LEGISLATIVE COUNCIL

Thursday, 10 March 2016

The PRESIDENT (Hon. R.P. Wortley) took the chair at 11:00 and read prayers.

Parliamentary Procedure

SITTINGS AND BUSINESS

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:01): 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.

Bills

ABORIGINAL HERITAGE (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 9 March 2016.)

The Hon. T.J. STEPHENS (11:02): I rise today on behalf of the opposition to speak to the Aboriginal Heritage (Miscellaneous) Amendment Bill, which we will be supporting subject to some amendments that I have on file. This bill seeks to amend the Aboriginal Heritage Act of 1988 to recognise direct agreements between traditional owners and government, as well as developers and mining operators, regarding the use of sites protected under the act. It will also resolve discrepancies between current land access agreements.

The bill aims to ensure all traditional owners have an equal say before government when agreements on land use are being negotiated. In some cases, there are many groups that lay claim to heritage sites, and the act streamlines these negotiations. The bill will establish a process for Aboriginal and native title representative groups to be officially recognised under the act as 'recognised Aboriginal representative bodies' (RARBs), therefore allowing them to negotiate with land use proponents officially with full authority.

The effect of this is twofold: it prevents the stonewalling of attempts of legitimate use of land on sites with Aboriginal heritage by certain groups with special interests but also gives even the smallest of native title groups and bodies a say at the negotiating table, provided they are officially recognised and registered. This is necessary as any splinter group could then enter negotiations and white ant any genuine attempts at economic activity on the site. All native title claimant body corporates will become official RARBs upon the act becoming law, unless these bodies specifically opt out.

I acknowledge the contribution of the Hon. Ms Franks and her putting on the record the dissatisfaction of SA Native Title Services. It believes that there has been inadequate consultation. On that point, it is disappointing that the government is rushing this through so quickly. This bill has not even spent its customary one sitting week on the *Notice Paper*. I hope that the minister will ensure that all stakeholders have an adequate opportunity for consultation on the bill and that all issues have been addressed.

I foreshadow a number of amendments that I will move at the committee stage of the debate regarding mediation between groups and the abolition of costs for applications to the court. These amendments are the result of discussions between the shadow minister, the member for Morphett in another place, and the Minister for Aboriginal Affairs and Reconciliation, and were deemed necessary by crown law. I commend the bill to the council.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:05): I thank honourable members for their contributions to the second reading stage of this bill. I would also like to thank them for their considered views on this bill. I know that a number of the members who have made contributions are members of the Aboriginal Lands Parliamentary Standing Committee, and have been for a long time, so they have made very informed contributions.

This bill envisages that an Aboriginal group may enter into an agreement with a land-use proponent. The bill in no way changes the ability for prosecution of people damaging, disturbing or interfering with sites, objects or remains. The bill also ensures that Aboriginal heritage will continue to be protected under the Aboriginal Heritage Act. The bill does not lessen anyone's burden to ensure that Aboriginal heritage continues to receive protection in South Australia. These reforms will provide Aboriginal people and groups with better opportunities to have a say in the protection of their cultural heritage and the use of their land.

I have a quite extensive list of answers to questions that have been raised in response to contributions made in the second reading stage, as well as some comments generally on the amendments that have been moved by the opposition. I might address these at clause 1 in the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. K.J. MAHER: Honourable members have raised a number of issues that I will address here at clause 1. In response to issues that were raised by the Hon. Tammy Franks on behalf of the Greens, I will go through and address each issue raised separately.

The first question was about what the process of consultation has been to date. The Aboriginal Heritage Act has been under review since 2008; there is a process of constant review of that act. Very wide community consultation took place at the start of the review in 2008-09, and then there was wide peak body and stakeholder consultation on a detailed draft bill in 2013. There was broad support for an agreement-making provision structure as part of the previous consultations.

I will just go through the consultations that have taken place previously in relation to this bill, and I beg the chamber's indulgence as it will take some time to go through them. A significant part of the previous review process and consultations was extensive community consultation occurring in 2009. This comprised 25 public meetings across South Australia, which were supported by the expertise of the Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet, as well as by representatives of both the South Australian Aboriginal Heritage Committee and the Heritage Subcommittee of the Aboriginal Congress for Native Title Management (the Joint Working Party).

Meetings occurred during 2009 for Adelaide Metropolitan West at Tauondi College, for Adelaide Metropolitan South at Neporendi, at Adelaide Metropolitan North at Elizabeth House at Elizabeth, in the Murray region at the Lower Murray Nungas Club at Murray Bridge, in the South-East at Raukkan and at Camp Coorong and also at the Quality Inn at Mount Gambier. In the Mid North, they occurred at the community hall at Copley, at the community hall at Nepabunna, at the Standpipe Function Room in Port Augusta, and at the Central Whyalla Football Club in Whyalla. In the Far North they were at Umoona in Coober Pedy and at the Anntetkerenya Store at Oodnadatta.

On the West Coast, they occurred at the Far West Aboriginal Sporting Complex at Ceduna and at Mallee Park Football Club at Port Lincoln. In the far East, it was at the Broken Hill Legion Club at Broken Hill, and on the West Coast it was at Port Pirie and Districts Aboriginal Community Centre at Port Pirie. On Yorke Peninsula, it was at the Patio Motel at Moonta Bay, and on the APY lands meetings were at Indulkana, Pukutja, Amata and Pipalyatjara. In Adelaide, it was at the Adelaide Town Hall, in the Murraylands at Glossop, and Yorke Peninsula at Point Pearce.

They were the consultations taking place in 2009. Written submissions were received from about two dozen individuals. I will not go through each of the written submissions, but I am happy to provide them to any honourable members who would like to see them.

In 2013, with the draft Aboriginal Heritage Bill, there was confidential peak body stakeholder consultation with the following people: the Commissioner for Aboriginal Engagement, the South Australian Aboriginal Advisory Council, the South Australian Heritage Committee, the Property Council, Anangu Pitjantjatjara Yankunytjatjara, Maralinga Tjarutja, the Local Government Association, the Resources Industry Development Board, the Australian Geothermal Energy Association, Primary Producers SA, the Law Society of SA, the Australian Petroleum Producers and Explorers Association, the SA Museum, the Chamber of Mines and Energy, the Aboriginal Legal Rights Movement, the Cement Concrete and Aggregates Association, South Australian Native Title Services and the Aboriginal Congress of South Australia.

Written submissions were received from the Museum, the Chamber of Mines and Energy, the Aboriginal Legal Rights Movement, the Cement Concrete and Aggregates Association, South Australian Native Title Services, the Aboriginal Congress of SA, Primary Producers SA, and the Law Society. In addition, over the course of the last year there have been discussions about this bill. I regularly meet with the Aboriginal Legal Rights Movement and also with the South Australian Aboriginal Advisory Council, the South Australian Aboriginal Heritage Committee, South Australian Native Title Services, and our Commissioner for Aboriginal Engagement.

I have, in discussions over the course of the past year, raised my desire to amend the Aboriginal Heritage Act to allow for an agreement-making provision, and certainly prior to the introduction of the bill I had a meeting with and provided the draft copy of the bill to the Aboriginal Legal Rights Movement, the South Australian Aboriginal Advisory Council, the state Aboriginal Heritage Committee and South Australian Native Title Services.

I also understand that consultations from other areas of government have taken place with the Australian Petroleum Production and Exploration Association, the Mineral Explorers Council of Australia and the South Australian Chamber of Mines and Energy. That is an outline of the consultation that has taken place in relation to potential changes to the Aboriginal Heritage Act. The principles underpinning the review have always been that traditional owners should be able to make decisions about the protection of heritage by agreement and that where possible that should be in alignment with the Aboriginal Heritage Act and agreements and decisions made under the Native Title Act.

Further consultation from early 2009 occurred in 2013, as I have outlined. More recently, I have met with some of those peak groups. I think that the Hon. Tammy Franks' next question was: when was the Law Society given a version of this bill, what was their advice and can you table it? I am advised that the Law Society was consulted on early versions of amendments to the Aboriginal Heritage Act and that it supported an agreement-making provision. I am advised that the Law Society has published a notice of the bill in its most recent bulletins to members.

The next question from the Hon. Tammy Franks was: what is the Aboriginal Legal Rights Movement's position on this bill? We received advice this morning from the Aboriginal Legal Rights Movement on their position on this bill. They do not agree with everything in this bill, and I am happy to address concerns. I think most of the concerns from the Aboriginal Legal Rights Movement I will address when I talk about South Australian Native Title Services' concerns in just a moment. I have regular meetings with the Aboriginal Legal Rights Movement, and I undertake to continue my regular meetings and consult with ALRM on the implementation of this bill and the development of guidelines and principles.

The next question was: is this bill in breach of the Racial Discrimination Act? I have had advice from the Crown that the bill does not breach and is not inconsistent with the Racial Discrimination Act or the UN Declaration on the Rights of Indigenous Peoples. I can inform the chamber that I am not aware of anywhere that that might be a potential breach. Is the bill inconsistent with the Native Title Act? The Crown has advised that the bill is not inconsistent with the Native Title Act.

I think a couple of these were questions that the South Australian Native Title Services raised, and certainly the next field of questions was raised by the South Australian Native Title Services. The question is about the assertion that the bill removes beneficial provisions, coupled with a new regime, in particular 19N, which gives the minister the power to approve agreements without consultation with Aboriginal people.

The South Australian Native Title Services specifically raised a question about section 19N of the bill, and they are concerned that ministerial approval agreements reached under the Native Title Act are not subject to consultation with Aboriginal people. We fundamentally disagree with this. This seems illogical, as consultation with the appropriate body that represents traditional owners has occurred in the process of reaching such an agreement.

Under section 19N, the minister must also consult with the South Australian Aboriginal Heritage Committee before approving any such agreement. If the minister is not satisfied that an agreement satisfactorily deals with Aboriginal heritage, it will not be approved. There is also an ability to revoke approval if the agreement is not working in practice. If the minister chooses to approve an agreement, she or he must be satisfied that it satisfactorily deals with Aboriginal heritage. Likewise, if a native title agreement is approved by the minister under section 19M, it can only be approved by the minister if satisfied that it satisfactorily deals with Aboriginal heritage and after consultation with the South Australian Aboriginal Advisory Committee.

In relation to issues raised about the repeal of section 6(2), specifically the question from the South Australian Native Title Services was: what are the implications for other native title groups seeking this delegation? On that question, the implication for native title groups (and I will get to that in a minute), there are no implications for native title groups, but I will explain that in a moment, but I acknowledge there are different views about the repeal of section 6(2).

The experience of dealing with the handful of requests since the commencement of the act in 1998 has revealed that this section does not do all that I think those who drafted the bill and traditional owners expected of it, as providing a delegation of ministerial power. The delegation of ministerial power, I suspect, is that it provides for a delegation of ministerial power, and the people to whom it is delegated must act as if they were the minister, not as a traditional owner, when making any decision.

This power, in practice, is administratively exceptionally difficult to work, as the Supreme Court observed in the Starkey matter that has been discussed in this chamber. At paragraph 98 of the Hon. Justice Sulan's judgement he observed:

> The issues of construction of section 6 are particularly complex, due in no small part to the unsatisfactory drafting of the section. Section 6 is difficult to interpret, its subsections exposing internal inconsistencies which are not easily reconciled. Ultimately it is a matter for Parliament to determine whether the difficulties in application of the section require resolution.

That is one of the things we are putting forward today. In addition, even if there was a delegation under section 6(2), for the first time in nearly 30 years of operation of the act, as I have said, any traditional owner given that delegation must act as if they were the minister and not the traditional owner. This potentially could mean a traditional owner acting against the interests of traditional owners in the carrying out of that delegation. Further, if any individual did receive a delegation under section 6(2), there is a very real potential for significant resource requirements for that individual or group of individuals. For example, the Crown could not provide legal advice as it does for ministers while exercising his or her responsibilities.

The very specific question was regarding the removal of 6(2) and what are the implications for other native title groups seeking the delegation. I am advised that under the current act the delegation under 6(2) cannot be made to an organisation. It cannot be made to a native title prescribed body corporate; it can only be made to an individual or a number of individuals. Strictly, the delegation cannot be made out to a native title prescribed body corporate.

The next question raised was: have Anangu been consulted and how will APY be dealt with in the bill? Certainly, over the course of previous consultations, APY have been consulted. The very easy answer is that this bill will have no effect on the operation of the APY Land Rights Act. The APY will be taken, under this bill, to be the recognised Aboriginal registered body for the APY lands, but

if the APY fail in anything they do under the terms of this act and fail to satisfactorily deal with heritage in any of its agreements that they may enter into, the minister can refuse to approve.

The next question raised concerned the doubt about who speaks for country and the potential undermining of native title bodies. That is not what this bill does or intends to do. In fact, the South Australian Aboriginal Heritage Act 1988 was enacted prior to native title coming into operation and does not currently contemplate native title. As I outlined just a moment ago, a native title prescribed body corporate cannot apply for a delegation under section 6(2); it is only individuals or a number of individuals.

Section 13 requires consultation before certain decisions are made. Although native title groups, in practice, are regularly some of the groups that are consulted with, they do not have any greater standing under the unamended act than any other group. Pursuant to this bill, a native title body will automatically be taken to be the registered Aboriginal recognised body unless the committee does not approve it. So, this bill, for the first time, directly contemplates the primacy of native title bodies in decision-making about their heritage for a given area. If the South Australian Aboriginal Heritage Committee does not approve of the native title body, then the body can make a merit-based application.

The next question was about the removal of the ability for the prosecution of people for damaging, disturbing or interfering with sites, objects or remains. This bill in no way changes the ability of the prosecution of people damaging, disturbing or interfering with sites, objects or remains. This bill also ensures Aboriginal heritage will continue to be protected under the Aboriginal Heritage Act. It does not lessen the burden for anyone to ensure that Aboriginal heritage continues to receive protection in South Australia.

The next question was: has the Minister for Aboriginal Affairs been briefed about the Starkey court case? I can confirm that I certainly have been briefed about the Starkey court case. I think it highlights the difficulty and unworkability of section 6(2) in practice. As I outlined in the previous answer, the court has made comment:

> The issues of the construction of section 6 are particularly complex, due in no small part to the unsatisfactory drafting of the section. Section 6 is difficult to interpret, its subsections exposing internal inconsistencies which are not easily reconciled. Ultimately it is a matter for Parliament to determine whether the difficulties in application of the section require resolution.

The next specific question that was asked was: what involvement has Straits and Kelaray had in regard to this bill and have Straits and Kelaray had any input into this bill? I can advise the chamber that I have had no interactions with Straits and Kelaray about this bill. I have checked with the Aboriginal Affairs and Reconciliation Division, and they have also informed me that they have had no interactions with Straits and Kelaray about this bill.

The next question was: if has there been an exchange of correspondence, could the chamber be provided with those? I would provide the chamber with those if there were any, but there have not been any exchanges of correspondence. The next question was: can the minister outline what industry stakeholders have been given an opportunity to provide feedback on this bill and previous iterations? I have previously outlined them, and I do not propose to go over that list of consultations again and the different stakeholders from 2008 up until February this year that have been consulted on this bill.

What role has the Minister for Mineral Resources and Energy had with regard to this piece of legislation before this? I can inform the chamber that except for the normal cabinet processes, the Minister for Mineral Resources and Energy has had no role in the development of this legislation.

The final question was about why we are keen to enact this as soon as possible and what is the rush, if we have spent so many years consulting? It is true: as honourable members know and have commented, the ideas behind this legislation and previous iterations of the bill that contemplated heritage-making provisions have been subject to enormous consultation over the last eight years. I think it is important to strike a balance between overconsulting, and certainly that is a criticism that occasionally comes up from Aboriginal communities, the consultation fatigue of consult, consult and consult, and wanting governments to just get on with things. It is a balance that one must find between enough consultation and that risk of overconsultation.

I think the bill that is before us strikes a balance between enabling Aboriginal traditional owners, native title holders and organisations and individuals, to have a stronger say in how their land can be used. It seeks to provide a level of protection for those groups who are registered under the act wishing to make direct agreement provisions. It protects the Aboriginal people and proponents. I am keen to have this bill in operation as soon as possible to allow the registered Aboriginal representative bodies to be set up and agreement-making to commence.

I genuinely and fundamentally believe these reforms will provide Aboriginal people, traditional owners, native title holders and groups, with a better opportunity to have a say in the protection of their cultural heritage and sacred sites and look to see how their country might benefit their communities. As I have said, I am keen to see these reforms progressed and implemented to allow the processes that this act contemplates to get underway as soon as possible. They were answers to the Hon. Tammy Franks' questions.

The Hon. T.A. Franks: Could you address the Law Society advice?

The Hon. K.J. MAHER: I might go back. When was advice given to the Law Society about this bill? I think that was the question of the Hon. Tammy Franks.

The Hon. T.A. Franks: I also asked where the Law Society advice was on this bill.

The Hon. K.J. MAHER: We do not have Law Society advice on this; we have not received advice from the Law Society on this bill. In relation to questions that were put by the Hon. Kelly Vincent, her first question was: what provisions will exist to support groups to meet and prepare themselves for discussions and negotiations under new provisions?

Under the bill, the presumption is that native title bodies will become the register for Aboriginal bodies and many native title bodies receive funding to interact on matters that concern them. I can inform the chamber that I will give an undertaking that we will provide resources to groups that require them to start their negotiations with companies under this act. I can also inform the chamber that it is a possibility that any agreement could contemplate providing for costs for bodies to enter into negotiations or to conclude agreements.

The next question was: how many successful prosecutions have there been under the existing act? I can inform the chamber that over time the existing deterrent mechanisms have worked well and companies are increasingly seeking to make contact and try to make agreements with Aboriginal people. Since the early 2000s, though, there have been specifically nine requests received from the Aboriginal community of South Australia to pursue investigations or prosecutions under the Aboriginal Heritage Act. These requests usually relate to damage, disturbance or interference to Aboriginal sites, objects or remains under section 23 of the act. They have also been in relation to the sale of objects under section 29 of the act.

I can put on record the various investigations that have taken place. First was Marree Man, the Dieri and Arabunna under section 23 of the act in 1998; the second was Umeewarra Lake, Port Augusta, multiple groups, under section 23 of the act in 2005. No. 3 was Lake Eyre, Arabunna, under section 23 of the act in September 2010. No. 4 was Willow Springs, Adnyamathanha, under section 23 of the act in January 2012. Scarred trees at Millicent, the Gunditj Mirring, under section 29 of the act in May 2013; Koonalda Caves, the Far West Coast, under section 23 of the act in March 2014; the issue of Hands Around the World by the Adnyamathanha under section 23 in April 2014; Lyons Road, Murray Bridge, Ngarrindjeri Regional Authority, under section 23 of the act in October 2014; and Parafield Gardens and Salisbury from Kaurna under section 23 of the act in November 2014.

In each of these cases, complaints raised or made have been investigated; however, none of the cases mentioned above were brought to prosecution for various reasons. Some of these factors have included: the burden of proof required for a prosecution, the situation did not meet requirements of the act, the perpetrators of any damage could not be identified, varying community points of view on the significance of an area and what constitutes damage, and alternative legal avenues that were pursued. I am advised that there has been only one prosecution under the existing act which resulted in an acquittal.

The next question that the Hon. Kelly Vincent raised was: what penalties are envisaged under the amended act? I can inform the chamber that one additional penalty is envisaged under the

amended act to add to the current 15 penalties: amendment of section 14—Authorisations subject to conditions, which provides:

> (2) A person who, without reasonable excuse, contravenes or fails to comply with a condition of an authorisation under this Act is guilty 10 of an offence.
>
> Maximum penalty:
>
> (a) in the case of a body corporate—$50,000;
>
> (b) in any other case—$10,000 or imprisonment for 6 months.

In addition, pursuant to clause 19K of the amended act, I note that, if a party fails to comply with a local heritage agreement, the District Court may make such orders as to secure compliance or remedy the default. The amendments change none of the existing penalties under the current act.

Under the current act penalties are provided under the following sections: section 10, relating to confidentiality of archives; section 18, relating to offences; section 20, relating to the discovery of sites, objects and remains; section 20(4), relating to failure to comply with the minister's direction; section 21, relating to the excavation of sites, objects or remains; section 22, relating to access to and excavation of land by authorised persons; section 23, relating to damage, etc., to sites, objects or remains.

They are also provided under section 24, relating to directions by the minister restricting access to sites, objects or remains; section 26, relating to a failure to comply with the directions of the minister or inspector; section 28, relating to the care of Aboriginal objects; section 29, relating to the control of the sale of land and other dealings with objects; section 32, relating to the surrender of objects and records; section 35, relating to the divulging of information contrary to Aboriginal tradition; section 36, relating to access to land by Aboriginal people; section 38, relating to the interference with signs. All the existing penalties remain and, as outlined above, the new penalty is envisaged. That is the extra penalty that is contemplated under this act.

While I am speaking to clause 1, after having addressed the questions raised by the Hon. Kelly Vincent and the Hon. Tammy Franks, I might address the three amendments to this bill that have been filed by the Hon. Terry Stephens. I know there have been discussions occurring between the opposition and the government in relation to these amendments, and I can indicate now that the government will be supporting the amendments that the Hon. Terry Stephens will be putting forward. They are sensible amendments that improve this bill and will lead to the Aboriginal Heritage Act, as it is contemplated to be amended, working better.

The Hon. Terry Stephen's amendment No. 1 is to make it abundantly clear in the act that the committee may give written reasons in relation to the appointment or other decisions under the section about appointing bodies. We think it is a good idea to make it clear that they can give reasons if they so choose. The second amendment allows for the South Australian Aboriginal Heritage Committee, if it considers it appropriate, to attempt to resolve any dispute relating to an application for a registered body by way of mediation between the parties. That is a sensible amendment that we agree to. Many of us who have an interest in this area know that it is not as easy as many would like to think as to who necessarily speaks for country and any particular part of country.

After discussions with the opposition, I can give an undertaking also that we will put in the guidelines that we contemplate that one of the things the committee can do is ask two bodies to consider putting in a joint application for one body to represent. We will give an undertaking that we will have that in the guidelines. That works well in conjunction with the new amendment that is being proposed.

The final amendment that is being proposed is in relation to costs. In relation to breaches of the agreement, parties have recourse to the District Court to seek relief for breaches of the agreement. The final amendment put forward by the Hon. Terry Stephens states:

> However, no order for costs is to be made under subsection (2) unless the District Court considers such an order to be necessary in the interests of justice

We agree with this as it is a sensible amendment. In a lot of these cases, there is a power imbalance that may be possible between a big company and an Aboriginal group. We would not want an

Aboriginal group to feel dissuaded from looking to potentially pursue their rights because of the threat of costs. We thank the Liberal Party for its constructive amendments, and I indicate that we will be supporting the three Liberal Party amendments.

The Hon. S.G. WADE: I would like to respond to one of the responses the minister gave. If I understood him correctly, his answer to the question, 'Why is this legislation being rushed?' was basically that the government felt that there had been adequate consultation and that they did not want to inflict consultation fatigue on the Aboriginal community. I make the point that my understanding was that the council was not asking the government to go out and undertake another round of consultation.

More to the point, we were maintaining our normal pattern of behaviour, which is that legislation lies on the table for a week. What I have found with a whole range of legislation is that, if the executive has done an effective task of consulting with the community, that period between the tabling of the bill and the progressing of the bill is an opportunity for us to get very short letters back from stakeholders saying, 'We've been consulted on the bill. It's fine with us.' We would have loved to have received those pieces of correspondence from the Aboriginal community, but they were not given that chance.

In relation to the fact that it has been eight years—and I appreciate the comments the minister has made about the extensive consultation—the executive should be mindful of the need to make a final check, if you like. This is an opportunity for people who have been consulted to say, 'There are no remaining issues we need to the bring to the attention of the parliament.'

The Hon. S.G. WADE: I appreciate the comments the Hon. Stephen Wade has made, and I certainly will take them into account, not just in any legislation I have before this chamber but I will make sure that other of my colleagues are aware of how that may help to increase the efficient passing of legislation in this chamber.

Clause passed.

Clauses 2 to 8 passed.

Clause 9.

The CHAIR: As you are agreeing to these amendments (there are two amendments from the Hon. Mr Stephens to clause 9), is there any value in putting them together?

The Hon. T.J. STEPHENS: If it is the will of the committee, I will move them both together and not delay the chamber. The minister has given a reasonable explanation of why we move these amendments and I thank him for his indication of support. I move:

Amendment No 1 [T Stephens–1]—

Page 7, after line 27 [clause 9, inserted section 19B]—After subsection (12) insert:

(12a) The Committee may give written reasons in relation to an appointment or other decision under this section.

Amendment No 2 [T Stephens–1]—

Page 7, after line 43 [clause 9, inserted section 19C]—

After its present contents (now to be designated as subsection (1)) insert:

(2) Without limiting subsection (1), the Committee may, if it considers it appropriate to do so, attempt to resolve any dispute relating to the applications by mediation between the parties.

Amendments carried; clause as amended passed.

Clause 10.

The Hon. T.J. STEPHENS: I move:

Amendment No 3 [T Stephens–1]—

Page 12, after line 36 [clause 10, inserted section 19K]—After subsection (2) insert:

(3) However, no order for costs is to be made under subsection (2) unless the District Court considers such an order to be necessary in the interests of justice.

Again, I will not delay the committee. The minister has kindly given his summation and agreed to support the amendment.

Amendment carried; clause as amended passed.

Remaining clauses (11 to 14), schedule and title passed.

Bill reported with amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:39): I move:

That this bill be now read a third time.

The Hon. T.A. FRANKS (11:39): At this point I would like to put on the record that I indicated in my second reading speech that I was not in a position to actually put the views of the ALRM because although they had written to me it was in a form that was not to be made public. In the course of the committee stage, in the last few minutes I have received a letter from the ALRM which I would now like to ensure is put on the record. I seek leave to table the letter from the ALRM, addressed to the minister, dated 10 March, which has the ALRM's permission to be released.

Leave granted.

The Hon. T.A. FRANKS: I would like to put on record some of the concerns that have been expressed to me today by the ALRM that are encapsulated in the letter dated 10 March 2016 and addressed to the Minister for Aboriginal Affairs. It reads:

Dear Minister

Re Aboriginal Heritage Bill 2016

Further to the letter of 24th February, ALRM desires to make further submissions to you regarding this Bill.

In our initial letter we referred particularly to the Evatt Report, Chapters 6, 8 & 10. We reiterate our support for that Report and the impulses behind it for improving state based heritage legislation.

Further to our last letter, ALRM is concerned regarding the removal of the operation of sections 12 to 14 and 21&23 of the [Aboriginal Heritage Act] from areas subject to agreements and with the inherent weakness of those provisions of the AHA, as interpreted.

We note that under proposed section 19H(2) a representative Aboriginal Body may refuse to negotiate and under section 19N(4) the Minister may only approve an agreement if satisfied that it deals satisfactorily with Aboriginal sites objects or remains known to be or that may be located in the agreement area.

One concern arising from Evatt and the structure of the present Act is that agreement may not always occur or may not always be possible and the default position is unsatisfactory.

In order to strengthen the agreement making process we reiterate what was said in paragraph 5 of page 2 of our letter of 24th February regarding the inadequacy of the good faith negotiating provisions and the need to give the ERD court jurisdiction on a no costs basis over the negotiating process itself.

To take an extreme example, what if an ore body or other development site was constituted of a sacred site, concerning which no compromise were possible. No agreement would or could be made or the Minister could not approve such an 'agreement', and the effect of section 19N(4), or of no agreement making process being commenced or concluded, is the default position; a process under sections 12,13&14, or simply sections 21 or 23AHA.

That process is flawed, and it is an indication that the AHA of 1988, although best practice at the time it was passed, has not kept up with developments in heritage protection policy, as witnessed by the Evatt Report. Accordingly ALRM recommends a compromise of the proposed repeal of section 6(2)&(4) and a further policy development.

We refer you to the Evatt report recommendation 6.4.

'…State and Territory laws should provide for assessments relating to the significance of sites and areas to be separated from decisions regarding land use. The former should be the responsibility of Aboriginal Heritage Bodies, the latter the responsibility of the Executive.'

ALRM recommends the rewriting of sections 12,13 &14 and 21&23 to ensure that Evatt's strict separation of functions occurs. We observe in that regard that the various interpretations of those sections and their interaction in *Starkey* (paras 35-44 and 111-124 per Sulan J.)

The Starkey decision

What is clear from that decision is that there is *no necessary connection* between a process of consultation, and determination of significance, sections 12-14 and Ministerial decisions about authorising disturbance, section 21-23 (para 43 per Sulan J).

Nor does section 12 give traditional owners or custodians definitive authority to determine significance, rather section 12 requires the *Minister* to determine whether to register sites. But this is upon the basis of a permissive but not mandatory process for application by the developer. Thus this process of site protection under the AHA works on the flawed assumption that protection is possible from a complete register of sites (which the State Register clearly is not) and an assumption that developers must approach the Minister to get clearance—which on the authority of *Starkey*—they do not.

Arguably it is that very uncertainty for traditional owners which led them to seek Ministerial delegations under section 6(2) in the first place.

No doubt it was the intention of the Minister to remedy this situation by the amending Bill, however the amendments do not resolve the question of definitive authority of traditional owners to determine significance. We return to this question of traditional ownership below.

ALRM submits that Aboriginal Representative Bodies should be given exclusive powers to decide significance of sites and objects. The Representative Bodies should be resourced to make such determinations and to inform the Minister and State Committee of those determinations and to have sites registered, if that is their wish.

It will be recalled that in our last letter we pointed out that existing section 6 has the virtue of bringing traditional owners together to make definitive statements about significance of sites. In that regard we also note that in litigation the Minister has expressed reservations about the process of defining who the traditional owners for particular sites actually are. Refer to *Starkey v State of South Australia* [2011]SASC34 at para 59,61. It may be observed that Sulan J attempted to provide a practical and usable definition in paragraph 63.

'The phrase "the traditional owners", on its face, might be taken to mean all of the traditional owners of an Aboriginal site or object. However, to construe section 6(2) in such a way would make it unworkable. It is likely to be impractical or even impossible to comprehensively and exhaustively identify and survey each and every member of an Aboriginal community satisfying the definition of traditional owner in section 3. Rather, for the purposes of section 6(2), "the traditional owners" must be interpreted as meaning a person or group of persons who are traditional owners and who can be identified as representing the traditional owners as a whole. Importantly in the context of this case, such a representative must be able to be sufficiently identified as having the authority in relation to the relevant Aboriginal sites and objects to act on behalf of the traditional owners as a whole of such sites and objects.'

If this very sensible gloss to the definition, made by Sulan J is accepted, then the real issue in relation to particular sites is this. If a site has many traditional owners, according to the principles of Aboriginal land tenure found to constitute native title for that area; there will always be a more restrictive question; who are the traditional custodians of that site and what is their decision regarding its significance? ALRM submits the answer to that question is crucial, and is the question which Prescribed Bodies Corporate, as the Recognised Aboriginal Representative Bodies are set up for. They should be empowered to implement the AHA by making those decisions.

Prescribed Bodies Corporate should be empowered to make definitive statements for the Minister, regarding significance of sites and objects.

Our concern with the Bill is that it is silent on the question of definitive determination of the significance of a site and to that extent it does not implement the Evatt Report, or properly acknowledge the importance and significance of Native Title for the AHAct.

The Minister's Function

In default of agreement being reached or being effective or registerable, under proposed DivisionA1, the Minister should be obliged to accept the determinations as to significance by a Registered Heritage Body but also be given a power to make state interest decisions which balance the interests of Recognised Aboriginal Representative Bodies and custodians against development interests.

The same consideration should apply in the event of a dispute as to the operation of an agreement, where the matter of dispute is access for development of a particular place, site or object. The dispute resolution provision in clause 19H (5) (b) should so specify.

It is appropriate that Courts have jurisdiction over heritage agreements under proposed section 19K, including jurisdiction where a party is alleged to have failed to comply with an agreement, but subject to this proviso. It is not appropriate that Courts make political decisions on a quasi-legal basis.

Such a 'national interest' clause being given to the Minister should specify the priority of heritage interests as being a significant consideration in the determination of the interests of the State as a whole, in the Minister's determination.

This is the considered further submission of ALRM and it does in our submission address a lacuna in the Bill and a proper compromise over the removal of section 6(2) & (4). ALRM also questions why section 6(2) delegations should not continue to be allowed to take place in relation to actions under section 29&35 AHA. We note in that regard the effect of *ALRM v State of SA No 2* (1994) 64SASR 558.

In addition, the Minister's concerns may be removed by turning the mandatory requirement in section 6(2) into a discretionary power. By changing the word 'must' to 'may'.

For the record ALRM is most concerned by the transitional provisions in Schedule 1 which would remove the operation of section 6(2) to existing applications and matters before the Courts. This is inappropriate because it affects existing rights in litigation in which the State of South Australia is involved. That is inappropriate and should not be pursued by the Parliament.

Yours faithfully

Cheryl A. Axleby

Chief Executive Officer

As I said, I have sought leave and tabled that document. I would hope that members in the other place at the very least might take the opportunity to read it, and I would hope that before the debate proceeds in the other place Law Society advice will be made available to all members.

With those few words, I indicate that the Greens were not in a position to support this bill, but it was quite clear that the numbers had been done and that the process was to be done expediently through those two players. Not only were the crossbenchers' voices in some way silenced—while I do acknowledge that the minister did indeed answer my questions—it is not an appropriate process to rush such legislation through the parliament, and certainly not without Law Society advice. It is reasonably unpresented.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:51): I thank the Hon. Tammy Franks for her contribution, and for her advocacy on behalf of these issues and the organisations whose letters she read out. As I indicated in the committee stage, I have regular meetings with Cheryl Axleby and her team at the ALRM.

Although I do not agree with Cheryl Axleby and the ALRM on every single point of every single issue, certainly the advice the ALRM provides is of great assistance to me as Minister for Aboriginal Affairs. I will commit to continue to meeting regularly with the ALRM and working with them. Much of what has been raised from the ALRM are good points, but go further beyond what the amendments of this act propose to do.

I give an undertaking that I will continue to work with the ALRM, and, if we can make improvements in the future, then I will do that in consultation with not just the ALRM but also the Aboriginal Lands Parliamentary Standing Committee and honourable members who have a significant interest in this area. I will undertake to discuss this further with the ALRM before this is discussed in the other place.

Bill read a third time and passed.

VICTIMS OF CRIME (COMPENSATION) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 8 December 2015.)

The Hon. A.L. McLACHLAN (11:54): I rise to speak to the Victims of Crime (Compensation) Amendment Bill 2015. This bill was introduced in the other place last year by the Treasurer. The victims of crime scheme provides monetary compensation to those unfortunate people in our community who have been injured as a result of a crime. The scheme provides compensation for

both physical and mental injury, and is designed to assist victims in their suffering, which often continues to impact their lives long after a crime has taken place.

Compensating victims of crime in more recent times has been part of a wider social legislative trend towards greater recognition of the importance of the interests of the victims of crime in the justice system. The general philosophy underlying victims compensation can be found in the preamble to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

This non-binding resolution was adopted by the United Nations General Assembly in 1985. It recognises that victims of crime, and frequently their families, witnesses and others who aid them, can be subject to loss, damage or injury and that they may in addition suffer hardship when assisting in the prosecution of offenders. The applicable act, which we are seeking to amend, is the state's response to these important principles.

Members may be interested to know that I commenced legal practice in 1990, and it is personally disappointing to me that there has not been greater consideration of the rights of victims since that time, particularly for financial compensation. In South Australia, there has been no increase in the amount of compensation available to victims since 1990 which is currently capped at $50,000. This capped amount covers compensation of both economic and non-economic loss.

Both the Liberal Party and the Labor Party made commitments at the 2014 election to double the amount of compensation to $100,000. Therefore, the Liberal Party welcomes this bill as a fulfilment of that promise. The bill itself amends the Victims of Crime Act 2001 to achieve this end. It also doubles the maximum compensation available for grief, from $10,000 to $20,000, and payments for funeral expenses, from $7,000 to $14,000. Importantly, it also extends eligibility for grief payments to include the children of homicide victims.

Other amendments contained in the bill include amending the numerical scale of compensation, from zero to 50, and replacing it with zero to 60, with the compensation amounts assigned to each value then increasing. This amendment has been drafted to align with the Civil Liabilities Act 1936, and I welcome this change. The bill increases the payments available to solicitors and counsel representing victims of crime, and it creates an offence that will require any claimants who receive compensation or damages from another source to notify the Attorney-General within 30 days.

I bring to the attention of the chamber that the member for Bragg in the other place successfully moved amendments to the bill deleting the clause that specified that fixed legal costs would not apply to the Crown. The member for Bragg also successfully moved an amendment removing the mandatory obligation of judges and magistrates to order that child offenders pay the victims of crime levy when convicted of an offence.

This particular amendment was drafted to accommodate a recommendation from the child protection systems royal commissioner. In her first recommendation from the royal commission, the commissioner outlined the difficulty experienced when trying to enforce these payments and cited the case of a 13-year-old child in state care who was convicted of 70 offences and so accumulated a levy debt of $7,000. The commissioner stated:

> The commission can see no benefit to victims of crime or the community more generally in burdening the children and young people with large debts they can never repay.

Perhaps more importantly, she went on to say:

> The commission has heard expert evidence that the past experiences of these children means that their behaviour is not likely to respond to punitive approaches.

The Liberal amendments were drafted in accordance with the commissioner's recommendations but still give judicial officers discretionary power to order payment of the levy, for example, if the child was employed and over the age of 16 years.

I am pleased that the members of the other place recognised the wisdom of the commissioner and her approach to this issue in order to emphasise both the restitution to victims but also the rehabilitation of offenders, particularly our youth. With those few words, I commend the bill to the chamber.

The Hon. J.A. DARLEY (11:59): This bill is fulfilling a government 2014 election promise to double the compensation payments for victims of crime. Currently, the maximum amount payable from the victims of crime compensation fund is $50,000. This bill will double it to $100,000. Other payments from the fund will increase according to a new scale, and payments will be indexed each year in line with CPI.

Whilst I am happy that the maximum has been increased, I am disappointed that it has taken so long for the government to move this bill. I understand that the increased payments will be available for victims of crimes committed after 1 July 2015; however, as parliament needs to pass this legislation, those affected have been left waiting. I am also disappointed that the government is only meeting what they undertook to do before the election and they have not gone further.

I understand the fund is currently sitting at about $203 million, with an expected annual increase of $40 million. Even with more generous payments to victims, the fund is still expected to hold a substantial amount of money for the government. The $203 million is an enormous amount of money for the government to be stockpiling. Instead of keeping the money in the fund, the government would be much better placed putting this money toward services for the community, such as rehabilitation and support services for domestic violence and substance abuse.

There has been an increase in recent years in both these matters, and clearly more services are needed to help the ever-growing number of victims. I have heard stories from many who are unable to access services in South Australia and who have had to travel interstate or even overseas to obtain treatment. This is not good enough, especially when there is $203 million sitting in the government's coffers. I understand that, whilst maximum payments are to double, those at the lower end of the scale will not see much of an increase and the changes may preclude some from being eligible for a payment when they were eligible before. Again, it is not good enough that some may miss out because the government is more interested in propping up the budget bottom line.

I would like the minister to provide information about the changes made to the bottom end of the scale and advise whether there will be people who would have received a payment under the old scheme who will now be ineligible under the new scheme.

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

DOG AND CAT MANAGEMENT (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 9 March.)

The Hon. S.G. WADE (12:02): I rise to be the lead speaker on behalf of the Liberal opposition in relation to the Dog and Cat Management (Miscellaneous) Amendment Bill 2015. In the absence of the Hon. Michelle Lensink, I have carriage of this bill on behalf of the Liberal Party.

Irresponsible pet ownership is a broad risk on a number of levels. The mistreatment of animals is clearly a threat to the welfare of those animals, but it is also a threat to other animals, both domesticated animals and native fauna. Humane treatment of all animals is a shared value of civilised societies. Irresponsible pet ownership also impacts on the amenity of local communities, the natural environment and the local ecosystems that we rely on. Accordingly, measures which promote the proper care of animals such as the Dog and Cat Management Act are well established and broadly supported.

Some may argue that this bill is a paternalistic measure which impedes the rights of pet owners. It is the Liberal Party view, on the other hand, that it puts in place necessary and appropriate controls which manage the risk of irresponsible pet ownership without unnecessarily impeding the enjoyment of pet owners. Our view is that this bill is well overdue, and I would like to recount some of the history. In that context, I am pleased to acknowledge the contribution of the late Hon. Dr Bob Such and pay tribute to his work in the area of animal welfare.

In 2006, Dr Such introduced the Prevention of Cruelty to Animals (Commercial Breeding of Companion Animals) Amendment Bill 2006 and the Prevention of Cruelty to Animals (Miscellaneous)

Amendment Bill 2006. In 2008, Dr Such introduced the Prevention of Cruelty to Animals (Animal Welfare) Amendment Bill 2008. He was also responsible for initiating the select committee after tabling the Animal Welfare (Commercial Breeding of Companion Animals) Amendment Bill in November 2012.

The select committee was established and received input from 124 individuals, 34 organisations and 10 breeders. The committee reported in July 2013 and 11 key recommendations were made. Some of the key recommendations were to improve welfare standards in the breeding of companion animals, increase purchaser confidence in the source of their companion animals, reduce the number of surrendered animals—and, by extension, euthanasia numbers—and increase public awareness of animal welfare issues and owner responsibilities. I acknowledge the quality bipartisan work of members of this committee.

Despite extensive calls from the community urging the Weatherill government to act on the recommendations to the select committee, no action has occurred at this time. In the context of the government's lack of action, the Hon. Michelle Lensink introduced the Animal Welfare (Companion Animals) Amendment Bill 2014 in September 2014.

I understand that the Dog and Cat Management Board was tasked by the government with developing a bill. A citizens' jury of 35 South Australians was established and undertook consultation in 2015. The jury received advice from animal welfare organisations, local councils, academics, veterinarians and government representatives about issues including, but not limited to, dog attacks, feral cat management, compulsory desexing, and the number of cats and dogs euthanased in animal shelters. I am advised that over 1,800 submissions were received.

The citizens' jury made the following recommendations: firstly, that there be greater coordination of educational programs about responsible pet ownership, including the introduction of an online test; legislation to encourage more acceptance of tenants with dogs and cats; compulsory desexing of new generations of dogs and cats; legislation to restrict the sale of dogs and cats from pet stores; a proposal for a trial of a trap, neuter, release project; mandatory registration and licensing of dog and cat breeders; a centrally managed statewide database for microchip data for dogs and cats.

The proposed trial of a trap, neuter and release project was not supported by the government. The government says it will investigate legislation to restrict the sale of dogs and cats from pet stores and encourage more acceptance of tenants with dogs and cats. I am advised that the other four recommendations are supported by the government.

On 18 November 2015, the Minister for Sustainability, Environment and Conservation finally introduced the state government's response to the select committee in the form of the Dog and Cat Management (Miscellaneous) Amendment Bill 2015. The bill seeks to amend the Dog and Cat Management Act and make related amendments to the Criminal Law Consolidation Act, the Equal Opportunity Act and the Major Events Act.

The government's bill implements a combination of the select committee's recommendations and the recommendations made by the citizens' jury. There are some differences between the Hon. Michelle Lensink's bill and the government bill. In summary, they are that the Hon. Michelle Lensink's bill included enforceable standards for the breeding of companion animals by regulation. The government alternatively proposes to implement that through the code of practice currently being developed.

The Hon. Michelle Lensink's bill provided for a licensing scheme for breeders subject to a range of conditions which could be revoked or suspended. The bill would have made it an offence to breed or mate companion animals without a breeder's licence. The Hon. Michelle Lensink's bill was based on select committee recommendations. However, after her bill was introduced, she consulted with relevant stakeholders and was considering amendments based on this consultation. The government's bill does not include a licensing scheme for breeders; rather, breeders will be required to be registered and adhere to a code of practice.

The Hon. Michelle Lensink's bill required animal welfare organisations to be approved by the minister. The government's bill does not include this. However, mandatory standards for the

knowledge, competency and skills of staff would be incorporated into a pet trade code currently being developed.

The Hon. Michelle Lensink's bill proposed that the minister provide general exemptions for desexing, registration and so forth. The government's bill allows the dog and cat management board to provide exemptions through regulation. The Hon. Michelle Lensink's bill proposed to make it illegal to sell an animal unless it was vaccinated and wormed. The government will require by regulation for sellers to provide buyers with written information on vaccinations and other treatments given to the animal.

The Hon. Michelle Lensink has undertaken consultation following the introduction of the Animal Welfare (Companion Animals) Amendment Bill 2015. Following the release of the Dog and Cat Management (Miscellaneous) Amendment Bill 2015, the honourable member again sought feedback from interested parties. On behalf of the Liberal team, I thank the Hon. Michelle Lensink and Ms Staude, her adviser, for the diligent and intelligent work they have done in terms of both policy development and community engagement.

Often it is the role of local councils not only to help mitigate damage through the promotion of responsible pet ownership but to deal with the ramifications when such standards are not met. The capacity of local councils to provide suitable welfare centres for abandoned and/or abused animals is becoming increasingly strained, and sadly many animals are euthanased each year as a consequence of neglect.

In an attempt to reduce these pressures, the Liberal team endorses the proposed amendments to the act put forward in this bill which will ease the administrative burden placed on councils. In turn, this will reduce the heavy demand on animal shelters, minimise waste and, most importantly, save a significant number of animals from preventable suffering. The proposed changes to registration will remove unnecessary complications in the administration of the act within councils. The new system will encourage dog owners to take active precautions, offering discounts to owners whose pets are both microchipped and desexed.

Additionally, the proposed system will reduce complexities, decreasing the number of registration categories from eight down to two. Any dogs that are not desexed will fall under the 'non-standard' category and their owners will pay higher registration fees. As the mandatory desexing rule comes into effect this will become one category, 'standard dog', which is a microchipped and desexed dog or an exempted dog. This will be a significant step towards simplifying the current system without any cost to its efficiency. Paradoxically, the impracticality of monitoring the training of dogs has rendered the previous rebate for trained dogs ineffective and it is abolished in this bill.

The Liberal Party similarly supports the proposed amendments to sections 5 and 6 which amalgamate cat and dog management. The establishment of a single officer identification, and the subsequent abandonment of the requirement for council employees to hold separate authorisation as dog management officers and cat management officers, will remove unnecessary administrative barriers for councils in responding to relevant threats.

It is important to remember that the desexing of domestic animals reaps benefits not only in controlling populations but through addressing hormone-related nuisance behaviours. The opposition acknowledges the work of the citizens' jury in relation to mandatory desexing. It is anticipated that the ramifications of this amendment will support a decrease in animal welfare admission rates as well as help to tame the cat overpopulation. Additionally, desexing can prevent hormonal wandering and aggression, creating a safer environment and, importantly, a safer environment for pets.

Although I understand that there will be parties who are concerned by the amendments, it is important to remember that exemptions will apply. Through certification by a veterinary surgeon, certain dog owners can be exempted from desexing their animal, with reasonable allowance made for working dogs, greyhounds and security dogs. Exemptions in relation to specific breeds can also be considered until a certain age.

Regrettably, the existence of cat and puppy farms interested solely in economic gain at the exploitation of animal welfare is also an unwanted stain on our society. The government's bill makes

it illegal to sell a dog or cat that a person has bred unless the breeder is registered as a breeder. Registered breeders are required to adhere to a code of practice.

In requiring all breeders to be registered with the Dog and Cat Management Board, the proposed amendments allow councils to monitor breeders in the area more efficiently, in turn alerting them to any emerging problems. This provision will enable the government and the community to be aware about where breeders are located and, if an offence is committed, prosecution will be facilitated. I am advised that the government intends to implement a statewide breeder database but no time frame has been given.

The aim is to stamp out puppy farm operators who are currently difficult to locate, as companion animals are often sold in public places and cannot be tracked. Breeder registration revenue will be paid into the Dog and Cat Management Fund and used to administer the breeder registration and conduct compliance activities. The government allows the board to keep a register relating to microchipped and desexed dogs and cats.

The Liberal opposition was looking to amend the legislation to specifically exempt working dogs from being desexed. The government has recognised this concern and has proposed that provisions be included in the regulations. The Dog and Cat Management Board has been working with Livestock SA, SA Working Sheep Dog Association and the South Australian Yard Dogs Association to determine an appropriate definition for a working dog. The board has indicated that it prefers the definition used in the Queensland legislation, a definition which I understand is also used in New Zealand.

In 2012, the select committee made the distinction between companion animals and working dogs, and members of that committee were of the understanding that working dogs would not be captured by the proposed regime. The Hon. Michelle Lensink consulted the working dog community following the introduction of her bill. Generally, the working dog community was supportive of such a scheme which would ensure that appropriate checks and balances were in place.

Support was given under the proviso that exemptions would be permitted for desexing and, once implemented, would be workable. Livestock SA, SA Working Sheep Dog Association and the South Australian Yard Dogs Association all confirmed extensive involvement in formulating an appropriate definition of 'working dogs' and fully supported the Queensland definition. The Hon. Robert Brokenshire tabled amendments in February which will provide full exemption for working dogs. The definition of 'working dogs' was not supported by the working dog community over the definition formulated by the board, in our view, and I understand that the board does not support the Hon. Robert Brokenshire's amendments.

The Liberal Party has considered both alternatives and resolved to support the use of the Queensland definition. We are also of the view that the issue is one that is appropriately dealt with in the legislation rather than in the regulations, so I foreshadow an amendment to that effect. Working dogs are not an area where practices are rapidly evolving such that a definition could become rapidly redundant, so we believe that a statutory definition is both appropriate and workable.

The government's bill includes increases to expiations and penalties. The Dog and Cat Management Board is advocating, with support from the Local Government Association, to remove expiations and penalties and place them within the regulations. This, it is argued, would allow the board to update them every three to five years rather than having to convince parliament to reopen the act and review them.

The Dog and Cat Management Board has suggested that there is the option to give power under the bill to increase the cost of fines through regulation. It is suggesting that at least a rise of CPI annually would be suitable. The minister has said that he has no preference either way as to whether there is the power in the bill to increase fines without having to open the bill each time to increase the fine. The proposed increases to maximum fines for offences under the bill have increased substantially due to the bill not being reviewed for 20 years. The proposed increase in fines is on par with fines for similar offences in other states.

The Liberal Party considers that fines should appropriately be in the bill so that they are amenable to parliamentary oversight. The Liberal Party has filed amendments which prescribe the

maximum fines as suggested without CPI increases and that will allow the bill to be reviewed in five years' time, when any further fine increases are considered.

While the opposition regrets the unnecessary delay in this legislation coming before the council, we acknowledge the work done by many stakeholders to make this the best bill it could be. We trust that in years ahead we will see the benefit of the bill in terms of the better treatment of domesticated animals and native fauna, the amenity of local communities, and the protection of the natural environment.

The Hon. T.A. FRANKS (12:20): I rise on behalf of the Greens to speak to the Dog and Cat Management (Miscellaneous) Amendment Bill before us. This is possibly one of the more cross-party efforts, to see this legislation before us, but I do commend the work of minister Hunter in bringing this bill before us and in the long consultation processes that have happened in various formats, most notably the citizens' jury on this matter and also the late Dr Bob Such's involvement in establishing a select committee that was also supported, as a venture, by the then not-quite-to-be minister, the member for Mawson, Leon Bignell. He shortly thereafter became a minister and, in his elevation, was ably supported by Dr Susan Close, the member for Port Adelaide.

The Hon. Michelle Lensink has brought previous pieces of legislation to this place and, as I said, many members of parliament and also members of the community have pursued the public discussion on dogs and cats in our society. I think this piece of legislation, being an amendment to the Dog and Cat Management Act rather than to the Animal Welfare Act, is significant in the shift in public attitudes as well as in the ability to contemporise this area of law in our state. I commend those particular members of parliament but also the many members of parliament who have spoken about the various issues that we grapple with in this sphere.

One thing that came up time and time again in the citizens' jury and in the media around the citizens' jury, and certainly in the ministerial statements that accompanied it, was that in this state 10,000 dogs and cats are euthanased each year—

The Hon. I.K. Hunter interjecting:

The Hon. T.A. FRANKS: Possibly more, as the minister said, and that is certainly one of the areas of concern that the minister is well aware I have been most interested in with regard to this bill. At this point, I indicate that I will have some amendments that I will table this afternoon with regard to ensuring better transparency around euthanasia rates of dogs and cats in our state, not as anything other than a tool to ensure that we do better in the future.

This bill is a culmination of that select committee work on dogs and cats, a culmination of the citizens' jury and a culmination of the work of many members of this place. I note that the Hon. Michelle Lensink has put an enormous amount of effort into this area, but is currently on maternity leave. I also want to thank my staff member Lauren Zwaans, who has put a lot of effort into this area in terms of research and consultation with stakeholders, and who is also on maternity leave, unexpectedly early. However, she has certainly left me well equipped to progress this debate, and I thank her for that.

I also thank the minister for his briefings, and Andrew Lamb of the Dog and Cat Management Board, who I am sure eagerly anticipates the passage of this bill, as well as Tara Bates, specifically, for her willingness to ensure that we were provided with information and answers to our questions. Many of the answers to those questions have ensured that we are not seeking to move too many amendments; we will have a few, but many of those answers ensured that we did not have to pursue amendments to this bill because we were confident that the issues we were raising were going to be addressed by it.

I want to particularly thank the RSPCA and the Animal Welfare League (AWL) for their contributions and continued conversations with my office. Certainly, the amendments that I will be putting forward on behalf of the Greens are informed by both the RSPCA and the AWL. I want to particularly commend the RSPCA for always having transparency around their euthanasia rates, but the AWL for being open to having discussions about transparency of euthanasia rates with their organisation into the future.

More recently, last Friday I hosted in this place a discussion with the Australian Veterinary Association of South Australia, which has some concerns and has made representations to members in this place about the bill. I will be raising one of its concerns in an amendment, which is about the language of 'spay' and 'neuter' specifically when we are talking about the desexing of animals. They raised the point that that in fact prohibits some forms of desexing and does not foresee new technologies where they may be more appropriate. I will be interested to have a discussion with the minister's office about that and, as I say, we will be circulating a form of words informed by the AVA's briefing in our amendments.

This bill, of course, has also had extensive consultation with groups such as the LGA and many in the community. It contemporises the Dog and Cat Management Act, and local councils will continue to have the task of administering and enforcing the act in the community, but the bill will provide councils with additional powers to investigate breaches of the act, such as dog attacks. It also introduces the first increase in expiations and penalties in some 10 years, to maintain adequate deterrents to reduce the number of irresponsible pet owners.

For example, councils are permitted to set a dog registration fee at $85, but the current expiation for failing to register is $80 and therefore an ineffective deterrent on the ground. It simplifies the disability dog accreditation processes and introduces the nationally consistent term of 'assistance dog', again to contemporise the legislation in our state. This bill introduces mandatory microchipping of all dogs and cats by an age set by regulation to commence from a date to be determined. Moving forward, dogs and cats in this state will be microchipped, but I note not the current cohort that is already in existence in terms of that mandatory expectation.

The bill also provides a framework for approval of microchip implanters by the Dog and Cat Management Board and addresses an issue that has been raised time and time again with me by groups such as the AWL and the RSPCA about ensuring that we reunite lost pets, lost companion animals, with either their owner or perhaps you might call it a slave sometimes in terms of some cats' attitudes. I think the old joke is that dogs have owners and cats have slaves, and certainly a few of us in this council can definitely relate to that.

However, whether we consider them our companion animal or our boss, we certainly want to be reunited with them if they go missing and to have an ability to track them that is more streamlined and allows more sharing across council jurisdictions. As we know, animals can travel merely across the street and be in a different council jurisdiction and perhaps not fall into the various ways that we seek to find our lost pets.

It seems like a no-brainer that you would indeed consolidate that information into a database. I am sure that it seemed like a simple proposition, and I am sure it will actually be reasonably difficult to implement, but I commend the minister for taking these steps. I look forward to seeing reports of more lost dogs and cats being reunited as a result of this particular measure for that database and microchip recording, transparency and streamlining of information.

It also, more controversially, introduces mandatory desexing of dogs and cats. It is not controversial for the Greens. We are certainly very strong supporters of this provision, but we are, as I say, cognisant of the words of the AVA with regard to the terms 'spay' and 'neuter' perhaps being too restrictive. The AVA has raised other concerns and has noted its strong opposition to some sections of the bill, including that mandatory desexing.

I take on board some of their concerns. I understand that they do not want to be in the position of policing such things. They fear that some people will be fearful of bringing their animals to them if this is the case. I think this cultural shift and community conversation that we will have will also support other measures to ensure that those who have companion animals are supported to ensure that they are desexed as appropriate.

We do not want to see animals overbred. We do not want to see the horrific instances of puppy farms in our state. We do not want to support that toxic industry, and this is one of the steps that will ensure that our beloved dogs and cats—our beloved companion animals—are more often loved than lost or unnecessarily euthanased. Desexing exemptions will of course apply to specific classes of dogs and also in specific instances.

This bill introduces a breeder registration program to improve the oversight of breeders. Again, I think there is strong community support for these measures as people see the horrors of puppy farms and puppy factories, and of unwanted animals reproducing. It also introduces a requirement that the breeder registration number be provided to consumers at the point of sale. This is a small measure that I am sure will have a significant impact.

The Greens, as I said, have had some consultations in this area, particularly with the RSPCA and the AWL. We will be seeking to increase transparency of euthanasia rates for dogs and cats. As the minister indicated in response to my noting that 10,000 dogs and cats are euthanased in this state per year, we would like to see that transparency record a fall in those numbers.

We will also be seeking to ensure that the definition of 'desexing' within the bill is not prohibitive to all forms of desexing, as has been raised with us by the AVA. We will not be supporting the Brokenshire amendment with regard to working dogs. The work of the Hon. Michelle Lensink and the Liberal opposition in this area is a much more attractive way to go and certainly seems to have had more consideration given to it in terms of that approach. We look forward to that debate, and will certainly continue discussions with both the opposition and the government.

Finally, we note that the Liberal opposition has proposed an amendment in relation to reviews of the act, but we have concerns that it only addresses the penalties. Certainly, we would be seeking to ensure that there are ongoing reviews of this act—not constant, I am sure the minister will be relieved to hear—

The Hon. I.K. Hunter: Hallelujah!

The Hon. T.A. FRANKS: —but we think, if there are going to be reviews of the act, we do actually want to see this act work, and we do need to provide those milestone opportunities—not just to look at the penalties, but to look at the operations and the success, and to identify ways in which we can work collaboratively to progress the way our state and community treat our companion animals with respect. With those few words, I commend the bill.

The Hon. G.A. KANDELAARS (12:33): I rise to speak in support of the government's Dog and Cat Management (Miscellaneous) Amendment Bill 2015. I especially commend the state government on its work in bringing the South Australian community, and importantly, stakeholders, along throughout the development of the bill. The government carried out a 10-week consultation period throughout April, May and June 2015. An online survey was hosted by the Department of the Premier and Cabinet's YourSAy website. Interested people could access the online survey to provide their views on key amendments to the draft bill.

As well as the online survey, the Department of Environment, Water and Natural Resources (DEWNR) and the Dog and Cat Management Board received submissions through emails, post and phone. The Dog and Cat Management Board conducted a social media campaign during the consultation period, which included posts on Facebook and Twitter, to engage with the community. The social media campaign was very successful, with 50 per cent of the submissions to YourSAy due to the exposure on the information provided through the board's Facebook pages.

I was impressed that this consultation generated over 1,800 submissions. DEWNR and the Dog and Cat Management Board collaborated to analyse the feedback received during consultation and produced a report which is available on the YourSAy website and which outlines the main responses to the draft bill. I am advised that, of the online respondents to the draft bill, 82.25 per cent supported the mandatory microchipping proposal, 87.59 per cent supported the breeder registration proposal, 56.93 per cent supported the increase in expiation and penalties, 50.2 per cent supported the changes to dog registration and 84.78 per cent supported the assistance dog reforms.

Alongside this consultation, the government established a citizens' jury to explore ways to reduce the 100,000 unwanted dogs and cats euthanased every year in South Australia—a true tragedy, I must say. Citizens' juries provide an excellent way to involve communities in the deliberation about a difficult and controversial topic, and 35 South Australians participated in the citizens' jury. The jury met four times during June and July 2015 and was provided with information from experts. The jury provided the government with its report, which was tabled in parliament in October 2015 together with the government's response to the recommendations.

The government supported four of the jury's recommendations, that is, greater coordination and education programs about responsible dog ownership, compulsory desexing of new generations of dogs and cats, mandatory registration of dog and cat breeders, and a centrally managed statewide database for microchip data for dogs and cats. Throughout the public consultation and citizens' jury, the government carried out targeted consultations with specific stakeholders.

I understand the Dog and Cat Management Board consulted with local government groups, such as the Local Government Association and local councils; animal welfare groups, such as the RSPCA and the Animal Welfare League of South Australia; breeder groups, like Dogs SA, the Feline Association of South Australia and the Governing Council of the Cat Fancy of South Australia; representative groups, such as the South Australian Yard Dog Association, the South Australian Working Sheepdog Association and Livestock SA; disability service groups, such as Lions Hearing Dogs, the Royal Society for the Blind and Guide Dogs of South Australia; and veterinarians and pet care associations, such as the Australian Veterinary Association (SA and NT) and the Pet Industry Association of Australia.

The bill's broad support from these organisations, along with the broader community, is a testament to the work of the government in engaging South Australians with the bill that positively affects the lives of many people, including pet owners and animal lovers, veterinarians, pet store owners and local government and, of course, possibly affects the lives of our dogs and cats. I commend the bill to the council.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (12:39): I understand that I am the final speaker, so I will indeed conclude. I would like to thank all members for their contributions to this debate and their support, or their foreshadowed support, in amending the Dog and Cat Management Act 1995. The bill proposes a number of changes to the act, including mandatory desexing, mandatory microchipping and mandatory breeder registration.

We believe that these changes will help to improve the ability of shelters to return lost dogs and cats to their homes, reducing the number of lost dogs and cats that end up in shelters; provide comfort to people that the puppy or kitten they are buying comes from a reputable breeder; enhance the ability of authorities to detect and prosecute puppy and kitten farms; and enhance local councils' capacity to manage cats and dogs.

The development of this bill has come through extensive public and targeted stakeholder engagement. A 10-week consultation period received over 1,800 submissions from the public, and we also carried out a citizens' jury, as has been noted by previous speakers, which was established to explore ways to reduce the over 10,000 unwanted dogs and cats that are euthanased every year in this state.

Along with this public consultation, the government has worked closely with stakeholders. The Dog and Cat Management Board has been instrumental in building support for the bill amongst stakeholders, including with local government groups, animal welfare groups (like the RSPCA, the Animal Welfare League, breeding groups, the SA Yard Dog Association, the SA Working Sheepdog Association and Livestock SA), disability service groups and veterinarian and pet care associations, such as the Australian Veterinary Association and the Pet Industry Association of Australia.

I point out these consultations so that honourable members are aware of the significant engagement the government has undertaken throughout the development and presentation of this bill to the council. Some members have raised concerns about how working livestock dogs will be treated under this bill, particularly with regard to the need for working livestock dogs to be entire (that is, not desexed) to carry out their work.

The government supports specific desexing exemptions for these dogs, recognising the importance of the hormone-driven behaviour of working livestock dogs and the need for some exceptions from desexing. The government contends that the most appropriate place for these exemptions is in the regulations—and I will come to this again before I close—which allow for greater flexibility so that any changes in sector practices can be administered in a timely way.

I understand that the Hon. John Darley has asked specific questions about the proposed breeder registration scheme, particularly about how the scheme will work to reduce the number of

puppy and kitten farms in South Australia. The key problem with these puppy and kitten farms is how you find and identify them so that you can seek compliance with legislation. The government's view is that a multidimensional approach is the best approach to reducing puppy and kitten farms. This is why the bill contains a range of revisions that collectively work together to enhance the ability of authorities to identify and prosecute puppy and kitten farms and for owners and prospective owners to have the assurance they want and need that the puppy or kitten they are buying comes from a reputable breeder.

First, mandatory microchipping identifies the animal and will be a requirement for all animals. Secondly, mandatory desexing of animals will restrict the capacity of ad hoc breeding and therefore reduce the supply of puppies and kittens. Thirdly, the introduction of a breeder registration scheme will allow the public and the RSPCA to access information about all breeders. It will be an offence to sell a dog or a cat unless registered as a breeder. The proposed definition for breeding and sale is broad and will encompass most operating models, I am advised.

It will also be compulsory for sellers to record the breeder registration number and microchip number in all advertisements for sale and for it to be provided to the purchaser. Requiring breeders to include their registration number in advertisements of dogs and cats for sale provides consumers and regulators with the ability to trace the origin of the animals—and that is crucial.

Breeders who advertise a high number of animals or offer sick or injured or genetically defective animals can be traced and their operations investigated by the authorities. In addition, consultation has occurred on the draft code of practice for the welfare of dogs and cats in breeding facilities to be regulated under the Animal Welfare Act 1985. This is anticipated to be finalised in 2016. Revisions to the code of practice for the care and management of animals in the pet trade under the Animal Welfare Act 1985 have also been consulted on and are anticipated to be finalised this year.

Breeder registration is thus a means for the RSPCA, councils and the public to identify breeders in the state, reducing the likelihood that a puppy or kitten farm can operate unnoticed in South Australia. Being able to identify breeders, shining a light on their practices and their location, will enable councils to better manage dog and cat management for planning health and safety. It is important to note again, as I said in my opening comments when we introduced the legislation, that most breeders in South Australia do absolutely the right thing. They love their animals, they treat them well, and they are not the targets of this legislation.

This will also enable inspection by the RSPCA for compliance with the Animal Welfare Act 1985. I think the Hon. Kelly Vincent raised a question about whether a disability dog must be accredited by both a prescribed accreditation body such as the Royal Society for the Blind, for example, and the Dog and Cat Management Board. As it stands, my advice is only the Dog and Cat Management Board can accredit a disability dog.

The bill additionally enables a prescribed accreditation body to accredit an assistance dog. No further approval will be required by the Dog and Cat Management Board; however, the prescribed accreditation body will need to provide the details of the dog to the board so that an essential record of all accredited dogs can be kept.

There was some reference in the debate to reviews. I draw honourable members' attention to division 3—Operations of the Board, and section 21—Functions of Board, subsection (1)(G). Of course, one of the functions of a board is to keep this act under review and make recommendations to the minister with respect to the act and regulations made under the act. Honourable members might care to have a think about that and whether or not that will satisfy their desire for a more pointed review at a point of time, but I bring that to your attention.

Also, the Hon. Mr Wade said in some of his remarks that I was not particularly fussed about whether some aspects of the regulatory approach that I brought into the legislation were dealt with by regulation, and that is relatively speaking right. However, I remind the council, and I think it bears keeping this in mind, that this is the first major review of this act in 20 years. There are reasons why it has taken that very long time.

If you consider the amount of time the government spent in returning this to the parliament, the amount of time the government spent in the long consultation process and the public discussion, you will probably understand why it is probably a good idea to give that flexibility and regulations to make changes, rather than expect that the government might open this bill up again and make changes to the legislation, rather than actually giving it flexibility. The two particular points I think that may be in contention, raised by the Hon. Mr Wade, are in relation to the definitions of working dogs and expiation offences.

I can see absolutely easily why the honourable member might want that in the legislation, but I just draw to the attention of the council that the ability to change, particularly the expiation offences by legislation, may well be limited in the future by the government's desire to pass legislation through or open up the act, understanding the great deal of public consultation as required to make any changes to this act whatsoever. I just put that on the record. I think it is worth reflecting on. If there is a huge degree of distrust, then maybe you do want it in the definitions in the legislation. But I would say: have a think again, particularly around the expiation, because if we need to increase expiation fees into the future you do not want to be waiting for 20 years before that happens, I would suggest.

In closing, I thank the many honourable members and their staff for engaging with my office on this legislation. It has been a very happy work of cooperation. It has avoided many points of contention and has built on considerable consensus. I look forward to the passage of the legislation.

Bill read a second time.

Parliamentary Procedure

VISITORS

The PRESIDENT: I would like to acknowledge the Westminster School. Welcome here. Good to see you all. I hope you learn something while you are here.

Sitting suspended from 12:49 to 14:16.

Ministerial Statement

PFIZER

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:17): I table a copy of a ministerial statement relating to Pfizer made earlier today in another place by my colleague the Minister for Health.

Question Time

TRANSIT POLICE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:17): I seek leave to make a brief explanation before asking the Minister for Police a question about transit police numbers.

Leave granted.

The Hon. D.W. RIDGWAY: In July 2012, the then police minister Jennifer Rankine announced that transit police would be boosted by 28. At the time she stated that there were 102 transit police officers. Basic maths deduced that this commitment would bring the number to 130 transit police by a date not specified but presumed to be at least within the forward estimates.

On 19 February 2014, the Premier issued a media release stating that the number of transit police was, at that time, 114. On 29 January 2016, the transport minister issued a media release stating that there were almost 100 transit police. For the sake of prudence, the very hardworking shadow transport minister David Pisoni (the member for Unley) took the liberty of FOI'ing the number of current transit police officers. SAPOL responded that, as at 3 February (so just five weeks ago), there were 73.8 FTE transit police officers.

Yesterday, in question time in the other place, the transport minister reported that the government had made good on its 2012 commitment and he attempted to justify his answer by saying

that, in response to the aforementioned FOI, the shadow minister had attempted to quote the number of transit police officers attending work on one particular day, that being 3 February. My question to the minister is: can he confirm that the response of his department to the FOI request was factually correct and that, as at 3 February 2016, there were 73.8 FTEs employed as transit police officers?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:19): I thank the Leader of the Opposition in this chamber for his important question. My advice is very clear: on 3 February 2016, there were, indeed, 73.8 FTEs who were performing the function of a transit officer on that day. I am advised that this figure does not include transit police officers who were on leave, whether that be annual leave, sick leave, maternity leave or other forms of absences of that nature.

I also thank the honourable member for his important question because it gives another opportunity for this government to outline its extraordinary success when it comes to resourcing the police well in this state. We did make an election commitment many years ago to increase the transit police numbers, and that commitment has been honoured.

The number of transit police patrolling public transport in this state has increased under this government, just as the number of police officers has increased under this government, just as the amount of money we spend on SAPOL has been increased by this government—on average by approximately 9 per cent per annum since coming to office—and that commitment remains ongoing.

We will continue to increase the police budget, we will continue to increase the number of police officers serving our community, we will continue to increase the services delivered to South Australians by making it safer, by working collaboratively with the police commissioner, who we genuinely believe is the person best placed to make decisions on how to productively and efficiently allocate the substantially increased resources that this government has provided to SAPOL.

TRANSIT POLICE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): I have a supplementary question. Given the minister claims that the FOI that the opposition received was only police transit officers on that day (of 73.8), how many transit police officers are there when taking into consideration those who are on maternity leave, holidays or not at work on that particular day? What is the exact number of FTEs who are paid and employed by SAPOL as transit police officers?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:21): I am advised that approximately 100 people are employed within the transit police section. It would not always be 100 on any given day, but it is a number in the order of 100. I am advised also that it is not just the transit police who are monitoring what is occurring within the public transport system. Police officers within existing LSAs obviously also have the capacity to be able to attend incidents that occur on public transport. It is not just people who are on public transport who can attend to these matters. Any person from a patrol base or anyone within an LSA has the capacity and, indeed, does respond to incidents as they arise and are alerted to SAPOL through the usual means.

TRANSIT POLICE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:22): I have a supplementary question. Given that minister Rankine stated that there were 102 back in 2012, and that she announced that the transit police would be boosted by 28, how can the minister stand here and say that they have honoured their commitment to the South Australian people? He is saying there is about 100, but we had 102 three years ago.

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:22): I'm not familiar with the specific remarks that the honourable member refers to. What I am familiar with is the advice that I have received from SAPOL, that the number of transit police has increased under this government's watch. That is a record that I am proud of, and it just so happens to be advice that is consistent with every other fact that exists within SAPOL in terms of this government's record of resourcing SAPOL effectively.

We have the highest number of sworn police officers per capita in this state of any state in the country. It is a record that is second to none and it has delivered results in respect of crime statistics and community safety. It is a record that we are proud of and we welcome the scrutiny that we get from the opposition when it comes to this state government's resources to SAPOL because it gives every opportunity to point to our record which, as I said, is second to none.

TRANSIT POLICE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I have a supplementary question. In relation to the FOI I quoted, I will just repeat it. The FTE Public Transport Safety Branch police officers, as at 3 February 2016, is 73.8. When has it become the practice of the government to release only the figures of people who were at work on a particular day? I think the exact number of transit police officers you have is 73.8.

The Hon. I.K. Hunter interjecting:

The Hon. D.W. RIDGWAY: I'm asking him a question, not you.

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: I'm asking him a question

Members interjecting:

The PRESIDENT: Order! The Leader of the Opposition, was that a question or a statement? I didn't hear a question in that.

The Hon. D.W. RIDGWAY: It was a question about the FOI policy of SAPOL. Did they release the number of people who were at work on any one particular day or is it just a figure that they have picked out of the air?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:24): The Leader of the Opposition does get very, very excited when someone else chimes in and interjects with what is an entirely accurate response. I think the honourable minister should be forgiven for piping up when such silly questions are asked. The facts are very simple. Responses to FOIs answer the question that is being asked, and it is my advice that the FOI is accurate and directly answers the question that was asked by the person who asked it.

SALISBURY POLICE STATION

The Hon. J.S.L. DAWKINS (14:25): I seek leave to make a brief explanation before asking the Minister for Police a question regarding the reduction in operating hours of the Salisbury Police Station.

Leave granted.

The Hon. J.S.L. DAWKINS: On the front page of this week's Salisbury edition of the *Northern Messenger* there is an article entitled 'Mayors slam plans for police stations'. It states that under SAPOL organisational reform program papers that were obtained by journalists, the Salisbury Police Station's hours of operation will be cut to 9am to 5pm Monday to Friday. I should indicate to the council, as someone who has in the past fought to keep the Salisbury Police Station open, and open for a decent amount of time, the current hours are 8.30am to 9.30pm seven days a week.

Her Worship the Mayor of the City of Salisbury, Mrs Gillian Aldridge, said in response to questioning on the matter by the *Northern Messenger* Salisbury edition:

> The Salisbury station is a lifeline in our community and I think to reduce the hours of its operation is absolutely scary...you would think the police would be available all the time to help, but they won't be if they reduce the hours.

In response to the article the minister was quoted as saying it was:

> …entirely appropriate that large organisations like SAPOL undertake internal reviews from time to time as they strive for continual improvement.

Given that the City of Salisbury is the second largest local government area, by population, in the state, and that the number of reports of all serious assaults in its police local service area has

increased over the last 12 months by 120 to 1,804 compared to the same period last year, my question is: does the minister believe that reducing the hours of operation of the local Salisbury Police Station is, to use his own word, 'appropriate'?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:27): I thank the honourable member for his question. The Salisbury Police Station, like every police station across the state, is being looked at as part of the organisational review that is being conducted by SAPOL. As I have stated before on the record, and I am happy to repeat again, this government welcomes SAPOL having a good look at itself in terms of trying to establish if there are ways it can improve public service with the additional resources that the government is providing.

The concerns raised by the mayor in the article that the honourable member refers to seem to overlook a simple premise; that is, the object of this review is not in any way to reduce services available to the community but rather to improve them. I am sure the honourable member understands the concept that if someone is sitting behind a desk it means they are not out on the front line, and the police commissioner is reviewing the allocation of resources to improve front-line services.

The suggestion that by somehow fiddling with the hours or potentially reviewing the hours of the front door being open to take administrative reports or other inquiries somehow means that there will not be the availability of police on a 24/7 basis is simply not an accurate reflection of what is taking place, or what would take place in the event that the police commissioner ultimately decides to wind back police station hours. Police will continue to be available on a 24/7 basis, most likely on an improved level of availability.

Having police officers confined to a police station as distinct from having them out on the front line, whether that be in a patrol car or by some other means, makes no sense whatsoever. We want to make sure that we get the balance right. We want to make sure that the police commissioner, I should say, has the flexibility to be able to get the balance right, not only having people available in a police station when the public reasonably needs them but also weighing up the fact that we need police men and women out on the road servicing the community as incidents arise.

We as a government are providing the police commissioner with the flexibility he needs. If the opposition has a different view about that methodology, they should come out and say it. They should come out and say, 'We don't support the police commissioner having a review. We don't support SAPOL being efficient and expeditious. We don't support the fact that the government is supplying SAPOL with additional resources year on year on year and therefore shouldn't be expecting high degrees of service with it.'

We support the police commissioner in conducting an internal review. We look forward to all interested parties playing a role in that consultation process, whether it be individual members of parliament, whether that be the opposition, whether that be the government, whether that be the Police Association or other members of the community. It is a consultation process. We welcome it, we endorse it, and we look forward to the outcome of it. But understand this: the only outcome I am advised that the police commissioner is pursuing in his internal review is to provide a more efficient, more available, more modern service to the South Australian public to ensure that they continue to remain safe.

The PRESIDENT: The Hon. Mr Dawkins has a supplementary question.

SALISBURY POLICE STATION

The Hon. J.S.L. DAWKINS (14:31): Will the minister confirm whether he thinks it appropriate that the second largest council by population in South Australia will be without a police station presence for the great majority of the time for access by the people in that city?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:31): I wholeheartedly support every effort that is being undertaken by this government and by SAPOL to serve the people of Salisbury in the most efficient and expeditious way possible. We have already improved the

resources that are available to SAPOL. What we want to also do is make sure that their communities—

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

The PRESIDENT: Can the Hon. Mr Dawkins allow the minister to complete his answer.

The Hon. P. MALINAUSKAS: We want to make sure that the people of Salisbury remain and continue to have their safety improved. If we are increasing the resources to SAPOL, we want to make sure that SAPOL is improving community safety with it, and that is what this review is looking at.

POLICE STAFFING

The Hon. J.S.L. DAWKINS (14:32): Supplementary: will the government support the calls of the South Australian Police Association's president, Mr Mark Carroll, that a parliamentary select committee be set up to review the policing model's resources and staffing?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:32): We don't want to turn SAPOL into a political circus, but it has become apparent over the past 48 hours that maybe the opposition does. Maybe the opposition thinks it is a good idea that we should start playing around with public safety, jack up people's fear, start raising concerns that don't exist and call into question the legitimacy of the police commissioner to be able to make appropriate decisions about what is in the interests of public safety.

This government won't be turning SAPOL into a political circus. We will be making a methodical, well thought through, efficient, productive contribution to the SAPOL organisational review, and we hope that the opposition and powers will do the same thing.

POLICE STAFFING

The Hon. R.L. BROKENSHIRE (14:33): Supplementary to the minister's answers: how can the minister say that he is increasing police resources and budgeting every year when in excess of $150 million of cuts are facing SAPOL? The second part is: does the minister agree that this review is in large part due to these cuts and the problems the commissioner is having with his budget?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:33): I thank the honourable member for his question. I would have thought that the honourable member would have been aware of the fact that the police commissioner himself has been repeatedly on the record in recent weeks making it very clear that SAPOL's organisational review is in no way due to any decision of government in regard to its budget.

The police commissioner has indeed confirmed, along with information from Treasury, that SAPOL does not even fully expend all the budget that is currently available to it, which is evidence within itself that this has nothing to do with the budget and everything to do with the police commissioner exercising his duty, his important function to make sure that we are increasing community safety by ensuring that we have a modern, efficient, productive South Australian police force, albeit with increasing resources supplied by this Labor government.

NORTHERN ECONOMIC PLAN

The Hon. R.I. LUCAS (14:34): My question is directed to the Leader of the Government. Given the Northern Economic Plan states that the average annual population growth is 1.7 per cent per year, this would mean there will be almost an extra 50,000 people in the north in 10 years' time. Does the minister accept that if 15,000 new jobs are created in the north over the next 10 years, this would mean a significant increase in the already high 9 per cent unemployment rate in the north?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:35): I thank the honourable member for his question, but we learned a lot yesterday about relying on what the Hon. Rob Lucas

comes in here and says. He was caught out twice in a row telling us half-truths and not giving us the complete story at all. I will take that question on notice and bring back—

Members interjecting:

The Hon. K.J. MAHER: Because all of us know we can't rely on what he tells us here. He is the boy who cried wolf, the guy who jumped the shark, and he has done it that many times that no-one on this side, and even people on the other side—even his own colleagues—don't take him seriously. So, I will take those questions on notice and bring back a reply, because his figures just cannot be relied on.

It is courageous that the Hon. Rob Lucas thinks that it is a good idea to come in here and ask about jobs in northern Adelaide. That is courageous; it is also foolish and stupid. It was their mob that created some of the biggest challenges we are facing in northern Adelaide. We all remember just over two years ago the then treasurer—he has had to scuttle out of the country—daring Holden to leave. The then treasurer Joe Hockey dared Holden to shut up shop and leave the country. The very next day—

Members interjecting:

The Hon. K.J. MAHER: The very next day, after being goaded into leaving, that is exactly what they did! And you know what we have heard from this mob on the other side in this chamber? Nothing—not a single thing. The very day after they were dared to leave, Holden announced they would stop manufacturing in Australia. That is what their federal colleagues did. They have not supported Holden in this state. Let's talk about other jobs in the north. Their federal colleagues—

The Hon. J.S.L. DAWKINS: Point of order: I remind the Chair that pointing is out of order, and the minister is about to start dribbling.

The PRESIDENT: I think it is important that members from both sides understand that pointing is really not appropriate. Minister, go ahead.

The Hon. K.J. MAHER: Thank you, Mr President. It is worth keeping in mind that it is their federal colleagues from the other side that are responsible for a lot of the challenges that we face. We have just reflected upon their federal colleagues goading Holden to leave the country—goading Holden to shut up shop—which they did.

Let's talk about some of the other things that their federal colleagues have done that they have promised. In *The Advertiser* of August 2015, Senator Simon Birmingham proudly announced, 'The best economic news for SA in decades.' He proudly announced on that day in *The Advertiser*:

> …Offshore Patrol Vessels…and other surface ships will provide a steady stream of work for shipbuilders in Adelaide…

What he told the good people of South Australia in 2015 was:

> Construction of OPVs will commence in 2018, two years earlier than initial estimates, while Future Frigates construction will start three years earlier, in 2020.

Any time you ask a federal Liberal now about offshore patrol vessels, you know what they say? They say nothing. You cannot trust what they say. Interestingly, Mr President, do you know what those members opposite say about offshore patrol vessels? They say nothing. They do not support South Australia; they did not support South Australia when Holden was in doubt. They don't support South Australia. Mr President, you know me; with OPVs, I will support South Australia.

The PRESIDENT: Supplementary.

NORTHERN ECONOMIC PLAN

The Hon. R.I. LUCAS (14:38): Given the minister and his government have been in power for the last 14 years, is the minister arguing in his response that they have no responsibility at all for the economic problems confronting the north at the moment?

Members interjecting:

The PRESIDENT: Order! The minister wants to answer the question in silence. Minister.

Members interjecting:

The PRESIDENT: You are also pointing, Mr Stephens; it offends your fellow colleagues. The honourable minister.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:39): Northern Adelaide is facing very significant challenges. There is a whole range of factors at play in Northern Adelaide. Certainly commodity prices and a slowdown in the mining and mining services sectors played a big role, but so have decisions in relation to federal government support of major industries, and that is why we are responding with a plan that has put in more than $24 million of new funding to support industries in the north, as compared to their one-page flyer that is a rehash of old policies.

MEDICAL RECORDS

The Hon. G.E. GAGO (14:40): I seek leave to make a brief explanation before asking the shadow minister for health a question about the information contained in private medical records.

Leave granted.

The Hon. G.E. GAGO: My question is to the shadow minister for health. On 1 March, he announced that he and the Liberal Party will introduce legislation to amend the Health Care Act 2008 to make it an offence for a person to improperly access or use personal information. My question is in relation to a letter received by the health minister, the Hon. Jack Snelling, stating:

> Minister,
>
> You may recall the incident occurred in August 2014 when my mother died suddenly at Noarlunga Hospital. At the time Mr Wade, the opposition health spokesperson, obtained or received confidential information from her personal medical records, which he used to create a false allegation that she had died as a result of not receiving proper care at the hospital.
>
> I note with interest that Mr Wade is now seeking to criminalise the conduct he sought to benefit from in 2014. Whilst I do not condone in any way what occurred in the high profile case last week, I consider his current position on the matter to be demonstrably hypocritical. I note with particular interest his statement in the press release of 3 March 2016:
>
> 'If you are admitted to hospital you have the right to have your personal information kept private.'
>
> My family believes it is a pity that Mr Wade didn't apply this philosophy when he chose to disseminate information that had been unlawfully provided to him in 2014. If Mr Wade believes that this type of conduct is criminal, was that also his belief in 2014? If so, then why was he prepared to use the product of criminal conduct for his advantage? Furthermore, if he did believe this was criminal conduct, why didn't he disclose the identity of the person to the appropriate authority?
>
> Alternatively. if Mr Wade's belief has emerged subsequently to the event, what was the epiphany event that brought about his changed philosophy? Is it the result of self-reflection on his unconscionable conduct and his willingness to exploit someone's confidential medical information for personal gain?
>
> Does Mr Wade's proposal also extend to those who, without reasonable lawful excuse, take possession or further disseminate that type of information? If so, does this mean that Mr Wade would consider that he had committed a criminal—

The Hon. T.J. STEPHENS: Point of order, Mr President: the member has sought leave to make a brief explanation. How long is question time going for? How long is this going for?

The PRESIDENT: We've had longer. The honourable member.

The Hon. G.E. GAGO: Sooky lala. The letter continues:

> Does he consider that he had committed a criminal offence in 2014? If he receives any information of this nature in the future, will he refrain from using it and forthwith report the offender to the appropriate authority?

My question to the shadow minister, the Hon. Mr Wade, is: does he accept that in August 2014 he broke the very law that he now wants to legislate?

The Hon. S.G. WADE (14:44): Two years ago, the Minister for Health commissioned an independent inquiry into matters that were raised then. I would challenge him now to accede to the

requests of the victims of the chemotherapy dosing for them to have their opportunity for an independent inquiry.

In relation to the minister's answer to the question in the house yesterday, I was very disappointed that the minister is apparently already rejecting, even before it has been tabled, an opportunity to strengthen the protection of patient records. The fact that the minister chose to play politics in the House of Assembly yesterday I think is disappointing and actually calls into question—

Members interjecting:

The PRESIDENT: Order! The opposition health spokesman has the floor.

The Hon. S.G. WADE: —the depth of his commitment, which he says he has, to protect patient privacy.

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: I would remind honourable members of the point I made in the context of that press conference that the current legislation does not deal with people who are employed in our hospitals who are not public servants. So, if the honourable minister believes it's appropriate that contracted workers within health facilities can provide information to other parties, then of course he is entitled to oppose the opposition bill.

Considering that that was a direct allegation that was made in the media last week in relation to a patient at The QEH and a private security guard, I think it's completely appropriate that the opposition suggests ways that our patient privacy laws can be strengthened. If the government is not interested in that, that's the government's choice. In terms of the details of the bill, I would ask the honourable member to wait for the bill to be tabled.

Members interjecting:

The PRESIDENT: Order! Supplementary; the Hon. Ms Gago has the floor.

The Hon. T.J. Stephens: Listen and learn!

The PRESIDENT: The Hon. Mr Stephens, you are making some very physical gestures there, and it seems to offend your colleague the Hon. Mr Dawkins. Please refrain from that. The Hon. Ms Gago has a supplementary.

MEDICAL RECORDS

The Hon. G.E. GAGO (14:46): Is the shadow health minister prepared to accept that he was wanting to use a product of criminal conduct for his own advantage?

Members interjecting:

The PRESIDENT: Order! Allow the honourable health spokesman to answer the question. The Hon. Mr Wade has the floor. The Hon. Mr Wade.

The Hon. S.G. WADE (14:47): No.

FREE-RANGE EGGS

The Hon. T.A. FRANKS (14:47): I seek leave to make a brief explanation before addressing questions to the Minister for Correctional Services, representing the Minister for Consumer and Business Services, with regard to whether he will 'give a cluck' for true free-range eggs.

Leave granted.

The Hon. T.A. FRANKS: South Australian consumers are currently getting ripped off. Choice estimates that last year at least 213 million eggs nationwide were sold as free range that did not meet basic consumer expectations of free range, yet there is no national standard for free-range eggs in Australia.

This could all change. Federal, state and territory consumer ministers are in the process of developing a national standard, setting clear rules for which eggs can claim to be free range and

which can't. We want to make sure that that standard is the real deal—simple to understand and meets consumer expectations. There's currently extreme pressures from big egg producers with big budgets to create a definition that suits their business model, one where consumers keep paying the free range premium price without knowing what they're buying.

Large companies that are selling free-range eggs that don't meet consumer expectations will fight a lower definition stocking density of 1,500 every step of the way, and they seem to have the ear of some in the federal government. As well as ripping off consumers, large-scale producers who call their eggs free range are crowding out the genuine free range farmers, and their livelihoods are on the line.

That is why Choice is running the Give a Cluck campaign and seeking political support. Imagine the dismay of not only Choice Australia but of course those true free range providers to hear the words of federal agriculture minister Barnaby Joyce, as reported in the Fairfax press on 3 March, and I quote:

> Mr Joyce said he and Ms O'Dwyer—

that is, minister O'Dwyer—

> had resolved the egg labelling issue between them and the upcoming meeting with the States would be the final tick-off point—but he didn't want to upset that process by announcing [prior to that meeting].

My questions are:

1. Will the minister indicate that he and this state government will indeed 'give a cluck' for true free-range eggs and support the 1,500 stocking density, as is currently held and supported by the state's voluntary scheme?

2. Can the minister confirm that this meeting will not simply give, as minister Barnaby Joyce hopes, a tick-off to the big end of town, but indeed will this minister for South Australia stand up for true free rangers and be ticked off and go it alone if that definition of 1,500 is not agreed on at that national meeting?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:50): I thank the Hon. Tammy Franks for her important question. I am more than happy to refer the question to the responsible minister in the other place and make sure that we get an appropriate and accurate response.

APY LANDS, RENAL DIALYSIS UNITS

The Hon. S.G. WADE (14:50): I seek leave to make a brief explanation before asking questions of the Minister for Sustainability, Environment and Conservation, representing the Minister for Health, in relation to community-based dialysis on the APY lands.

Leave granted.

The Hon. S.G. WADE: More than 20 people from the APY lands need regular dialysis treatment in order to stay alive. A lack of ongoing community-based treatment options means these patients must relocate permanently to Adelaide or regional centres like Alice Springs and Port Augusta. The South Australian government currently reimburses the Northern Territory government a set fee for every dialysis treatment provided in Alice Springs to an APY renal patient.

Last July, the federal government announced funding of $1.7 million to cover the cost of establishing a permanent dialysis facility on the APY lands. The proposed facility, to be run by Western Desert Dialysis, would have the capacity for up to four dialysis machines. This would enable 12 patients to comfortably receive regular dialysis on their traditional lands, week in, week out.

On 13 October 2015, Western Desert Dialysis provided SA Health with a detailed business case outlining the costs and service model for delivering ongoing dialysis services in an APY community. In addition, the Ernabella Community Council invited Western Desert Dialysis to address its meeting in December 2015, at which it endorsed the proposal and identified land for the facility.

The business case was based on modelling that assumed no additional costs would be incurred by SA Health and that the funding currently provided as a reimbursement to the

Northern Territory government would instead be paid to Western Desert Dialysis. A similar arrangement already exists between Western Australia Country Health Service and Western Desert Dialysis for the provision of dialysis services in two Western Australian remote Aboriginal communities (Warburton and Wanarn).

Given the credibility and track record of Western Desert Dialysis, there is no apparent reason why such an agreement could not work in South Australia. However, to date, no response has been provided by SA Health to the business case or to the repeated calls from APY communities for community-based dialysis services.

The Hon. P. Malinauskas interjecting:

The Hon. S.G. WADE: Given the growing number of people requiring dialysis treatment—sorry, Mr President. Minister Malinauskas may not care about Aboriginal health, but we do. Given the growing number of people requiring dialysis treatment—

The Hon. I.K. HUNTER: Point of order, Mr President: I seek your ruling. I know what you have said to us about pointing across the chamber but the violent gesticulations of the Hon. Mr Stephens—

The Hon. R.I. Lucas interjecting:

The Hon. I.K. HUNTER: Gesticulations. His violent gesticulations have been throwing off the Hon. Mr Wade in his question, making him take longer than he needs to in his brief explanation, and I seek your ruling on that.

The PRESIDENT: Can the Hon. Mr Stephens keep his violent gestures to himself? The Hon. Mr Wade has the floor.

The Hon. S.G. WADE: Given the growing number of people requiring dialysis treatment, the demands being placed on the Northern Territory dialysis services will soon be reaching their limits. This could result in South Australian patients being turned away from accessing renal services in the Northern Territory. My questions are:

1. When will SA Health respond to the business case provided by Western Desert Dialysis five months ago?

2. Noting that there will be no additional costs incurred by SA Health, why hasn't SA Health embraced the opportunity to provide much-needed dialysis services on the APY lands?

3. What factors, if any, could prevent SA Health from supporting the Western Desert Dialysis proposal?

4. In the event that the Northern Territory government is no longer able to accommodate any additional renal patients from the APY lands, where will this treatment be provided?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:54): I thank the honourable member for directing a question to me for the Minister for Health in the other place. I've got to say that he is a very brave man indeed, after what we have just heard in terms of a question directed to him, asking the Minister for Health to offer him another opportunity to talk about his hypocrisy about utilising the private patient details that somehow have been arranged for him to access in his political efforts. But of course he has every right to direct a question to the Minister for Health. I will undertake to take that question to the minister in another place and bring back a response for him. But woe befall him asking the Minister for Health to now come back to him with another chop at Mr Wade's hypocrisy.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Gazzola.

PORT AUGUSTA COUNTRY CABINET

The Hon. J.M. GAZZOLA (14:55): My question is to the Minister for Manufacturing and Innovation.

Members interjecting:

The PRESIDENT: The Hon. Mr Gazzola has a question to ask, so please allow him to do it in silence.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Minister, cool it down, the honourable member has a question for you.

The Hon. J.M. GAZZOLA: Thank you, sir. Can the minister update the council on the government's recent community cabinet meeting in the north of South Australia?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:56): I thank the honourable member for this very important question. Mr President, as you know, each year cabinet makes regional visits to bring government to those people who may not always have such a ready opportunity to meet with ministers or heads of departments to discuss important issues affecting them and their region.

Last week, country cabinet sat in the Far North of our state, in Quorn, home to the Flinders Ranges Council, a local government area and really the heart of South Australia's beautiful outback. It is also home to the Pichi Richi Railway and a frequently used location for some of our country's best loved films. In fact, I am advised that in weeks before our visit, filming had taken place for a new spin-off show based on the *Wolf Creek* movie, which I understand is one of John Dawkins' favourite movies.

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

The Hon. K.J. MAHER: Yes, it's a horror film. Cabinet travelled to Port Augusta prior to arriving in Quorn for the cabinet meeting proper. While there, I took the opportunity to meet with Alinta management at the site and also with staff to discuss how operations were going there in the wake of the announcement to cease operations later this year and in terms of their close-down plan and timetable.

I have made several trips to Port Augusta over the last few months, and I appreciate the opportunity to be updated directly by Alinta on the progress that they are making. I understand that some Alinta workers have already transitioned to new jobs within the same industry and that Alinta was working with staff to ensure that they had every opportunity to seek and find new employment options as operations continue to wind down at the Port Augusta Power Station. I understand that a community engagement program is being developed by Alinta, who have discussed with me that they will continue to do all they can to work with their employees and the community as they move towards their wind-down later this year.

One company that is working very closely with Alinta to benefit from their existing infrastructure is Sundrop Farms. Sundrop Farms is a developer, owner and operator of a high-tech greenhouse facility that produces high-value crops. The use of advanced technology, in particular solar thermal technology, allows them to operate their food production facilities in what is a non-traditional food growing area, such as Port Augusta. It would be easy to think that the land and climate of the region would not necessarily lend itself to high-value food production, but Sundrop Farms is using some of the newest technologies and innovations to expand their 20-hectare site to benefit the people of the area and the planet.

Sundrop plants are grown hydroponically with coconut husks, rather than soil, as a growing medium. The greenhouse coverage means there is a lower risk of pests and a reduced need for pesticides, and produce can be grown throughout the year. During a visit to Sundrop Farms I was able to see that the construction team is finalising the first of four new greenhouses and a very, very impressive solar field.

The 115-metre tall solar collector tower I think will use 23,750 individual mirrors to harness the energy drawn from the sun. This really is innovation in action and will result in many new full-time jobs in Port Augusta over the coming months and years. It is expected that once fully operational, Sundrop Farms will produce around 15,000 tonnes of tomatoes annually using solar power, sea water and natural pest management. This project is just one example of how new technologies and partnerships within regions are creating sustainable industries and providing and expanding new employment opportunities to people in the north of the state.

As part of community cabinet, the cabinet then met at the Port Augusta Secondary School for a series of one-on-one meetings with individuals and community groups to discuss key issues affecting the region. A public forum was held after that, where members of the public from the Port Augusta region could ask questions directly of ministers and chief executives. It was a pleasure to see a number of people who have a very strong interest in the area. The member for Stuart, Dan van Holst Pellekaan, was a member of the audience and he certainly is gaining a very high profile, not just in that area but across the state—a very high profile.

The Hon. R.L. Brokenshire: He'll make a good minister one day, won't he?

The Hon. K.J. MAHER: I didn't quite hear the Hon. Robert Brokenshire's interjection, but I suspect it was something like, 'He might roll the leader one day,' but I wouldn't speculate on that at all. I am sure the member for Stuart would make a fine Leader of the Opposition one day, and even sooner than we may all think. He is getting a very high profile around the state—I repeat, a very high profile.

Also the local mayors, the Port Augusta mayor, Sam Johnson, who I speak to regularly, and the Port Pirie mayor, John Rohde, were both there. I met subsequently, after that trip, with the acting mayor for Whyalla. Pleasingly, in Port Augusta and at other events in the area, the member for Giles also attended. That was very pleasing. I was very pleased to see the acting mayor, Tom Antonio—not at the meeting; I did not get a chance to see him there, but I talked to him subsequently.

It was good to have the opportunity to speak to so many people at that cabinet meeting. As always, it was a fantastic opportunity for ministers to talk directly to members of the community, to understand issues and to look at ways where we can help.

SUNDROP FARMS

The Hon. A.L. McLACHLAN (15:02): I have a supplementary question. Can the minister advise the chamber how many employees Sundrop Farms has and what is the anticipated increase in employees from the development?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:02): I thank the honourable member for his question. It is a very, very good question and he is a very, very good member. I have been disappointed in not feeling the love from him lately. Before we had a new minister, I used to feel the love from him quite frequently; it seems to have transferred to the new minister, but I am very pleased to know that I am still in his thoughts.

In relation to the question, I do not have the figures of the exact number at Sundrop Farms who are employed at the moment, but I will get the exact numbers as far as I can and bring back that answer, and also of projected employment increases. It is, as I understand it, some hundreds. I can't guarantee that I will be able to account for any sick leave or maternity leave that is happening at the time because I would not want to lead to your confusion. I will seek an approximate number.

COUNTRY CABINET

The Hon. R.L. BROKENSHIRE (15:03): I have a supplementary question based on the minister's answer regarding community country cabinet. Does the minister agree that the Labor government failed to go to community country cabinet meetings until a compact was signed and forced upon them by now minister Brock?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive

Transformation, Minister for Science and Information Economy) (15:04): I thank the honourable member for his question. I agree with his reflection that the member for Frome is a very good member. He is not just a very good member but he is a very good minister, and he gets things done and makes sure that regional South Australia is heard to an even greater extent within cabinet. I thank the honourable member for his question and agree with him that minister Brock gets things done.

SA WATER

The Hon. R.L. BROKENSHIRE (15:04): I seek leave to ask the Minister for Water questions regarding the policies of SA Water.

Leave granted.

The Hon. R.L. BROKENSHIRE: Can the minister advise the house:

1. If a burst water main occurs on DPTI or council roads—such as occurred last Friday on Greenhill Road during the Clipsal—does SA Water pay for the full repair work, including all the re-rubbling, compaction and sealing, etc., to DPTI or the council?

2. Has the minister checked, and if he has not will he check and report back to the council, that there was nearly 12 months when the changeover of management from United Water to the new contractor for SA Water occurred—

The Hon. I.K. Hunter: When was that?

The Hon. R.L. BROKENSHIRE: The changeover was a few years ago now—one year, one full year, when there was a significant reduction in mains replacement and monitoring and the general repair program?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:06): I thank the honourable member for his most important question. I have to say that my understanding is that when SA Water is doing repairs, or its contractor Allwater is doing repairs, which require access under roads its policy is to make good those roads and repair them. It is also my understanding that the investment that SA Water makes in terms of its maintenance of the pipe system, on top of the $50 million every year it utilises in terms of making good pipe leaks and bursts, was about $300 million for the last financial year.

I understand that amount of money has been relatively consistent. I do not have year-on-year costings for that in front of me, but clearly the honourable member can access that through Auditor-General's reports or through—

The Hon. R.L. Brokenshire interjecting:

The Hon. I.K. HUNTER: Well, the honourable member can choose whatever access route he likes. He could probably just look at the website or go back to some of the annual reports of the agency, but if he wants to put in an FOI because it is easier for him to make other people do the work then off he can go. That is his choice. The important thing is this, and I say it again and again and again: SA Water has lower breakages and bursts of mains than their competitors interstate.

The Hon. R.L. Brokenshire: We're not interested in interstate—

The Hon. I.K. HUNTER: The honourable member says that he is not interested in that, he doesn't care about that. He would like to pretend that in an ideal world there are no breakages whatsoever, that no other water system in the world has bursts or breakages in their mains. What he has to do, if he is going to be a responsible member of this chamber, and particularly when he is talking on the wireless to the South Australian community, is actually utilise facts and figures that stand up. Not the magical ones he makes up in his head, or the magical ones that Senator Bob Day seems to send down the phone line to him when they communicate, or however they do that (I have no idea), but actual facts and figures.

These national comparative numbers—they are not done by us, they are done at a national level—will show that the number of breaks for Sydney Water alone—not for New South Wales but for Sydney Water alone—is 30 breaks or bursts per 100 kilometres of pipe per year. SA Water's, for

South Australia, is 11.5. I think ESCOSA's determination of how many breaks SA Water should target is 21. That is from memory so I cannot actually swear to it, but I think it is right; I read that some time ago.

SA Water overachieves, and it overachieves because it expended over $300 million in the last financial year on continual maintenance programs with its pipe network. How can SA Water outcompete Sydney Water, Victorian Water, or Western Australian water utilities in the number of breaks it has in its pipelines if it does not have an excellent pipeline maintenance program? This is what the honourable member does not want to deal with; he does not want to deal with that. He does not want to deal with the fact that, on top of that excellent outcome compared with other water utilities of a similar size of over 1,000 customers, SA Water also has to deal with the reactive clay soils, the Bay of Biscay soils—

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: The Hon. Mr Ridgway does not believe in it, Mr President, if you remember rightly. Bay of Biscay soils expand and contract, particularly around the Hills Face Zone in the eastern suburbs up around Mitcham and further around to Campbelltown and Paradise. Not only do they outcompete other similar water utilities in having the lowest number of breaks, they also do it on expansive clay soils. That says that that massive investment they expend on their maintenance program is doing something right.

EMERGENCY SERVICES LEVY

The Hon. A.L. McLACHLAN (15:10): My question is to the Minister for Emergency Services. Can the minister rule out that the emergency services levy will be increased as a result of the Pinery bushfire, as it was for the Sampson Flat fire?

The Hon. R.L. Brokenshire: Hey, I asked that question.

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:10): I thank the honourable member for his important question, notwithstanding the fact that it has the Hon. Mr Brokenshire rather jealous and fired up. The ESL, as is well known throughout the community and hopefully increasingly well known, provides money into a hypothecated fund that is spent specifically on facilitating emergency services within our community, making sure that our emergency services, which are already some of the best resourced in the country, continue to be well resourced.

The question of the size or the value of the emergency services levy on the people of South Australia is something that the government is constantly keeping its eye on. This is a government that remains committed to having the lowest taxation regime we possibly can to ensure a decent standing level for the people of the state, at the same time balancing that with a well-resourced emergency services sector. Of course, the amount of the emergency services levy will be determined through the budget process, and that process rests with the Treasurer. I am sure that through the budget process the size of the emergency services levy will be known to the South Australian public.

ENVIRONMENT PROTECTION AUTHORITY

The Hon. G.A. KANDELAARS (15:11): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber about how the Environment Protection Authority is working with industry and other regulators to improve environmental outcomes and how this will benefit small and medium businesses?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:12): I thank the honourable member for his very important question. The Environment Protection Authority does a fantastic job, I think most of us would agree, protecting, restoring and improving the environment by regulating pollution, waste, noise and radiation.

The EPA understands that achieving good environmental management is fundamental to our way of life in South Australia. We know that modern and well-implemented regulations can stimulate the economy and result in broader community prosperity. This is why the EPA works closely

with industry and the community and other government agencies to ensure that it gets the right balance of protecting the environment and also supporting sustainability, growth and prosperity for our state.

The EPA licenses more than 2,200 businesses, I am advised, in our state. In May 2015, the EPA, in partnership with Business SA and the Australian Industry Group, launched a landmark statement of agreement in recognition that good environmental regulation leads to better long-term economic prosperity. This agreement underpins the EPA's commitment to working with business and industry to encourage growth while maintaining high regulatory standards.

In particular, and in recognition of the importance of the sector to the South Australian economy, the EPA has made a commitment to working closely with small to medium businesses to streamline regulation and enable and reward good environmental practice. An example of this was the highly successful Change@SouthAustralia 90-Day Project that began in 2013. It involved the EPA, Primary Industries and Regions South Australia (PIRSA) and the Australian Southern Bluefin Tuna Industry Association.

The South Australian aquaculture industry is one of the largest primary production sectors in this state, with a production value, I am advised, of $243 million in 2012-13. The tuna industry accounts for over half the state's gross value aquaculture production as well as being a significant export industry for the state. In 2013, the tuna industry raised concerns about government processes being out of line with farming cycles, as well as duplication of processes within agencies and unclear accountability for decision-making. The aim of the project then was to change the processes so that they were better and they better complemented the annual fishing and farming cycle.

Some of the outcomes of the project include: streamlining the licensing system, reducing duplication of legislative processes, improving information sharing among agencies to minimise delay and maximise a benefit to our customers, significantly refining referral processes between PIRSA and the EPA, and also streamlining chemical usage protocols. These recommendations have been implemented, I am advised, with the changes in respect to licence and chemical use application processes implemented in preparation for the 2014-15 tuna season.

The benefits to the tuna industry have been quite significant. They include: removing unnecessary or inefficient regulatory requirements leading to improved relationships between the state government and the seafood sector, and a more effective and efficient use of chemicals in the aquaculture sector. The industry estimates that the new arrangements could save it up to $700,000 a year by cutting the time it takes to apply for a tuna licence by half and reducing costs by 20 per cent.

Such great results have been achieved because all parties were committed and willing to cooperate, and because the industry was closely involved in all aspects of the project, including being a part of the project team. I would like to commend everyone involved for their contribution in ensuring the project's success. This project and the lessons learned will have a flow-on effect for other industries and small to medium businesses, I hope. The EPA will continue to identify ways to improve its regulatory and licensing processes, to ensure that the environment is protected in the most effective way, and to encourage innovative solutions and promote broader prosperity outcomes.

To this end, the theme of the EPA's 2016 summit on Wednesday 27 April will be 'Better environmental regulation generating jobs of the future'. This will put a spotlight on how the EPA can better support SME innovation, growth and job creation through relevant and best-practice regulation.

NUCLEAR WASTE

The Hon. M.C. PARNELL (15:16): I seek leave to make a brief explanation before asking questions of the Leader of the Government, representing the Premier, about nuclear waste.

Leave granted.

The Hon. M.C. PARNELL: The House of Assembly is currently considering a bill to repeal section 13 of the Nuclear Waste Storage Facility (Prohibition) Act 2000. The Legislative Council will presumably consider this bill in coming weeks. Section 13 is the section that prohibits the use of public money to, 'encourage or finance any activity associated with the construction or operation of a nuclear waste storage facility in this state'.

If section 13 is repealed, it will be open to the government, through ministers, public servants and agencies, to actively promote South Australia as a destination for the world's high-level nuclear waste. It will enable advertising campaigns aimed at convincing South Australians that their future lies in becoming the world's nuclear waste dump. It will enable ministers, public servants and agencies to commence detailed planning and design work in preparation for the building of a nuclear waste dump in South Australia. It will also enable the government to appropriate money though the budget or seek loans or other finance for the building of a nuclear waste dump in South Australia.

Remarkably, the bill before the other place is retrospective in its operation, meaning that if it passes into law unamended, any breach of section 13 that occurred after yesterday will be retrospectively excused. On Monday evening on ABC radio, the Premier addressed the question of possible breaches of section 13 both before and after the royal commission hands down its final report on 6 May as follows:

> ....if we're in this phase of having this discussion, does section 13 provide or present any difficulties for us, and we had to ask the same question about establishing a royal commission proper and even that question wasn't 100 per cent clear but on balance, the—our advice from the Solicitor-General was that the royal commission didn't fall foul of this provision but as we move into the next phase where we've having a much more substantial debate, where government ministers may be advancing arguments in favour of this proposition, once we get into that phase, then it could be argued that public money you spend is spent to encourage such a thing and we wouldn't want to be in breach of our own legislation, so it's important that that be dealt with.

My questions are:

1. Which ministers or agencies have already breached section 13?

2. Which particular ministers or agencies is the repeal of section 13 designed to protect?

3. Which of his ministers is the Premier most afraid have already fallen foul of section 13 or are likely to do so in coming months?

4. What will happen if the government's bill is not passed but ministers act as if it has? Will those ministers be prosecuted?

5. Will the Premier release the Solicitor-General's advice, as he promised to do during the interview on Monday evening?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:20): I thank the honourable member for his questions and I will refer those questions to the minister in another place and bring back a reply.

Bills

VICTIMS OF CRIME (COMPENSATION) AMENDMENT BILL

Second Reading

Adjourned debate on second reading (resumed on motion).

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:21): I believe we have had the last speaker on this debate, and I am happy to proceed accordingly.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. A.L. McLACHLAN: I indicate, as I did this morning in the second reading, that the Liberal Party will not be seeking amendments to this bill.

Clause passed.

Remaining clauses (2 to 15) and title passed.

Bill reported without amendment.

Third Reading

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:23): I move:

That this bill be now read a third time.

Bill read a third time and passed.

YOUTH JUSTICE ADMINISTRATION BILL

Second Reading

Adjourned debate on second reading.

(Continued from 10 February 2016.)

The Hon. J.A. DARLEY (15:24): I understand this bill is needed because a change in the structure of the departments and ministers saw a split in the way youth justice was administered. Currently, different aspects of youth justice are administered under a number of acts and other mechanisms. This bill will consolidate all youth justice administration under the one act. The guiding principles of the bill are to emphasise the importance between the particular needs of youth offenders, rehabilitation and community safety.

The issue of youth justice and what should be the guiding principle is a complex matter. If we look at international examples, we see systems and community attitudes which are vastly different to ours. For example, the infamous case of the murder of two-year-old James Bulger in Merseyside in the UK saw an entire community angered and vying for the blood of two ten year olds. The offenders were tried as adults, found guilty and incarcerated until they reached adulthood.

In comparison, in a similar case in Norway, where five-year-old Silje Redergard was beaten and murdered by six-year-old boys, the community took an entirely different approach. The two boys were not punished or labelled as killers, and in fact within a week they were enrolled at a local preschool where they were included and embraced by others, not ostracised. They were fostered psychologically and supported by government social workers until they turned 18 when they had the choice of continuing to receive support from a caseworker or not.

These two cases show polarising attitudes to the administration of youth justice and I believe that achieving a balance, as proposed, is the key. The important role of family support as well as the unique challenges related to Aboriginal and Torres Strait Islander youth and youth from minorities are also recognised in the bill. Given the overrepresentation of both of these groups, it is important to recognise the unique challenges faced by these youth and be mindful of their background, which may have contributed to their offending.

I am pleased to see the introduction of the training centre visitor and the charter of rights for youths detained in training centres. It is important that the rules and guidelines for treatment within training centres is outlined and that there is an avenue to have matters addressed if anyone feels there are problems.

Like another bill we currently have in this place which deals with adult offenders, this bill seeks to extend the parameters of home detention and the circumstances in which home detention can be used. I hold some concerns about this, and the cynic in me believes that the government is expanding home detention provisions as they are running out of space in gaols and youth training centres. This thought is more relevant to adult offenders rather than juvenile offenders, as I recognise that often having a young offender in home detention within a supportive family environment will serve them and the community much better than a term in a training centre.

Finally, I understand changes are proposed to change the ceiling age of young people in youth custody. I am supportive of these measures as it has often struck me as peculiar that once a person hits the magical age of 18 they are expected to suddenly become all-wise and all-knowing,

with the ability to be able to cope with whatever life throws at them. This is, of course, not the case, and I am supportive of measures which will support young people.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:28): I understand I will be the final speaker and therefore close the debate at the second reading. I would like to thank those members who have contributed to the second reading debate and look forward to their expressions of support.

Our government has worked in partnership throughout the development of this bill with stakeholders in the youth justice sector, government, non-government and community. I would like to thank each of them for their commitment to this very important piece of work. It has been this extensive consultation and this dedicated work which has ensured the proposed legislation achieved the right balance between supporting the rights of young people and the safety of our community. In closing, I thank members again for their constructive comments, and I look forward to dealing with this bill expeditiously through the remaining stages.

Bill read a second time.

Committee Stage

In committee.

Clauses 1 to 55 passed.

Schedule 1.

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

Amendment No 1 [SusEnvCons–1]—

Page 40, line 43 [Schedule 1, Part 6, clause 26, inserted section 63(9)]—Before 'a magistrate' insert:

a Judge of the Court or

I would like to thank the council for their indulgence in consideration of this late amendment. I understand it is technical in nature—an amendment that has been put in place as a between the houses amendment to ensure that there is consistency between the Young Offenders Act 1993, the Youth Court Act 1993 and the Youth Justice Administration Bill 2015 in relation to judicial officers.

The current section in the Young Offenders Act 1993 provides that a judge of the Youth Court may make an order transferring a person from a training centre to a prison for the remainder of a period of detention or remand. Proposed section 63(9) in the Youth Justice Administration Bill 2015 provides that the Youth Court must be constituted of a magistrate for the purposes of determining an application under section 63. This amendment seeks to ensure that this section refers to both a judge or a magistrate. As this amendment primarily relates to a change to the Young Offenders Act 1993, it was appropriate to seek instructions from the Attorney-General's office who, I understand, supports this amendment.

The Hon. A.L. McLACHLAN: The Liberal Party will support that amendment.

Amendment carried; schedule as amended passed.

Title passed.

Bill reported with amendment.

Third Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:33): I move:

That this bill be now read a third time.

Bill read a third time and passed.

OCCUPATIONAL LICENSING NATIONAL LAW (SOUTH AUSTRALIA) REPEAL BILL

Second Reading

Adjourned debate on second reading.

(Continued from 8 March 2016.)

The Hon. R.I. LUCAS (15:34): I rise on behalf of Liberal members to support the second reading of the Occupational Licensing National Law (South Australia) Repeal Bill. Those members who have been here for a number of years might recall that this bill has had a chequered history. In 2008, COAG agreed to develop a national trade licensing system for multiple occupational trades. Victoria was given the job as the lead legislator, and those of us who were in the South Australian parliament in 2011 may well recall that we passed the appropriate legislation. The model that was being envisaged was that the states would pass the appropriate legislation in their respective states to ensure that the national agreement was implemented.

At the time of the legislation in 2011, which the government introduced, the Liberal Party supported the legislation. We were advised at that time that the first wave of occupations that would be licensed included air-conditioning and refrigeration mechanics, plumbers and gasfitters, electricians and property agents. We were told that the second wave of occupations was to include land transport, maritime, building, conveyancers and valuers.

With the change of federal government and the change of government in some state jurisdictions, in December 2013 COAG changed its mind. We were told through the communiqué that there was a majority vote, which I guess indicates that there were at least a small number of jurisdictions that did not agree with the change of mind. In December 2013, COAG decided to abandon the whole national occupational licensing scheme.

The COAG communiqué—we obviously were not present at that particular meeting—noted that most jurisdictions had identified a number of concerns with the proposed model and potential costs. One might suggest that, if jurisdictions were identifying that at that stage, why on earth had those concerns not been identified prior to 2011, between the period of 2008 and 2011 when this proposed national scheme was agreed to?

In 2013, the states agreed to work together via the Council for the Australian Federation (CAF) to develop alternative options for minimising licensing impediments to improve mobility between the states. We were advised that, while South Australia had implemented the nationally agreed legislation, some other jurisdictions had not.

We are told that there had been strong opposition to the proposed model—the 2011 model, that is—from various real estate industry bodies and the National Electrical and Contractors Association, known as NECA. I can attest to the strength of feeling of some real estate industry bodies. We sought comment from the local Real Estate Institute in South Australia, and a representative on the institute's behalf said:

> We see this bill as just unwinding a piece of legislation that we were opposed to because it diminished educational standards for real estate agents to that equivalent of out of the Weeties packet. As such, delighted to see the official end to the nonsense.

That was a relatively informal colloquial expression of the strongly held view of the local Real Estate Institute, from someone acting on their behalf.

As we understand it, the various real estate bodies throughout the jurisdictions have varying levels of entry requirements and restrictions in terms of operating in their states, which was part of the reason for having a nationally agreed model. Whatever the national agreement was, it fell apart once it went to the various state jurisdictions.

I will refer to some response I have had from the minister in relation to this but, before I do, the National Electrical and Contractors Association (NECA) opposed the original model as 'life threatening' and 'another pink batts debacle waiting to happen'. That was NECA talking about it. I should have quoted the Real Estate Institute in New South Wales earlier, which criticised the model as 'leading to a reduction in existing standards, as the lower standard applying in some states would be used for the national model.'

Minister Rau, as the minister responsible, was asked, on behalf of the Liberal Party in the House of Assembly, if he could throw any light on some detail of why the national scheme was being dissolved. For the benefit of members, I will place on the *Hansard* his formal response to me, dated 23 February 2016. It states:

> The scheme has never become operational. It is being dissolved because there was intractable disagreement between the states and territories on the details of the scheme and concern about the cost of the scheme compared with retaining the existing state-based approach to occupational licensing.
>
> States and territories had agreed with the original proposal to move to national licensing of various occupations with the objective of increasing labour mobility and decreasing the cost to business of operating across borders. This led to the enactment of the Occupational Licensing National Law by states and territories and the establishment of the National Occupational Licensing Authority.

I interpose that various national bodies that have already been established as a result of the repeal of this legislation are going to have to be disestablished, and funds which have been paid by states into funding these national bodies will have to be distributed under a scheme of arrangement which has been agreed to between the various states. I continue with the letter from minister Rau to me, dated 23 February:

> The next stage of the scheme required agreement on a uniform national set of eligibility criteria and competency standards for the various occupational licenses to be prescribed in regulations under the occupational licensing national law acts. This involved input from existing state and territory licensing authorities and representatives of various occupations.
>
> Some states and territories were strongly opposed to any reduction of their eligibility criteria and qualification competency requirements, while other states and territories were opposed to any increase in the requirements on the basis that this unnecessarily increases barriers to entry to the occupations and hence end-cost to consumers.
>
> The industry bodies lobbied hard against any reduction in qualifications and competency standards. This led to concerns that the costs of the national scheme would outweigh the benefits of it.

I think the quotes I gave earlier from the Real Estate Institute of South Australia, the Real Estate Institute of New South Wales and the National Electrical Contractors Association are a fair indication of the accuracy of the statement minister Rau has conveyed to the opposition in that letter.

Further detail of the letter I will not put on the public record, but it provides detail of how the money and assets are going to be distributed amongst the various jurisdictions and it is, in my judgement, acceptable and certainly, from our viewpoint, it does not appear to raise any significant issues that need to be pursued during the debate on the bill.

The only point I would make is that a lot of this was being pursued. The Hon. Mr Darley was here and an active part of the debate, the work health safety debate, where again I suspect at some stage in the future we are likely to see some of the problems that have been warned about in relation to that legislation that need to be pursued, with tidying up legislation in this state and in other states as well. In this particular example, it is not a question of just tidying up; it is that the majority of COAG has now decided that this is unworkable and voted to disestablish the whole bang lot.

With those statements, I indicate Liberal Party support of the second reading. The only question at this stage I have for the minister (and I understand that we are not concluding the debate today) when he closes the second reading debate is: can he ascertain from the minister responsible—and I am not sure whether it was minister Rau at the time or another minister—what was the South Australian minister and government's position at the December 2013 COAG meeting?

That is, the communiqué indicates that it was a majority vote to abandon the national occupational licensing scheme. What was the position the South Australian government put at December 2013? Was it part of the majority voting to abandon it or were they part of the minority that was voting to continue the scheme? With that, I indicate the Liberal Party's support for the second reading.

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

TOBACCO PRODUCTS REGULATION (ARTISTIC PERFORMANCES) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 9 March 2016.)

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:45): I thank all members for their contributions on this important legislation, and I look forward to further discussing the bill in depth during the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1 passed.

Remaining clauses (2 and 3) and title passed.

Bill reported without amendment.

Third Reading

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:47): I move:

That this bill be now read a third time.

Bill read a third time and passed.

HEALTH CARE (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 2 December 2015.)

The Hon. J.A. DARLEY (15:48): The Health Care (Miscellaneous) Amendment Bill provides for a number of amendments in relation to private health facilities. The proposals to license stand-alone private daily procedure centres and off-site locations for private hospitals is welcomed. It will provide more oversight for these facilities and give peace of mind to the consumer over the regulation of these facilities. Many members of the community probably assume that these facilities are already licensed and that there is some sort of minimum standard and oversight, and these amendments will bring the industry into line with community expectations.

The provision for the gazettal of construction, facility and equipment standards is a sensible one and will ensure that the regulation of these standards can keep up with the evolving technology and improved research. The minister's second reading speech indicated that the limits were placed on hospital bed numbers to underpin the planning and coordination of service provision across the private and public sectors; however, given the high demand for hospital services, I see it as a sensible move to remove these limits in the metropolitan area. I hope this will lead to an increase in public hospital beds, which will increase the number of people who can access health care without having to rely on private health insurance or incurring high private hospital fees.

Finally, two new fees are being introduced for licence amendments and applications to alter or extend a facility. I understand that the government incurs a cost to administer the licensing regime and that the money may be lost if the fees are not introduced. I agree with the fees to recover costs. I will put on the record my concern over potential escalation of these fees. The minister states that South Australia's licensing fees are substantially lower than the national average. However, there are many examples where South Australia's fees are extraordinarily higher than our interstate counterparts. Fees such as these should reflect the cost of providing the service and should not be used as a revenue raising tool by the government. With those remarks, I support the bill.

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

STATUTES AMENDMENT (HOME DETENTION) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 3 December 2015.)

The Hon. A.L. McLACHLAN (15:51): I rise to speak to the Statutes Amendment (Home Detention) Bill 2015, and I speak on behalf of my fellow Liberal members. The bill provides for an alternative penalty to a sentence of imprisonment to enable a larger group of convicted offenders to be placed on home detention. The Liberal Party will be supporting the second reading of the bill, but has filed amendments.

To achieve this end, the bill amends both the Criminal Law (Sentencing) Act 1988 and the Correctional Services Act 1982. We have been informed by the government that the purpose of these amendments is to divert away from custody offenders who are assessed as at low risk of causing harm to the community, while providing a suitably intensive penalty that is serious enough to warrant restrictions on their freedom and liberty.

The Attorney submits that this bill will minimise the harm and economic loss associated with imprisonment by allowing offenders to retain community ties and benefit from greater rehabilitation opportunities. It is hoped that this will promote rehabilitation of offenders and thereby reduce recidivism by ensuring that those of low risk, or at the lower end of the scale, are not exposed to the environment of a correctional institution. The Liberal Party is supportive of this objective.

Currently, section 37A of the Correctional Services Act 1982 places limitations on when a prisoner is eligible to be released and provides a maximum period of 12 months that can be spent on home detention. The amendments contained in the bill expand the Correctional Services home detention program to allow suitable prisoners to be released on home detention earlier in their prison sentence and to spend longer amounts of time on home detention.

For example, it removes the requirement for prisoners to serve 50 per cent of a nonparole period, or a total sentence where no nonparole period is fixed, before being eligible for home detention. It also removes the limitation that prisoners can only spend a maximum period of 12 months on home detention. This will enable the Department for Correctional Services to identify a larger number of eligible prisoners who meet the suitability criteria for release on home detention under strict conditions and monitoring.

All the other eligibility criteria remain the same, which means that life sentence prisoners, sex offenders and terrorist offenders are not eligible for home detention under the Correctional Services program. The bill's amendments also bring changes to the Criminal Law (Sentencing) Act to establish home detention as a valid sentencing option for a court when imposing a period of imprisonment. Currently, if a period of imprisonment is to be imposed, a good reason does not exist to suspend that sentence pursuant to section 38 of the Criminal Law (Sentencing) Act; the only option open to a court is to impose a custodial sentence.

Therefore, these amendments will provide an added avenue for a court to impose a sentence of imprisonment to be served on home detention. The bill does not, however, exclude any particular classes of offences or terms of imprisonment for its application. The only prerequisite is that the sentencing court retains discretion to be exercised upon consideration of all the facts and circumstances of the individual case.

The bill lists matters that the court must take into consideration when making the determination of whether to order a period of home detention, with the paramount consideration being the safety of the community. Other factors include, for example, the impact the home detention order is likely to have on any victim, spouse or domestic partner of the defendant, or any report ordered by the court for the purpose of assisting the court in determining whether to make a home detention order.

We are informed by the government that the home detention option is only intended to be utilised for those offenders who are assessed as posing a low risk of causing harm to the community.

The conditions of a home detention order under the bill are more intensive than a suspended sentence bond, while still allowing for an offender to retain ties within the community.

The offender will effectively be detained in the approved place of residence and can leave only for remunerated employment, necessary health-related treatment, or for education or training activities as required by the court. The Liberal Party is pleased that the bill creates an offence for contravention, or failure to comply with the conditions of a home detention order, which is punishable by a significant fine or further imprisonment.

I note that the Law Society wrote to the Attorney-General on 22 October 2015. The letter was written by the then president, Rocco Perrotta. I have asked the minister if, in summing up his second reading, he could address for the record the various issues raised by the Law Society—some of which are more administrative in nature—and give an indication in those circumstances the intention of the government upon enactment of the bill.

The Liberal Party has filed some amendments, and I will address those in greater detail at clause 1 in committee. The government at this point have made some submissions in relation to those amendments, and they are being considered by the opposition. We may have a more crystallised view when we reach the committee stage in the following sitting week.

The amendments of the opposition seek to restrict the discretion of the court to provide for home detention for murder, serious sex offenders and terrorist offenders. I flag that, in part of the government's submission, it is perceived by some that this might be an unnecessary restriction on the discretion of the court. We will have an opportunity to debate that in the committee stage. With that, I commend the bill. Again, we will support the second reading, and I look forward to the committee stage.

The Hon. T.A. FRANKS (15:58): I rise on behalf of the Greens to speak to the Statutes Amendment (Home Detention) Bill 2015. The Greens believe it is important that our sentencing laws provide for judicial discretion to ensure that the courts can address all the circumstances of the cases they hear, including the gravity of the offence, the circumstances of the offender and victim or victims, deterrence, and rehabilitation.

The Greens support the government's commitment to ensuring that our corrections system moves away from the legacy of former correctional services minister Kevin Foley, who once said the infamous phrase, 'Rack 'em, pack 'em, stack 'em, if that's what it takes to keep our streets safe.' He was of course referring to cramming two to three prisoners in one prison cell as a measure of addressing the increasing cost of running our prisons. We know that the state government spends approximately $77,000 per prisoner per annum, which is an enormous amount, and something we must address. We must ensure that we do this in a way that reduces the overcrowding issue in our prisons, and indeed is smart justice, not just tough justice.

The Greens welcome the consultation the government has undertaken when having this bill drafted. We know that the government engaged in a discussion paper called Transforming Criminal Justice—Better Sentencing Options. This paper was released in June last year, and through a community advisory panel was organised by democracyCo, which is an innovative South Australian company focused on providing assistance to improve citizen engagement on various issues.

That advisory panel saw 19 representatives, who were selected from the sector, organise several workshops with stakeholders, and I have been advised that the cost of engaging democracyCo was approximately $23,203.50 (to be approximate). The bill before us is a reflection of the feedback taken via this stakeholder engagement process. It amends the Criminal Law (Sentencing) Act 1988 to establish home detention as a sentencing option for a court imposing a period of imprisonment.

The bill also allows the Department for Correctional Services to identify a larger number of eligible prisoners to be released on home detention under strict conditions and monitoring. This home detention program will not be available for every prisoner, and we know that life sentence prisoners, sex offenders and terrorist offenders will remain ineligible for home detention. They are not explicitly excluded in the bill, but they would be considered by the courts to be high risk and therefore not eligible for home detention. The bill does require the court to make the judgement call on who the qualifying offenders will be to be captured by this bill.

I have been advised that, as of 7 February 2016, 169 people were on the back end of the home detention orders. We know that the Correctional Services home detention program has been successful for nearly 30 years and that this has been one of the prompts for the government to create a new power for our courts to make home detention orders as part of that sentencing order.

As part of my contribution to the bill, I would also like to reflect particularly about women who are in our prison system and perhaps, because of the circumstances they find themselves in, end up in our prisons for sometimes minor offences and the impact that this can have not only on themselves but of course on their families. I am certainly cognisant of the publication *Captive Minds: Truth Behind Bars: Realities of Women's Imprisonment in South Australia*. I thank members of Seeds of Affinity for providing me a copy of this publication, which has been most enlightening for a member of parliament to read, not only statistics.

Certainly, I was struck by the information inside the booklet of the high prevalence of women in prisons who suffer from borderline personality disorder, an issue members would be well aware that I have raised in this council before, along with the Hon. Kelly Vincent and the Hon. Stephen Wade, as a significant mental health concern in our community. When you note that it is the second most prevalent mental illness suffered by women prisoners, you would have to think that there is certainly an area there where the services we have been talking about and advocating for borderline personality disorder in this state may reduce the incarceration rate of some of those women. One of those stories in *Captive Minds* that really struck me is titled Another Women's Experience. It is a personal account, which reads:

> When I first came to prison I had no idea what kind of woman dwelled within and I had a fear of the unknown. Nobody I know had ever been to prison or associated with people that had.
>
> I am the only child of an upper middle class family and all my friends are of similar background. I attended a Catholic private school and grew up in an environment that was always aware of 'what the neighbours think' if we failed to keep a certain standard of living.
>
> I am an intelligent full time single mum to 2 beautiful children who also attend private schools. My children were the product of an abusive relationship where I constantly sought the approval I never received from my mother. I was never quite 'up to standard' and I was more of the 'its not what's on the outside but what's on the inside that counts' type of person, much to my mother's horror.
>
> After years of verbal and physical abuse, my children's father left me for another woman. That's when I fell into the trap of trying to please the unpleasable and lied to Centrelink about my earnings in order to have as much money as possible. I felt a big enough 'loser' as it was, let alone not having the money to maintain 'a certain standard'. It all caught up with me and I was sentenced to 14 months imprisonment for Centrelink fraud.
>
> Being incarcerated was the most frightening and life changing experience for me. I lost everything from my home, to my children, to the cat, the furniture, even my underwear.
>
> When I plan to make a fresh start I mean it in every sense of the word. Ironically, the things I found the most mundane on the outside are the things I miss the most on the inside. The relentless call from my children 'MUUUUM?' while I was on the phone or toilet, the cat getting under my feet while I was preparing a meal, the morning traffic of the school run, are all things I miss dearly.
>
> I have learnt who my true friends are, and the list is short. My mother refuses to visit and my friends who promised to bring my kids to see me every weekend, haven't brought them once. I can ring my children whenever I want as long as I have enough money on my phone account after getting paid $27 a week and the one phone for 35 other women is free. Even if I do get to speak to them, it can be no longer than 15 minutes. As nice as it is to speak to them, a phone call is no substitute for a goodnight kiss and a bedtime story from Mum.
>
> I can honestly say I have never experienced loneliness like I have in here. It is all part of the price I must pay for my mistakes, and I have seen enough in here to know that I am one of the lucky ones. Life on the outside for me is a much better option than life on the inside.
>
> Since being incarcerated I have met many women from all different walks of life. While some do fit society's stigma of the stereotype associated with the system, I was surprised to learn how many don't. I too was blindsided by the media's betrayal as to what type of women are behind bars. I can assure you it is far from what we are led to believe. I guess that's what happens when you only hear one side of the story.
>
> It is time for women prisoners to tell the full story and the how and why of what led them to prison.

You cannot but have compassion when you think of those children without their mother, and I certainly would imagine that in many cases, where children's needs are put first, there might be cases when home detention is considered the most appropriate thing for the court to recommend.

In conclusion, I know that this bill requires the court's interpretation on who it determines to be eligible for home detention. The paramount consideration of the court when determining whether to make a home detention order will be the safety of the community. This then means that women prisoners, like the woman whose story I just read out who had a 14-month sentence for Centrelink fraud, may meet the criteria.

We know that we are likely to see an increase in the number of prisoners who are eligible for home detention. However, I ask the minister to ensure that staffing levels are increased accordingly and that the $2.5 million in funding for the home detention program includes the cost of additional staff, GPS and electronic monitoring devices. It would be undesirable to see an expansion of prisoners in home detention coupled with insufficient administrative support, and so certainly I encourage the new minister to look into these matters in detail, and I wish him well with his portfolio. With those words, the Greens support the bill.

The Hon. J.A. DARLEY (16:07): This bill expands the parameters of when home detention can be used. It will allow the courts to impose a sentence of home detention rather than a custodial sentence. Currently, only offenders who have served 50 per cent of their nonparole period of a custodial sentence are eligible for home detention. This bill removes this restriction and will allow for a greater number of prisoners to apply for home detention.

I understand that punishment of a crime should have balanced elements of punishment of the offender whilst also giving them the opportunity to rehabilitate themselves before returning to society. The minister's second reading very strongly indicated that imposing a custodial sentence on some offenders may actually do more damage than good and that home detention in a supportive environment would provide for a much better outcome not only for the offender but for the community.

However, I wonder if this change is due to the fact that our prisons are full and the government is looking for alternatives to house offenders, especially as the plans to build a new prison at Mobilong were scrapped two years ago. I understand that the proposal will not allow home detention for all offenders but only for those who have been deemed to not be a risk to the community.

I am concerned that, whilst there are restrictions for those who are already serving custodial sentences to be eligible for home detention, there are no restrictions on the courts. Currently, those who are serving a life sentence or are convicted of certain sex offences or terrorist acts are ineligible for home detention. They will continue to be ineligible should this bill pass; however, there are no similar restrictions for home detention sentences imposed by the courts.

When my office raised this with the government, the response was that the court should have flexibility to determine if a sentence of home detention would be suitable on a case-by-case basis. Does this mean that the government does not trust the judgement of the chief executive of corrections to make the same assessment? I understand the opposition have moved an amendment which will address this and I look forward to hearing the government's response to this.

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

HOUSING IMPROVEMENT BILL

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:10): I move:

That this bill be now read a second time.

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

Leave granted.

The *Housing Improvement Act of 1940* was enacted to address major concerns in relation to the standard and supply of housing in South Australia at a time of a severe shortage of housing arising from the depression of the 1930s. Today, it is the older dwellings located in established suburbs with existing services, which provide the majority of affordable housing within South Australia.

A review of the Act has found that the regulation of minimum standards for existing houses, and the rent control of sub-standard houses, continues to be relevant today, but the provisions to enforce minimum housing standards under the Act are ineffective in ensuring owners carry out necessary repairs. Substandard houses identified in the review were characterised by poor building condition through lack of essential maintenance, or defective work carried out by owners. Specific issues included structural failure and substandard electrical or sewerage systems. Without taking action to address this, some owners will continue to ignore their obligation to provide safe and suitable accommodation, exposing their occupants to significant health and safety hazards.

Those most impacted are low income households, migrants and students who need affordable housing. Many of these people, including tenants receiving Government private rental assistance, have little choice but to accept housing of an undesirable standard. While few private rental properties have a Housing Improvement declaration, the impact is high on the individual occupants. Occupant health and safety is potentially impacted due to the condition of the property, such as lack of basic amenities, and blocked fire exits due to overcrowding.

Emerging issues identified during consultation include the increase in demand in rural and remote areas for rental accommodation by mine workers and associated contractors, resulting in low income residents being displaced into unsatisfactory accommodation. Also of concern was the impact on some international students, whose lack of knowledge and preference for low cost options make them vulnerable. The international education industry is the State's fourth largest export, accounting for more than 6500 local jobs. Students are avid users of social media, and negative comments about South Australian housing can travel quickly and have a major impact on where future students choose to study.

The proposed Housing Improvement Bill 2015:

- continues the regulation of minimum standards for existing houses with more effective provisions for compliance and enforcement;
- regulates the rent payable for unsafe and unsuitable housing; and
- introduces a key objective of raising community awareness of the minimum housing standards.

A key principle on which this Bill is based is the concept of a general duty, which provides for balanced obligations of both owner and occupant.

The ability to fix rent by regulation is an appropriate response to ensure that disadvantaged people do not pay excessive rent for substandard housing. There is also a need to be able to direct the owner to repair items which pose unacceptable risk.

Raising community awareness is an important objective. History has shown the need to retain the regulation of minimum housing standards, but has also shown that many owners are willing to comply when they know of the requirements. This Bill provides essential support to ensure that the quality of affordable housing is maintained. The quality of life for South Australians is not only influenced by the cost of housing, but the quality of affordable housing.

During preliminary consultation in 2010, a discussion paper providing an overview of the proposed regulatory framework was presented to Government agencies, local government, and peak industry bodies. Feedback indicated general support for the continuation of regulation of minimum housing standards, and a general duty to ensure premises are safe and suitable for occupation. There was strong endorsement from tenant support organisations for continuation of rent control for substandard houses.

The Housing Improvement Bill was put out to consultation during July and August 2012. Information sessions were attended by sixty seven people from local government, real estate agents, tenant support and industry organisations. Sixteen written submissions were received, including various representative groups for landlords, tenants, real estate agents and local government.

The Bill repeals the Housing Improvement Act 1940. Historically the Act provided the legislative authority to the South Australian Housing Trust (SAHT). The Housing Improvement Bill 2015 vests authority to the Minister in lieu of shared responsibility between the SAHT and local government, with minimum standards for existing houses becoming applicable to residential premises throughout this State.

Part 3 of the Bill sets out the main suite of tools that will secure compliance with basic housing standards. These are housing assessment orders, housing improvement orders, housing demolition orders, notices to vacate and rent control notices.

A housing assessment order is issued to an owner where the Minister has reason to believe that the premises are, or may be, unsafe or unsuitable for human habitation. Such an order will require an owner to carry out assessments of the premises.

A housing improvement order may be issued to an owner where the Minister has reason to believe that the premises are unsafe or unsuitable for human habitation and that works are required to remediate defects. Such an order may require the carrying out of specified works.

A housing demolition order may be issued to an owner where the Minister has reason to believe that the premises are so unsafe or unsuitable that it would be impracticable or unreasonable to undertake remediation works.

Such an order requires the demolition of the premises. This power is continued from the repealed Act, and as has been the case in the past, is expected that this provision would be used rarely.

With each of these orders $10,000 is the maximum penalty for non-compliance. This contrasts with a maximum penalty of $100 for breach of an equivalent provision under the repealed Act of 1940.

Underpinning this framework are provisions that enable registration of the orders with the Registrar-General. An order is registered against an owner's land with the effect that successive owners of land are bound by any undischarged orders and a charge is placed on the land such that the Minister may recoup expenses incurred by the Minister in carrying out remedial work that an owner might fail to carry out him or herself under such an order.

Part 3 also enables tenants and registered mortgagees or encumbrancees, with the authorisation of the Minister, to carry out the requirements of a housing assessment order or housing improvement order. Where the premises are rented, costs and expenses may be recouped by withholding rental payments.

A notice to vacate is an essential tool to enable premises to be vacated should that be required under a housing improvement order or housing demolition order. Provisions have been included in the Bill to provide for the termination of a tenancy agreement, to secure the ejectment of occupants and, in appropriate cases, to compensate a tenant for resulting loss and inconvenience.

Rent control notices are continued from the repealed Act but with an improved process for inviting an owner to show why such a notice should not be made. A rent control notice will fix the rent of substandard premises after the Minister has taken into account the condition of the premises, the capital value of the premises as determined under the Valuation of Land Act 1971 and the market rent for residential premises of that kind in the same or similar localities. A rent control notice will continue to apply in relation to premises despite any change in ownership or occupancy of the premises.

Further provisions of the Bill include:

- restricting the landlords from entering premises at unreasonable times for the purposes of carrying out the requirements of a housing assessment order or housing improvement order;
- ensuring the correct rent is paid and demanded in relation to premises that are subject to a rent control notice;
- minimising the risk that tenants are evicted or treated unfairly by a landlord if they make a complaint about the condition of premises;
- requiring disclosure in statements made in the advertising of the sale or lease of residential premises, of the fact that the premises are subject to an order or notice under the Bill.

The Bill gives the South Australian Civil and Administrative Tribunal jurisdiction to hear housing improvement tenancy disputes. Such disputes are disputes about matters arising under the Act or any matter that may be the subject of an application under the Act.

It is anticipated that the comprehensive and robust framework of measures contained in this Bill will support this government in its endeavours to achieve and maintain safe and suitable standards of housing in this State well into the 21st century.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Objects of Act

This clause sets out the objects of the Act, which are—

- to ensure that housing meets the prescribed minimum housing standards; and
- to regulate unsafe or unsuitable housing and the rent payable in respect of such housing; and
- to raise community awareness of the prescribed minimum housing standards.

4—Interpretation

This clause defines key terms used in the Act.

5—Prescribed minimum housing standards

This clause sets out a power to enable the making of regulations to establish prescribed minimum housing standards that must be met for residential premises to be considered safe and suitable for human habitation. It sets out a list of matters that may form the subject matter of such regulations including matters relating to construction, amenity, cleanliness, sanitation, safety and access.

6—Application of Act

This clause clarifies how terms used in the Act are to be interpreted when applied to sites and dwellings that are subject to residential park agreements within the meaning of the *Residential Parks Act 2007* and to premises that are subject to residential tenancy agreements, or to rooming house agreements, under the *Residential Tenancies Act 1995*.

Part 2—Administration

Division 1—Minister

7—Functions

This clause sets out the functions of the Minister. The functions include promoting safe and suitable standards of housing, by ensuring that adequate measures are taken to achieve compliance with the Act, developing or adopting codes of practice or guidelines and being a primary source of advice to the Government in connection with safe and suitable standards of housing.

8—Delegation

The Minister will be able to delegate functions and powers conferred on the Minister under the Act.

Division 2—Authorised officers

9—Appointment of authorised officers

This clause deals with the appointment of authorised officers for the purposes of the Act. Appointments can be made subject to conditions or limitations. An authorised officer is subject to the Minister's direction.

10—Identity cards

This clause requires authorised officers to be issued with identity cards and to produce the card when exercising powers. The clause also requires the surrender of the card when the person ceases to be an authorised officer.

11—Powers of authorised officers

This clause sets out the powers of authorised officers in connection with the administration and enforcement of the Act. Such an officer may—

- enter and inspect residential premises at a reasonable time;
- ask questions of any person found on the premises;
- inspect any article or substance found in the premises;
- take and remove samples from any substance or other thing found in the premises;
- require any person to produce any plans, specifications, books, papers or documents;
- examine, copy and take extracts from any plans, specifications, books, papers or documents;
- take photographs, films or video recordings;
- take measurements, make notes and carry out tests;
- remove any article that may constitute evidence of the commission of an offence against the Act, require a person to answer any question that may be relevant to the administration or enforcement of the Act.

This clause further provides that an authorised officer may use reasonable force to enter residential premises if—

- the officer has a warrant; or
- the officer believes it is necessary.

Subclause (6) makes it an offence attracting a maximum penalty of $5,000 for a person to—

- hinder or obstruct an authorised officer, or a person assisting an authorised officer, in the exercise of a power under this clause; or
- fail to answer a question put to him or her by an authorised officer to the best of his or her knowledge, information and belief; or

- fail to provide reasonable assistance in relation to the inspection of premises.

The ground of self-incrimination cannot be used as an excuse for failure to furnish information required under the clause. The standard provisions regarding the evidentiary use that may be made of information provided by a person in compliance with the clause apply.

Part 3—Orders, notices and other action to deal with unsafe or unsuitable housing conditions

Division 1—Housing assessment orders, housing improvement orders and housing demolition orders

12—Housing assessment orders

The Minister may issue a housing assessment order to the owner of residential premises if the Minister has reason to believe that the premises are, or may be, unsafe or unsuitable for human habitation. Failure to comply with a housing assessment order attracts a maximum penalty of $10,000.

A housing assessment order must include a requirement for assessments to be carried out of the nature and extent of defects at the premises, and for a written report of those assessments to be submitted to the Minister. In addition, such an order may require a person with specified qualifications to carry out or prepare a report of the assessments and may require assessments to be carried out on behalf of the Minister by an authorised officer or other person authorised by the Minister. The order must state that the person may, within 28 days, apply to the Tribunal for a review of the order.

13—Housing improvement orders

The Minister may issue a housing improvement order to the owner of residential premises if the Minister has reason to believe that the premises are unsafe or unsuitable for human habitation and that works are required to remediate defects in respect of the premises. Failure to comply with a housing improvement order attracts a maximum penalty of $10,000.

A housing improvement order must include particulars of the defects identified in respect of the premises and may require the person to whom it is issued to prepare a plan of works for the premises or to carry out specified works within a specified period. The order may authorise the work to be carried out on behalf of the Minister by an authorised officer or other person authorised by the Minister and may require the premises to be vacated and remain unoccupied for a time. The order must state that the person may, within 28 days, apply to the Tribunal for a review of the order.

The clause also provides a system for dealing with cases where urgent action is required to address unsafe or unsuitable conditions of residential premises. This is a fast track method of issuing a housing improvement order in circumstances of urgency. Such an order may be issued orally, but in such a case the person must be informed of his or her right to apply to the Tribunal for a review of the order. In addition, such an order will expire within 3 business days unless it is confirmed by a written order issued by the Minister and served on the person.

14—Housing demolition orders

The Minister may issue a housing demolition order to the owner of residential premises if the Minister has reason to believe that the premises are so unsafe or unsuitable that it would be impracticable or unreasonable to undertake remediation works. Failure to comply with a housing demolition order attracts a maximum penalty of $10,000.

Such an order must include particulars of the defects identified in respect of the premises and must require the premises to be demolished not less than 28 days after issue of the order. The order must require the premises to be vacated and remain unoccupied until the completion of demolition or of specified works. The order may also authorise the demolition to be undertaken on behalf of the Minister by an officer authorised or other person authorised by the Minister. The order must state that the person may, within 28 days, apply to the Tribunal for a review of the order.

15—Registration of housing assessment order, housing improvement order or housing demolition order

This clause enables a housing assessment order, housing improvement order or housing demolition order to be registered with the Registrar-General in relation to land owned by the person on which the premises are located.

The effect of such registration is either or both of the following (as may be required):

- the order will become binding on each successive owner of the land;
- the registration of the order against the land will operate as a charge on land, securing payment to the Minister of costs and expenses incurred by or on behalf of the Minister in taking action required by the order.

This clause also deals with notification of owners and registered mortgagees and encumbrancees. It sets out procedural requirements and preconditions for cancelling the registration of the order.

16—Action by Minister on non-compliance with housing assessment order, housing improvement order or housing demolition order

This clause enables the Minister (or an authorised officer or other person authorised by the Minister) to carry out the requirements of a housing assessment order, housing improvement order or housing demolition order in the event of non-compliance with such an order by the owner.

17—Recovery of costs and expenses incurred by Minister

This clause enables the Minister to recover reasonable costs and expenses incurred by the Minister in taking action under a housing assessment order, housing improvement order or housing demolition order as a debt from the person to whom the order was issued. Also recoverable by the Minister are the amounts prescribed by regulation for any registration or cancellation of an order. Subclause (3) sets out the method of recovery of these amounts including as a charge on land (if the order has been registered) or in the form of rent. Subclause (6) sets out how the priority of a charge imposed under the clause ranks as compared with other charges, namely, it will have priority over—

- any prior charge imposed on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land; and
- any other charge on the land other than a charge registered prior to the registration of the order.

Subclause (7) gives the Minister the same powers as a mortgagee under a mortgage in relation to any default in payment of an amount that is a charge on land under this clause.

18—Action, and recovery of costs and expenses, by registered mortgagee or encumbrancee or by tenant

This clause provides that certain persons other than the owner (namely a tenant or a registered mortgagee or encumbrancee) may take action as authorised by the Minister in respect of a housing assessment order, a housing improvement order or a housing demolition order which has not been complied with. A tenant may recover the costs of doing so either as a debt due by the person to whom the order was issued or as a deduction in rent. A registered mortgagee or encumbrancee is entitled to recover the amount as a debt or by adding it to the principal of the mortgage.

19—Owner of residential premises may seek reimbursement of costs and expenses from other owners

This clause enables an owner of residential premises who has been issued with a housing assessment order, housing improvement order or housing demolition order to seek an order from the Tribunal to recover all or some of the costs incurred in connection with the order from one or more other owners of the premises.

20—Interaction of this Division with *Real Property Act 1886*

This clause gives precedence to the provisions of Division 1 relating to registration by the Registrar-General and the priority of charges over the *Real Property Act 1886*. A charge imposed under the Division is not discharged by the exercise of a power of sale or foreclosure under that Act or by the exercise of a power of sale under any other Act.

Division 2—Notice to vacate

21—Notice to vacate

This clause requires the Minister to issue a notice to vacate if a housing improvement order or housing demolition order has been issued in respect of premises requiring the premises to be vacated. A notice to vacate is issued to the occupiers of the premises (who may or may not be the owners) and requires them to vacate the premises by a specified date. If the premises are occupied under a residential tenancy agreement, the notice must state that the tenancy will be terminated on a specified date, that the tenants must give up possession of the premises on or before that date and that the landlord is authorised to take possession of the premises on that date. The notice must state that the persons may, within 28 days, apply to the Tribunal for a review of the notice.

Failure to comply with a notice to vacate or to sublet premises to which it applies is an offence attracting a maximum penalty of $2,500.

22—Power of Tribunal to make order for ejectment or compensation

This clause enables the Tribunal to make an order for ejectment of an occupier who has not vacated premises by the date specified and an order under certain circumstances requiring a landlord to pay compensation to the tenant for loss and inconvenience as a result of the early termination of the tenancy.

23—Enforcement of ejectment order

This clause makes an order for ejectment enforceable by a bailiff appointed by the Tribunal provided that the person in whose favour the order was made notifies the Tribunal of non-compliance with the order within 14 days of the date on which the order takes effect (or such longer period as the Tribunal may allow). The clause sets out the powers of a bailiff in enforcing such an order, including that the bailiff may request the assistance of the police and may use reasonable force. These powers are consistent with equivalent powers for such a purpose under the *Residential Tenancies Act 1995*.

Division 3—Rent control notices

24—Rent control notices

This clause allows the Minister to declare, by a rent control notice published in the Gazette, that premises in respect of which a housing improvement notice has been issued are to be subject to rent control. Before doing so, the Minister must give the owner a preliminary rent control notice stating his or her intention to control the rent and the maximum proposed rent. In fixing the maximum proposed rent the Minister must have regard to the condition of the premises, the capital value of the premises as assessed under the *Valuation of Land Act 1971* and the market rent for similar premises.

The preliminary notice gives the person 14 days to make representations to the Minister as to why a rent control notice should not be made, after which the Minister decides whether or not to proceed with the notice.

A rent control notice comes into operation on the date of gazettal or a later date specified in the notice and remains in place for the period specified or until revoked by the Minister. The notice continues to apply despite any change in ownership or occupancy.

25—Offence to charge more than maximum rent under rent control notice

This clause makes it an offence attracting a maximum penalty of $2,500 or expiation fee of $210 for a person to charge, demand or receive rent above the maximum rent fixed in a rent control notice.

Division 4—Special provisions relating to prescribed residential tenancy agreements

26—Landlord must give notice of intention to carry out inspections or works under housing assessment order or housing improvement order

This clause provides for the manner in which a landlord may enter and inspect premises to which a housing assessment order or housing improvement order applies. In most cases, entry will only be permitted after written notice is given to the tenant between 7 and 14 days before the day of entry and a specified 2 hour period required to be available for the proposed entry. In remote locations, if a person is required to accompany the inspection these time requirements are relaxed somewhat, and in the case of emergencies there are no time requirements. It should be noted that this clause does not apply to premises that are rented under a residential park agreement within the meaning of the of the *Residential Parks Act 2007*, under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1995* to which that Act applies or under a rooming house agreement within the meaning of the *Residential Tenancies Act 1995*. Such agreements are governed by similar provisions in those respective Acts.

27—Landlord must keep and provide record of rent if rent control notice applies

This clause requires a landlord to keep a record of rent details if a rent control notice applies to the premises. The records must include details of the date and amount of payment, who paid the rent and the period of the tenancy to which the rent relates. Records must be kept for two years. If rent is paid other than into an ADI account, the details must be given to the tenant within 48 hours. If paid into an ADI account, the landlord need only give the details on request by the tenant. Failure to comply with the clause is an offence attracting a maximum penalty of $1,250 and an expiation fee of $160. As with the previous clause, this clause does not apply to premises that are rented under a residential park agreement within the meaning of the of the *Residential Parks Act 2007*, under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1995* to which that Act applies or under a rooming house agreement within the meaning of the *Residential Tenancies Act 1995*. Such agreements are governed by similar provisions in those respective Acts.

28—Termination of prescribed residential tenancy agreement by tenant

A tenant residing in premises that are the subject of an order or notice under Part 3 is entitled to vacate without reason on giving at least 7 days notice. Again, this clause does not apply to premises that are rented under a residential park agreement within the meaning of the of the *Residential Parks Act 2007*, under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1995* to which that Act applies or under a rooming house agreement within the meaning of the *Residential Tenancies Act 1995*. Such agreements are governed by similar provisions in those respective Acts.

29—Termination or variation of prescribed residential tenancy agreement by landlord

This clause provides certain protections for tenants who occupy premises that have been the subject of an inspection by an authorised officer within the past 6 months or to which an order or notice under this Part applies (other than a notice to vacate). It enables tenants to speak freely about the condition of premises without fear of reprisals. A notice given to a tenant by a landlord terminating or varying such a tenancy must be in the prescribed manner and form, rely on at least 1 ground prescribed by regulation, and be confirmed by the Tribunal.

The clause enables the genuineness of factors motivating the giving of a notice of termination or variation by a landlord to be tested by the Tribunal, thus reducing the likelihood of retaliatory action on the part of a landlord.

If satisfied that the factors are genuine, the Tribunal may confirm the notice, however if it is not so satisfied, it may set aside the notice, and/or make an order reinstating the tenancy on such condition as it considers appropriate.

The Tribunal may, when considering the application, make an order compensating the tenant for loss or inconvenience resulting from the termination or variation of the tenancy.

It is an offence attracting a maximum penalty of $1,250 for a landlord to grant a fresh tenancy over the same premises within 6 months without the consent of the Tribunal.

Again, this clause does not apply to premises that are rented under a residential park agreement within the meaning of the of the *Residential Parks Act 2007*, under a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1995* to which that Act applies or under a rooming house agreement within the meaning of the *Residential Tenancies Act 1995*. That is because such agreements are protected by similar provisions in those respective Acts.

Division 5—Obligation to publicise orders and notices

30—Orders and notices under this Part to be displayed on premises

This clause requires an owner of premises which are the subject of an order or notice under Part 3 (other than a preliminary rent control notice) to display the order or notice legibly and prominently at the premises as directed by the Minister. Failure to comply with this provision is an offence attracting a maximum penalty of $2,500 or an expiation fee of $210.

31—Orders and notices under this Part to be declared in advertisements for sale or lease of land and in lease agreement

This clause requires the vendor of premises to which an order or notice under Part 3 applies (other than a preliminary rent control notice) to include in any advertisement for the sale of the premises a clear statement that such order or notice applies to the premises. Failure to comply with this provision is an offence attracting a maximum penalty of $2,500 or an expiation fee of $210.

Clear disclosure must also be made in respect of the advertising for the lease of such premises and in the lease agreement. In addition, if a rent control notice applies to the premises, any oral or written representation to the lessee concerning the rent must disclose that the rent is fixed by a rental control notice. This offence attracts a maximum penalty of $2,500 or an expiation fee of $210.

Statements required to be made under the clause in an advertisement or document must be in legible form and appear in a reasonably prominent position in the advertisement or document, with the offence attracting a maximum penalty of $2,500 or an expiation fee of $210.

If a landlord fails to make clear to a lessee that the rent is fixed under a rent control notice the lessee may rescind the lease.

Division 6—Review by Tribunal

32—Review by Tribunal

A person who has been issued with a housing assessment order, housing improvement order, housing demolition order or notice to vacate may apply for a review by the Tribunal of the order or notice or a variation of the order or notice. The owner of premises in respect of which a rent control notice has been made may apply for a review of the notice or any variation of the notice. An application for review must be made within 28 days after the order or notice is issued or made or any variation of the order or notice is made (unless the Tribunal allows an extension of time).

Part 4—General duty

33—General duty

This Part creates a statutory duty on an owner of property to ensure that the premises are safe and suitable for human habitation. If the premises are occupied under a residential tenancy agreement, the landlord and tenant have the following obligations:

- the landlord must take reasonable steps to ensure that the premises are and remain safe and suitable for human habitation;
- the tenant must take reasonable steps to comply with the landlord's actions and must ensure that the premises are maintained in a reasonable state for the purposes of human habitation.

In determining what is to be regarded as being reasonable for the purposes of the clause, regard must be had to matters including—

- prescribed minimum housing standards;
- relevant codes of practice under the regulations;
- the potential impact on occupants of the premises of a failure to comply with the general duty.

A failure to comply with the general duty does not of itself render an owner liable to civil liability or criminal action, but compliance may be enforced by the issuing of a housing assessment order, housing improvement order or housing demolition order.

Part 5—South Australian Civil and Administrative Tribunal

34—Jurisdiction of Tribunal

This clause vests the South Australian Civil and Administrative Tribunal with jurisdiction to deal with a housing improvement tenancy dispute. It will have the powers given to it under the Act as well as under the *South Australian Civil and Administrative Tribunal Act 2013*.

However, the Tribunal has no jurisdiction to hear and determine a monetary claim for more than $40,000, unless the parties to the proceedings consent in writing (and such a consent will be irrevocable).

If a monetary claim is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same residential tenancy agreement may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.

In such proceedings the court may exercise the relevant powers of the Tribunal under the *South Australian Civil and Administrative Tribunal Act 2013* as well as under the Act.

35—Intervention by Minister

The Minister may intervene in proceedings before the Tribunal or a court concerning a housing improvement tenancy dispute.

If the Minister intervenes in proceedings, he or she becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

36—Amendment of proceedings

This clause enables the Tribunal to amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

37—General powers of Tribunal to resolve housing improvement tenancy disputes

The Tribunal may, on application by a party to a housing improvement tenancy dispute—

- restrain an action in breach of the Act; or
- require a person to comply with an obligation under the Act; or
- order a person to make a payment (which may include compensation) under the Act for breach of the Act; or
- modify a residential tenancy agreement to enable the tenant to recover compensation payable to the tenant by way of a reduction in the rent otherwise payable under the agreement; or
- relieve a party to a residential tenancy agreement from the obligation to comply with a provision of the agreement; or
- terminate a residential tenancy agreement or declare that a residential tenancy agreement has or has not terminated; or
- reinstate rights under a residential tenancy agreement that have been forfeited or have otherwise been terminated; or
- require payment of rent into the Fund until conditions stipulated by the Tribunal have been complied with; or
- require that rent so paid into the Fund be paid out and applied as directed by the Tribunal; or
- require a tenant to give up possession of residential premises to the landlord; or
- make orders to give effect to rights and liabilities arising from the assignment of a residential tenancy agreement; or
- exercise any other power conferred on the Tribunal under the Act; or
- do anything else necessary or desirable to resolve a housing improvement tenancy dispute.

The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

38—Restraining orders

The Tribunal may make a restraining order against a person in the following circumstances:

- if the person is causing or may cause serious damage to property following the issuing of an order or notice under Part 3 in relation to the premises or the making of any decision by the Tribunal in relation to the premises in a material respect; or

- if the person is failing to comply with the general duty under Part 4.

A restraining order may be made without notice to the person provided that the Tribunal gives the person a reasonable opportunity to satisfy it that the order should not continue.

39—Special powers to make orders

The Tribunal may make an order in the nature of an injunction (including an interim injunction) or an order for specific performance.

However, a member of the Tribunal who is not legally qualified cannot make such an order without the approval of the President or a Deputy President of the Tribunal.

The Tribunal may also make ancillary or incidental orders.

40—Application to vary or set aside order

A party to proceedings before the Tribunal may apply to the Tribunal for an order varying or setting aside an order within 1 month of the making of the order. The Tribunal may allow an extension of time. The 1 month period will, if reasons are provided on request by the applicant, run from the time the applicant receives the written statement of reasons. This clause is expressed not to limit the provisions of the *South Australian Civil and Administrative Tribunal Act 2013*. Proceedings under the clause are not intended to constitute a review for the purposes of section 34 or 70 of that Act.

41—Reasons for decisions

This clause requires the Tribunal to provide written reasons for its decision on request by a person affected by the decision.

42—Time for application for review or instituting appeal

The time for making an application for a review or appeal under the *South Australian Civil and Administrative Tribunal Act 2013* runs from the time written reasons are received, provided that the request is made within 1 month of the decision.

43—Representation in proceedings before Tribunal

The rights of a party to a housing improvement dispute to be represented in proceedings before the Tribunal (including a conference or mediation under the *South Australian Civil and Administrative Tribunal Act 2013*) are set out in this clause.

A party may be represented by a lawyer if—

- all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage a party who does not have a professional representative; or
- the Tribunal is satisfied that the party is unable to present the party's case properly without assistance; or
- another party to the dispute is a lawyer, or is represented by a professional representative (defined to mean a lawyer, law clerk or a person who holds or has held legal qualifications under the law of the State or another place); or
- the Minister has intervened in, or is a party to, the proceedings.

A party may be represented by a person who is not a lawyer if—

- the party is a body corporate and the representative is an officer or employee of the body corporate; or
- the party is a landlord and the representative is an agent, or an officer or employee of an agent, appointed by the landlord to manage the premises on the landlord's behalf; or
- all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage an unrepresented party; or
- the Tribunal is satisfied that the party is unable to present the party's case properly without assistance.

44—Remuneration of representative

A representative of a party to a housing improvement tenancy dispute in proceedings before the Tribunal may not be remunerated unless the representative is:

- a lawyer or a law clerk employed by lawyer; or
- an officer or employee of a body corporate representing the body corporate in the proceedings; or

- an agent, officer or employee of an agent representing the landlord in the proceedings whose premises the agent had been appointed to manage on behalf of the landlord.

Contravention of this provision is an offence attracting a maximum penalty of $7,500.

Part 6—Register

45—Register

This clause provides that the Minister must keep a register that records—

- the address of residential premises to which an order or notice under Part 3 applies;
- the maximum rent fixed for residential premises to which a rent control notice applies; and
- any other prescribed information.

The register must be made available for free inspection by members of the public. However, the Minister has an absolute discretion to exclude particular details in the register from inspection. A person may also obtain a copy of part of the register on payment of the prescribed fee.

Part 7—Miscellaneous

46—Contract to avoid Act

An agreement or arrangement that is inconsistent with the Act or purports to exclude, modify or restrict the operation of the Act, will be (unless the inconsistency, exclusion, modification or restriction is expressly permitted under the Act) to that extent void. A purported waiver under the Act will be void. A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of the Act (directly or indirectly) will be guilty of an offence attracting a maximum penalty of $5,000.

47—Protection from liability

This clause provides that an authorised officer or person engaged in the administration of the Act will not be subject to civil or criminal liability for any acts or omissions done in good faith in the exercise or discharge of a power, function or duty or in the carrying out of any direction or requirement under the Act. Such a liability lies instead against the Crown.

48—Offences by bodies corporate

If a body corporate is guilty of an offence against the Act, each director and manager of the body corporate will be guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless that person can prove that he or she could not, by the exercise of due diligence, have prevented the commission of the offence. A person may be prosecuted and convicted of an offence against this clause whether or not the body corporate has been prosecuted and convicted of the offence.

49—Tribunal may exempt agreement or premises from provision of Act

The Tribunal may order that a provision of the Act will not apply (or will apply in a modified way) to a particular prescribed residential tenancy agreement or to particular premises occupied under such an agreement. Contravention of any condition of such an order is an offence attracting a maximum penalty of $1,250.

50—Service

An order, notice or document may be served on a tenant, subtenant, occupier or other person (or agent of the person)—

- personally; or
- by leaving it for the person or agent at the person's or agent's place of residence, employment or business with someone apparently over the age of 18 years; or
- by posting it to the person's or agent's last known place of residence, employment or business; or
- by sending it to the person or agent by fax or email to an address provided by the person or agent for the purposes of service under the Act.

In addition, the order, notice or document may also be fixed on a conspicuous part of the premises or by some other manner permitted by the Tribunal.

If two or more persons are owners, occupiers, landlords, tenants or subtenants of residential premises, service need only be effected in relation to one of them, provided that reasonable attempts have been made to effect service on the others.

An order, notice or other document required or authorised to be given to an occupier or subtenant under the Act need not address the occupier or subtenant by name.

51—False or misleading information

A person must not make a statement that is false or misleading in a material particular, whether by inclusion or omission of a particular, any information given or record kept under the Act. The offence attracts a maximum penalty of $10,000.

52—Continuing offences

If an offence against a provision of the Act is committed by a person by reason of a continuing act or omission, the person will be liable to an additional penalty for each day during which the offence continues of not more than one-fifth of the maximum penalty for the offence.

If an offence continues after the person is convicted of it, the person will be guilty of a further offence against the provision and will also be liable to an additional penalty for each day during which the offence continues of not more than one-fifth of the maximum penalty for the offence.

An obligation will be regarded as continuing until the act is done, regardless of whether a period within which, or time before which, the act is required to be done has expired or passed.

53—Commencement of proceedings for summary offences

Proceedings for an offence against the Act may only be commenced by the Minister or an authorised officer within 3 years of the date of the alleged commission of the offence or such later time as the Attorney-General may allow.

54—Orders in respect of contraventions

This clause provides that if the court finds that there has been an offence committed under the Act that has caused injury or loss to a person or damage to property of the person, the court may, in addition to any penalty—

- order the defendant to take specified action to prevent further injury, loss, or property damage; or
- order the defendant to pay reasonable costs and expenses or compensation as determined by the court.

A person who has contravened the Act may also be ordered to pay the Minister an amount into the consolidated account not exceeding the court's estimation of the amount of economic benefit he or she is estimated to have acquired or accrued. This includes an economic benefit obtained by delaying or avoiding costs.

55—Recovery from related bodies corporate

This clause provides that if an amount is payable by a body corporate to the Minister, its related bodies corporate will be jointly and severally liable to pay the amount.

56—Joint and several liability

Where an amount is recoverable by the Minister from 2 or more persons under the Act, the provision is to be construed as if those persons were jointly and severally liable to pay the amount to the Minister.

57—Evidentiary provisions

This clause outlines the evidentiary provisions that will facilitate proof of certain matters in proceedings under the Act.

58—Regulations

This clause sets out the general regulation-making powers under the Act.

Schedule 1—Related amendments, repeal and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Residential Parks Act 2007*

2—Clauses 2 to 9—Amendment of various provisions of *Residential Parks Act 2007*

Clauses 2 to 9 amend various provisions of the *Residential Parks Act 2007* that are consequential on, or related to, the *Housing Improvement Act 2015*.

Part 3—Amendment of *Residential Tenancies Act 1995*

3—Clauses 10 to 21—Amendment of various provisions of *Residential Tenancies Act 1995*

Clauses 10 to 21 amend various provisions of the *Residential Tenancies Act 1995* that are consequential on, or related to, the *Housing Improvement Act 2015*.

Part 4—Repeal of *Housing Improvement Act 1940*

4—Clause 22—Repeal of Act

This clause repeals the *Housing Improvement Act 1940*.

Part 5—Transitional provisions

5—Clauses 23 to 30—Transitional provisions

These clauses contain transitional arrangements for the implementation of the Act.

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

STATUTES AMENDMENT (GENDER IDENTITY AND EQUITY) BILL

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:11): I move:

That this bill be now read a second time.

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

Leave granted.

South Australia has a proud history as a leader in social justice and anti-discrimination reform. It was the first jurisdiction in Australia to legislate to permit women to vote and the first place in the world to end discrimination against women standing for Parliament. South Australia was also the first state in our nation's history to decriminalise homosexuality.

In the past 40 years, South Australian governments have made a number of changes to legislation and policy with respect to Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (*LGBTIQ*) people. These changes have contributed to an improvement in the ability of LGBTIQ South Australians to lead safe and engaged lives in our State and the wider community.

South Australia's reputation as a great place to live is in part based on the fact that we are a tolerant, inclusive society. The Government's commitment to an inclusive society is enshrined in the South Australian Strategy for the Inclusion of LGBTIQ people.

Unfortunately, there are still aspects of our laws which do not reflect inclusiveness and have the effect of discriminating against people in our community.

It is because of this that, early last year, the Government announced, through the Governor's speech to the opening of Parliament, that the South Australian Law Reform Institute would be invited to review legislative and regulatory discrimination against individuals and families on the grounds of sexual orientation, gender, gender identity or intersex status.

The Institute released its Audit report on 10 September 2015, and it identified more than 140 pieces of legislation that discriminate on the grounds of sexual orientation, gender, gender identity or intersex status. The Report outlined a suite of recommendations for the Government to address in relation to current legislative and regulatory based discrimination. These included Recommendations for Immediate Action and Recommendations for Further Review and Reporting by the Institute.

The timing of the Report's release was poignant. For it was in September last year that the local LGBTIQ community – and many other people – were celebrating the 40th anniversary of the passing of laws making our state the first jurisdiction in Australia to decriminalise homosexual acts between consenting adults. That legislation was strongly supported by then Premier Don Dunstan – a man who had championed gay rights for many years and had a proud record of fighting against discrimination wherever he saw it.

The Government has considered the recommendations of the Law Reform Institute's Report, and through this Statutes Amendment Bill it seeks to implement the majority of the report's recommendations for immediate action.

The majority of the proposed amendments are aimed at removing binary notions of sex (eg, male and female) and gender (eg, man and woman) or provisions that fail to set out how the law applies to a person who is intersex or gender diverse. The amendments also seek to remove interpretative language in legislation that has the potential of discriminating against people based on their relationship status.

The following amendments are proposed in this Bill:

Amending section 4 of the *Acts Interpretation Act 1915* to include the terms 'gender identity' and 'intersex status' in the dictionary section of the Act.

Amending section 26 of the *Acts Interpretation Act 1915* to replace the existing gender related rule with a new interpretative rule based on section 23(a) of the Commonwealth's *Acts Interpretation Act 1919* to provide that: 'words importing a gender include every other gender.'

Amending section 36A of the *Acts Interpretation Act 1915* to revise the existing gender balance on boards provision to make it clear that, regardless of the person's sex as legally recorded, a person who identifies as a woman should be included in the pool of possible appointments where an Act requires a minimum number of female/women positions on the board. Similarly, a person who identifies as a man should be included in the pool of potential appointments where it is legislated to include a minimum number of male/men positions, regardless of the person's sex as legally recorded.

Replacing the term 'opposite sex' with the term 'different sex' in the *Criminal Law (Forensic Procedures Act) 2007*, *Equal Opportunity Act 1982*, *Family Relationships Act 1975* and *Sexual Reassignment Act 1988*.

Repealing outdated provisions in the *Guardianship of Infants Act 1940*, *Trustee Act 1936*, *Landlord and Tenant Act 1936* and *Settled Estates Act 1880*.

Amending the *Correctional Services Act 1982*, *Criminal Law (Forensic Procedures) Act 2007* and *Summary Offences Act 1953* to enable a person subject to a search or assessment to request that it be conducted by a person of the same sex or gender identity, unless the person being searched or assessed requests otherwise.

Amending the terminology in the *Equal Opportunity Act 1982* to replace the current protections against discrimination on the grounds of 'sexuality' and 'chosen gender' with similar protections based on the attributes of 'sexual orientation' and 'gender identity'.

Amending the *Domicile Act 1980* to include reference to domestic partners and remove an unnecessary reference to gender, as well as removing a discriminatory provision in the *Evidence Act 1929*.

Through these changes, we seek to ensure that our laws do not inadvertently discriminate against LGBTIQ South Australians.

Many of these changes may not seem important, and for most South Australians the impact will be negligible. But for people who may potentially experience discrimination as a result of these laws, the impact can be significant.

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 *Acts Interpretation Act 1915*

4—Amendment of section 4—Interpretation

This clause inserts definitions for the terms *gender identity* and *intersex status* into the principal Act.

5—Amendment of section 26—Interpretation of words relating to gender or number

This clause amends section 26 of the principal Act to alter the meaning of references to gender.

6—Amendment of section 36A—Gender balance in nomination of persons for appointment to statutory bodies

This clause inserts definitions for the terms *man* and *woman* into section 36A of the principal Act.

Part 3—Amendment of *Correctional Services Act 1982*

7—Amendment of section 23—Initial and periodic assessment of prisoners

This clause amends section 23 of the principal Act to broaden the range of matters that the CE must have regard to when carrying out an assessment under the section to include the prisoner's gender identity, sexuality or sexual identity.

Subclause (2) amends the principal Act by allowing the prisoner to request that an assessment under the section be made by a person of the same sex or gender identity as the prisoner.

8—Amendment of section 37—Search of prisoners

This clause amends section 37(2)(a) of the principal act so that if, during a search of a prisoner under the section, the prisoner is naked, the sex or gender identity of those present (other than a medical practitioner) must be the same as that of the prisoner.

Part 4—Amendment of *Criminal Law (Forensic Procedures) Act 2007*

9—Amendment of section 3—Interpretation

This clause amends the definition of *intrusive forensic procedure* to make reference to a transgender or intersex person.

10—Amendment of section 21—Forensic procedures to be carried out humanely

This clause amends section 21 of the principal Act to make reference to a transgender or intersex person. Reference to a person of the opposite sex is substituted with a reference to a person of a different sex.

Part 5—Amendment of *Domicile Act 1980*

11—Amendment of long title

This clause amends the long title of the principal Act.

12—Amendment of section 7—Capacity to have independent domicile

This clause amends section 7 of the principal Act to substitute masculine references with references to 'the person'.

13—Amendment of section 8—Domicile of certain children

This clause amends section 8(3)(a) of the principal Act to remove the reference to 'in wedlock' from the provision that concerns the domicile of adopted children.

Part 6—Amendment of *Equal Opportunity Act 1984*

14—Amendment of section 5—Interpretation

This clause amends section 5 of the principal Act to delete the definition of *chosen gender*. Other amendments to section 5 delete references to gender such as 'he or she'.

References in the principal Act to sexuality are changed to sexual orientation.

15—Amendment of section 6—Interpretative provisions

Amendments made to the principal Act by the clauses that follow substitute references to 'chosen gender' with 'gender identity' and 'sexuality' with 'sexual orientation'.

16—Substitution of heading to Part 3

17—Amendment of section 29—Criteria for discrimination on ground of sex, sexual orientation or gender identity

18—Amendment of section 30—Discrimination against applicants and employees

19—Amendment of section 31—Discrimination against agents and independent contractors

20—Amendment of section 32—Discrimination against contract workers

21—Amendment of section 33—Discrimination within partnerships

22—Amendment of section 34—Exemptions

23—Amendment of section 35—Discrimination by associations

24—Amendment of section 36—Discrimination by qualifying bodies

25—Amendment of section 37—Discrimination by educational authorities

26—Amendment of section 38—Discrimination by person disposing of interest in land

27—Amendment of section 39—Discrimination in provision of goods and services

28—Amendment of section 40—Discrimination in relation to accommodation

29—Amendment of section 45—Charities

30—Amendment of section 47—Measures intended to achieve equality

31—Amendment of section 85Z—Exemptions

These amendments are consequential.

Part 7—Amendment of *Evidence Act 1929*

32—Repeal of section 34H

This clause repeals section 34H of the principal Act.

Part 8—Amendment of *Family Relationships Act 1975*

33—Amendment of section 10A—Interpretation

This clause amends the definition of *qualifying relationship* to substitute the reference to 'opposite sex' with a reference to 'different sex'.

Part 9—Amendment of *Guardianship of Infants Act 1940*

34—Repeal of section 20—Power of woman to sue as next friend

Section 20 makes provision for a woman to be able to sue as next friend in relation to a child. The section is obsolete and is to be repealed.

Part 10—Amendment of *Landlord and Tenant Act 1936*

35—Repeal of section 44

This clause repeals section 44 of the principal Act.

Part 11—Amendment of *Settled Estates Act 1880*

36—Repeal of sections 48, 49 and 50

This clause repeals sections 48, 49 and 50 of the principal Act.

Part 12—Amendment of *Sexual Reassignment Act 1988*

37—Amendment of section 3—Interpretation

This clause amends the definition of *reassignment procedure* in section 3 of the principal Act to substitute the reference to the opposite sex with a reference to a different sex.

Part 13—Amendment of *Summary Offences Act 1953*

38—Amendment of section 81—Power to search, examine and take particulars of persons

This clause amends section 81(3)(d) of the principal Act to provide that if a person is to be subject to an intimate search, the search be carried out, where reasonably practicable, by a person of the same sex or gender identity as the person being searched.

Part 14—Amendment of *Trustee Act 1936*

39—Repeal of section 22

This clause repeals section 22 of the principal Act.

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

At 16:12 the council adjourned until Tuesday 22 March 2016 at 14:15.