given that this bill has been supported in a multipartisan way, we also support the amendment.

New clause inserted.

Remaining clause (68), schedule and title passed.

Bill reported with amendment.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (12:49): I move:

That this bill be now read a third time.

Bill read a third time and passed.

NATIONAL GAS (SOUTH AUSTRALIA) (GAS TRADING EXCHANGES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 September 2013.)

The Hon. R.I. LUCAS (12:51): I rise on behalf of the Liberal Party to support the second reading of the bill, which seeks to amend the national gas law to facilitate the establishment of gas trading exchanges and create the rules and regulations by which they will be governed. The bill provides for the Australian Energy Market Operator (AEMO) statutory functions to facilitate the gas trading exchanges operations and to set fees. It also outlines minimum standards by which exchanges must be made and, while the first exchanges will be established in Queensland, the bill provides the regulatory framework for future gas trading exchanges. After the initial implementation of the bill, Australian Energy Market Commission will assume the regulatory role over the gas trading exchanges.

We are advised that this issue has been debated for some time through the Standing Council on Energy and Resources. It established a consultation process, including the establishment of a gas supply hub reference group. That has been going on for quite some time. The Liberal Party in South Australia, when it received the bill, because we in South Australia are the lead legislator on gas and electricity law, sought comment and follow up with the Energy Supply Association, Energy Retailers Association, Alinta Energy, Energy Australia and Envestra. None of those bodies, which had been involved in the earlier debates and discussions at the national level, had anything further to add to the draft bill before the parliament.

AGL actually indicated that it supported the bill, even though it initially had some concerns about gas trading exchanges potentially being compulsory. Origin Energy had also sought clarification at the draft legislation stage, but has indicated to the Liberal Party that it is now comfortable with the bill. The Liberal Party's consultation with stakeholders indicates that there is no body that has indicated to us any opposition to either the overall intent of the legislation or, at this stage, to any parts of it. For those reasons the Liberal Party supports the second reading.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (12:54): I understand that there are no further contributions to the second reading. I thank the Liberal opposition for its support of this bill and the indicated support of others. It is a fairly straightforward piece of legislation, providing a technical framework, and I look forward to its being dealt with expeditiously through committee.

Bill read a second time.

CRIMINAL LAW (SENTENCING) (SUSPENDED SENTENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 September 2013.)

The Hon. S.G. WADE (12:55): I rise on behalf of the Liberal opposition to indicate our support for the passage of the Criminal Law (Sentencing) (Suspended Sentences) Amendment Bill. On 5 June the Attorney-General introduced the bill in the House of Assembly. It proposes to amend the Criminal Law (Sentencing) Act 1988 to limit the power of the court to suspend a term of imprisonment to when there are exceptional circumstances for two targeted groups of offenders.

Currently, a sentencing court must determine whether good reasons exist in order to suspend an offender's sentence. This is uniform for all cases, other than sentences for serious firearm offences, which require a higher threshold test to be applied, in that sentences can only be suspended when there are exceptional circumstances. This bill proposes to expand the cases in which judges must apply this higher exceptional circumstances threshold test to include people who are repeat violent offenders or are convicted of a serious and organised crime offence.

The good reasons test for the purposes of deciding whether to suspend a sentence requires the judge to consider the individual circumstances of the case at hand and assess whether these circumstances provide good reason to suspend a sentence. On the other hand, the exceptional circumstances test requires the sentencing court to be satisfied that there are exceptional circumstances in the instant case that set it apart from other cases and thereby justify an exercise of the judicial discretion to suspend a sentence.

The opposition has been advised that in the early 2000s there had been a trend for courts to interpret 'good reasons' as 'exceptional circumstances'. In the case of R v Fowler, the Supreme Court explained the differences between 'good reason' and 'exceptional circumstances' and concluded that the good reason test was the relevant test for suspended sentences. By requiring courts to apply the higher threshold test of exceptional circumstances, the bill will in effect enact the earlier trend for courts to interpret good reasons as exceptional circumstances. It is important to note that the definitions of serious and organised crime offences prescribed by this bill go beyond the definition prescribed in serious and organised crime legislation.

The Attorney-General posited in his second reading speech that this bill does not remove judicial discretion. That is true, but it does reduce it. In fact, reducing the judicial discretion is the whole point of the bill. The opposition appreciates that this will increase the number of offenders who are imprisoned. We are concerned to ensure that the government backs up the legislation with appropriate resourcing. We already have overcrowded prisons. We do not need to have it exacerbated by the government continuing to legislate without resourcing to back the legislative changes. A leaked November 2012 budget bid outlined the expected costs of the scheme in this bill:

> This reform will result in an estimated maximum of 34 prisoners per day in the prison system immediately following the introduction of the new law, evening out to 18-27 extra prisoners per day over time. Extra capacity within the prison system will be required to allow for the expected increase in prisoners.

The budget bid estimated that $9.8 million would be invested for 30 additional prison beds at the Port Augusta prison, operating at a cost of $2.7 million by 2016-17.

At a briefing, the government claimed that there would be sufficient provision in the budget to cover the flow-on effects of this bill. The opposition will continue to monitor that situation. Having said that, the opposition supports the legislation. We do think it is appropriate that in relation to this targeted set of offenders they need to justify exceptional circumstances before they should be able to access suspended sentences.

Debate adjourned on motion of Hon. Carmel Zollo.

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

PAPERS

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

Primary Industries and Regions SA—Report, 2012-13

By the Minister for Forests (Hon. G.E. Gago)—

Forestry SA—Report, 2012-13

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

Department for Further Education, Employment, Science and Technology's Response into the Economic and Finance Committee Report on the Inquiry into Workforce and Education Participation

QUESTION TIME

COORONG NATIONAL PARK

The Hon. J.M.A. LENSINK (14:18): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions about the Coorong National Park.

Leave granted.

The Hon. J.M.A. LENSINK: I understand that the state government and the Ngarrindjeri people have been negotiating future management arrangements and ownership of the Coorong National Park. A new arrangement for the park has been proposed, which would see greater involvement and participation of the Ngarrindjeri people through the creation of a management board. An option of comanagement and ILUA has been proposed for three years. The state government has also proposed that the Coorong National Park be owned by Ngarrindjeri after the comanagement three-year period, providing that good management has occurred.

Through the Liberal Party's consultation, it has become apparent that there are some concerns with these plans. Fishers and tourism operators who pay for national park access and industry-associated licence fees are worried that costs will increase and access will be restricted if not prohibited. My questions to the minister are:

1. Which stakeholders have been included so far in the negotiations?

2. What access arrangements will be available to people who are not of Indigenous descent?

3. What impact will these proposed changes have on tourism operators, boat access, and local commercial and recreational fishing sectors?

4. What safeguards will be in place to ensure that the park's management remains transparent and accountable?

5. What power will this authority have over the shacks that currently exist in the Coorong, and will they be able to remain with current leaseholders?

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): I thank the honourable member for her most important questions. Can I say at the outset that there should be no concerns really with this proposal; it is a very similar proposition to what we are currently doing in other national parks around the state where we have comanagement boards set up and in place. There is consultation with NRM boards, there is consultation with communities, and the boards are jointly represented by my department, community members and members of the Aboriginal organisations involved. They are working very well, and I can say only that the normal processes we go through for all of these joint programs and joint management programs will be in place for this one as well.

COORONG NATIONAL PARK

The Hon. J.M.A. LENSINK (14:20): I have a supplementary question. Can the minister guarantee that the rights that non-Indigenous interests have currently will remain after the agreement has been signed?

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): I do not believe there is a history of any rights that people currently have that have been altered in any way in relation to our current comanagement boards. I cannot foresee a situation where that may be altered into the future.

PRIMARY PRODUCTION WASTE

The Hon. S.G. WADE (14:21): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question relating to the disposal of primary production waste.

Leave granted.

The Hon. S.G. WADE: The Riverland is a significant contributor to South Australia's wine industry, producing around 50 per cent of the state's total annual crush. I am advised that each year the region accumulates approximately 1,000 hectares' worth of treated pine posts, including approximately 2,500 kilometres of poly irrigation piping. This waste can only be disposed of at specific landfill sites and, as a result, I am advised that there is significant stockpiling on properties or illegal and dangerous disposal. My questions to the minister are:

1. What is the state government doing to address the abundance of treated pine posts and poly irrigation piping in the Riverland?

2. Is the government aware of the amount of unwanted posts and poly piping in the Riverland and has it considered providing an EPA-approved landfill site in the region?

3. Will the government provide financial assistance to dispose of stockpiled posts at remote EPASA-approved landfill sites at McLaren Vale, Dublin and Inkerman?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:22): I thank the honourable member for his most important question. Coincidentally, this issue was raised recently in an article in the *Murray Pioneer* on 15 October, where the member for Chaffey in the other place commented on the disposal of pine posts from private land. I am happy to inform the house that I have in fact written to the member for Chaffey on this matter. I understand that treated timber posts used by irrigators and in vineyards, as the honourable member outlined, are most commonly treated with copper chrome arsenate (CCA), a water-based heavy metal mixture used to preserve timber.

As I stated in my letter to the member for Chaffey, CCA-treated timber is not subject to normal biodegradation and cannot be composted. I am advised that it should not be burnt due to the high risk of causing environmental harm from toxicity associated with the release of chromium and arsenic compounds. I can appreciate the challenges that these issues pose in managing the disposal of unwanted timber posts.

I sent the member for Chaffey in the other place a report on CCA-treated timber in South Australia for his information. I am happy to get that report for the honourable member as well, if he would like. This report was prepared by the Environment Protection Authority and provides an overview of CCA-treated timber and potential waste management solutions. Of course, the member can get a copy of this report for himself at the epa.sa.gov.au website.

To further help industry better manage CCA-treated timber waste issues, Zero Waste SA has worked with the South Australian Wine Industry Association to develop the treated timber waste management guidelines, which I also provided to the member for Chaffey for his information. The guidelines aim to assist the wine industry to understand its waste management obligations in relation to treated timber posts and to provide measures that can be implemented in wineries. A copy of the guidelines can also be obtained from the EPA's website.

Management strategies outlined in the document include options for re-use, avoidance, stockpiling, landfill disposal and resource recovery. Sir, I can see you are fascinated by this topic, so I will briefly detail some of these options, if you would like. First is re-use. Where possible, it is recommended that CCA-treated timber be re-used to benefit other applications. Re-use options identified for CCA-treated timber include fence posts, landscape timber, parking lot bumpers, guard rail posts, composting bins, planter boxes, shipping crates and walkway edging.

Some broken vineyard posts are used for agricultural fencing across South Australia, I am advised. Some vineyards have altered trellis design by purchasing substantially taller posts, as well. As posts often snap at ground level, a taller post, once snapped, usually has a length that enables it to have an ongoing use, hence reducing the reorder of new posts and it is probably quite economical. I am also aware that there is a product on the market called Ocloc which is a repair bracket that can be fixed to damaged and broken trellis posts and this can also reduce the need to reorder new posts.

The second issue is avoidance. It is suggested that, as a longer-term management strategy, the use of CCA-treated timber should be reduced and avoided in favour of other alternatives including plastics, steel, aluminium, fibreglass, brick, stone or cement, composites and wood species with a natural resistance to decay, depending on what it is to be used for, and timber treated with other preservatives such as ammonium derivatives of copper that do not contain arsenic or chromium—for example, ammoniacal copper quaternary.

Third, there is stockpiling and landfill disposal. As I informed the member for Chaffey, landfill disposal is the current accepted method for dealing with CCA-treated timber across the country. In South Australia, engineered landfills and storage sites to accept this material have been specifically licensed by the EPA. The EPA's report provides guidance on the identification and separation of CCA-treated timber from other mixed waste streams.

Fourth, there is, of course, resource recovery. I am advised that the potential to commercialise resource recovery technology for CCA-treated timber has been previously explored in South Australia, but no commercial outcomes have been identified thus far. Possible resource recovery technologies for the end-of-life disposal of CCA-treated timber include metal extraction, energy recovery, carbon recovery and fibre recovery.

I am advised that there are several examples of treated timber being used in commercial waste to energy facilities. For example, a cogeneration facility in Pennsylvania accepts treated timber as an energy feedstock to produce electricity. Additionally, a facility in France accepts all types of contaminated timber and recycles the material in three steps, via crushing, thermal treatment and, finally, separation.

I am also told that a range of products utilising recycled CCA-treated timber is listed by the Australian Pesticides and Veterinarian Medicines Authority, the national body responsible for the registration of CCA in Australia. The economic viability of establishing resource recovery technology for CCA-treated timber would require a thorough consideration of issues, including whether there would be an ongoing, consistent supply of this material as a feedstock.

APY LANDS, DISPUTE RESOLUTION

The Hon. T.J. STEPHENS (14:27): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question about dispute resolution on the APY lands.

Leave granted.

The Hon. T.J. STEPHENS: In answer to a question asked yesterday by the Hon. Tammy Franks, the minister detailed the decision to appoint a conciliation panel for resolution of current disputes on the APY lands. My question to the minister is: what are the operational details of the panel, including which parties the panel will meet with, and when?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:28): I thank the honourable member for his most important question. My understanding is that the appointment of any conciliator needs to be approved by the executive body that it relates to—in this case, APY. They did that, I think I advised the chamber, on 9 October, from memory. They then constitute a panel because I have appointed five of them, as I have previously advised the house.

As I understand it—and I need to seek further advice in case this is not correct—a person with a grievance would apply to me as minister to have that grievance heard by a conciliator. I would appoint one of the panel to hear that grievance or sit down and act as conciliator or mediator on this particular issue, whatever it might be, and that is how the procedure would be advanced. Of course, that would probably be advanced in the area where the issue arises, be it the APY, but it could also be, if it suits all parties, somewhere else in the state, such as Adelaide.

The PRESIDENT: Supplementary, the Hon. Mr Stephens.

APY LANDS, DISPUTE RESOLUTION

The Hon. T.J. STEPHENS (14:29): Will the minister try to give some priority to Mr Kenmore, who has contacted many members in this place about a number of issues that he has raised in a very public way?

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 will not seek to give anyone priority, but we will deal with Mr Kenmore's issues in the appropriate manner.

SOUTH AUSTRALIAN FOOD INDUSTRY AWARDS

The Hon. K.J. MAHER (14:29): My question is to the Minister for Agriculture, Food and Fisheries. Will the minister inform the chamber about the South Australian Food Industry Awards, the finalists announced last night, and when the winners will be announced?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:30): I thank the honourable member for his most important question. The South Australian food industry, as I have said in this place before, is worth over $14 billion to the state's economy and, combined with the wine industry, employs one in five South Australian workers. Given the contribution the food industry makes to this state, I believe that the South Australian Food Industry Awards are a fitting way to recognise outstanding achievement, as well as providing the opportunity to benchmark, inspire and celebrate the best that the industry has to offer.

I am pleased to advise that, for the first time in the 16-year history of the awards, consumers had an exciting opportunity to vote for their favourite South Australian food company and get involved with the awards with a new Buy SA Consumer Award. In addition, the introduction of a Primary Producer Award ensures that those who grow and breed our premium food have the opportunity to be recognised and celebrated. These awards also align with the state government's strategic priority of premium food and wine from a clean environment and, in addition, create greater awareness of our producers, both locally, nationally and internationally.

Last night the food industry VIPs joined the host of the awards, Food SA, and representatives from the major sponsor, PIRSA, at the historic Regal Theatre to announce the South Australian food companies who are finalists for the 2013 South Australian Food Industry Awards. Unfortunately, I was not able to attend, but I understand that the finalists included well-known brands such as Beerenberg, Robern Menz and Bickford's, and niche producers such as Pangkarra Foods from Clare and Buzz Honey from the Adelaide Hills. Six of the finalists are first-time applicants, including Rohde's Free Range Eggs and SA Mushrooms. It was also great to see primary producers well represented, making up almost half of the total 19 finalist companies.

It is pleasing to see such a broad range of producers being named as finalists and a diverse range of product being recognised, including things like mushrooms, kangaroo, nuts, carob, honey, ice-cream, crackers and, of course, our famous lamb. The finalists announced last night are now in the running for 10 award categories: leadership, best practice, innovation, new product, regional sustainability, export, primary producer, workforce development, and the new consumer award. The winners of the awards will be announced at a gala dinner to be held on 29 November 2013 at the Adelaide Convention Centre. The dinner will showcase local premium food and wine and I am looking forward to attending that event. Tickets for the awards presentation dinner are still available online and more information is available on the SA Food Awards website.

Products from the state's aquaculture, fisheries, grain, horticulture and livestock industries are increasingly in demand for their quality and, of course, their high production standards and it is fitting to see these producers recognised for their innovation, sustainability, best practice and significant contribution to South Australia's economy.

These awards are really a fantastic way to highlight the diversity of our premium produce made right here in South Australia and I would like to place on the record my congratulations to all of the finalists and, of course, thank and acknowledge the good work of Food SA for their hard work, in particular, in running these awards for the second year.

DISABILITY SERVICES

The Hon. K.L. VINCENT (14:34): I seek leave to make a brief explanation before directing questions to the minister representing the Minister for Disabilities on the subject of brokerage expenses.

Leave granted.

The Hon. K.L. VINCENT: I, like other members I am sure, have recently received a copy of the Auditor-General's Report for the 2012-13 financial year and have begun the process of examining the many facts and figures contained within.

I was very interested to note that over the five years from 2008 to 2013 the cost of brokered services, those contracted out to third parties by DCSI, has virtually doubled, moving from $57 million to $112 million in the last financial year. Other figures in the report show that this has been a steady increase over the period in question, with an increase of over $12 million each financial year. My questions to the minister are:

1. What are the reasons for this steady and very substantial increase in the cost of brokered services purchased by DCSI?

2. Is the climbing cost of brokered services likely to plateau and, if so, when?

3. What impact is the expansion of the national disability insurance agency likely to have on the cost of brokered services?

4. Has the increased expenditure in this area by DCSI led to an improvement in the services received by South Australians with disabilities?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:35): I thank the honourable member for her most important questions. I undertake to take them to the Minister for Disabilities in the other place and seek a response on her behalf. However, just one reason comes to mind, of course, and that is possibly because of the massive increase in government investment in disability services for the disability community and members of that community. It may not be surprising, in fact, given that the government has increased its expenditure in those areas massively over the last year or two. Our costs of brokered services may also have gone up, but I will undertake to bring back a response. Good question.

BREAKAWAYS CONSERVATION PARK

The Hon. R.P. WORTLEY (14:36): Will the Minister for Sustainability, Environment and Conservation inform the chamber about the recent hand back of the comanaged Breakaways Conservation Park to its traditional owners, the Antakirinja Matuntjara Yankunytjatjara?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:36): I am very pleased that I have another question on comanagement and the Breakaways Conservation Park hand-back to traditional owners and I am very pleased with the honourable member's excellent pronunciation. I might call them AMY.

As the honourable member points out, on 6 August I had the great pleasure of joining with the traditional owners of the Breakaways Conservation Park to participate in a formal handover of this park to the AMY people. This was of course in response to their recent successful native title claim over the area. However, it is important to note that my department has been operating a comanagement agreement over this park with the traditional owners since early 2011 in respect of their special knowledge and cultural attachment to the park.

The Breakaways Conservation Park is a beautiful and unique piece of South Australia. Estimated to be more than 70 million years old, the Breakaways are a group of flat-topped hills, otherwise known as mesas, close to the Stuart Ranges. The geology is actually quite spectacular. Once covered by an inland sea, the park is now home to numerous flora and fauna species including the red kangaroo and the fat-tailed dunnart—a small intriguing marsupial that stores excess fat in its tail to use through the lean months of winter. Interestingly, Mr President, the fat-tailed dunnart also has the ability to enter into a special state of torpor that can last from a few hours to several days. They do this in order to conserve energy during winter.

The Hon. G.E. Gago interjecting:

The Hon. I.K. HUNTER: Well, I was resisting any temptation to reflect on the similarities with those present. Of course I would never, never reflect on Mr President's position in this chamber.

The PRESIDENT: Order!

The Hon. I.K. HUNTER: As the honourable leader of mine said, it could be used as a description for those opposite with their lazy approach to parliament, but I will not go there, sir.

They hibernate their own way through the proceedings of this chamber. It is a very cuddly animal, I should say; it has a lot of positive attributes as well. The Breakaways Conservation Park, as I said earlier, is a beautiful place, one that I am told is very popular with tourists during the hours of sunset. They watch the sun highlight the myriad colours—

The Hon. R.L. Brokenshire: I've been there.

The Hon. I.K. HUNTER: The Hon. Mr Brokenshire said that he has been there, and I am very pleased that he has. I hope he was very careful of what aspects he took photographs because they are culturally sensitive, as I said, but they are well signed. It is quite magnificent. The tourists watch the sun highlight the myriad colours—reds, browns and ochre—that the Breakaways possess. To my knowledge no-one has complained to me or my department about their rights to access that wonderful area being impugned because of the hand-back of the Breakaways Conservation Park or because of the joint management that we have undertaken with the AMY community. Of course, the Breakaways were also used as backdrops, I am told, for films such as *Mad Max 3 Beyond Thunderdome* and *The Adventures of Priscilla, Queen of the Desert*. I have only seen one of those movies. This handover represents a significant development in the management of this special place.

Members interjecting:

The Hon. I.K. HUNTER: I will leave that to honourable members to speculate on and perhaps lay a few bets. The comanagement of the park will not only ensure that the quality of the natural environment is enhanced but that its cultural significance is both recognised and protected.

The Antakirinja Matuntjara Yankunytjatjara people have had a long and ancient relationship with this place. Upon my visit I was treated to a tour of the park by the Chair of the Co-Management Board, Mr Ian Crombie. I was pleased to see first-hand some of the sites that attract tourists to the park and have the Dreaming associated with the landmarks explained to me by Mr Crombie. This comanagement agreement and handover will also ensure that the visitors who come to admire the park and learn about its history and the environments will also have a greater opportunity to understand and respect the cultural importance of this land and engage with the traditional owners.

I can advise that a board has been established consisting of four representatives of the Antakirinja and two representatives of the district of Coober Pedy and one from my department. This is not unusual. This is the way that we do these things. The board has held its first meeting, and I can inform the chamber that one of its first roles will be to work with the department to prepare a new management plan for the park. I am certainly looking forward to hearing of its development. Again, this is the normal process for these comanaged sites. It is also worth noting that this is now only the second Aboriginal owned park in South Australia. Whilst it is expected there will be more across our state into the future, many people, including myself, will be looking towards what happens at the Breakaways as evidence for similar proposals elsewhere being fantastic successes.

On behalf of the South Australian government, I wish the board and the traditional owners all the best with their future deliberations as they care for and protect the Breakaways for the future of all South Australians.

SHACK LEASES

The Hon. J.A. DARLEY (14:42): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions regarding shack rents.

Leave granted.

The Hon. J.A. DARLEY: As previously outlined, the minister is maintaining that a 4 per cent rate of return on shack sites was appropriate in 2009. This was following the global financial crisis of 2007-08 which was widely regarded as the worst economic crisis the world has seen since the 1930s and saw property prices tumble, particularly for holiday waterfront locations. In an interview with the ABC yesterday, the minister said that the overall market was currently down but that beachfront shacks still attracted a premium. I understand that the minister is now calculating shack rents on a 2.75 per cent rate of return based on advice from the Valuer-General who advised that the rate of 2.75 per cent applied from 2009 to now in 2013. My questions are:

1. How can the minister possibly justify that these shack sites would have attracted a higher rate of return immediately after the global financial crisis compared to now which is three years after federal Treasury chief Ken Henry said that the global financial crisis was over in 2010?

2. Will the minister accept that a mistake was made in calculating the rents using a 4 per cent rate of return and immediately refund the overpaid rents to lessees?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:43): I thank the honourable member for his very important question and his ongoing interest in this area. In the answer I am about to give I need to correct some aspects of his opening explanation in which he made a few errors, but we will get to that in a moment. I have spoken about this shack issue in this place many times before and I am happy to do it again.

It is important to acknowledge that there are fewer than 300 life tenure shack leases on crown land and 100 in national park reserves. As many people understand, the crown land subject to shack leases has been assessed a number of times, most significantly in 1994 under the then Liberal government shack site freeholding policy. The intention of this policy was to permit freeholding—that is, the purchase of the land—wherever possible. Following on from this policy, most shacks on crown land were sold to the occupants under this process. Six criteria had to be met for shacks to be eligible for freeholding, I am advised.

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. Again, as I previously stated in this place, sites that met the criteria were sold by the then government to the occupant. Those who did not meet the criteria were issued with non-transferable life tenure leases, which means that the lease will expire when the last lessee passes away.

As you can see from the then Liberal government's own policy, shacks, where possible, were offered to occupants for freeholding. Those that were not and were issued with life tenure leases were so issued for a particular reason, the reason being the greater good, as stated by the then Liberal government's policy, that is, not meeting public health requirements or continued public access to waterfront or flood and erosion issues and planning requirements, as I have outlined.

I note that the Crown Land Management (Life Lease Sites) Amendment Bill was introduced by the Hon. Michelle Lensink into this place, she having also introduced the National Parks and Wildlife (Life Lease Sites) Amendment Bill, to provide for a long-term tenure over shack sites. The government quite responsibly opposes these bills, which in many respects expose the Liberal Party at its privatising best. The Liberal Party wants to hand out prime chunks of crown land to benefit a few people. The Liberal Party should be ashamed of this blatant electioneering, which blatantly contradicts its own government's policy, a policy based on good advice.

The Hon. R.I. Lucas: That was 20 years ago.

The Hon. I.K. HUNTER: Well, the issues haven't changed. The Hon. Mr Lucas says that that was 20 years ago; the issues have not changed. If anything, access to these sites is more problematic in some areas. If anything, coastal erosion is more problematic in some areas and the public health issues are still related to some of these shacks sites.

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

The Hon. I.K. HUNTER: As honourable members may know, if they have been to some of these sites, some have long-drop toilets that drop on to public beaches. That is what they continue to do. It is clearly an issue of public health. As I have said many times, periodic revaluation of the annual rent for these leases is undertaken in an appropriate way. 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. As I have previously advised, 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 Deputy Valuer-General (not the Valuer-General, was my advice).

We must all understand—I think we do—that the markets change, values change, they go up and down over time, and hence the rate goes up and down over time. I can recall from previous

briefings that the rates were sometimes set at 8 per cent; now they are down to 2.75 per cent. I am pleased to share with the house, however, that I recently adopted a variation to the shack rent-setting policy. Land valuers have consistently advised my department that, while the overall market is somewhat depressed, investigations reveal that absolute beachfront properties attract a premium over land located beyond the beach frontage (that is common sense, I imagine).

This has led to waterfront sites attracting particularly high land values and resulted in potential rent increases in some cases of up to $7,000 post 1 July 2013 under the current policy. This level of increase does seem challenging and quite high for those in the community who pay shack rents. This is why I have determined to provide relief for leaseholders should land values increase quite significantly in this situation.

This new policy will place a cap on rent increases. This cap will equate to $2,000 per revaluation cycle for leases revalued on a three-yearly basis, and $3,500 per revaluation cycle for leases revalued on a five-yearly basis. Letters, I am advised, will be sent to each lessee and the Shack Owners Association detailing this new rent-setting policy and how it will impact them.

If a lease is subject to the cap, the rent notification will set out the rent that would be payable without the application of a cap, and the rent is adjusted under the cap to clearly demonstrate the reduction in rent under the policy. I am advised that the next set of rent notifications will be sent out later this month—late October 2013. I am further advised that of 37 revaluations approximately 14 will be impacted by the cap. I understand that an earlier set of rent notifications went out in July this year. There were 53 revaluations, I am told, and of these 25 will be impacted by the cap, and this cap will apply to those earlier rents as well.

STATE/LOCAL GOVERNMENT FORUM

The Hon. J.S. LEE (14:49): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the State/Local Government Forum.

Leave granted.

The Hon. J.S. LEE: The minister's State/Local Government Forum is currently the subject of change as a result of the proposed machinery of government changes announced in April by the Minister for State/Local Government Relations. The proposal is to have the forum managed by the Department of the Premier and Cabinet and that the Premier will have carriage of the forum. The forum is referred to in the State/Local Government Relations Agreement, and annually the agreement includes a series of priorities, many which are subject to the work of the forum. My questions are:

1. Can the minister confirm how many forum meetings she has attended since being appointed as the Minister for State/Local Government Relations?

2. Can the minister advise when the next meeting of the forum is scheduled and whether any new priorities for 2013-14 will be released?

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) (14:51): I thank the honourable member for her question. She is obviously not aware that a forum was conducted just the other week on 4 October. Under the new arrangements, it was coordinated by Premier and Cabinet, chaired by the Premier and attended by a number of people, including myself. Clearly, the member is out of date; she is out of the loop and really just does not know what is going on.

I am pleased to report on the subjects that were discussed at the forum. There was a number of strategic priorities. There were issues around regional development. There were issues around economic development and industry procurement. The China engagement was also a topic for discussion. The Premier, with the forum, has agreed that under the new arrangement there will be three forums a year. The next forum is to be advised, but he is committed to three forums a year.

RECLAIM THE NIGHT

The Hon. CARMEL ZOLLO (14:52): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question regarding women's activism.

Leave granted.

The Hon. CARMEL ZOLLO: The first Reclaim the Night march took place in Australia in 1978. It is an annual march for women held every October that brings women together to speak out against violence. My question to the minister is: can she update the chamber about the 2013 Reclaim the Night event?

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) (14:53): South Australia has led the world in many measures that help make sure that women are fully able to participate at all levels of our community. We have always been a progressive state. As you know, we were the first colony in Australia and the fourth place in the world where women obtained the right to vote, in 1894. The gains that we have achieved have been a long hard struggle which has been fought over many years and which is a legacy that women of today should feel honoured to be the custodians of.

South Australian activists blazed the path for women's rights movements, not just locally but internationally as well. South Australia's own Muriel Matters is an iconic figure in the suffragette movement. A persistent and ambitious campaigner for voting rights, she is being honoured with a film based on her suffragette activities in the UK. I should also mention the fabulous work that Frances Bedford MP has organised and advocated for in that space. Ms Bedford has played a pivotal role in bringing forward Muriel Matters' name and her very important historic contribution, and she and her colleagues should be congratulated for that remarkable work. The film is showing as part of the Adelaide Film Festival, with a screening last Sunday 13 October and this upcoming Friday at the Palace Nova. This is a fantastic acknowledgement of a woman who dedicated her life to fighting for equal rights for women.

The fight for women's rights in South Australia may have changed, but it is certainly not over. Women still face intimidation, threats and acts of violence in public and private at an alarming rate. Violence against women is a plague on our society, which can be found, unfortunately, across all sectors of our society. It affects women of all ages, from all backgrounds and in every area. Again this year, South Australian women will let it be known that all women deserve to live free from violence, and they will march the streets to reclaim the night.

Reclaim the Night is an international movement held on the last Friday of October, where women come together in their communities to take a stand against violence, including sexual violence against women. I am advised that rallies will be held across Australia, in both metropolitan and regional communities.

Reclaim the Night is again coordinated this year by the Reclaim the Night Collective and will be held on Friday 25 October. I place on the record my appreciation of the work done by all of the organisations which are involved in that collective. I am pleased to acknowledge the small funding contribution I, on behalf of the Office for Women, have been able to make to the Reclaim the Night Collective to help coordinate the event this year, as I have done in previous years.

The 2013 Reclaim the Night event will begin with a rally in Victoria Square at 7pm, followed by a march along King William Street and down Hindley Street, ending at the Yungondi Courtyard at the University of South Australia. I am advised that approximately 500 people attended last year's event, which was a great turnout, and I am sure that this year will prove to be a big success as well.

Events such as this go beyond activism. They show all South Australians that this is a state that respects women's rights and believes profoundly in their right to safety. We do more than just believe in this principle; we act to make sure it happens. Tackling an issue as insidious as this requires an approach from all levels of society and government. The South Australian government has worked tirelessly to ensure that we are creating a society that will one day be free from gender-based violence.

This government has supported federal initiatives such as the National Plan to Reduce Violence Against Women and their Children, the National Centre for Excellence and the recently established Foundation to Prevent Violence Against Women and their Children. It is therefore most disappointing to see that, while the Coalition has indicated its support for the national plan, its contribution so far has been limited to $1 million over four years for the White Ribbon campaign—and that is a good campaign, undeniably. It is a very worthy campaign; they do very important work amongst men. In fact, the federal policy states that they will look for cost-effective ways to address

violence against women, and I hope that is not a sign of worse things to come in terms of cuts to those programs.

These are not issues with which we should play politics. The wellbeing, health and safety of half of the population should be above political pointscoring. With this coming Reclaim the Night, I hope that all in both chambers and those across all levels of government will join with women across the country in expressing their ongoing and meaningful support for the issue of safety for women.

RIDE TO WORK DAY

The Hon. M. PARNELL (14:59): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries, representing the Minister for Transport and Infrastructure, a question about cycling.

Leave granted.

The Hon. M. PARNELL: Yesterday was Ride to Work Day and, as the honorary coordinator of the Parliament House bicycle users group, it was good to see a number of parliamentary and electorate office staff in attendance, all of whom refer to this esteemed institution as work. It was also good to see the Premier and the Leader of the Opposition in attendance and, to their credit, neither of them in lycra.

At the breakfast in Hindmarsh Square a novelty event was held whereby the Premier and the Leader of the Opposition attempted to see who could go the slowest on a bicycle. However, it was the fervent hope of all cyclists in attendance that, come 15 March next year, it will not be a race between Liberal and Labor to see who can be the slowest when it comes to bicycle infrastructure, programs and spending. That brings me to the point that the government's current cycling strategy for South Australia entitled Safety in Numbers expired three years ago in 2010 and has not been updated since it was written seven years ago.

We also saw in *The Advertiser* today a report from the Australian Bicycle Council showing that participation rates for cycling in South Australia have dropped 5 per cent in the last two years. Apparently cycling in the city area has increased slightly but overall the figures are down. As I have said on many occasions, this is in spite of the fact that bicycles have outsold motor vehicles in South Australia every year for the last 12 years. My questions to the minister are:

1. What is the status of the expired state cycling strategy and when will a revised strategy be released?

2. What is the government's response to the worrying decline in cycling participation rates identified by the Australian Bicycle 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) (15:01): I thank the honourable member for his most important questions and will refer them to the Minister for Transport in another place and bring back a response.

MILLICENT AND DISTRICT HOSPITAL

The Hon. R.I. LUCAS (15:01): I seek leave to make an explanation before asking a question of the minister representing the Minister for Health about obstetric services at Millicent hospital.

Leave granted.

The Hon. R.I. LUCAS: Members will be aware that in recent times there has been some controversy about the Jay Weatherill Labor government's decision, implemented by minister Snelling, to remove obstetric services from the Millicent hospital. Members will also be aware that on a recent cold Wednesday evening a month or so ago almost 500 people turned up to protest at the decision by the Jay Weatherill Labor government being implemented by minister Snelling.

Another issue raised subsequent to that is: what are the arrangements for obstetric services in other hospitals in country South Australia? Some people have suggested that there are examples of hospitals where the average number of births delivered per year in the hospital were less than the number at the Millicent hospital prior to decision by the Jay Weatherill Labor government.

Another issue raised with me was that, in the view of some people, in some country areas (or at least one) Country Health SA entered into an arrangement with a sole GP in terms of delivering the obstetric service at that particular country hospital. The questions that my constituents want put to the Jay Weatherill Labor government in relation to this decision are as follows:

1. Can the minister list all of the hospitals in Country Health SA that have approval to deliver obstetric services, and can the minister also provide the respective Country Health SA classifications or categories of these hospitals in relation to obstetric services?

2. For the last three financial years, can Country Health SA or the minister provide the number of births in each of those hospitals?

3. If there are hospitals with lower numbers of births on an annual basis compared to the number of births at the Millicent hospital, what were the special circumstances in those hospitals that led Country Health SA and the Jay Weatherill Labor government to allow the continuation of obstetric services in those country hospitals and not to make similar decisions at the Millicent hospital?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:04): I thank the honourable member for his most important questions on the matter of Country Health SA hospitals and obstetric services. I will undertake to take that question to the Minister for Health and Ageing in the other place and seek a response on his behalf.

KESAB CLOTH NAPPY LIBRARY

The Hon. G.A. KANDELAARS (15:04): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber how the state government is assisting households with young children to reduce the number of nappies going to landfill?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:04): I thank the honourable member for his most important question. The usage of—

The Hon. J.S.L. Dawkins: Are you going to put them in with the pine posts?

The Hon. I.K. HUNTER: I'm not sure that we like to mix up the deposits that go into landfill like that, the Hon. Mr Dawkins. The usage of modern cloth nappies significantly reduces the volume of disposable nappies going to landfill, but I am also advised that they are also a significantly cheaper option for families with young children. It is for these reasons that I am therefore pleased to advise that the state government, through Zero Waste SA, has awarded $30,000 to Keep South Australia Beautiful Environmental Solutions—a division of KESAB, of course—to promote the use of modern cloth nappies.

With assistance from a private business known as Eco Bums, KESAB is now running a cloth nappy library program to encourage households with young children to consider the benefits that cloth nappies provide. The program provides subsidies to families to purchase a 'try before you buy' kit. This will enable parents to experiment with the various cloth nappies on the market and decide on their suitability for their family.

It has been estimated, I am told, that the cost of providing cloth nappies for a child from infancy to three years of age is around $1,000. This compares reasonably favourably with $3,500 for disposable nappies. I should also add that cloth nappies can be used for future children as well, reducing the cost further.

The Hon. S.G. Wade: You can't use them before they're born.

The Hon. I.K. HUNTER: No; children as they come along, the Hon. Mr Wade. The program also offers demonstration and education sessions that are being held at various councils around Adelaide over the coming months, and I am told that, following the library's first appearance at the Coromandel Community Centre, already some 44 families have taken up the opportunity to trial cloth nappies.

Research by the University of Queensland has shown that home-washed, re-usable nappies are certainly more environmentally friendly than disposable nappies. This study found that on solid waste alone, re-usable nappies generate 20 times less solid waste than disposables. In relation to energy, home-washed nappies were found to use less non-renewable energy over their

life cycle than disposable nappies. I should also add, for any energy conscious members of this place, that home-washed nappies washed in front loader machines were the best in terms of water efficiency performance.

In separate research in 2003, it was found that 2.1 billion disposable nappies were being sent to landfill each year. This is a huge amount and if we are committed to reducing our amount of waste, nappies should also be a target. It is pleasing to see work such as this program getting off the ground, offering and educating parents about an alternative to the use of disposable nappies.

I can advise that the cloth nappy library program will be next appearing, I am told, at the Alexandrina Council's Goolwa library on 26 October from 6.30 to 7.30pm. If members or indeed their constituents have any queries as to how they can get involved in the program, they can find more information on the website www.ecobumsclothnappies.com.au.

I certainly would like to congratulate KESAB and Eco Bums for developing this program and of course their ongoing efforts to reduce waste entering landfill and offering an alternative for families to consider in terms of cloth nappies versus disposables.

SA WATER

The Hon. R.L. BROKENSHIRE (15:08): My question is to the Minister for Water, and I seek leave to make a brief explanation before asking him a question regarding SA Water bill impacts on South Australian families and pensioners.

Leave granted.

The Hon. R.L. BROKENSHIRE: Thank you, sir. I hope you will still be happy with the question. The Auditor-General's Report revealed some very interesting information about the operations of SA Water. In fact, on page 1823—it is a huge report—the Auditor-General states:

SA Water has exceeded the planned profit before tax by $48 million. SA Water internal reporting indicates major contributing factors were:

- higher than planned income from rates and charges of $11 million due mainly to water sales
- lower than planned operating expenditure in the order of $28 million for the Adelaide desalination plant—

and it goes on. I focus on the $28 million saving on operating expenditure for the desal plant because the dividend to the SA government was $26.6 million higher than budgeted—very close to the amount actually saved on the desalination plant.

The minister and I had a discussion about this issue on FIVEaa radio yesterday morning, and I start my questions with the one he could not answer on air. Perhaps after more than a day, diligent as he is, he has found out the answer to my question about community service obligations, which largely are to provide what is called postage stamp pricing so everyone in the state pays the same price for water. Before proceeding to my questions, I thank the minister for acknowledging on radio that his government continues to support the principle of postage stamp pricing for country SA residents. My questions to the minister are:

1. Why were the community service obligation payments $183 million in 2009 and as high as $198 million in 2010, but fell right back in 2013 to $107 million? I acknowledge the minister said on air it is going back up to $124 million this year, but that is still far short of $198 million in 2010.

2. Why did the state government believe there was merit in the past of providing a one-off water security rebate due to the cost of water security projects, but when those costs do not end up being as high as anticipated, they will not offer a further concession to water customers?

3. Does the minister accept the argument that if you do not pass this much dividend through SA Water to general revenue you would not need a new tax as he claimed on radio yesterday, but rather could find savings initiatives, like eliminating government waste, to cancel out the reduced dividend income?

4. The minister said on radio that he defends the government's right to take dividends from SA Water to pay for non-water related projects. Is the minister saying his government does not care about the cost of living pressure posed by water bills?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:12): What an appalling question, Mr President! The honourable member just repeats his

ignorant approach that we saw on FIVEaa yesterday. Clearly he did not take on board anything that I said. In fact, I am wondering whether he actually listened, so perhaps I might take him through a couple of the comments that I made then.

I understand that the SA Water profit after income tax increased by $42 million to $264 million, as outlined in the Auditor-General's Report, and this does not reflect the return to government, of course, because the profit includes amounts paid to SA Water's community service obligations, which the honourable member mentioned in his explanation, and for non-commercial activities including, as he said, statewide pricing—I think he referred to it as postage stamp pricing—which ensures that all SA Water customers pay the same price, despite the cost of providing the service to them.

Clearly, if you think about it rationally for a moment, the cost of providing water services in the country, in rural and regional areas, is much higher than it is to metropolitan Adelaide, but this government maintains a policy that everybody in the state should pay the same price. Effectively metropolitan Adelaide water consumers are subsidising users in other parts of the state. We believe, and continue to believe, that is a fair approach.

This increased profit goes directly, of course, to government services. It allows the government to continue providing the level of service that South Australians expect and, if the honourable member is suggesting the profit should be returned to SA Water customers, which I understand he did on the radio and I think he might also have suggested again in his opening remarks, then it is incumbent on him not to just say, 'Oh, go and find them in savings. Go and find them because there might be some waste somewhere.' It is incumbent on him to tell us how he will compensate. Where are the savings that the Hon. Mr Brokenshire would like to give to the people of South Australia?

Members interjecting:

The Hon. I.K. HUNTER: Where are the savings that he might find in government enterprises? How is he going to cut the services that South Australians depend on so very much? Of course, the Hon. Mr Brokenshire will not tell you, just like the Liberal opposition will not tell you how they are going to do what they've—

Members interjecting:

The Hon. I.K. HUNTER: Mr Marshall goes on radio commenting on burst water mains, of all things—the Leader of the Opposition trotting out to the media on the topic of burst water mains. My goodness me! And what does he say? What does Mr Marshall say to the media? 'Oh dear, the government has been cutting back on maintenance of the pipe system.' Wrong, Mr Marshall. What was the government doing for the last three years with regard to investment on the part of SA Water in terms of maintenance of the pipe system?—$82 million a year over the last three years, going up to $129 million last year. Of course, if you know your ESCOSA briefing, you will know that that is projected to go up to $169 million on average over the next three years.

So we have been increasing our expenditure on the maintenance of our system, on the assets of SA Water. But what on earth is Mr Marshall going to do if he is saying that when the Liberal opposition is in government they are going to spend more of SA Water's dividend on asset maintenance? What is he going to cut? What is Mr Marshall going to cut or what taxes are going to be put up? That is what they will not tell you; their secret plans that they have got hatched, already written, will not be released. They will not tell the South Australian public what they intend—

Members interjecting:

The Hon. I.K. HUNTER: We do, Mr President, but they will not, and you know in your heart of hearts that they are going to cut, cut, cut into the services that South Australians depend on. The Liberals will cut them to pieces, and they will sack public servants. Let me remind honourable members what the former—

Members interjecting:

The PRESIDENT: Order! I have great difficulty in hearing the minister.

The Hon. I.K. HUNTER: —Liberal leader—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: —said when she was speaking openly and honestly to the electorate of South Australia, unlike the current opposition. She told them, 'We will cut between 25,000 and 35,000 public servants; that's what we're going to do.' She let the cat out of the bag and she paid the price for that. I do not think her position was safe for very much longer after that—a matter of days in fact.

The Hon. R.L. BROKENSHIRE: Point of order. My point of order is the standing order regarding relevance.

The PRESIDENT: Sorry, I am having difficulty hearing you—

The Hon. R.L. BROKENSHIRE: I am waiting for an answer to my questions.

The PRESIDENT: The Hon. Mr Brokenshire, order! What is your point of order?

The Hon. R.L. BROKENSHIRE: Relevance, sir. I am not getting an answer.

The PRESIDENT: You have no point of order. Minister, you have the call.

The Hon. I.K. HUNTER: He has no relevance either, Mr President. Let me say this in response to a question asked by Mr Brokenshire. Halfway through his ramble he talked about the water security rebate that was put out by this government to help people when they had to pay increased water costs because of the desalination plant. That is what this Labor government does: it helps people who are suffering the cost-of-living prices and pressures. Of course, what we have done in this latest water-pricing deal is we have seen a nominal decrease in the price of water. We have also increased the concessions available to pensioners and eligible low-income earners and we have also managed to make sure that any future increases over the next three years in terms of the regulated time will be approximately CPI, or less.

It is this government that is concerned about the cost-of-living pressures the community faces. It is this government—and only a Labor government—that takes into account the key services that public servants provide to the community, and it will always be a Labor government that actually runs the Public Service in the interests of the state and in the interests of the community, and we will continue to do so.

CRIMINAL INVESTIGATION (COVERT OPERATIONS) ACT

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) (15:18): I table a copy of a ministerial statement relating to the Criminal Investigation (Covert Operations) Act 2009 made earlier today in another place by my colleague the Deputy Premier, John Rau.

EVIDENCE (DISCREDITABLE CONDUCT) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 26 September 2013.)

The Hon. S.G. WADE (15:19): I rise to speak on the second reading of the Evidence (Discreditable Conduct) Amendment Bill 2013. I will be brief because the bill itself is brief; in fact, it consists of just one sentence. This issue the bill seeks to address is also rather straightforward. The 2011 act, the Evidence (Discreditable Conduct) Act 2011, required that notice be given for all discreditable conduct evidence, even if the evidence did not relate to the propensity or disposition of the person charged. The government, the Solicitor-General and the DPP argue that the notice requirements have been onerous in practice and are seeking to remove them altogether. The opposition is sympathetic to that concern and seeks to facilitate that in a measured way.

For members who have been following the debate in the other place, as the bill was originally introduced it only sought to remove notices for discreditable conduct that related to propensity or similar fact evidence. To frame that in the positive tense, the bill originally introduced by the government only required notice to be given for propensity and similar fact evidence. The opposition was prepared to accept that limited scaling back but did not affect the evidence that comprised the most significant risk. However, we do not support the change to remove notice requirements for the most risky evidence. As such I will be moving an amendment during the committee stage to revert the bill to the original version introduced by the government in the House of Assembly.

Let me stress that this is not a radical diversion from the government's intention, it is actually a suggestion that their first attempt was the best. In that context, I remind honourable members of the debate. It is easy for the bill of 2011 which was the subject of such debate to have faded in our memory. I thought that perhaps one of the most pertinent statements in the House of Assembly by the Attorney-General was a nice, succinct statement which highlights the risk of this sort of evidence:

> There is a general exclusionary rule at common law that evidence of bad character or criminal conduct not related to the charge is inadmissible and cannot be used in criminal trials. This rule is not absolute but the current common law test in South Australia imposes a very high threshold for the admissibility of such evidence, at least if it is to be used for propensity or similar fact purposes. The evidence must be of such a high standard that in itself it affords no reasonable inference other than the guilt of the accused before it is admitted.

Later in the same statement he said:

> The result of that test is a cogent, reliable and highly relevant evidence is sometimes kept from a jury. The Bill will improve the criminal justice system by allowing prosecutors in appropriate cases to introduce evidence of prior offending when it is both relevant and appropriate and in the interest of justice to do so (for example, in cases of alleged sexual abuse where the accused has committed other sexual offences in similar circumstances and that is relevant to the current proceedings).

I will continue to quote the Attorney-General but I pause to say that, having stated the general law, he then went on to state the risk:

> However, the Bill also recognises the need for an appropriate balance to be struck. It is not intended to allow the routine introduction of evidence of discreditable conduct. The 'time honoured law' of England and Australia 'that you cannot convict a man of one crime by proving that he had committed some other crime'...is a strong principle of the common law. The election commitment does not overturn or displace this principle as much as modify it in order to arrive at a fair and workable modern model. The admission of such evidence is confined to where it is relevant, appropriate and in the interests of justice to do so.

So the Attorney-General was appropriately indicating that this was an enhancement of the law which, if I recall it correctly, was supported by all parties, but it was done so in a measured way, acknowledging the risk and part of the managing of the risk was to put in notice requirements. The bill required that that notice requirement be given for all forms of discreditable conduct evidence. The government's original bill in the House of Assembly is that proved onerous, let's just limit it to propensity and similar fact evidence. We think that was a reasonable balancing of the risk and the benefit. The government is now proposing, in the bill's amended form as it arrived in this council, to remove the notice requirements altogether.

I should stress that the Law Society, as I understand it, has distributed to all members its strong opposition not only to the bill as amended in this place but the bill as introduced in that place. The Law Society would say don't touch the law. We say, yes, we think a measured modification is appropriate but, considering that we are dealing with risky evidence in a very sensitive area of law, we believe it is appropriate to maintain the notice requirements in relation to propensity and similar fact evidence. I will be moving an amendment at clause 3 to that effect.

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) (15:25): I do not believe there are any further second reading contributions on this bill, which is quite straightforward and small. It is about making changes around governing the use of discreditable conduct evidence in criminal proceedings. A great deal of consultation has taken place in relation to this, and the act really is intended to simplify what has become a very complex area in common law. With those few words, I commend the bill and look forward to its being dealt with expeditiously through committee.

Bill read a second time.

Clause 1.

The Hon. S.G. WADE: The minister mentioned that there had been significant consultation, but was mute as to the nature of it. I clarify that the Law Society does not support this bill, and I will quote from a letter dated 11 October:

> The manifest purpose of the bill is to ensure that the evidence of discreditable conduct is admitted only for a permissible purpose. To that end it is incumbent upon the adducing party to outline the purpose for which it wishes to lead the evidence. This is of critical importance before it, because it puts before the court and the defendant (or co-defendant) on notice of the proposed use of the evidence. From there, arguments as to admissibility will properly follow. Importantly, the court will be in a position to rule on admissibility on the basis of the proposed use.

The letter concludes that society does not support the original bill and does not support the amended bill. To clarify, the minister suggested that this simplified a complex area of law: it does no such thing. It relates to notice requirements. We changed the law in 2011.

The Hon. D.G.E. HOOD: Why has the government amended the bill? What is the government seeking to do? Why was the government not satisfied with the bill originally, and what was the reason for the change?

The Hon. G.E. GAGO: The Evidence (Discreditable Conduct) Amendment Bill made changes to the Evidence Act 1929 governing the use of discreditable conduct evidence in criminal proceedings. The act passed with all party support, following an extensive consultation process. The act was intended to simplify what had become a complex area of common law. Though the act is a major advance on the previous common law position, one aspect needs clarification.

The 2011 act requires a party seeking to adduce any evidence of discreditable conduct to give notice in writing to each other party in the proceedings, in accordance with the rules of court. This requirement was drawn from a practice in the Uniform Evidence Act jurisdictions. It has become clear that the inclusion of that notice requirement in the South Australian legislation is not necessary. Importantly, the removal of the notice requirement will not undermine a defendant's right to a fair trial. The court will still, as with any other type of evidence, have to be satisfied of the relevance and the admissibility of the discreditable conduct evidence before a party will be able to lead such evidence.

The Hon. S.G. WADE: Basically, what the minister just read to you was the second reading speech to the original government bill, with a slight modification at the end. Could I remind members what the government said at the second reading stage of the original 2011 bill in relation to notice?

> The Bill makes it clear that careful consideration must be given to the purpose for which any discreditable conduct evidence is admitted. The use of evidence of uncharged acts is potentially dangerous because the notion of the relevance of uncharged acts can be rather vague and easily used to admit what otherwise would be inadmissible similar fact or propensity evidence by an extended view of what is to count as relevant as part of the 'background' or 'context' or 'relationship'. The prosecution must give reasonable notice of the purpose for which such evidence is adduced.

If the risk was there then, the risk is there now. It is clear from the statements in the second reading explanation that that was going to apply to nonpropensity and nonsimilar fact purposes. We think the risk of removing the notice in relation to those classes of evidence is one thing, and we are willing to accept that. We are not willing to take the next step, particularly in light of the grave concerns expressed by the Law Society.

The Hon. M. PARNELL: I will take any guidance that you have, Mr Chairman, but given that this is such a small bill, it looks like every issue is being agitated currently at clause 1. I am happy to wait until the Hon. Stephen Wade moves his amendment, but I have some questions of him. Is it appropriate to ask those now?

The CHAIR: Certainly.

The Hon. M. PARNELL: My question of the Hon. Stephen Wade: is it the opposition's main concern that without a formal notification provision, such as we have currently in section 34P(4) and (5), dangerous or risky evidence would enter into a trial on the run without a judge having the ability to think about its relevance or admissibility and without the defendant having the chance to challenge its relevance or admissibility? Is the main fear that this stuff could just appear in court and everyone be taken by surprise, and suddenly it is before the jury and nobody has had a chance to draw breath and work out whether in fact it should be part of the case at all. Is that the concern?

The Hon. S.G. WADE: I am happy to respond. I would suggest that it probably is more a matter of amendment at clause 3. It is always incumbent on the judge to exclude evidence which is not appropriate, but the position of the government in 2011 and the position of the government as recently as 11 September was that notice was appropriate. In spite of the fact of the normal processes in relation to disclosure of evidence and the normal processes of the judge being able to exclude inappropriate evidence, notice was appropriate. It was appropriate in 2011. It was appropriate in relation to this risky class as recently as 11 September and now it is not.

I did take the opportunity specifically to discuss this with a QC. I asked, 'Is it a real mischief? Do you think that we are going to increase the risk of miscarriages of justice without the notice?' He was adamant that he believed that it was important in relation to what is demonstrably

risky evidence. I do not want to be convicted because I did a similar thing in the past. I will be done for each crime in turn on the basis of the evidence in each case.

Certainly, the member is correctly indicating that judges can always act to exclude evidence that is inappropriate. But, as I said, notice procedure was seen appropriate for everything in 2011; it was seen as appropriate, in relation to the more narrow class, by the government itself in its own bill as early as 11 September. I do not think that the interests of justice in South Australia have dramatically changed in the last month such that a more cautious approach, which was originally proposed by the government, is not the appropriate course to take now.

The CHAIR: Basically, I gave you some latitude, the Hon. Mr Parnell and the Hon. Mr Wade. We are still at clause 1, and the questioning and answering is still going to the amendments. I am proposing to stick to clause 1 or to put clauses 1 to 3 and we can go straight to the Hon. Mr Wade's amendment at clause 4.

The Hon. M. PARNELL: I have an observation on clause 1.

The CHAIR: An observation?

The Hon. M. PARNELL: Yes. The Hon. Stephen Wade has pointed out that we did debate this back in 2011. I revisited the remarks I made back then, when really the question before us was: should we codify, should we put in a statute, what has been the practice of the court? As I understand it, that is effectively what we did: we wrote down and put into the Evidence Act the practice that had already developed over time.

I did note, going back through *Hansard*, that we did not have a committee debate on the bill back in 2011; *Hansard* just records that the bill passed through its remaining stages. There were no questions, no contributions, no nothing. So, this is actually the first time we have bothered to go through it clause by clause.

I have a question on clause 1, and I refer to the Law Society's submission—and, as the Hon. Stephen Wade said, the Law Society has said that it does not like it. One of the Law Society's points, and I think that it is a fair point, says:

> In order for the court to rule on the admissibility of discreditable conduct evidence, it is essential for it to know its proposed use.

That is sort of stating the obvious. Then it goes on to say, 'The subsection 34P(4) notice provides this information to the court.' My question of the minister is: is that the only way for the court to get that information? In other words, if we dispensed with the notice, which is what this bill seeks to do, does that of itself mean that the court will somehow become ignorant as to the proposed use of this discreditable conduct evidence?

The Hon. G.E. GAGO: While I am seeking advice, I would like to respond to some comments the Hon. Mr Wade has made, which also allude to questions the Hon. Mark Parnell asked. I think that what the Hon. Mr Wade is not taking into account is the development of this law in the courts. As the Hon. Stephen Wade said, the Law Society, in its submission, said:

> The manifest purpose of this bill is to ensure that evidence of discreditable conduct is admitted only for permissible purpose. To that end, it is incumbent upon the adducing party to outline the purpose for which it wishes to lead the evidence.

With the greatest respect to the Criminal Law Committee, the government disagrees with the latter part of that statement. On one reading, it could be said that the Law Society is asserting that it is for the prosecution or counsel for the co-accused to justify the admission of evidence of discreditable conduct, under section 34P, as a matter of law. I am advised that this is not correct. The correct position, in accordance with the relevant case law, is that it is incumbent upon the other party to object to the use of that evidence.

The Hon. S.G. WADE: While the minister is continuing to—

The CHAIR: The Hon. Mr Wade, we are still awaiting—

The Hon. G.E. GAGO: I'm still awaiting some advice.

The Hon. S.G. WADE: Yes, but you have interposed with a comment on another matter. I believe I can do the same.

The Hon. G.E. GAGO: But I haven't finished my answer yet.

The CHAIR: Yes, it goes to your amendment and I should not have allowed you to do it. We are still at clause 1, we are at observation 1.

The Hon. G.E. GAGO: If you just give me a minute I will respond in full.

The CHAIR: The minister will be responding to the Hon. Mr Parnell—

The Hon. S.G. Wade: She interposed with an irrelevant comment.

The CHAIR: You don't run this place yet, the Hon. Mr Wade, so just relax and let the minister—

The Hon. G.E. GAGO: He won't be for a while, either, at the rate they're going.

The CHAIR: Minister, do you have a response?

The Hon. G.E. GAGO: If you can indulge me for one more moment.

The CHAIR: Do you have a response to the Hon. Mr Parnell's observation?

The Hon. G.E. GAGO: It is coming.

The Hon. S.G. Wade: The silence is deafening.

The Hon. G.E. GAGO: It is on its way. I have been advised that the answer to the Hon. Mark Parnell's question is: absolutely not. The Court of Criminal Appeal has handed down a number of decisions on this section. The case of R v CG (2013) SASCFC83 makes it clear, as I am sure you will agree—

The Hon. M. Parnell: I will refresh my memory later.

The Hon. G.E. GAGO: Let me refresh your memory—makes it clear that the onus is on the defence to raise objections to the use of the evidence, as it is at this point that the court will consider the proposed use of that evidence with assistance from the parties and make a ruling on that evidence.

The CHAIR: Mr Wade—at clause 1, I hope.

The Hon. S.G. WADE: I am actually responding to a comment by the Hon. Mark Parnell on clause 1.

The CHAIR: On clause 1?

The Hon. S.G. WADE: Yes. The Hon. Mark Parnell, I think, correctly summarised the discussions of 2011 as seeing this as a part codification of the relevant law. I think that is a very relevant point to make because in that sense it was one of the rare cases where the South Australian evidence law was moved towards the uniform Evidence Act. If I can quote from the speech of the Attorney-General in the other place he acknowledged that and said:

> The 2011 Act requires a party seeking to adduce—

I am presuming the word that should be there is 'evidence'—

> of discreditable conduct to give notice in writing to each other party in the proceedings in accordance with the rules of court. This requirement—

in other words, the requirement in 2011—

> was drawn from the practice in the Uniform Evidence Act jurisdictions.

Let me pause: the Uniform Evidence Act jurisdictions are the jurisdictions that have codified their evidence laws. It goes on to say that:

> The UEA requires the prosecution to give notice of its intention to use either propensity or similar fact evidence, but importantly does not require written evidence of a party's intention to use discreditable conduct for other purposes.

In other words, if we followed them in 2011 and we part codified, and they require notice still and we are maintaining part codification, I cannot see why we should not continue to follow their precedent of requiring notice in that limited circumstance only.

The Hon. G.E. GAGO: With all due respect to the Hon. Stephen Wade, who is far more knowledgeable in these legal and technical matters than I am, I believe and am advised that the Hon. Stephen Wade is actually still relying on the original bill back in 2011 and what was said about that at that time. It appears that at the moment his comments appear to be failing to take into

consideration the way the courts have interpreted that since then. That has a significant bearing and difference on the interpretation.

The Hon. S.G. WADE: Thank you, Mr Chairman, for your generosity with the clause 1 contribution; it is certainly enlightening. Could I reiterate: the quote that I just gave was a statement by the Attorney-General on 11 September 2013. If the Leader of the Government is suggesting that somehow I have not allowed for recent developments in the law, then that is an issue she should raise with the Attorney-General, not with me. Let me read it again:

> This requirement—

from the 2011 act—

> was drawn from the practice in the Uniform Evidence Act jurisdictions. The UEA requires the prosecution—

Requires—current tense. As at 11 September, UEA jurisdictions require notice. If the government is now telling us that either those jurisdictions have all changed their laws since 11 September or some other massive development has occurred that we need to be made aware of, then I suggest the government does that. Otherwise, do not impugn my statements when I am quoting their own Attorney-General.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

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

Amendment No 1 [Wade–1]—

> Page 2, line 11—Delete line 11 and substitute:
>
> > Section 34P(4)—after 'evidence' insert:
> >
> > > that relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue

I must admit bemusement. I did not realise it was going to be so hard to argue for a government bill. The use of propensity evidence and similar fact evidence has a significant chance of prejudicing a case if used. Therefore, it makes perfect sense that clear and advance notice is given to ensure it is appropriate before it is admitted.

Evidence about a person's propensity or disposition is risky. It could come down to as crude a proposition as, 'We should convict Fred of one crime because we know he did another.' I note that the Hon. Mark Parnell made the point in his 2011 contribution to the debate on the original act that the idea of someone's past history of criminal acts being used to persuade a jury of a person's guilt on other matters had the potential to significantly undermine justice. That concern is still present if appropriate checks and balances, such as notice, are not in place. It is appropriate that parties have notice of such evidence to be presented and the arguments to be made out.

We are faced with the need to balance resourcing challenges within our prosecution and the risk of miscarriages of justice. The original 2013 bill tabled on 11 September said the balance would be restored by only requiring notice of evidence that was going to be used that showed propensity or disposition. The bill as amended by the government that has come into this place said that we should abolish notice for any use of discreditable conduct including propensity or disposition.

The opposition humbly considers that the government was right. The government was right and closer to the right balance in its original bill—the one tabled on 11 September in the other place. Notice should be given if the evidence is going to be used to show propensity or disposition. My amendment simply reverts the government bill to its original form. Members who are concerned about transparency, about open disclosure and about checks and balances to avoid miscarriages of justice, I would urge you to support the amendment.

The Hon. J.A. DARLEY: I rise very briefly to indicate my support for this amendment, but I do so somewhat reluctantly. I am advised that the Criminal Court of Appeal has ruled that notice requirements under section 34P(4) are of no legal consequence. They are not relevant in any substantial sense. That is clearly reflected in the government's bill. The criminal bar on the other hand has recommended that the requirements be kept in an amended form which reduces the

subject matter of what needs to be provided. This approach is consistent with the opposition's proposed amendment.

This amendment should not be seen as being soft on crime or about making the job of defence lawyers easier. It should be about ensuring that our legislation reflects what is deemed acceptable while at the same time providing appropriate safeguards. The argument that the Criminal Court of Appeal's ruling renders the provision superfluous is certainly very convincing. However, it fails to address the concerns raised by the legal profession more generally.

What this highlights to me is that this is an area of our criminal justice system that warrants much broader review. There appears to be a general consensus on both sides of the argument that, as they stand, the notice requirements are too broad. Rather than throwing out the baby with the bath water, I think it would be sensible to adopt the position of the opposition in the first instance and ensure that the wider issues that have been raised be addressed through some form of consultation process. The fact that the court has the ability to dispense with the notice requirements altogether further reaffirms why I am willing to support the opposition's argument.

The Hon. G.E. GAGO: The government rises to oppose the amendment. This amendment reinserts notice requirements into section 34P. The amendment brings the bill back to the format it was in when the government introduced it in the other place. The government amended the bill in the other place to remove the notice requirement completely after receiving advice that the notice provisions were not necessary given recent decisions of the Court of Criminal Appeal.

Despite the section requiring prior written notice, the onus is still on the other parties and the court to raise any objections to the use of evidence of discreditable conduct. This being so, the government has taken the view that the notice requirement is unnecessary as a matter of law, given the operation of section 34P, and therefore should be removed. Any notice requirement in practice for discreditable conduct evidence seems an unnecessary bureaucratic formality; however, there are certainly arguments to support the opposition's amendment and the original form of this bill.

The Law Society has expressed its support for the retention of the notice requirements, as has already been mentioned in this place, and there is no doubt that the receipt of a notice containing the uses to which the prosecution or co-accusing tends to put such types of evidence would be a useful tool when advising a client facing criminal charges. I have already put on the record our view of the lack of understanding around the issue of it being incumbent on the adducing party to outline the purpose for which it wishes to lead to evidence and I have already put our response to that on the record.

The Hon. S.G. WADE: I will just briefly respond. I accept the advice that I was given by government in earlier stages that recent court decisions have suggested that it is not necessary. In other words, it is not fatal for the admission of evidence that a notice was not provided, but to me that does not go at all to the case of how useful it is in terms of ensuring a fair trial and to avoid miscarriages of justice. I prefer the government's original bill. I encourage members to support the amendment.

The Hon. M. PARNELL: I am loath to drag the debate out on what seems to be a fairly, in some ways, minor technical point, but what I do not have any feeling for at the moment is what degree of relief would be provided under the government model and under the opposition model.

Under the government model the relief would be that nobody has to give this formal notice in writing to each party in the proceedings in accordance with the rules of court because we would be deleting that altogether. Under the Hon. Stephen Wade's proposal there are still some cases where you would have to give that notice, but what I have no idea about is: are we talking hundreds of cases per year and the Hon. Stephen Wade is giving relief in 50 per cent of them? To try to work out how serious an issue this really is, if anyone can throw any light on that, I would appreciate it.

The Hon. G.E. GAGO: I have been advised that the use of similar fact or propensity evidence is adduced in a significant number of cases, particularly sexual assault cases. The original form of the bill would reduce the burden significantly, which is what the Hon. Mr Wade's amendment seeks to do; however, some notices would still be required. Ultimately it is the government's desire for the legislation to pass through parliament, whether it is in the form introduced to the other place or in the form before us now.

The government obviously opposes the opposition's amendment but I am advised that the Attorney-General will likely accept that amendment in the other place should it be the will of this chamber. We would obviously prefer notice to be removed, but we are at either way.

The Hon. S.G. WADE: I would like also to make a contribution to the Hon. Mark Parnell's question. My memory might not serve me correctly, but I seem to recall that I asked a similar question of the DPP, and I do not think I am misrepresenting it by providing a bit more clarity than saying propensity and similar fact evidence is used in a significant number of cases.

My understanding is that the DPP led me to believe that the current provisions mean that in hundreds of cases he or his officers are required to provide notices, and that is why the bill is here, because it has proved to be an onerous burden. In terms of the affordability, if you like, of what my amendment suggests and what the government originally proposed, I make two points.

First of all, we are talking about a risky area: the cost-benefit analysis of innocent people being inappropriately imprisoned and, for that matter, the cost to the state of miscarriages of justice and appeals and so forth. I suspect that serving a notice in a minority of cases is money well spent. My other point goes back to the Hon. Mr Parnell's point about part codification. The other states on which this 2011 provision was modelled require notice. It cannot not be that onerous; they are doing it all the time.

The Hon. M. PARNELL: This is indeed a wicked dilemma. I thank the minister for her answer and the Hon. Mr Stephen Wade as well, but we do need to come to a landing on this. I take some comfort from the fact that the main operative provisions of section 34P are not being altered, that is, the default position is that this discreditable conduct evidence is not allowed, and the act then sets out an exception to that. What we are talking about is if someone wants to try to invoke the exception, do they have to give notice?

I understand that it is an onerous burden but also I note that if the bill is passed in its unamended form—in other words, subsections (4) and (5) are both deleted—I would have thought that in the practice of the court, if it turned out that some form of time frame or notice was required, then they can impose that through the rules of court notwithstanding that there is no express provision in section 34P.

Subsection (4) that the government is proposing to delete entirely is fairly prescriptive but not entirely. What it says is that you have to give reasonable notice in writing in accordance with the rules of court. So, what a reasonable notice is will be determined by the rules of court and it may be that the notice might not have to be given in writing. The rules of court might provide that it has to be given verbally and it might set out some sort of time frame. However, we have to overlay on that the risk, as the Hon. Stephen Wade has said, and the cost to the DPP.

We know the backlog of criminal trials is a matter of concern to those awaiting criminal trial, if not of concern to the general community, but I do not think that there is any great harm in accepting the government's bill as it currently is and that is getting rid of (4) and (5) together. It is not to say that the Hon. Stephen Wade's arguments do not make sense, they do, but in terms of coming to a landing on this we will be supporting the bill and we will not be supporting the Hon. Stephen Wade's amendment.

The committee divided on the amendment:

AYES (9)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Hood, D.G.E.	Lee, J.S.
Lucas, R.I.	Stephens, T.J.	Wade, S.G. (teller)

NOES (7)

Finnigan, B.V.	Gago, G.E. (teller)	Kandelaars, G.A.
Maher, K.J.	Parnell, M.	Wortley, R.P.
Zollo, C.		

PAIRS (4)

Lensink, J.M.A.	Hunter, I.K.

PAIRS (4)

Ridgway, D.W. Franks, T.A.

Majority of 2 for the ayes.

Amendment thus carried; clause as amended passed.

Title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (16:07): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 October 2013.)

The Hon. R.I. LUCAS (16:07): I rise on behalf of Liberal members to support the second reading of the legislation. In so doing I place on the record my concern at the callous disregard for the truth that the Attorney-General and minister responsible for this particular legislation seems to have in terms of his both public and private comments.

I was intrigued during the lunch break today to be contacted by a journalist and asked why was I, in the Legislative Council, publicly disagreeing with the position of Steven Marshall in my contribution on the bill. I said to the journalist, 'What bill are you talking about? We have had electoral and the gas trading exchanges.' She said, 'No, no, it's the liquor licensing bill.' I said, 'Well, you should go back to your Labor Party sources and say that the Legislative Council hasn't debated the liquor licensing legislation; I haven't spoken on the liquor licensing legislation.'

The Hon. T.J. Stephens: And 'you're a liar'.

The Hon. R.I. LUCAS: Well, no, the journalist is not a liar, but her source doesn't tell the truth. Then, lo and behold, someone else contacted me and said, 'Have you seen John Rau's Twitter feed?' So, I went to have a look at John Rau's Twitter feed, which was from this morning.

The Hon. M. Parnell interjecting:

The Hon. R.I. LUCAS: I am told his cat makes more sense than he does and tells the truth more often, but I am not referring to John Rau's cat's Twitter feed on this particular occasion.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! I think you should return to the text.

The Hon. R.I. LUCAS: I am returning to the text. John Rau's Twitter feed this morning says:

Libs in the Upper House repudiating their leader's commitment to support the Late Night Code. Rob Lucas now de-facto leader of the Party.

There is John Rau telling all and sundry—

The Hon. K.J. Maher interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The Hon. Mr Maher will get his opportunity shortly.

The Hon. R.I. LUCAS: —and indicating that I was in the upper house this morning repudiating my leader's commitment to support the late night code as part of this and I am now the de facto leader. Just to follow it up, John Rau's Twitter feed then says—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The Hon. John Rau.

The Hon. R.I. LUCAS: Well, no, it just says 'John Rau' here. I am reading straight off his Twitter feed. He does not describe himself as honourable. 'John Rau MP@JohnRauMP. Biggest

challenge of Marshall's short time as leader—imposing discipline on maverick Lucas.' This is before I had even spoken on the legislation. I had not given an interview on the issue in the last however long it has been—certainly not in the last few days. There is the Deputy Premier, the minister in charge of the legislation, out there telling people that Lucas is going rogue in the upper house, and he is repudiating Steven Marshall's position in relation to the late night code and the liquor licensing legislation. Sadly, if it was not a common occurrence I would call on the Deputy Premier to apologise for his untruthful statements, but the practice is there have been so many of them over a period of time.

The Hon. T.J. Stephens: Do you think he was also leaking? He was probably leaking against Weatherill yesterday.

The Hon. R.I. LUCAS: I think that is probably for another debate.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The honourable member should ignore the interjections.

The Hon. R.I. LUCAS: Exactly. I think they are still trying to find the leak in either Mr Rau's office or Mr Snelling's office.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The honourable member should ignore the Government Whip as well.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. R.I. LUCAS: I can only suggest to Mr Rau that on occasions if he would like to either be accurate or truthful in his statements he might actually get one of his staff—if all his staff are still employed in his office—

The Hon. T.J. Stephens: Isn't he is one short?

The Hon. R.I. LUCAS: Well, I am not sure if he is one short, but I am sure he has plenty. If he could get one of his staff—if they are all still employed—to actually check the *Hansard* record before he makes statements in relation to issues, particularly when he overcooks the meal a little by saying, 'This is the biggest challenge of Marshall's short time as leader.'

Let us address the issues and put on the record the Liberal Party's position on this. Let us be clear what Liberal leader Steven Marshall's position is on this particular legislation, not the claimed statements by the Deputy Premier on this issue. On 1 October on FIVEaa, Mr Marshall was interviewed by Mr Leon Byner, and I quote from the transcript:

> …we've had real concerns about the Late Night Trading Code ever since the Government put it up for renewal…this has been out for consultation since last October. Look, there's got to be a balance; on the one hand you want to have people safe while they're out but you don't want to increase costs on licensees unnecessarily and you certainly don't want to restrict people's ability to have fun.

The Hon. S.G. Wade: Sounds like Rob Lucas.

The Hon. R.I. LUCAS: No, this is Steven Marshall:

> …we agree with you, Leon, the better approach is always to target the offending behaviour rather than put a restriction on everybody. Now look, we've made a decision in the Liberal Party room not to frustrate this attempt by the Government to deal with, you know, alcohol abuse and alcohol related violence but we do still have concerns.

Leon Byner then says:

> …obviously everybody worries about this; I just sourced some information to get some fact and I've actually broadcast the information…you're saying you agree with what they're saying but you won't do anything.

Mr Marshall says:

> Well, what we've said is that we will review the licence classifications if we're elected to Government next year as part of an overarching review. We're not going to frustrate the Government's push at this stage. Let's put it in place—it's already begun—let's put it in place and review it but we think that there needs to be a review. Plenty of people have told us that these lockouts that have occurred in other places haven't delivered the results that the Government are claiming that they have.

Further on, in response to further questions from Mr Byner, Mr Marshall says:

...the simple fact of the matter is we are as concerned about alcohol related violence as the Government is. The Government with their resources have decided this is the best way to go; they've been out for consultation for a year. Let's put it in place, let's see what results that it yields and then let's review it. But my natural inclination is not to punish everybody; my natural inclination, the inclination of the Liberal Party is to address the poor behaviour of certain individuals and certain licences, and we haven't seen a lot of action from the Commissioner targeting specific venues, that's been a real issue and something that we'd like to investigate.

Again from FIVEaa, but this time it is an extended interview with Ali Rodda. I think the transcript was done on 8 October, but I suspect that it is an interview from 7 October, the night before. Liberal leader Steven Marshall says:

We've had real concerns about the Government's Late Night Code for an extended period of time, they've watered it down significantly.

Then further on, he says:

We've said that if we're elected we'll review it. We want to make sure that it is sensible...generally speaking the Liberal Party doesn't like to put these blanket restrictions on everybody that goes out, we prefer to target any action against individuals that are doing the wrong thing, it gets back to our general philosophy as a party...that hasn't been the case at the moment, everybody's going to have the same restrictions. We said if we're elected we'll review that but let's see what it's like for the next 12 months.

Then, finally, further on, he says:

...well...we would much prefer this focused on the individuals that are doing the wrong thing, not hitting everybody that's doing—I mean, imagine if they got their first code through, we would have been the laughing stock...imagine if...an international high roller had come to...one of our major venues, maybe the Intercontinental and ordered a double spirit and the person said 'oh sorry, I can't serve you a double spirit and...here's your single spirit' and it's in a plastic cup. I mean, we would have looked like a laughing stock...the revised code is much better than was originally proposed.

The Hon. K.J. Maher: So, you support it—you're supporting the code?

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. R.I. LUCAS: The position of the Liberal leader is the position that all members of the Liberal Party will be supporting, and I rise on behalf of the Liberal leader to indicate our support for the Liberal leader's position, contrary to the untruthful statements made by the Deputy Premier in relation to these issues. Let's look closely at what Liberal leader Steven Marshall has been saying in relation to the late night—

The Hon. K.J. Maher: Which version?

The Hon. R.I. LUCAS: Well, I've just read two versions of it there for you—exactly the same.

The Hon. K.J. Maher: Well, do you support it? Do you support exactly what he said?

The Hon. R.I. LUCAS: I support exactly what Liberal leader Steven Marshall has said. What the Liberal leader has said is that we have had real concerns about this government's late night code. That is what he said, quite clearly—and I agree with him 100 per cent where he says, 'We have real concerns about the government's late night code.' He then goes on to say:

...generally speaking, the Liberal Party doesn't like to put these blanket restrictions on everybody...we prefer to target any action against individuals that are doing the wrong thing, it gets back to our general philosophy as a party.

That is the difference between the Liberal Party and the Labor Party. The Labor Party's approach has been to put blanket restrictions on everybody. The Liberal leader Steven Marshall is saying that that is not the Liberal Party way; that is not the Liberal Party philosophy. Our preference would be that we take action against those who breach the law.

Instead of having blanket restrictions on every late night venue—and I have spoken in this house often about this government, led by people like former attorney Atkinson, current Attorney Rau, Premier Weatherill and the former leader in this place, Mr Finnigan, all having this wowsers' view and being opposed to young people enjoying themselves in the entertainment precinct of Adelaide. The position is that, whilst there have been some changes in this revised code, we know, if re-elected, the direction in which this government would head.

They have made their intention clear; they have just been forced to wind some elements of this back in the revised code. Commissioner Paul White has made his intentions clear at a number of meetings with stakeholders in the CBD. Lawrie Bias in a number of interviews on late night radio has quoted statements made by Mr White at recent meetings with stakeholders evidently. The

intention of the Labor government is clear, if re-elected, if given their head, if allowed to do what they want to do, they want to crack down on everybody.

Young people right across the board realise that, starting originally with the former premier Mr Rann, who wanted to close down all the pubs and clubs at 2am in the morning, this has been an evolving policy and the government has been quite intent on implementing it. They have part of it in this revised code but, if re-elected, if given their head, we know the direction they would want to go.

The Liberal leader Steven Marshall is quite outspoken. He makes it quite clear what his view is and what the Liberal Party's philosophy is. What we should do, rather than penalising everybody—that is, all venues and all young people in the main, but all people who are wanting to enjoy nightclubs in the early hours of the morning—is to target those who commit the offences. In relation to the venues, we should impose through a penalty regime that, if they are the ones who are breaching the licensing provisions, penalise them to a significant degree in the end. Impose the sanctions in terms of operating hours on the ones who continue to break the law.

Bring down the penalties on those who break the law, from both a licensing viewpoint and, equally, in the main young people's viewpoints, but whoever the punters are in the Adelaide CBD in the early hours of mainly Saturday and Sunday mornings. Hit those who misbehave or break the law in a public place with significantly increased penalties. I will address some further comments about that in a moment.

That is the general position that Steven Marshall, the Liberal leader, has put down on any number of occasions on behalf of the Liberal Party. From his viewpoint, that is a more sensible way to go. He has said, 'This government has already implemented its code. It is two or three weeks into the code already. It has been implemented because it has, in essence, been introduced by a regulation-making power.'

Even if it were to be disallowed, as a code, the government—as it has done with other regulations—could the next day reinstitute that code or indeed any other code that it wanted to apply between now and the election. Of course, we only have another 11 sitting days, so the government could reintroduce the code in the fourth week of November and that would operate all the way through until after the election anyway—so, for a five-month period—without parliament having any opportunity to disallow it if the parliament so chose.

The reality is that the government knows that on this occasion it has parliament over a barrel in relation to the late night code. It can ensure that this code or any other version of the code can operate because they are going to prorogue this parliament in the early weeks of December and there will be no opportunity for parliament to express a view any differently during that period.

Liberal leader Steven Marshall has made it clear that this is in. There will be a review if he is elected in March 2014. There will be a review of the liquor licensing provisions, but in particular obviously of the late night code—is someone cracking a coldie out the back there?

The Hon. R.L. Brokenshire interjecting:

The Hon. R.I. LUCAS: They won't be able to do that after 3am anywhere. The Liberal leader, Steven Marshall, has indicated that, if elected, there will certainly be a review. If certain amendments from, I think, the Hon. Mr Darley—

The Hon. R.L. Brokenshire: And the Hon. Ann Bressington.

The Hon. R.I. LUCAS: —and the Hon. Ann Bressington are passed, then there will be a review even if a Labor government—heaven forbid!—happened to be re-elected in March 2014. Whatever happens, it is likely that there will be a review of the operation of the legislation. Liberal leader Steven Marshall's position—which I strongly support—about bringing the boom down on individuals being the way to go just makes so much sense.

I have had, over the years, interminable arguments with former attorney Mr Atkinson on this issue because he and former premier Rann were the original wowsers who led the charge on this. What they do not realise is that young people these days live different lives to the lives we led when we were their age.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. R.I. LUCAS: They do not actually go out until late on a Saturday night or a Friday night and their entertainment hours are from 11 o'clock through to 5 o'clock or 6 o'clock.

Those who have had teenage children or young adult children living in their households these days will know that you do not see much of them on a Sunday morning because they do not get home until breakfast time. They sleep for the bulk of the morning and emerge sometime in the early afternoon.

It is not a life, Hon. Mr Brokenshire, suited to dairy farmers unless you do the milking as soon as you come back from the club and then go to bed. I hear on talkback radio when Mr Atkinson says, 'This is an outrage—young people out in the early hours of the morning,' and you hear the older callers agreeing with Mr Atkinson and going, 'Tut-tut-tut.'

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The Hon. Mr Atkinson.

The Hon. R.I. LUCAS: Is he honourable?

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Yes, he is. He was a minister for a number of years and he is now the Speaker.

The Hon. R.I. LUCAS: Has he accepted it? Well, let me call him the member for Croydon, then. I would not like to refer to him as honourable, so, the member for Croydon.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. R.I. LUCAS: The member for Croydon, with his interminable arguments where he tut-tuts about young people in the early hours of the morning actually enjoying themselves, gets a number of older callers, in particular, who tut-tut at the same time and cannot bring themselves to comprehend why anyone needs to be out at 4am or 5am enjoying themselves. The reality is that is the way of life for many young people these days. I am disappointed that the Hon. Mr Maher and the Hon. Mr Kandelaars, chortling on the backbench, cannot understand.

The Hon. T.J. Stephens: Was Maher one of those nerdy blokes who never went out, do you reckon?

The Hon. R.I. LUCAS: One of those nerdy blokes, do you reckon?

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! Other members will get an opportunity to speak if they wish. The Hon. Mr Lucas has the call.

The Hon. R.I. LUCAS: The reality—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: I just said that I support—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The Hon. Mr Maher is out of order.

The Hon. R.I. LUCAS: The problem we have, as I said, with the Hon. Mr Maher and the Hon. Mr Kandelaars in their support for the Deputy Premier and the others is that they just do not understand that young people like to go out in the early hours of Saturday morning and Sunday morning, in particular, and whether it is 12 o'clock or 4am or 5am or 6am is no different to them in terms of their entertainment. Large numbers of people are out there enjoying themselves. That is when they get to meet new people. That is when they socialise. That is their release after they have worked through the working week. The other point that the member for Croydon and the Hon. Mr Maher and the Hon. Mr Kandelaars—

Members interjecting:

The ACTING PRESIDENT (Hon. J.S. L. Dawkins): Order!

The Hon. R.I. LUCAS: —cannot understand is that these days the problems that are being attributed to licensees in many respects cannot be impacted by the licensees of particular venues because a lot of people, in particular young women, preload before they go out because alcoholic drinks at clubs are so expensive. They get their bottles of vodka and their mixers, and whatever else it might happen to be, with their friends and they drink their alcohol before they head out at 11 o'clock at night so that when they are at the clubs the cost of their beverages is not as much as it might otherwise be. They actually arrive in the nightclubs and in the hotels obviously already having had some alcoholic intake at home.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. R.I. LUCAS: The other issue that the member for Croydon cannot understand—although to be fair on a couple of recent occasions he has conceded that he agrees or he concedes there is an issue—is that public misbehaviour in the CBD on occasions is not solely due to alcohol, but is significantly due to illicit drugs. Young people are combining both alcohol and illicit drugs and that is causing—

The Hon. R.L. Brokenshire: It is a bad cocktail.

The Hon. R.I. LUCAS: It is a bad cocktail, and that is causing not only significant health issues for some of them but also some of the behaviour problems that we are seeing. The simple solution for the member for Croydon and others who support him—the Deputy Premier—is in essence that you have to blame the venue operator for being the one who continues to ply these young people with alcohol.

I am the first to concede that I am sure there are one or two rogue operators who do that, and I reiterate that the boom should come down on them and they are the ones who should be penalised, if need be, with changes to their licensing hours and whatever else it might happen to be if that is required, but there is this assumption that misbehaviour is being caused by the licensees of premises in the early hours of the morning and it is alcohol related, when in many cases—perhaps even in most cases I suspect in recent days—it is illicit drug related and in some cases a combination of both. Those are the sorts of simple, broadbrush solutions that the Deputy Premier and prior to that the former premier and the member for Croydon are initiating and supporting. They have not understood what is actually going on with young people in our clubs and pubs.

The other point to make is that when this was originally being pushed as a solution, a number of high-profile cases had occurred in terms of unfortunate acts of violent behaviour. When you actually looked at them at least half of them had occurred before the hours of what is now the proposed lock in, lock out, that is before 3am. A couple of the high-profile cases were actually late in the evening before, 11pm or midnight, but certainly a good number of them are occurring before the 3am lock in, lock out.

As the Liberal leader Steven Marshall has indicated, he has a number of significant concerns about the government's code, and a number of those have been raised by young people. Again, those who are familiar with having had young people in recent years negotiating clubs and pubs in the early hours of the morning will know—particularly in relation to young women but not solely young women—that sometimes when a young woman wants to leave to go home, whether she has had enough or she is upset and wants to go home, her friends at 3am or whatever time it is will take her outside and, in numbers, escort her to a cab or to a parent who might be coming to collect her to take her home. So that particular young woman gets home safely and her friends then return to the nightclub.

What these young people are saying now is that, as a result of the lock in, lock out, that is not now going to be able to occur. If one of a group of young women wants to go home at 3.10am and the others want to kick on until 5am, the friends are going to have to say, 'Sorry, I'd love to come out and escort you to a taxi or to your dad's taxi, or whatever it is, but you're on your own,' because the Jay Weatherill Labor government's view is that we should have the lock in, lock out. So there are going to be safety issues.

People will not have as much sympathy for this, but people at nightclubs who smoke, for example, often have to go outside to have a smoke in a lane or in the street, or whatever it happens to be, after 3am and then they go back in. Of course, that will not be permissible under the new arrangements and smokers will just have to grin and bear it.

I think one of the other issues in relation to the review—and only time will tell as to who is right in relation to this—is: will all the people who cannot get in at 3am because they have been at a venue which closes at 3am and they then want to move to another venue which is open from 3am to 5am go home, or will they stay in the entertainment precinct and go to cafes, fast food joints and arcades which might still be open rather than head home at 3am?

There are two versions of that and time will tell whether all of those young people will head off home at 3am or whether some will stay on in the less controlled environments. For all the criticism of pubs and clubs, there is security, there are CCTVs and there are staff, but if you go to takeaway food outlets such as McDonald's, cafes or arcades, there is not the same level of security

staff and staffing—or there has not been, I should say—as occurs in the more tightly controlled pubs and clubs.

I think that will be an issue that I do not have a strong view on one way or another but I have heard both arguments in terms of what might happen. We would hope that the problems will not stay on the streets in the less controlled environments and cause even greater problems in terms of public misbehaviour and public safety issues. Again, as Liberal leader Steven Marshall has said, this code and its impact need to be reviewed and that will certainly be one of the aspects that will need to be reviewed. The other aspects will need to be the issues of public transport, access to getting out of the precinct in a safe fashion. I know the government has announced a short-term measure of some increase to public transport which is good but ultimately the long term will be the issue.

To summarise, Liberal leader Steven Marshall has very eloquently articulated my position on this issue. He has outlined the concerns, he has nevertheless outlined the reasons why this piece of legislation will pass the parliament. Liberal members will not be voting against the legislation; Liberal members will not be disallowing the late night code prior to the March 2014 election.

In essence, the summary of the position I believe ought to be adopted is that you target the offenders, as Liberal leader Steven Marshall has indicated. Secondly, as a state we are in the process of giving police an extra 300 police officers. As the Hon. Mr Brokenshire will recall from his time as police minister, when governments give additional staffing to police, governments are in a position to say we want this particular issue to be addressed.

My view is that as part of that 300 we should be saying to the police commissioner we want additional resourcing for Friday and Saturday nights every week of the year in the entertainment precincts of Adelaide. The entertainment and tourism precincts are important for South Australia and, rather than what this government has tended to do, we should have short-term operations with extra staffing on Friday and Saturday nights. We believe that the entertainment precincts in Adelaide, out of the additional 300 staff that we are providing to police—

The Hon. R.L. Brokenshire: Five years it's going to take them for those extra police to come on.

The Hon. R.I. LUCAS: Yes, I understand the concerns about the length of time but whatever that length is, as we provide the additional resources there is nothing wrong with a government indicating that we want some of them to be directed to extra presence on the streets in the CBD on Friday and Saturday evenings. Look, it might also be in the Glenelg precinct as well if a government and the police commissioner believe there are problems down there as well.

I think the third issue that needs to be part of a total package or solution is some version of a sobering up centre or a dry out centre to try to assist the police. Each time they arrest somebody, two of them are taken out of the system for a period of time as they fill in the paperwork and have to look after the drunken and disorderly person. Certainly in other states and other jurisdictions versions of sobering up centres have evidently been successful. It is well worthwhile looking at that.

The fourth element of a total package should be a much greater concentration of CCTV security in and around the entertainment precincts of Adelaide. I note that the federal member for Adelaide prior to the last federal election committed to additional funding for CCTV in some parts of Adelaide. I am not sure whether that actually was approved and went through, but if it did not then some combination of federal, state and local government funding ought to be devoted to a much greater concentration of CCTV coverage in the city so that if people are misbehaving in a public place, there is a very high percentage chance of them being caught misbehaving and therefore being able to be punished by the authorities.

So, that would appear to be a much more sensible package of measures to try to tackle the misbehaviour of the minority in relation to public disorder, public misbehaviour offences, in the CBD. As Liberal leader, Steven Marshall, has said, 'Don't blanket ban punish everybody for, in essence, the misdeeds or sins of a minority.' If 98 per cent of young people happily enjoy themselves in pubs and clubs in the early hours of the morning, don't punish all 100 per cent of young people because 1 or 2 per cent have misbehaved—punish the 1 or 2 per cent. If 98 per cent of the licensees, the venue owners, are behaving and doing everything possible to manage their premises, don't punish all of them in terms of their livelihoods, punish the 1 or 2 per cent with proven records of misbehaviour in relation to breaches of the Liquor Licensing Act. Bring down the boom on the 1 or 2 per cent, don't bring down the boom on 100 per cent of the community.

On behalf of Liberal members, I summarise by saying that we strongly support Liberal leader, Steven Marshall's position on the legislation. We will not be opposing the second reading of the liquor licensing bill, and we will not be voting for a disallowance motion in relation to the late night codes, but will strongly support his concerns about the late night code and his position that all of it should be reviewed, hopefully by a Liberal government post-March 2014.

The Hon. R.L. BROKENSHIRE (16:47): I will be brief. I appreciated listening to the Hon. Rob Lucas, and I have to say that, in all the years I have been here (and he has been here a lot longer), he has always been very consistent in his approach to these issues, so it is no surprise to me that the text of the Hon. Rob Lucas's speech was as it was. He is incredibly consistent on freedom of opportunity.

I also note in the gallery a former colleague and a highly respected former deputy premier, the Hon. Graham Ingerson, and I apologise to him, as he was in here earlier, and I did not realise we were going to bring on this second reading. It is good to see him back here—obviously he still loves and enjoys his politics.

I want to put a few points on the record in the second reading debate, and that is that I do support the 3am lock-out. After discussion with my colleague, the Hon. Dennis Hood, and after consideration of other issues, the Family First position is to support the lock-out with the two amendments I have tabled. Sources we have been talking to indicate that the lock-out is working and minimising the risk of violence. In Newcastle they have had initiatives put in place to try to curb risk and allow a safer and more viable precinct, and I have been advised that that is working well in New South Wales, and likewise I understand also in Whyalla, where the Hon. Russell Wortley, my colleague, and others will be with us next week. I hope the Hon. Russell Wortley will spend some time with me checking on that while we are over in Whyalla.

The Hon. J.S.L. Dawkins: I'll keep an eye on you.

The Hon. R.L. BROKENSHIRE: The Hon. John Dawkins, of course, will be there also as another prestigious member of the Natural Resources Committee, and I am sure he will be keen to check out how things are going in Whyalla also.

I have circulated the rationale for the amendments to colleagues, so I will not go into that now. Ultimately it is up to the council to decide how this bill is finished with respect to amendments and the bill put up by the government. Alcohol-fuelled violence is an issue, and I think we are realising that we have to do what we can to allow people to have an enjoyable and vibrant city and state in which to live, work and play, but also it needs to be a safe one. To that end, I want to highlight the good work of Encounter Youth. For years I have worked with, watched and noted down my own way the work Encounter Youth does with Schoolies Week, which will start again soon.

One section of Encounter Youth known as the Green Team has been out doing some fantastic work in the streets of Adelaide. They have a regular presence on Hindley Street. In fact, if any colleagues haven't already, I would recommend they have a look at what Mr Simon Royal did in a segment on *7.30* SA several weeks ago just to show the benefit of having the Green Team out there on the streets working with, particularly, young people but also all people out there in Adelaide. I would ask the government to support them and other groups like the Sammy D Foundation that are working on reducing alcohol-fuelled violence. Clearly, the government, as indeed is the case with all of us, does not have all the answers, but the volunteer base is there on the ground and groups like the Green Team need the government to get behind them, including with some funding.

I know not everybody is happy about the 3 o'clock lock-out—or lock-in; whichever way you want to look at it—but at the end of the day we have to be responsible in the way we go about legislating to protect our community. I believe the government has done a lot of work in this area. I know that the police have been very keen to see this lock-out.

As anecdotal evidence, on the weekend I had some friends up at home on our farm for lunch. One of them lives very close to Adelaide and she walks into Adelaide on a Saturday morning to do her errands, as she described it. She said there has been a noticeable difference walking through Adelaide over the Morphett Street bridge and into the Hindley Street area early on a Saturday morning and seeing people sitting around enjoying themselves drinking coffee, starting to go about shopping and going to work. She said she has noted, just in the couple of weeks, a clear lack in the number of intoxicated people wandering around the streets at that time.

I think the government is trying to do something for the better public policy good here, and that is why we will be supporting the principles of this bill. I hope that we can get support for our amendment. I will talk more about that once we get to the committee stage.

Debate adjourned on motion of Hon. R.P. Wortley.

SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL BILL

Adjourned debate on second reading.

(Continued from 12 September 2013.)

The Hon. S.G. WADE (16:53): I rise on behalf of the Liberal opposition to indicate our support for the passage of the South Australian Civil and Administrative Tribunal Bill 2013. On Wednesday 24 July, the Attorney-General introduced the bill in the House of Assembly. The concept of a general appeals tribunal in South Australia dates back to the 1984 recommendation of the South Australian law reform committee. In that sense it is an idea that has had a long gestation through a Labor government, a Liberal government and a return to a Labor government.

In 2006, the process for reviewing administrative decisions was itself reviewed by the Attorney-General's Department and the Law Society, which proposed a civil and administrative tribunal. The bill was the subject of a discussion paper released in August 2011, and I think it is worth noting that other than Tasmania, South Australia is the only jurisdiction in Australia without such a tribunal.

The 2013-14 budget has allocated $4.9 million over four years in operating initiatives and $1.44 million in investing initiatives to establish the tribunal. Interestingly, a leaked November cabinet submission—one leak in a long line; perhaps the most noteworthy was yesterday's front page—

The Hon. R.L. Brokenshire: A fairly big front page.

The Hon. S.G. WADE: Yes, I thought so. As the honourable member reminds me, leaking ships sink. The leaked November cabinet submission had costed the project at $7.3 million over five years and relies on an ambitious start-up time frame to stay within budget. The Attorney-General indicated during estimates that the Sturt Street court building would become SACAT's new accommodation.

The bill seeks to establish the tribunal in South Australia with jurisdiction 'to review certain administrative decisions and to act with respect to certain disciplinary, civil or other proceedings; to confer powers on the tribunal; and for other purposes', as contained in the act. The bill's stated intention is to create a one-stop shop for the community on a broad range of civil and administrative matters. Despite this, this bill itself does not provide any jurisdiction for the tribunal or for any particular matters to be referred to it; rather, it lays the foundation for other tribunals to be subsumed through subsequent amendment bills, and I am sure they will be brought forward in due course.

The intention of having a multifaceted centralised tribunal will allow claims to be settled affordably and quickly without having to go through the usual court process. It is the hope of my party, and I am sure the parliament, that this can make justice more affordable and more accessible to South Australians.

As I said at the beginning, the opposition supports the bill and the tribunal. However, the bill is not perfect. After all, the government itself has submitted 97 amendments to a bill with only 101 clauses. Stakeholders have suggested around another 80 amendments, which the opposition is considering. I would flag that stakeholders have raised their opposition to the clause in relation to abolishing the privilege against self-incrimination.

I found it amazing that the government should include such a blanket provision in a bill; in other words, it is assuming that there is no place for the privilege against self-incrimination in any of the tribunals that might come into this bill. As I have indicated to the Attorney-General, that is a provision which the opposition finds unacceptable. The opposition will continue to look at those 80 suggested amendments, and it looks forward to the committee stage of the consideration of the bill.

Debate adjourned on motion of Hon. R.P. Wortley.

WORKCOVER CORPORATION (GOVERNANCE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 October 2013.)

The Hon. R.L. BROKENSHIRE (16:59): I want to please the whips at this late hour in the sitting week, so I will be brief, but I do want to put on the public record a few issues about WorkCover. I did receive yesterday, like other honourable members I am sure, a letter from the Attorney-General basically saying:

> This bill represents an important step in the Government's strategy to reform the WorkCover Scheme. The Governance Bill leads the way to the establishment of a more accountable, commercially focussed and business oriented WorkCover Board, and in conjunction with the recently strengthened WorkCover Charter, will also provide the Government with greater oversight and control over WorkCover.
>
> The period of appointment for all but one of the current WorkCover board members expires on 31 October 2013 and it is my desire to appoint the new board using the appointment criteria laid out in this bill. As such, I want to bring the WorkCover Corporation (Governance) Amendment Bill 2013 on for debate and passed tomorrow.

And that is what we are doing.

I understand that the government has the support of the opposition, but I just want to place on the record that I hope that we do have a board that is more accountable and that is commercially focused and business orientated. I had extreme concerns about the appointment of some people on the previous board. To me, one fairly high profile person in particular had a conflict of interest when they were able to be on the board and also be involved in working as the sole case manager company for some time. I cannot understand why the government ever allowed those sorts of situations to occur. I trust that, from the Attorney-General's letter, that will not be happening in the future when they appoint people to the board.

Having said that, this is a governance bill. I have received some lobbying, at one stage from Business SA, who apparently now have advised my colleague the Hon. Dennis Hood that, after having some early concern, they now support this bill. The Self Insurers of South Australia, who I do not think get enough support or notice taken of them from the government, would have liked this bill to address broader governance issues and they say it has flaws.

Raising one point from the Self Insurers of South Australia: does the government have on the board now or intend to add to the board, firstly, people with at least 10 years' legal experience; secondly, a fellow of the Institute of Actuaries of Australia; thirdly, a person with at least 10 years' experience in personal injury insurance; and, fourthly, a certified practising accountant with over 10 years' experience? Secondly, if not, what experience does the government believe is important to have on the board in the alternative?

I think they are fair and reasonable questions from the Self Insurers, particularly when you see that we have the highest WorkCover levies in Australia. I declare that my family and I pay WorkCover levies and they are astronomical. When you add up per hour what that adds to the cost of employment, it is no wonder that youth unemployment in particular is high in this state. It costs several dollars an hour for a farm employee with respect to WorkCover.

Something has to change. We have been promised changes by this government, but we have not seen them. We have seen blowout after blowout when it comes to the unfunded liability. I understand that, from the most recent report, the WorkCover unfunded liability is about $1.3 billion. We also have one of the worst return-to-work rates in the nation.

Frankly, I have to say that it was a Labor government that brought in WorkCover—and I wish I did not have to say this, but, unfortunately, it has been an absolutely dismal failure. I for one cannot understand why we even keep WorkCover. I personally believe that, if we get our legislation right to protect workers, etc., which should be the job of the parliament, then why should employers not be able to go out like we used to do and bid for work cover insurance at the same time as we bid for our insurance—which is not cheap?

I know the President and others with union-related backgrounds do not like that, and there is some ideology in the Labor Party—through the Wright family, I believe—that goes right back, that WorkCover is the bees knees, but it has been an absolutely dismal failure. I would love to see a government come in and make the laws—and we will support the laws in the parliament to protect the workers, but give us a chance to get cheaper work cover levies. I do not think, contrary

to what I heard recently from the government, that we will be seeing a reduction in levies in the near future.

I just want to finish with a couple of other points. First, given this legislative change to WorkCover and given where we are in the parliamentary cycle, I gather it is unlikely that any other bill will be brought in by the government. Has the government drafted another bill, given that it has been in deep consultation on the WorkCover improvement project for some time, or is this all we are going to see from the government when it comes to WorkCover between now and the next election?

Whenever you speak to employers now, next to utility costs WorkCover is one of the big concerns they have about employing people. Families are hurting and businesses are hurting when it comes to utility costs, red tape and green tape—and then they tell me about the cost of WorkCover. I hope that it is an election issue because it is a silent sleeper for a lot of people at the moment. The media does not seem to report the real facts about WorkCover. However, for the last 12 years of WorkCover under this government I am sorry to say that I would give them a rating of F, for failure.

What happened to the reopening and redemptions to reduce the unfunded liability and help injured workers get off the system? What happened to reducing WorkCover levies for employers, noting the leaked memo on government plans to the end of this year in the election campaign? There was no mention of WorkCover there that I can recall. Will the government announce a reduction in WorkCover levies between now and March? I would like to know, and a lot of other employers would as well.

As I said earlier, the WorkCover annual report just tabled shows that the unfunded liability is over $1.3 billion, even though the funding ratio has improved. I ask the government: what is the projected future, all things being equal, for the unfunded liability into the forward estimates? Is the government at all concerned about the unfunded liability? With those remarks, you can gather that I am not impressed with WorkCover one iota. I hope that whoever wins government at the next election will take WorkCover by the horns and sort it out properly.

I mentioned earlier that the Hon. Graham Ingerson was in the gallery, and I must say that when he was in charge of WorkCover there was real improvement. In fact, the unfunded WorkCover liability when he was the minister in charge was, in real terms, next to nothing—'diddly squat' I would describe it—compared with what has happened since. We did not even get annual reports tabled when the Hon. Michael Wright was the minister for WorkCover for a couple of years. It is an absolute disgrace. I hope that things sort themselves out. We are only two votes and we do not have the numbers, so this bill is going through—but not without a whack from us to the government on the appalling record and history of WorkCover.

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

CRIMINAL LAW (SENTENCING) (SUSPENDED SENTENCES) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

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) (17:08): I understand that there will be no further second reading contributions. I will put on the record that, although the Hon. Kelly Vincent had indicated that she was considering making a contribution, she has had to go home due to ill health. However, I have been advised by her office that she is happy for the second reading and committee stages to be progressed for this bill.

On that advice I will sum up and we will progress to the committee stage of the bill, if that is the will of this chamber. I thank those members who have contributed to the debate, particularly those who support this bill. The bill targets repeat violent offenders and those offenders who are involved in serious and organised crime, the most serious drug offences and offenders who target jurors and witnesses. This bill is targeted at the right offenders. It does not remove the court's discretion and it will not result in our gaols overflowing. The government wants it on the record that this bill does not implement any policy of mandatory minimum sentences, contrary to the rather unhelpful submission from the Law Society.

When sentencing any offender, the first step the sentencing court takes is to determine whether a sentence of imprisonment is appropriate, and if so, the court also determines the length of the sentence. This process is undisturbed. Currently, once the court makes a decision to

imprison an offender, the court then considers whether any good reason to suspend that sentence. It is this test that we are changing. For the offenders we are targeting, they will now have to demonstrate that there are exceptional circumstances to warrant their sentence being suspended.

This reform will result in some offenders serving time who otherwise might have been out in our community on a suspended sentence, but these are the offenders we want locked up: people who commit serious drug offences, people who commit offences to support criminal gangs, and people who continue to commit violent offences despite having the benefit of a suspended sentence in the past.

With the passage of this bill, this government is sending a message to repeat violent offenders and to offenders involved in serious and organised crime: we will not tolerate this type of offending, and we have made it harder for you to obtain a suspended sentence, so be prepared to spend more time in gaol.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. R.L. BROKENSHIRE: I move:

Amendment No 1 [Broke–2]—

Page 2, line 18 [clause 4(2), inserted subsection (2b)]—Delete 'either' and substitute 'any'

I believe that our police need our support when it comes to protecting them against what has been an increase in police assaults. I have noted with interest where the Barnett government in Western Australia has addressed legislation issues to assist in the issues they had (similar to South Australia, I understand) where there was an increase in serious police assaults, that in the period since that has been in operation, they have seen a significant reduction in police assaults, which is a great thing for the police, a great thing for the families of the police, and also I believe assists in starting to overcome a cultural problem where, if you are not happy with someone, you seriously assault them. That is something that we need to jump on from a great height when it comes to preventing what is quite a high number of assaults against the person in South Australia. Whilst I acknowledge that there has been a reduction in a lot of crime, the reality is that, when it comes to assaults against the person, I have not seen that being the situation.

I believe that we need to show that there is little tolerance from the parliament when it comes to serious harm or worse, and this amendment takes the same approach as exists in this bill for serious and organised crime offences—no chance for a suspended sentence if you cause serious harm to a police officer in the course of his or her duties. Serious harm, I emphasise—I am not talking about a scratch or a bruise and that type of thing. I am talking about serious harm where we see people being glassed, stabbed and shot at and the like right across Australia, in fact, but of course we are only responsible for South Australia.

I also just want to advise colleagues that the Brokenshire-2 amendment, I stress, is no different in substance to Brokenshire-1. It removes the word 'aggravated' and replaces it with 'specified' in all relevant places except clause 5 where it is needed but the basic effect is the same. I conclude with the reasons why Family First put this amendment forward. If it is good enough to take suspended sentences away from bikies who commit serious and organised crime offences—and we congratulate the government on doing that in this bill—then it is certainly good enough to take them away from the thugs who assault our police, causing them serious harm, or who attempt to murder them.

The Hon. S.G. WADE: It is slightly unusual, but I would like to ask a question of the minister in relation to the honourable member's amendment. As I understand it, the—

The CHAIR: The Hon. Mr Wade, will it assist if the minister puts the government's position on the amendment first? That might expedite matters.

The Hon. S.G. WADE: It actually comes out of Mr Brokenshire's comments. Mr Brokenshire suggested that this would remove the capacity for suspended sentences to be awarded. In relation to the government's provisions in relation to non-police and in relation to Mr Brokenshire's amendments in relation to police, could the minister clarify whether the option of suspended sentences would be removed or just limited?

The Hon. G.E. GAGO: I am advised, just limited. The government supports the Hon. Rob Brokenshire's amendment. This first amendment is only made because of further amendments filed by the Hon. Robert Brokenshire, whereby further offences are added to a list of offences. All five of the Hon. Mr Brokenshire's amendments are supported by the government. I think there are some by the Hon. Dennis Hood as well. In fact, all the amendments that have been tabled by honourable members will be supported by the government, just in case that might assist them in the length of the debate.

The Hon. S.G. WADE: I rise to indicate that the opposition also supports the amendment by the Hon. Robert Brokenshire. The amendment would require the higher exceptional circumstances threshold to be met if a person is convicted of any of the offences included in the table and where the victim is a police officer. Our understanding is that the amendments do not remove the judicial discretion, but they do reflect the community's concern to protect police in their role which this house only on Tuesday of this week affirmed in very clear terms in its amendments to the Statutes Amendment (Police) Bill.

The bill allows the court to impose a sentence appropriate to the circumstances rather than a one-size-fits-all sentence predetermined by statute, but it appropriately reflects the community's determination to support our police officers as, day by day, they put themselves in harm's way and we believe the community expects that all citizens will show appropriate respect to the police. It is appropriate that a suspended sentence should be harder to get and should be subject to the exceptional circumstances criteria if police are the victims.

Amendment carried.

The Hon. R.L. BROKENSHIRE: I move:

Amendment No 2 [Broke–2]—

Page 2, line 20 [clause 4(2), inserted subsection (2b)(a)]—After 'crime offence' insert 'or specified offence against police'

Amendment carried.

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

Amendment No 1 [Hood–1]—

Page 3, line 2 [clause 4(2), inserted subsection (2b)(b)]—Delete '3 year period' and substitute:

5 year period

I will be relatively brief and I thank the minister for her indication of support, but this amendment does bear a little bit of explanation.

The Hon. S.G. Wade: You still need another two.

The Hon. D.G.E. HOOD: Indeed, yes. It is usually the other way, of course; it is ironic. This is a very simple amendment. It simply changes the time frame for which two suspended sentences could not be given from three years to five years. Of course, this is only for the designated offences, as listed. I will read out some of those so-called designated offences. I think members would by and large agree that anyone who got two suspended sentences in a five-year period for such offences would truly have to be in exceptional circumstances. The offences are: kidnapping, rape, persistent sexual exploitation of a child, shooting at police officers—they are just a few; there are others, but they are obviously at the very high end of the scale and are very serious indeed.

I see no reason—although the bill does allow reason in exceptional circumstances—that anyone should be given two suspended sentences for offences of that seriousness in the five-year period, hence my amendment.

The Hon. S.G. Wade: And all of them.

The Hon. D.G.E. HOOD: Indeed.

The Hon. G.E. GAGO: The government rises to support this amendment. The bill makes amendments to the Criminal Law (Sentencing) Act so that an adult offender being sentenced for a designated offence, who in the past three years has received the benefit of a suspended sentence for a serious offence of violence, will not receive the benefit of another suspended offence unless the court is satisfied exceptional circumstances warrant the suspension, as opposed to the usual

test of whether there is good reason to suspend. The bill will make it harder for these repeat offenders to receive the benefit of a second suspended sentence.

The Hon. Mr Hood's first amendment extends the three-year period to a five-year period. This will result in capturing more repeat offenders under this reform. The government supports this amendment. These amendments support the government's policy that there are some repeat offenders who should only receive the benefit of a suspended sentence if their circumstances are truly exceptional.

The Hon. S.G. WADE: The opposition also supports this amendment. I seek confirmation as to whether all the categories of offenders who need to meet the exceptional circumstances test will be subject to the five-year period.

The Hon. G.E. GAGO: My advice is yes.

The Hon. S.G. WADE: That being the case, could I ask the government for an update on the budgeted cost? As I said, the budget bid at the end of last year estimated that it would cost $9.8 million for 30 additional prison beds at the Port Augusta Prison, at an operating cost of $2.7 million by 2016-17, to implement the old policy. So, are we looking at a 40 per cent increase in the cost?

The Hon. G.E. GAGO: I note that the figures that the honourable member refers to are very old figures and are obviously out of date, but in relation to current costings, those figures are not available. I will obviously take what I can on notice and see what information is available and bring that back at a later date, but I have been advised that costings of that nature are not available at this point in time.

The Hon. S.G. WADE: If the government is not able to provide a cost, can they provide an estimate of the additional prison beds that will be required?

The Hon. G.E. GAGO: I am advised no.

The Hon. S.G. WADE: What I find baffling is that almost 12 months after an original assessment was made the information has gone backwards. The Treasury has allowed the government to bring this bill forward without any idea of how much it will cost.

The Hon. G.E. GAGO: I have been advised that we had costings on the bill, but not those amendments at this point in time.

The Hon. S.G. WADE: Could I have an indication of the costs on the bill?

The Hon. G.E. GAGO: I am advised that the assessment indicated that the impact on the daily number of prisoners in relation to prison occupation fitted within the current capacity of our prison system, therefore it was assessed to have no additional costs on the current provisions within our corrections system.

The Hon. S.G. WADE: I am delighted to be advised by the government that there is spare capacity in our prison system because that would be a surprise to most people, including the Public Service Association who support our correctional services officers. The minister is saying that the three-year window would not result in additional cost to the system. Is the minister able to advise whether there is an expected additional cost for the extension of two years? Let me stress again, we have already indicated we are supporting this, but we expect the government to have the resources to implement laws, not just pass them.

The Hon. G.E. GAGO: I have already indicated that we currently do not have costings for those aspects of the amendment. I have already put that on the record.

The Hon. A. BRESSINGTON: Perhaps I could ask the minister if she is aware of what the Victorian experience has been with the same legislation as we are passing here now? That it has made absolutely no difference to the number of people who have received suspended sentences through the court mainly because of the exceptional circumstances clause, or term, in the bill and that it has allowed the courts to give a wider interpretation of 'exceptional circumstances'. In actual fact, a report that I received from the Victorian courts has indicated that it has been basically a moot bill for any sort of outcome at all for keeping offenders from getting suspended sentences and being released.

The Hon. G.E. GAGO: The matter before us today is a bill that clearly seeks to repeat the ability for people to receive suspended sentences for a series of very serious offences. That is the principle at stake we are looking at, and the member either supports the direction we are proposing

to take or does not. In terms of Victorian statistics, I have been advised that we are not aware of any statistics coming out of Victoria on the issue of suspended sentences, and I would be happy for the honourable member to make whatever data or references she is referring to available to us, but we are not aware of any.

In terms of the potential for an unintended effect of widening the interpretation of exceptional circumstances, I am advised that South Australia has a very longstanding and very strong interpretation of exceptional circumstances, of case law that defines what exceptional circumstances are, and that we are most doubtful indeed that this bill will have any adverse effect, or in any respect any effect, on the interpretation of exceptional circumstances.

The Hon. A. BRESSINGTON: The document I am referring to is 'Suspended sentences in Victoria: monitoring report', and I have a statement here from the Victorian Sentencing Advisory Council. The analysis suggests:

> ...that, in the absence of credible alternatives to suspended sentences, legislative attempts to restrict the use of suspended sentences have not been successful.

The Victorian report suggests:

> ...that the sentencing judges are adopting a broader approach to the definition of 'exceptional circumstances' for cases imposing a suspended sentence than the definition of 'exceptional circumstances' for cases regarding breach of a suspended sentence which refers to circumstances that are 'clearly unusual, quite [unusual] [or] out of the ordinary.

The council went on to state:

> While the Council continues to be concerned with what we believe are fundamental flaws with the structure of suspended sentences on community confidence, we equally believe that any changes to other intermediate orders should be fully tested before any additional moves are made to restrict further sentencers' ability to make this order. To do otherwise would risk increasing the prison population substantially, resulting in a sharp rise in correctional system costs.

But that is about adding additional changes to the law where exceptional circumstances are put into play for suspended sentencing guidelines. So, in actual fact, the advisory council from Victoria is saying that basically this has made no difference at all because of the court's ability to put a broader interpretation on the circumstances now using the term 'exceptional circumstances'.

The Hon. G.E. GAGO: I notice that the honourable member does not refer to any specific statistics in relation to actual numbers or changes in numbers, and the advice I have received is that the information contained in the reference the honourable member refers to contains no statistics. There were no measurements or monitoring of actual numbers, or changes in numbers, but they were general observations.

All I can do is reassure the honourable member that that may well be in terms of the impact on exceptional circumstances in relation to Victorian case law but, again, the honourable member does not refer to any stats, and we understand that there are no statistics amongst those observations, that they are general observations only. I can only reassure the honourable member that the case law here in South Australia around exceptional circumstances is very well developed and very strong and is most unlikely to be impacted on in any way.

The Hon. A. BRESSINGTON: Just to clarify, as I said, that was a monitoring report of suspended sentences. I have just one very short clause here that I can read onto the record which basically supports the statement that this has been a piece of useless legislation in Victoria. It states:

> In 50 of the 83 cases analysed, the sentencing judge expressly referred to section 27(2B) or to 'exceptional circumstances'. Explicit reference to the section and to 'exceptional circumstances' has increased over time, from 40% of relevant remarks in the period from January 2008 to June 2008, to 72% in the period from January 2009 to June 2009.

Let me just be clear: I support the legislation but if there are sticking points that have occurred in Victoria because of the exceptional circumstances clause, my original question to the minister stands: what steps have we taken to make sure that this is not just another useless piece of legislation and that we do not repeat in our legislation here whatever it is that renders it useless?

The CHAIR: The Hon. Mr Wade.

The Hon. S.G. WADE: The minister is clearly choosing not to answer. I would just like to go on and make—

The CHAIR: Order!

The Hon. G.E. GAGO: My answer is already on the record. I have talked about case law, our strong case law. I have already answered the question twice.

The Hon. A. Bressington: No you haven't.

The Hon. G.E. GAGO: Well, I have. I said that our case law is strong—

The CHAIR: Order!

The Hon. G.E. GAGO: —and that I do not believe it will be impacting—

The Hon. S.G. Wade interjecting:

The CHAIR: Order!

The Hon. G.E. GAGO: I have already put that on the record.

The CHAIR: Order!

The Hon. G.E. GAGO: Do not be misleading.

The CHAIR: We are dealing with the Hon. Mr Hood's amendment and now, the Hon. Mr Wade, you have a further question?

The Hon. S.G. WADE: I have comments to make on the clause.

The CHAIR: Comments on the clause.

The Hon. S.G. WADE: In relation to the minister's assertion that there are no statistics in the Sentencing Advisory Council report—

The Hon. G.E. GAGO: I said that I was not aware of any.

The CHAIR: Order!

The Hon. G.E. GAGO: Do not be misleading. I said I was not aware of any. I did not say there were none.

The Hon. A. Bressington: You said there were none in the report that you referred to.

The CHAIR: Order! The Hon. Mr Wade.

The Hon. S.G. WADE: Thank you, Mr President; I appreciate having the call. I refer to page 9 of the report. Clearly there is a table that shows an increase in suspended sentences in the Victorian Magistrates Court in relation to wholly suspended sentences between 2000 and 2008-09. I reiterate that the opposition is supporting this legislation, but the Hon. Ann Bressington raises a very good point. The parliament often passes legislation that does not have the effect that parliament intends. The Hon. Dennis Hood has raised concerns in this parliament in recent months about the diminution of court accountability stats, for want of a better word. I think the Hon. Ann Bressington raises a good point. I ask the minister: what steps will the government take to monitor the implementation of these laws so that parliament can be confident in the shared objective? The government, the opposition and as far as I know all crossbenchers support this. We need to know if they work. What will the government be doing to monitor the effect of this legislation?

The Hon. G.E. GAGO: I am advised that we will do what we already do which is monitor our own statistics. We do that currently and we will continue to do that. As I have said, in terms of the reassurances around the broadening of exceptional circumstances, I have already indicated that we believe that our case law is well-developed and extremely strong in terms of providing very clear direction around what constitutes exceptional circumstances.

Amendment carried.

The Hon. R.L. BROKENSHIRE: I move:

Amendment No 3 [Broke–2]—

Page 3, line 10 [clause 4(2), inserted subsection (2ba)(a)]—After 'serious and organised crime offence' insert 'or specified offence against police'

Amendment No 4 [Broke–2]—

Page 3, lines 15 and 16 [clause 4(2), inserted subsection (2ba)(b)]—After 'serious and organised crime offence' insert 'or specified offence against police'

I advise the council that these are consequential amendments.

Amendments carried.

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

Amendment No 2 [Hood–1]—

Page 3, after line 26 [clause 4(3), inserted subsection (4)]—After paragraph (c) insert:

(ca) an offence under section 19AC;

My last amendment was to lengthen the period of time for which one would qualify for a second suspended sentence, that is, of the designated offences. What this amendment does is add to the designated offences and specifically adds dangerous driving to escape police pursuit to make that also a designated offence. If this amendment passes, an offender would not qualify for two suspended sentences against that offence in what would now be a five-year period unless there were exceptional circumstances.

The Hon. G.E. GAGO: The government rises to support this amendment. Very briefly, whilst the Hon. Mr Hood's first amendment extends the three-year period to five years, this second amendment and third amendment extend the application of this new provision to the offences of dangerous driving to escape police pursuit and serious criminal trespass in a place of residence, also known as a home invasion. For these reasons we support these amendments.

Amendment carried.

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

Amendment No 3 [Hood–1]—

Page 3, after line 32 [clause 4(3), inserted subsection (4)]—After paragraph (i) insert:

(ia) an offence under section 170;

Members will be pleased to hear this is the last one. This adds another designated offence to the list, so that will be a second one. The minister has just referred to it in her short contribution. This one is serious criminal trespass in a place of residence, otherwise known as a home invasion.

Amendment carried.

The Hon. R.L. BROKENSHIRE: I move:

Amendment No 5 [Broke–2]—

Page 4, after line 14 [clause 4(3), inserted subsection (4)]—After the definition of *serious and organised crime offence* insert:

specified offence against police means—

(a) an aggravated offence under section 23(1) or 23(3) of the *Criminal Law Consolidation Act 1935* where the aggravating circumstances of the offence are the circumstances referred to in section 5AA(1)(c) of that Act and the victim is a police officer; or

(b) an offence of attempted murder or attempted manslaughter under the *Criminal Law Consolidation Act 1935* where the victim is a police officer and the offender committed the offence—

(i) knowing the victim to be acting in the course of his or her official duty; or

(ii) in retribution for something the offender knows or believes to have been done by the victim in the course of his or her official duty.

Amendment carried; clause as amended passed.

Schedule and title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (17:46): I move:

That this bill be now read a third time.

Bill read a third time and passed.

COMMUNITY HOUSING PROVIDERS (NATIONAL LAW) (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 25 September 2013.)

The Hon. R.I. LUCAS (17:46): The Liberal Party supports the second reading of the Community Housing Providers (National Law) (South Australia) Bill. In summary, the key aims of the bill are to:

- introduce a nationally consistent approach to regulation of registered community housing providers;
- provide a platform for registered community housing providers to operate more easily across jurisdictions;
- secure government's financial and non-financial interests in community housing assets;
- clearly establish the separation of government's dual roles for funding and regulation; and
- provide greater public and commercial confidence in the capacity and professionalism of registered community housing providers.

The Liberal Party's position on this bill has been led by the member for Morphett, who has engaged in the consultation on the bill. He has advised our party room that this legislation is being introduced through template legislation which will be passed in each participating jurisdiction and there has been a national agreement in relation to the legislation. He advises that New South Wales passed the legislation on 22 August 2012, and it is the host or lead legislator, I assume, for the legislation.

He indicates that all states and territories have been extensively involved in the development of the national law and that South Australia confirmed its commitment to implementing the national system by signing an intergovernmental agreement to the national regulatory system for community housing providers on 31 August 2012.

I guess there is an obvious question as to why it has taken 12 months to get to this particular stage for the South Australian parliament to consider the legislation, but I do not intend to delay the passage of the bill by pursuing that. I will leave that to the member for Morphett. With that, I indicate Liberal Party support for the second reading of the bill.

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

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) (RESTRICTED BIRTHING PRACTICES) AMENDMENT BILL

Second reading.

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

That this bill be now read a second time.

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

Leave granted.

On 6 June 2012, the Deputy State Coroner handed down his findings into the unrelated deaths of three babies who died at the time of, or very soon after their births, between 2007 and 2011. While the names of these babies are publicly reported, out of respect for the families involved in these tragic events, I will choose not to repeat the names in this place.

Each of the babies was delivered by way of planned homebirth at the respective homes of their parents but unfortunately died after complications that were experienced in the course of their births. In each of the births the Deputy State Coroner found that there was an enhanced risk of complication associated with their births that was not unpredictable.

SA Health's *Policy for Planned Birth at Home in South Australia* states that:

> The prerequisite for a home birth is that the woman should have an uncomplicated singleton pregnancy with a cephalic presentation between 37 and 42 weeks of gestation (259 to 294 days).

The Policy also includes a list of conditions that preclude a woman giving birth at home. These conditions may relate to the woman's obstetric and medical history, or may arise during her pregnancy or labour. The conditions may also

relate to the home environment, for example, ease of access should a hospital transfer be required and the distance to the nearest hospital.

The Policy uses the phrase *'preclude a woman giving birth at home'* but I want to put it on record that the Government is not opposed to homebirths. The Government recognises that where a woman gives birth is her choice. But it is important to ensure that this choice is an informed decision and that the person assisting in the birthing process is appropriately qualified and trained and practises in accordance with accepted professional standards.

In his findings the Deputy State Coroner found the births were in that category where a homebirth would not normally be considered. One was a macrosomic (or large) baby, the second was a breech birth, and the third was the second born of twins. Complications can, and often do, arise in pregnancies when these indications are identified and present an increased risk to the mother or baby or both. In these situations it is important to ensure that the level of care provided is appropriate and that the person providing this care is appropriately qualified.

It is also important that the mother understands the risk associated with choosing to homebirth where there is an enhanced risk of complication. The Deputy State Coroner raised concerns about whether the mothers appreciated the degree of risk of the complications associated with their decision to proceed with a homebirth. The Victorian Coroner reached a similar conclusion in his May 2013 Inquest into the death of a baby in a planned homebirth in that State where he found:

> Her [the mother's] evidence as also articulated in her statement and in counsel's submissions was that had she known there was a risk to her baby she would not have proceeded with home birth plans and would have remained in hospital to deliver her baby.

There will be some parents that will wish to proceed with a homebirth even after being informed of the risks. As the South Australian Coroner found in a 2007 Inquest into the death of a second twin in a planned homebirth:

> Clearly the decision as to the place of birth of a child is one for the parents of the child to make. In the present case it is clear that the [parents] made their decision after having obtained a great deal of information of their own initiative. They were clearly intelligent people who were able to make a fully informed decision about the place of birth of their twins.

This Bill is in response to the Deputy State Coroner's recommendations from his 2012 Inquest into the deaths of the three babies. The Deputy State Coroner recommended that the Minister for Health and Ageing:

> … introduce legislation that would render it an offence for a person to engage in the practice of midwifery, including its practice in respect of the management of the three stages of labour, without being a midwife or a medical practitioner registered pursuant to the National Law.

The National Law that the Deputy State Coroner refers to is the *Health Practitioner Regulation National Law* which is the national legislative scheme for the registration and accreditation of 14 health professions. Under the National Law, each profession is regulated to ensure that the persons registered in the profession maintain high standards of competence and conduct. This is to ensure that the health and safety of the public is protected. Should a health practitioner not meet the standards for the profession they may face disciplinary action which may include suspension or de-registration.

Amongst the requirements to be eligible for registration a person must demonstrate that they hold an appropriate qualification to practise in the profession. In order to maintain their registration they must demonstrate continuing professional development. A person that has not been practising in their profession for an extended period of time may be required to undertake further study or only practise under supervision until they can demonstrate competency.

Under the National Law there are currently three practices that are protected—some specific dental treatments, the prescription of optical appliances, and spinal manipulation. The purpose of protecting a practice is to limit its performance to a defined group of health practitioners who are suitably trained and qualified, and regulated. These practitioners must operate under codes and guidelines for the purpose of maintaining high standards of competence and conduct for the scope of practice of the profession.

For example, under the National Law spinal manipulation is a protected practice and may only be performed by a person registered in the medical, chiropractic, osteopathy or physiotherapy professions. Members will appreciate the risk of catastrophic injury that may occur if this practice could be done by unregistered or unqualified individuals.

The Deputy State Coroner's call for the protection of midwifery practice follows the same principle. It is important that any person involved in midwifery practice holds the appropriate qualifications, skills and experience and practises within a quality and safety framework.

It may be useful at this point that I define midwifery practice for the benefit of Members. Midwifery practice refers to the care of a woman across the care continuum of the antenatal, intrapartum and postnatal periods for the mother and baby. In its true sense only a midwife practises midwifery. A medical practitioner may also provide care to the woman throughout the childbearing process. These services are known as obstetric care and are provided by registered medical practitioners who have undertaken education and training in obstetrics, or whose training is recognised by The Royal Australian College of Obstetricians and Gynaecologists and, if employed in the public health system, they are credentialed by SA Health to provide these services.

In responding to the Deputy State Coroner's recommendations SA Health supported the call for legislation to restrict midwifery practice to a midwife or a medical practitioner registered under the *Health Practitioner*

Regulation National Law. In January 2013 a consultation paper was distributed to the peak professional bodies and posted on SA Health's website inviting comments on the proposal to protect midwifery practice in South Australia.

32 submissions were received following a six-week consultation process and these submissions are available on SA Health's website. 25 submissions supported the proposal to legislate for the protection of midwifery practice; four submissions did not. Another three submissions agreed that the public should be protected from unregistered practitioners but suggested alternate measures to restricting the practice to achieve this.

The Chair of the Child Death and Serious Injury Review Committee has also written to the Government supporting the greater regulation of midwifery services to ensure that 'babies are born as safely as foreseeable in the homebirth setting.' These submissions have assisted in the drafting of the Bill before the House today.

While practice protection works in one way to protect the public by ensuring that only those persons that are suitably trained and qualified can perform those services, in another way it prevents those who are not members of the nominated profession from providing such services. The consultation process highlighted that to protect midwifery practice would affect a number of health practitioners that are involved in the provision of antenatal and postnatal care. This care may be provided by registered health practitioners within their scope of practice or unregulated persons providing emotional or social support to the woman and her family.

Many of the submissions received related to Aboriginal Maternal and Infant Care Workers. These workers work with midwives to provide the best care possible for Aboriginal and Torres Strait Islander women with the goal of reducing poor perinatal outcomes. It is well documented that Aboriginal and Torres Strait Islander women continue to experience substantially poorer maternal and perinatal outcomes, characterised by higher rates of death, pre-term birth and a higher proportion of low birth-weight babies, compared with their non-Indigenous counterparts. The collaborative approach between the Aboriginal Maternal and Infant Care Workers and the midwife and medical practitioner has been important in providing culturally respectful and safe maternity care to Aboriginal mothers, babies and families.

Any practice protection should not interfere with collaborative arrangements between the registered health practitioners and other health providers such as Aboriginal Maternal and Infant Care Workers or support persons such as birth attendants, birthing advocates, doulas, assistants in midwifery, or mothercarers. It is not the Government's intention to restrict the services and support available to a woman during her pregnancy. To do so may inadvertently push women to seek out the services of unqualified or unregistered health care providers.

In restricting birthing practices to either a midwife or medical practitioner this Bill strikes a reasonable balance between the services that may be provided to a woman during her pregnancy and the need to ensure that the health and safety of the mother and baby is protected.

Under the *Health Practitioner Regulation National Law* it is an offence for any person that is not registered with the Nursing and Midwifery Board of Australia to take the title of 'midwife' or 'midwife practitioner'. It is also an offence under the National Law to claim to be registered or qualified as a midwife, or to take or use any title, or describe themselves in any way, that may cause another person to believe that they are a midwife.

The National Law only prevents a person from taking the title, or leading others to believe they are a 'midwife'; it does not prevent any person from practising midwifery. As the Deputy State Coroner found a person may call themselves a 'birth advocate' and perform the clinical duties and responsibilities of a midwife without having to conduct the practice within the accepted safety and quality framework of the midwifery profession.

A registered midwife or medical practitioner must ensure they comply with any standards, codes or guidelines issued by their professional regulatory board. Failure to do so may result in disciplinary action.

A registered midwife or medical practitioner must ensure that the information that they provide to their patients is based on contemporary, relevant and well-founded evidence and practice. This will allow the woman to make an informed choice about options for her birth. For example, the codes for midwifery require the midwife to practise in a manner that:

> …recognises the woman's right to receive accurate information; be protected against foreseeable risk of harm to themselves and their infant(s); and have freedom to make choices in relation to their care.

Under the safety and quality framework the midwifery profession would not have recommended home birthing for the three babies investigated by the Deputy State Coroner.

The woman is placing her trust in the hands of the health practitioner and will be guided by them in determining that she is making a safe choice. Any person that is not a registered midwife is not bound by the requirements to practise within the profession's safety and quality framework.

I am aware that some people are of the view that the codes and guidelines for the midwifery profession are artificially limiting and favour hospital births, and do not allow an informed choice to be made. While the current guidelines for the midwifery profession state that a woman with certain risk factors should be referred for consultation with another care provider and other women with higher risk status are referred for specialist obstetric care, the guidelines do also support and protect a woman's right to choose where she delivers her baby.

The Australian College of Midwives has recently issued the third edition of the *National Midwifery Guidelines for Consultation and Referral* that outlines the process for midwives to follow if a woman chooses to proceed with a homebirth even though it is against advice and evidence that it is not safe to do so.

Where the midwife agrees to provide care, the Guidelines suggest that the midwife should continue to make recommendations for safe care, engage other registered health practitioners in the care of the woman, and plan for the management of an emergency.

The decision at this point to continue care does not imply that the woman's decision to choose a pathway of care that carries increased risk of harm to either the woman or her baby is endorsed by the midwife. It is a professional decision to ensure the best outcome for mother and baby.

The midwife may also decide to discontinue care where the woman decides to give birth (including homebirth) in a manner that is not within accepted professional guidelines. In these circumstances the midwife is to inform the woman of the decision and the reasons why. This decision may be made over a period of time as the midwife continues to outline the risks of proceeding with a homebirth to the woman throughout the course of her pregnancy. I am told that this situation will arise in a very small number of cases as once advised of the risk most women will decide against a homebirth.

Where the decision is made to discontinue care the midwife should ensure that the woman has alternative care, which may include providing assistance to find another practitioner who is willing to see the woman and provide care.

The Guidelines advise that the midwife is obliged to attend the woman as the primary care provider if issues arise during labour or in urgent circumstances. Under these circumstances the midwife is to provide care to the best of their ability.

Some submissions received during the consultation raised concerns that passing legislation to restrict childbirth to a registered midwife or medical practitioner is removing the woman's choice to decide who she may have present at the birth. Giving birth involves so many emotions for the woman and her family, and it is important for the woman to not only have people around her that can ensure a safe delivery for the mother and baby but also those who can provide emotional and social support for the woman and her family. It is not the intention of this legislation to preclude the emotional and social support from the woman and her family.

It is accepted professional practice for the midwife to involve others in the care of the woman during her pregnancy and birth, where it is considered that it would be beneficial to the woman or her baby. However, any such involvement must be considered within an appropriate risk management framework where the midwife is to take into account such matters as:

- whether the involvement of another is supported by legislation, policies, guidelines or protocols;
- that the other person is competent to undertake to perform the activity safely;
- that the other person is ready, or confident, to perform the activity;
- whether there is consensus in the midwifery profession that another person may perform the activity; and
- whether the midwife is available to provide the required level of supervision and support, including education.

Where the midwife makes the decision to involve others in the care of the woman or her baby, the midwife is still regarded as the primary care provider and has responsibility for the overall care of the woman during childbirth.

We have been told that during the consultation period there was a perception from some that registration is just a list of people that can practise in a particular profession. But it is much more than this and this is the message that the Government needs to get across to the public. As I have outlined previously, being registered ensures that the person is appropriately qualified and trained to practise in their profession. In order to continue with their registration they need to continually refresh their skills through professional development. They need to adhere to any standards, codes or guidelines issued by their regulatory board to ensure that they practise in accordance with a quality and safety framework. But more importantly, their practice is at all times under review by both their peers and fellow health practitioners. Under the National Law if a practitioner is impaired, involved in unprofessional conduct or places the public at risk because they are practising in a manner that constitutes a significant departure from accepted professional standards, they may face disciplinary action.

The Deputy State Coroner made a separate recommendation about the need for education in the form of written advice to the public regarding homebirths. SA Health has also accepted this recommendation and work has commenced on an information brochure to be distributed widely and made available on SA Health's website. This brochure will provide up-to-date, unbiased information about the range of birthing options to enable the woman to make appropriate choices in relation to the birth of her baby, including the involvement of a registered health practitioner.

I would now like to take the opportunity to respond to three issues that emerged during the consultation process.

The first was that this change would make the *Health Practitioner Regulation National Law* inconsistent with other jurisdictions. Shortly after the Deputy State Coroner published his findings SA Health put a paper to the Australian Health Ministers' Advisory Council to seek in-principle support for the National Law to include midwifery practice as a protected practice. Unfortunately this proposal was not supported by other jurisdictions.

The former Minister for Health and Ageing agreed that South Australia would proceed with the practice protection. Since 2007, six Coronial Inquests across four States (South Australia, New South Wales, Victoria and Western Australia) have been held into the deaths of eight babies delivered by way of planned homebirths. SA Health is aware of another death from a homebirth in South Australia that occurred in December 2012 that has

been referred to the South Australian Coroner. The circumstances of these Inquests have varied slightly, however, in five of these Inquests it was identified that the deaths resulted from pregnancies where there was an enhanced risk of complication. The common theme in the Inquests was whether the woman had made an informed choice about the place of birth for her baby. The involvement of unregistered persons in these homebirths has been a common element in the Inquests in South Australia and Western Australia.

It is interesting to note that following the publication of the Victorian Coroner's findings released in May 2013 where he also called for greater regulation of home birthing, the former Commonwealth Health Minister presented a paper to the Standing Council on Health calling for greater regulation of midwifery and maternity care providers. This paper was considered in June 2013 and Health Ministers have agreed to consider options that may be used for greater regulation of unregistered persons providing 'midwifery-type maternity care services'.

While a national approach is preferred, it is the Government's belief that two South Australian Coronial Inquests examining the death of four babies and another death currently referred to the Coroner, highlight the need for greater regulation in this State. South Australia could await the work at the national level but there are concerns about how long this process could take. The evidence is that action is needed now to protect the public in this State.

The proposal to restrict birthing practices in South Australia will create a departure from the National Law which the Australian Health Practitioner Regulation Agency, or AHPRA, will be required to administer in this State. However, Western Australia, New South Wales, Queensland and the Australian Capital Territory have modified the National Law for their jurisdictions on other matters of concern to them, and AHPRA has successfully been able to administer these variations.

The second matter that was raised during the consultation process was that this legislation was not necessary given the increased powers provided to the Health and Community Services Complaints Commissioner to deal with unregistered practitioners.

Members may recall that legislation was passed in this place following the Social Development Committee's *Report into Bogus, Unregistered and Deregistered Health Practitioners* that gave the Health and Community Services Complaints Commissioner greater powers to take action against these practitioners. Unregistered health practitioners are now required to follow a Code of Conduct which sets out minimum standards of practice. If, after a complaint has been made to the Commissioner, it is found that the unregistered practitioner has breached the Code of Conduct, the Commissioner may make a prohibition order. Such an order will generally be made where the Commissioner is of the opinion that the practitioner poses an unacceptable risk to the health or safety of the public. An order made by the Commissioner may prohibit a practitioner from providing health services, or specified health services, for a period of time or permanently. Penalties apply for those practitioners who do not comply with a prohibition notice.

The Deputy State Coroner recommended that these provisions be brought into place, which occurred on 14 March 2013. However, the Deputy State Coroner acknowledged that these provisions alone would not stop a person who is not a registered midwife from engaging in midwifery practice, hence his consequent recommendation for legislation to protect the practice.

Unfortunately, the Health and Community Services Complaints Commissioner can only take action after a complaint has been made and investigated. This does not stop an unregistered practitioner from engaging in midwifery practice. I think that this quote from the submission from the Health Consumers Alliance of SA summarises succinctly why the Health and Community Services Complaints Commissioner's increased powers are not enough:

> … consumers do not believe that this level of protection is sufficient. It is reactive rather than pre-emptive and consideration of complaints and issuing of notices is too late for the dead baby.

The third matter that was raising during the consultation period was a suggestion that women were being forced to seek out unregistered providers because the current level of publicly funded homebirth programs or the number of practising midwives are not sufficient to meet the current demand for home birthing services.

Statistics released by the Nursing and Midwifery Board of Australia for March 2013 indicate that there were 397 midwives registered in South Australia with a further 2,385 registrants holding dual registration as a registered nurse and midwife.

SA Health currently provides care to women through either the Midwifery Led Continuity of Care Program or the Midwifery Group Practice program in three metropolitan public hospitals (Women's and Children's Hospital, Lyell McEwin Health Service and the Flinders Medical Centre) and six regional centres across country South Australia. These programs cater to women who are at low obstetric and medical risk. An Aboriginal high risk continuity birthing service at Port Augusta is also supported by midwives and medical practitioners.

In addition, SA Health has commenced work on credentialing nurses and midwives that would allow eligible privately practising midwives access to public hospitals.

These are the services available through the public health system. The Midwifery Group Practice Program at the Flinders Medical Centre and Mount Barker maternity services were expanded in late 2012. Any further expansion of the public programs, particularly in country South Australia, is limited by birth rates, demand and workforce requirements as well as geographical and fiscal limitations.

The comments received during the consultation process also highlighted the lack of options for women with complex clinical needs who wanted to birth at home, and under these circumstances had no alternative but to seek the services of unregistered providers. Home birthing where there are complex clinical needs is not a practice that is condoned by the professions or the current SA Health *Policy for Planned Birth at Home in South Australia*. However, earlier this year the Australian College of Midwives updated their guidelines to acknowledge that there will be a small

number of women who will want to homebirth even where there is an enhanced risk, and so the midwife is able to manage this situation and plan for the management of an emergency. This negates the need to seek out the services of unregistered providers.

The Bill is in response to the Deputy State Coroner's recommendation for legislation to render it an offence for a person other than a registered midwife or medical practitioner to be involved in the management of the three stages of labour.

The Bill before the House will restrict birthing practices, defined as the management of the three stages of labour and childbirth, to a midwife or medical practitioner registered under the *Health Practitioner Regulation National Law*. It is these practitioners who hold the appropriate qualifications and training to perform a restricted birthing practice and who must practise within accepted professional standards. For any other person it will be an offence to perform a restricted birthing practice with a maximum penalty of $30,000 or imprisonment for 12 months applying. This will include unregistered practitioners, persons who were previously registered but who have had their registration suspended or cancelled, or persons previously registered but who have chosen not to renew their registration. No fine will be applied to the woman giving birth.

The Bill recognises that there are a number of health practitioners that may provide health services to a woman during her pregnancy. By restricting birthing practice, these services may continue. The Bill also recognises that there are others who may provide emotional and social support to the woman and her family during the birth. These persons will also be able to continue in this role.

The Bill also makes provision for those instances where a person other than a midwife or medical practitioner may need to render assistance to a woman who is in labour or giving birth to a child in an emergency.

This Bill is not about denying a woman the choice of whether her baby is born at home or in a hospital. It is about ensuring the safety of the woman and her baby by restricting the management of the three stages of labour and childbirth to a registered midwife or medical practitioner.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Health Practitioner Regulation National Law (South Australia) Act 2010*

4—Amendment of Schedule 2—Health Practitioner Regulation National Law

The *Health Practitioner Regulation National Law*, as it applies as a law of South Australia, is to be amended by inserting a new section that will prevent a person carrying out certain practices associated with a woman's labour and the birth of a child unless the person satisfies 1 of the criteria to be set out in the new provision. In particular, a person will not be able to carry out an act that involves undertaking the care of a woman by managing the 3 stages (or any part of these stages) of labour or child birth unless the person is—

(a) a medical practitioner (as defined by the Law); or

(b) a midwife, as defined by this section (being a person registered as a midwife under the Law); or

(c) a student acting in specified circumstances; or

(d) a person acting under the supervision of a medical practitioner or a midwife and acting in accordance with any professional standards issued by a relevant board; or

(e) a person acting under a recognised form of delegated authority; or

(f) a person acting in an emergency situation.

The maximum penalty for the offence to be constituted by this section will be $30,000 or imprisonment for 12 months. A mechanism is included to ensure certainty about what constitutes the 3 stages of labour or child birth.

Schedule 1—Amendment of *Health and Community Services Complaints Act 2004*

1—Amendment of section 56A—Codes of conduct

A related amendment is to be made to the *Health and Community Services Complaints Act 2004* to ensure that a code of conduct may be prescribed under Part 6 Division 5 of that Act in relation to the provision of health services by any class of persons who are not registered service providers under a registration law that applies in relation to health services in South Australia.

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

CRIMINAL LAW CONSOLIDATION (PROTECTION FOR WORKING ANIMALS) AMENDMENT BILL

Second reading.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (17:50): I move:

That this bill be now read a second time.

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

Leave granted.

On 26 August 2013, police dog Koda, a German shepherd, was stabbed while detaining an offender. The injury was life-threatening. Koda was treated by a nearby vet and underwent emergency surgery followed by a period of recovery. A 30 year-old man has been charged with attempted aggravated robbery, four counts of theft, aggravated serious criminal trespass, aggravated assault police, property damage and injuring an animal, being Koda.

There are currently no specific laws in South Australia that target offenders who intentionally harm animals used in law enforcement roles.

The most serious offence available that deals with harm to animals is s 13 of the *Animal Welfare Act 1985*. It says:

13—Ill treatment of animals

(1) If—

(a) a person ill treats an animal; and

(b) the ill treatment causes the death of, or serious harm to, the animal; and

(c) the person intends to cause, or is reckless about causing, the death of, or serious harm to, the animal, the person is guilty of an offence.

Maximum penalty: $50,000 or imprisonment for 4 years.

On 27 August 2013, the Premier and the Commissioner of Police announced that the Government would propose to Parliament the enactment of a serious criminal offence, punishable by up to 5 years imprisonment, that dealt with harming animals used for law enforcement purposes.

On 28 August 2013, the Premier indicated that there was a case for extending this measure to guide dogs.

The South Australian Police Force currently has 25 dogs and 36 horses.

The Premier and the Commissioner of Police announced that *'The new laws will not only provide more protection for the animals but also deter criminals from targeting them.'*

Further, the Premier has stated that *'In addition to any penalty that may be imposed, the Court will also be able to order the person to pay a reasonable amount for the treatment, care, rehabilitation and retraining of the animal.'*

The proposed *Criminal Law Consolidation (Protection for Working Animals) Amendment Bill 2013* contains the new offence of causing death or serious harm to a working animal by an intentional act. Serious harm is defined in a way that is consistent with the current definition of serious harm as it applies to humans. The applicable maximum penalty will be 5 years imprisonment. The definition of working animal explicitly covers a police dog, a police horse, a guide dog and a correctional services dog. Other working animals can be prescribed by regulation. The public has been invited, via Your SAy, to comment on the proposal generally and further listing in particular.

It is not necessary that, at the time the offence is committed, the offender knows that the animal is a working animal as defined. In almost all cases either the circumstances surrounding the incident or the accoutrements of the animal will make that obvious.

In accordance with the policy announced by the Premier, the Bill provides for an extensive set of court powers to award compensation for various effects of causing the death of or serious harm to a working animal. The extent of the order will be up to the court.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Insertion of Part 3C

This clause inserts new Part 3C into the principal Act as follows:

Part 3C—Protection for working animals

83H—Interpretation

This clause defines key terms used in the new Part 3C.

83I—Causing death or serious harm etc to working animals

This clause creates an offence for a person to intentionally cause death or serious harm to a working animal. The relevant terms are defined in proposed section 83H. The maximum penalty for an offence is 5 years imprisonment.

The clause sets out circumstances in which the offence does not apply, and makes provision relating to the defences available in respect of the new offence.

83J—Court may order compensation and other costs

This clause allows a court to make orders for compensation for expenses arising out of the harm caused to the working animal (for example, for replacement, retraining, rehousing and similar costs).

83K—Enforcement of order for compensation etc

This clause provides that an amount ordered under new section 83J is enforceable under the *Criminal Law (Sentencing) Act 1988*.

83L—Evidentiary

This clause allows certain matters relating to an offence to be proved by certificate.

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

STATUTES AMENDMENT (OCCUPATIONAL LICENSING) BILL

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

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

That this bill be now read a second time.

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

Leave granted.

I move that the Bill be now read a second time.

This Bill amends the—

Building Work Contractors Act 1995

Plumbers Gas Fitters and Electricians Act 1995

Security and Investigation Industry Act 1995 (as being retitled by the Security and Investigation Agents (Miscellaneous) Amendment Act 2013)

Second-hand Vehicle Dealers Act 1995

Land Agents Act 1994

Conveyancers Act 1994

Fair Trading Act 1987

In 2012, Consumer and Business Services (CBS) undertook a process improvement review of the occupational licensing legislation it administers.

This included industry round table discussions with peak construction industry representatives to identify areas requiring regulatory reform. Additionally, feedback was sought from CBS employees about ways to improve the administration and regulation of all occupational licensing legislation.

The result is a collection of reforms, contained in this Bill, that are aimed at reducing regulatory costs for business by removing unnecessary red tape and improving administrative efficiencies for CBS.

A reform that will be of particular benefit to business is to remove the requirement that building work contractors may only nominate their directors or employees to be building work supervisors. This will enable contract workers to be nominated for this role. Currently over 6,400 building work contractors require a nominated building work supervisor. This reform will significantly reduce staffing costs for industry as it will give people maximum flexibility in the way they can structure their business.

Another red-tape reduction initiative relates to the simplification of audit requirements for land agents and conveyancers. If their trust accounts had no activity within an audit period, they will simply be required to submit a declaration to that effect. This is instead of the current requirement of being required to go to the expense of having their accounts audited and a report lodged with CBS, despite the fact that there has been no activity.

Another reform that will be of benefit to business is to enable builders, plumbers, gas fitters and electricians, who are the subject of a bankruptcy order, to work as sub-contractors. Currently a person is not entitled to hold a licence under the *Building Work Contractors Act 1995* or the *Plumbers Gas Fitters and Electricians Act 1995* if they become bankrupt and CBS is required to take them to Court to cancel their licence. This reform will enable many tradespeople to continue to work in their field and make a living despite being declared bankrupt. Restricting their licence to that of a sub-contractor only, will ensure consumers remain protected as they will not be entering into contracts with bankrupt persons. The main contractor will be responsible for the sub-contractor. This reform will also assist to reduce skills shortages across the state.

The powers of the Commissioner for Consumer Affairs are proposed to be increased to improve administrative efficiencies and increase consumer protection. Generally, only the Court has the power to cancel, suspend or impose a condition on an occupational licence. The Commissioner has the power to suspend a licence in urgent circumstances, to prevent significant harm, for a period of six months under the *Building Work Contractors Act 1995*, the *Plumbers Gas Fitters and Electricians Act 1995* and the *Second-hand Vehicle Dealers Act 1995*. Additionally, conditions may only be imposed at the time of granting the licence and may only be amended by application of the licensee. Initiating proceedings in the Court to cancel, suspend or impose a condition on a licence is a lengthy and costly process for CBS. Enabling the Commissioner to take disciplinary action against licensees, such as imposing conditions to restrict the type of work they can perform or suspending a licence if the person becomes no longer eligible to hold a licence, will reduce costs for Government, reducing the burden on Courts, and significantly improve protection for consumers, as the speed at which this action may be taken against licensees will be increased. This will be evidence based action and the rules of natural justice and procedural fairness will apply. More serious breaches or disciplinary matters will still be referred to the Courts.

It is also proposed to increase the Commissioner's powers under the *Fair Trading Act 1987* to require a trader to personally attend a compulsory conciliation conference arranged to resolve a consumer dispute. This is because face to face conferences have been found to be much more effective in bringing about the speedy resolution of disputes between consumers and traders. A party will be able to seek approval from the Commissioner to attend the conference by telephone in certain circumstances such as remoteness of their location.

Some reforms, proposed to be included in the regulations, are aimed at improving clarity. For example, the definition of 'building work' will be expanded to include those tasks already considered by CBS and the general public to constitute building work, like the installation of solar panels or an air-conditioning system.

Most significantly, the Bill proposes to increase the maximum penalties that may be imposed on a person for trading unlicensed in accordance with the penalties regime proposed under the National Occupational Licensing System (NOLS). Currently the maximum penalty that may be imposed on a person for unlicensed trading under the occupational licensing legislation is $20,000. The exception is the *Second-hand Vehicle Dealers Act 1995* where the maximum penalty is $100,000. These penalties are considered to be inadequate to deter licensees who seriously and repeatedly breach the legislation. Such conduct poses significant risks to consumers and offenders enjoy the opportunity to make significant profits. Therefore it is proposed to pre-emptively introduce the penalty regime proposed under NOLS as follows:

$50,000 for 1st or 2nd offence for an individual.

$50,000 and/or 12 months imprisonment for 3rd or subsequent offence for an individual.

$250,000 for a body corporate.

A similar penalty regime is proposed to be introduced under the *Second-hand Vehicle Dealers Act 1995*, which is not currently proposed to be included under NOLS.

These penalties were included in the *Occupational Licensing National Law (South Australia) Act 2011*. That Act passed through Parliament in February 2011 and was proclaimed so as to establish the national licensing authority, but the majority of its provisions were suspended pending the commencement of NOLS. A commencement date for NOLS has not yet been set. It is understood that the penalties were determined after analysing current jurisdictional penalties and other national schemes.

Additionally, it is proposed to increase consumer protection under the *Building Work Contractors Act 1995* and the *Plumbers, Gas Fitters and Electricians Act 1995* in relation to charging clauses in contracts that give contractors the right to lodge a caveat over residential property on which they are performing work to secure the debt.

The reform is proposed in response to complaints received by Consumer and Business Services from consumers in relation to solar rental company contracts. The contracts in question contained charging clauses that led to a number of caveats being lodged over various properties.

It is proposed to require a contractor to ensure that a contract with a charging clause explains the purpose of the charging clause, explains the effect of a caveat, explains that the charge created by the clause entitles the contractor to apply to the Courts for the sale of the property to recover their debt, and advises the consumer to seek independent advice should they have any concerns.

The reform is proposed to be included in the regulations of both Acts. Whilst the *Building Work Contractors Act 1995* already enables this, the *Plumbers, Gas Fitters and Electricians Act 1995* is silent on the requirements for domestic contracts. Therefore the Bill amends that Act to enable the proposed variation to the regulations.

Striking the balance between proper consumer protection and making things simpler for business is difficult. However, through our engagement with industry, the Government has identified areas where unnecessary red tape and regulatory costs can be removed, so as to better support business and industry, without exposing consumers. A number of reforms will provide stronger protection for consumers and improve the integrity of industry by cracking down on people trading unlicensed or in breach of licence conditions.

It is anticipated that the Bill will have widespread benefits for business, industry, Government, consumers and the general community.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Building Work Contractors Act 1995*

4—Amendment of section 3—Interpretation

This clause makes a minor amendment to make it clear that a 'building' includes a wall.

5—Amendment of section 6—Obligation of building work contractors to be licensed

This clause increases the penalty for unlicensed building work contractors.

6—Amendment of section 7—Classes of licence

This clause allows the imposition of conditions on a licence at any time on application by the licensee.

7—Amendment of section 9—Entitlement to be licensed

This clause alters the provision relating to granting a licence to a natural person who is or has been, or to a company with a director who is or has been, an insolvent under administration or a director of a body corporate wound up for the benefit of creditors, to reduce the waiting period before there can be an entitlement to be granted a licence and to allow the grant of a conditional licence.

8—Amendment of section 13—Classes of registration

This clause allows the imposition of conditions on a registration at any time on application by the registered building work supervisor.

9—Substitution of section 14

This clause substitutes a new section 14 allowing people registered under Part 3 of the *Plumbers, Gas Fitters and Electricians Act 1995* to be taken to hold building work supervisors registration (subject to the regulations).

10—Substitution of section 16

This clause introduces a fit and proper person requirement for registration.

11—Amendment of section 19—Approval as building work supervisor in relation to licensed building work contractor's business

This clause deletes the requirement currently contained in section 19(4)(b) of the Act that a building work supervisor for a building work contractor be either a director of the contractor (if it is a body corporate) or an employee and also consequentially deletes subsection (6) of that section. The clause also contains some minor amendments to clarify the wording of subsection (8).

12—Substitution of Part 3A

This clause substitutes new Parts 3A and 3B as follows:

Part 3A—Suspension or variation of licence or registration in urgent circumstances

19A—Commissioner may suspend or impose conditions on licence or registration in urgent circumstances

This section is based on the current section 19A but applies to registration as well as licenses and allows for the imposition of conditions on a licence or registration as an alternative to suspension.

Part 3B—Cancellation, suspension or variation of licence or registration

19B—Commissioner may cancel, suspend or impose conditions on licence or registration

This section gives the Commissioner a new power to make a determination to cancel or suspend a licence or registration or to impose conditions on a licence or registration where the licensed or registered person no longer meets the criteria in the Act for entitlement to be granted a licence or registration (as the case may be). The section also grants appeal rights to the District Court.

Part 3—Amendment of *Conveyancers Act 1994*

13—Amendment of section 5—Conveyancers to be registered

This clause increases the penalty for unregistered conveyancers.

14—Insertion of Part 2A

This clause inserts a new Part 2A as follows:

Part 2A—Cancellation, suspension or variation of registration

9AA—Commissioner may cancel, suspend or impose conditions on registration

This section gives the Commissioner a new power to make a determination to cancel or suspend a registration or to impose conditions on a registration where the registered person no longer meets the criteria in the Act for entitlement to be granted registration. The section also grants appeal rights to the District Court.

15—Amendment of section 24—Audit of trust accounts

This clause inserts a new subsection (1a) providing that if no trust money is held in a conveyancer's trust account during an audit period, then no audit statement is required in relation to that period (but instead there must be a declaration as to why no trust money was held). The clause also makes 2 consequential amendments.

16—Amendment of section 49—Disciplinary action

This clause allows for the imposition of conditions on a conveyancer's registration in disciplinary proceedings before the Court.

Part 4—Amendment of *Fair Trading Act 1987*

17—Amendment of section 8A—Conciliation

This clause makes it clear that the parties to a conciliation are not *entitled* to have the conciliation conference conducted by telephone or other electronic means - it is for the Commissioner to determine whether that will be appropriate in the particular case.

Part 5—Amendment of *Land Agents Act 1994*

18—Amendment of section 6—Agents to be registered

This clause increases the penalty for unlicensed agents.

19—Insertion of Part 2A

This clause inserts a new Part 2A as follows:

Part 2A—Cancellation, suspension or variation of registration

11C—Commissioner may cancel, suspend or impose conditions on registration

This section gives the Commissioner a new power to make a determination to cancel or suspend a registration or to impose conditions on a registration where the registered person no longer meets the criteria in the Act for entitlement to be granted registration. The section also grants appeal rights to the District Court.

20—Amendment of section 22—Audit of trust accounts

This clause inserts a new subsection (1a) providing that if no trust money is held in an agent's trust account during an audit period, then no audit statement is required in relation to that period (but instead there must be a declaration as to why no trust money was held). The clause also makes 2 consequential amendments.

21—Amendment of section 47—Disciplinary action

This clause allows for the imposition of conditions on an agent's registration in disciplinary proceedings before the Court.

Part 6—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

22—Amendment of section 6—Obligation of contractors to be licensed

This clause increases the penalty for unlicensed contractors.

23—Amendment of section 7—Classes of licence

This clause allows for conditions to be imposed on a licence at any time on application by the licensee.

24—Amendment of section 9—Entitlement to be licensed

This clause alters the provision relating to granting a licence to a person who is or has been an insolvent under administration or a director of a body corporate wound up for the benefit of creditors to allow the grant of a conditional licence.

25—Amendment of section 13—Obligation of workers to be registered

This clause increases the penalty for unregistered workers.

26—Amendment of section 14—Classes of registration

This clause allows the imposition of conditions on a registration at any time on application by the registered worker.

27—Substitution of section 16

This clause substitutes a new section 16 which introduces a fit and proper person requirement for registration.

28—Substitution of Part 3A

This clause substitutes new Parts 3A and 3B as follows:

Part 3A—Suspension or variation of licence or registration in urgent circumstances

18A—Commissioner may suspend or impose conditions on licence or registration in urgent circumstances

This section is based on the current section 18A but applies to registration as well as licences and allows for the imposition of conditions on a licence or registration as an alternative to suspension.

Part 3B—Cancellation, suspension or variation of licence or registration

18B—Commissioner may cancel, suspend or impose conditions on licence or registration

This section gives the Commissioner a new power to make a determination to cancel or suspend a licence or registration or to impose conditions on a licence or registration where the licensed or registered person no longer meets the criteria in the Act for entitlement to be granted a licence or registration (as the case may be). The section also grants appeal rights to the District Court.

29—Insertion of sections 33A and 33B

This clause inserts a new provision requiring a contractor's licence number to be included in published advertisements (other than ones of a kind specified in the proposed provision) and a new provision imposing requirements on contracts to perform plumbing, gas fitting or electrical work on domestic property where the contracts contain a charging clause.

Part 7—Amendment of *Second-hand Vehicle Dealers Act 1995*

30—Amendment of section 7—Dealers to be licensed

This clause increases the penalty for unlicensed dealers.

31—Insertion of Parts 2A and 2B

This clause inserts new Parts 2A and 2B as follows:

Part 2A—Suspension or variation of licence in urgent circumstances

14A—Commissioner may suspend or impose conditions on licence in urgent circumstances

This section is based on the current section 25A (in Part 4A) but allows for the imposition of conditions on a licence as an alternative to suspension.

Part 2B—Cancellation, suspension or variation of licence

14B—Commissioner may cancel, suspend or impose conditions on licence

This section gives the Commissioner a new power to make a determination to cancel or suspend a licence or to impose conditions on a licence where the licensed person no longer meets the criteria in the Act for entitlement to be granted a licence. The section also grants appeal rights to the District Court.

32—Repeal of Part 4A

This clause makes a consequential amendment. Part 4A is repealed because the material in that Part will now be dealt with by proposed new Part 2A.

33—Amendment of section 31—Disciplinary action

This clause allows for the imposition of conditions on a licence in disciplinary proceedings before the Court.

Part 8—Amendment of *Security and Investigation Industry Act 1995*

34—Amendment of section 3—Interpretation

The definition of *security agent* is amended to include hiring out or otherwise supplying persons for various purposes already referred to in the definition.

35—Amendment of section 6—Obligation to be licensed

This clause increases the penalty for unlicensed agents.

36—Amendment of section 7A—Licence conditions

This clause amends section 7A (to be inserted by the *Security and Investigation Agents (Miscellaneous) Amendment Act 2013*) to allow for the imposition of conditions (at the request of the licensee) at any time after the licence has been granted.

37—Insertion of Part 3A Division A1

This clause inserts a new Division in Part 3A as follows:

> Division A1—Cancellation, suspension or variation of licence where eligibility criteria no longer met
>
> 23AB—Commissioner may cancel, suspend or impose conditions on licence
>
> This section gives the Commissioner a new power to make a determination to cancel or suspend a licence or to impose conditions on a licence where the licensed person no longer meets the criteria in the Act for entitlement to be granted a licence. The section also grants appeal rights to the District Court.

38—Substitution of heading to Part 3A Division 1

This clause makes a consequential amendment to a heading.

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

ELECTORAL (FUNDING, EXPENDITURE AND DISCLOSURE) AMENDMENT BILL

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

LATE PAYMENT OF GOVERNMENT DEBTS (INTEREST) BILL

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

STATUTES AMENDMENT (TRANSPORT PORTFOLIO) BILL

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

EVIDENCE (DISCREDITABLE CONDUCT) AMENDMENT BILL

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

At 17:55 the council adjourned until Tuesday 29 October 2013 at 14:15.