LEGISLATIVE COUNCIL

Tuesday, 6 December 2016

The PRESIDENT (Hon. R.P. Wortley) took the chair at 10:01 and read prayers.

The PRESIDENT: We acknowledge Aboriginal and Torres Strait Islander peoples as the traditional owners of this country throughout Australia, and their connection to the land and the community. We pay our respects to them and their cultures, and to the elders both past and present.

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) (10:02): 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

RELATIONSHIPS REGISTER (NO 1) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 December 2016.)

The Hon. J.M.A. LENSINK (10:03): I rise to indicate support for this matter, which is one of a series of SALRI bills before this parliament. In making a few remarks in relation to this particular piece of legislation, I must admit that I have spent some time refreshing my memory about what each piece of legislation does, and a key matter is to provide for a relationships register.

Through the media, we would all be familiar with the very sad case that was brought to our attention about a couple from the UK, one of whom passed away and his partner was then unable to have that relationship recognised, and it is appropriate that we do that. I understand the concerns that members have expressed in relation to potentially recognising marriage relationships even though marriage is a matter for the federal law. Clearly, I am a supporter of gay marriage and hope that that issue is resolved in the affirmative as soon as possible. However, to deny people recognition of their relationships simply because of those reservations is an unreasonable imposition upon them.

There are also some very significant changes for people who are considered as intersex and, once again, I would like to acknowledge the briefing that I think was provided for members on 16 November. I was not previously aware of the particular difficulties faced by intersex people and I am grateful to people from that community, and particularly to the unambiguously titled Organisation Intersex International Australia Limited and its president, Morgan Carpenter, who travelled from New South Wales, for providing us with the information about that.

One of my family members has studied genetics and was a geneticist, so I was familiar with the difficulties of particular genetic diseases, particularly Batten disease, which was the subject of her PhD. But I was not aware of the particular physical problems that intersex people had, so I am grateful to them for providing that information. There is a very good brochure entitled 'Androgen insensitivity syndrome: support and information for those affected by androgen insensitivity syndrome (AIS) and similar conditions' which is available at www.vicnet.net.au/~aissg.

We were provided with information about the particular problems by people who attended that briefing. There are 40 identified variations on a spectrum. In the past, intersex people have suffered, and probably still suffer, from a number of human rights abuses, including surgery and

inappropriate hormone therapy, and often were not provided with proper informed consent for children and parents. I was surprised to learn that intersex people have not been covered by the Equal Opportunity Act, but one of the clauses in this legislation will include them. Also, intersex people often have secondary health issues, such as osteoporosis, chronic fatigue and, clearly, the discrimination that they have undergone from people who do not understand and are unsympathetic to their cause. With those particular remarks, I commend the legislation to the house.

The Hon. R.I. LUCAS (10:08): I rise to speak to the second reading of this bill and, in doing so, make some general comments about the four bills that the Legislative Council will be addressing this week in the Weatherill government's festival of conscience presentation to the parliament. It is interesting that if any of these bills are amended, the Weatherill government has taken the decision that the House of Assembly will not be sitting in this optional week of sitting.

This means that should the Legislative Council amend any of the bills, they will not be able to progress any further because the House of Assembly have taken their leave and gone home, and they will not be considered until we reconvene in the second week of February. I think that is an interesting statement in and of itself in relation to the Weatherill government's reluctance to sit this week for a variety of reasons.

As previous speakers from my party have indicated, these bills are conscience vote issues either in totality or, as in relation to the adoption bill, on some significant aspects of the bill. So, as members of the Liberal Party, each of us needs to address how we will approach all these bills all at the one time. Certainly from my viewpoint, and I am sure from all members' viewpoints, we will be listening to the arguments we have had presented to us, both for and against.

There has been quite an intensive email campaign in relation to aspects of some of the pieces of legislation we are discussing, both for and against. Obviously members, myself included, will give due weight to those particular submissions that have been made to each of us. However, from my viewpoint, and I am sure from that of others in my party as well, on a conscience vote issue I have to revisit what I believe in relation to these issues.

As I have indicated before on some of these issues that we have addressed in the past, each of us is a product of our upbringing and the personal experiences that we have lived through, whether through family, friends or acquaintances. Finally, each of us is a product of what we learn firstly as young people and then ultimately as adults. Each of us will balance those influences on our decision-making in our own way.

I have indicated in the past, particularly in relation to voluntary euthanasia issues, that, whilst I acknowledge the power of whatever the majority view might be in the community, my view in the end is that, as a member of parliament, I have been elected to make individual judgements and to listen to the views but that I am not here to ultimately vote in accordance with whatever the majority view is in the community on each issue.

That view has led me to have healthy differences of opinion with voluntary euthanasia advocates, for example, who continue to maintain, 'The majority of people want this particular issue; therefore, you are honour bound to have to vote that way.' As I have indicated before, when I put the same view to those people, 'The majority of people support capital punishment in certain limited circumstances; do you want me to follow that particular view as well?' inevitably they say, 'No, not in that case, but in the case of voluntary euthanasia you should.'

Certainly, the way I have approached these issues is that, as an individual legislator, I do not believe and I do not accept that we are honour bound to vote in accordance with the majority. Ultimately, we make decisions either on the basis of what we think is in the public interest or, in this case, an issue of individual conscience as to what you believe.

As I have looked at these issues, I have looked at my own history and my own opinion has developed over the years in the parliament. My first exposure was in the mid-1980s on a sexual reassignment bill. Going back through the record, there is no record of my having spoken or put any particularly strong view on it. It would appear that bill went through both houses of parliament in a relatively uncontroversial manner at the time.

In and around that same period, which was in my first term in government, we had an extremely controversial debate in relation to equal opportunity legislation and whether or not the equal opportunity legislation should prevent discrimination in employment and various other areas on the basis of a person's sexual preference. At that time, many years ago now, that was a very controversial area and I and a small number of other Liberals joined with virtually all the Labor members in the Legislative Council and the House of Assembly to support those amendments to the equal opportunity legislation.

In recent years, the parliament, including this chamber, has supported further amendments in relation to a large number of state statutes which outlawed what was described as discrimination against persons on the basis of their sexual preference or their sexuality. Again, speaking from my own individual conscience, that was something I was prepared to accept.

Inevitably, the question always is: what is the next step? Where do you draw the line in terms of your own individual preference or conscience? Whilst we have not directly had to vote on this—although we have had various motions and other bills which have sought to bring this issue into the state jurisdiction—my personal view has been that marriage is an institution that is described as and should be left as a union between a man and a woman.

My own conscience is that the ideal environment, in terms of the nurture and the upbringing of a child, is to have a mother and a father in a loving relationship. I accept that the ideal is not always possible but, then again, that is true in many areas that we legislate. The ideal is not always possible but, ultimately, we do pass laws guided by, hopefully, either improving the situation or with regard to what the ideal might be.

Certainly, from my viewpoint, whatever belief you have in relation to how life might have begun on this planet, it is hard to argue against the notion that men and women in union producing children is the critical factor in the survival of the species. When we look at what constitutes marriage as a community—and this is an issue more particularly directly relevant in the federal parliament and the federal jurisdiction—we are obviously now having to address some of the associated issues in some of these bills that we are addressing.

All of us have to draw a line somewhere. We see the line being drawn differently in Australia compared with some other countries. Other countries and other cultures have drawn the line where they accept polygamy. Indeed, there are some within South Australia who have put the view to me that they believe that we ought to recognise polygamous relationships in South Australia. In some other countries and in some other cultures, child marriage or forced marriages are an accepted part of their culture and their country.

In Australia and South Australia, we have not drawn the line to include those particular forms of marriage. We have said, 'No, as a community we don't accept that.' In the end, my contention here is that all of us draw a line somewhere. We are not prepared to accept that anything goes in Australia. We are having a discussion and a debate at the federal level in particular, but now we are having to engage in the discussion in South Australia as to whether we want to change the definition or the acceptance of marriage in Australia and South Australia to include other forms of relationships, such as same-sex relationships.

As I said at the outset, my personal belief is that the line is drawn essentially where it is in relation to a marriage being limited to a relationship between a man and a woman. I do not have as many concerns now; it certainly would have been different years ago when we started this debate about equal opportunity legislation in the eighties, but now I do not have an issue and would be prepared to support arrangements such as civil unions, which have been discussed at the federal level and others. I do not accept the argument that we ought to redefine marriage in the way that many advocates wish it to be.

Through civil unions, or whatever other arrangements or alternative process might be approved at the federal or state level, it is certainly possible to provide greater access to the legal rights for same-sex couples that many would wish without actually having to go down the path of including them within the definition of marriage. With that background as to my personal beliefs, which have guided me in my own conscience vote on this issue and on others, I am prepared to

support the second reading of this bill on the basis that it allows any couple in a relationship, including same-sex couples, to have that relationship registered in a register.

I note from earlier debates that similar or the same registers and processes exist in the ACT, New South Wales, Victoria and Tasmania, and are contemplated in some of the commonwealth legislation that the mover of the bill referred to in his second reading explanation. The register will allow a certificate and greater access to certain entitlements and, for those reasons, it has been supported in a number of other jurisdictions throughout Australia.

The register will allow certain relationships in certain other countries to also be recognised, and I noted from the debate in the House of Assembly that there was an argument which, I think, quoted the Victorian circumstance where the actual legislation listed those other countries. This bill is contemplating a different process, where those countries will be proclaimed by way of regulation and then parliament would ultimately have a power to disallow those regulations should either house of parliament so determine.

The mover accepts, for the reasons I outlined in my earlier contribution, that there are some other countries and cultures that accept different versions of relationships and/or marriages—relationships in this case—which we in Australia are not comfortable with accepting. The government and the proponents of the legislation clearly accept that they do not wish to open it up to everything, and it would only be certain countries where this acknowledgement of certain relationships would be recognised through the process outlined in this legislation. As the second reading explanation argues:

> This bill, when passed, will create an option for couples in any relationship to more easily demonstrate their status when dealing with various bodies, including government agencies and service providers, in order to have their relationship respected and access their rights and entitlements.

For those reasons, and with the background that I gave earlier, I support the second reading. Whilst I reserve my final position on the third reading until we see what ensues in the committee stage of the debate, my current intention would be to support the third reading of the bill as well.

The Hon. T.J. STEPHENS (10:25): I rise to speak to the Relationships Register (No 1) Bill. This bill underpins the mechanics of further bills currently before this place which establish a new kind of qualifying relationship for parenting eligibility when it comes to adoption and surrogacy.

In the first instance, all of these measures were in one big, complex bill, which was very sensibly separated into a number of bills in the other place. However, this step should have been unnecessary and unfortunately it has led to a very rushed process for the resultant split bills. I hope that nothing is missed during this process and there are no unintended consequences that arise from a lack of scrutiny.

To get back to the crux of the current debate, this bill seeks to establish a register for non-marriage relationships, regardless of gender and sexual preference. I do not have a fundamental objection to this. The rights afforded to de facto couples were extended to homosexual couples under the commonwealth Coalition government of the Hon. John Winston Howard OM, AC, and I think it is entirely reasonable that we do not seek to further intrude on those rights.

In my opinion, this register merely circumvents the cohabitation requirements to constitute such a status. In good reason, we must acknowledge that these are not marriages and they never will be, regardless of whether the couple is heterosexual or homosexual. This relationship status of two registered people is designed as a security for couples under the law, without the added responsibility and obligations of a marriage. In fact, the bill states that a registered relationship becomes void upon one or both of the partners entering into a marriage, according to the commonwealth Marriage Act. To me, this makes sense.

What cannot be tolerated is a system of registration which tries to circumvent the commonwealth Marriage Act and, by extension, the constitutional power over marriage matters, which remains the exclusive domain of the commonwealth. With those words, I will not oppose the second reading of this bill.

The Hon. R.L. BROKENSHIRE (10:27): I rise briefly to speak on the Relationships Register (No 1) Bill. I have already spoken on the gender identity bill and also on the adoption bill, and my

colleague has spoken on the surrogacy bill. I am personally amazed that we are even in this parliament today with a focus and priority on four, effectively, same-sex bills. That is what we are here for. The House of Assembly is up and they are not coming back. Even if amendments to any of these bills are passed today, my colleagues in the lower house have said that they are not coming back and that they will deal with them next year.

I shake my head to think that we are here today, in an optional week, focusing on four same-sex marriage bills when we have an economy that is in disarray. We have some of the highest employment problems in Australia, an electricity supply that is unreliable and electricity prices that are the highest in the world, and this is the priority of the government. These are government bills.

These days we seem to be dealing with more and more minority issues, as opposed to majority issues that the silent majority of people out there want us to actually deal with. We seem to be focused on political correctness and the fact that perhaps there is some political support for the situation as some perceive it to be, including from cabinet because these are cabinet bills. That is what they are. They are not private members' bills: they are cabinet bills, and I will be doing everything I can to explain just where the priorities of this government are as I travel around this state over the next 18 to 20 months prior to the election.

The absolute majority of people, the silent majority of people, are sick and tired of political correctness, of minority-focused interests and situations and they want to see this state and this government focus on the things that count for the majority of people. I cannot believe that we are doing this bill today when we have not had a national debate on civil union: that should come first. There should be an opportunity for uniformity around civil union across Australia, not state by state in some de facto way, bringing in bits and pieces of legislation that may accommodate certain situations in this state that are not accommodated in other states. Rather, we should be asking for a federal debate on civil union.

We also still have the matter of a plebiscite to deal with, a plebiscite that the federal Liberal government have a mandate to bring to the people. Interestingly enough, a lot of people feel intimidated by a well-structured minority group internationally that is financially cashed up and wants to push its agenda—and, by the way, it is a smaller group within the group because not all of that group supports this. Having said that, there is a mandate for a plebiscite.

I believe that there is a process and an order: (1) a mandate for a plebiscite; (2) the opportunity, nationally, to be able to speak for an option of a civil union, which we have not even had, and then to consider subsequent pieces of legislation from that. Again, it amazes me that we are here today and that this is the priority of the state Labor government, and I, for one, will be opposing the third reading of this bill.

The Hon. J.M. GAZZOLA (10:31): For the record—and it should not be any surprise—I will be supporting the four bills and wish to thank those who have contacted my office expressing either their support or opposition.

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) (10:31): I was not going to speak on the bill but, on reflection—and I thank the Hon. Rob Lucas for his contribution where he went through when this has come up before—so that in the future I can reflect on my views at this time, I thought I would place them on the record. Very briefly, the issues we will be dealing with this week in this bill and the ones to follow boil down, for my mind, to fairness and equality. I am pretty certain that in years to come we will look back at debates such as these, on these issues that effectively remove discrimination, and wonder what all the fuss was about. With that, I indicate my strong support for this and the three bills that follow.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (10:32): I believe that all honourable members who wanted to participate in this debate have done so, so I rise now to close the second reading. I would like to thank the members for their contribution to this important debate. The Relationships Register (No 1) Bill 2016 will bring South Australia into line with the Australian

Capital Territory, New South Wales, Queensland, Victoria and Tasmania, by creating a relationship register that recognises people in South Australia who live in marriage-like relationships.

The bill will enable South Australian couples who are unmarried, whether they are in heterosexual or non-heterosexual relationships, to have their relationships registered with the state government. There are several benefits to this change. The first benefit is that couples will have legal certainty and protection guaranteed for their relationships. This will apply to all South Australian law, as well as under federal legislation, owing to the effect that the commonwealth Acts Interpretation Act, which allows for state-based registers to be recognised for the purposes of federal law.

The second benefit is that interstate and overseas relationships will be properly recognised under our existing state legislation. This will ensure proper recognition of partners married overseas or registered under interstate or overseas civil union or partnership scheme. This will ensure that the awful situation that arose for Mr Marco Bulmer-Rizzi, with the passing of his husband here in Adelaide, will not happen again. The third benefit is that South Australian couples will have an avenue to register their relationship and their love for each other.

While the process is, of course, voluntary, the significance of these three benefits cannot be overstated. This is all the more so for same-sex partners who are not able to marry under the laws of this country. Indeed, some couples will continue to use the register in preference to marriage, even if the law does change, and that is all well and good. The registration of relationships gives partners the peace of mind and security in the knowledge that their relationship cannot be questioned and that it will be recognised in law. Surely, one of the most important things our law should do is recognise, protect and honour the love that people have for each other and not treat them as second-class citizens. Again, I thank honourable members for their contribution and I commend the bill to the house.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. D.G.E. HOOD: I have a few questions on clause 1. Firstly, how many similar provisions exist in other states? How many relationships registers are there and in which states?

The Hon. I.K. HUNTER: I will read out the second paragraph again from my closing speech. The Relationships Register (No 1) Bill 2016 will bring South Australia into line with the Australian Capital Territory, New South Wales, Queensland, Victoria and Tasmania.

The Hon. S.G. WADE: As a supplementary to the Hon. Mr Hood's question, in what year did the Australian Capital Territory establish a register? I understand that there was commonwealth action against previous ACT legislation which was found to be inconsistent with the Marriage Act, but are we aware of any action by the commonwealth in relation to the ACT register?

The Hon. I.K. HUNTER: My advice is that, to our knowledge, there has been no commonwealth action against the ACT register. The honourable member is quite right, I think. The ACT passed law for, essentially, marriage and there was commonwealth action against that but nothing that we are aware of in terms of the register. I do not have the year in front of me in my notes, but I will come back to the honourable member with that.

The Hon. D.G.E. HOOD: Following on from that, does the government have figures on how many couples have taken up the opportunity to register their relationship in those states? Is there any data available?

The Hon. I.K. HUNTER: I do not have that data but, again, I can make inquiries of the relevant jurisdictions for the honourable member and bring that back.

The Hon. D.G.E. HOOD: I have a few more questions at clause 1. I note for the record that I do not intend to delay the committee, but there are a few legitimate questions on this issue that will not take a great deal of time. Could the minister outline for the chamber how the relationships register will differ from marriage in a legal sense?

The Hon. I.K. HUNTER: My advice is that registered partnerships will attract the same legal status as domestic partners currently do under the Family Relationships Act, which of course is a South Australian act passed by this parliament.

The Hon. D.G.E. HOOD: I thank the minister for his answer. I understand that that is the case, but I was therefore wondering how that then differs from marriage.

The Hon. I.K. HUNTER: My advice is that it is probably the obvious situation: a marriage currently defined under the federal Marriage Act is between a man and a woman only. In our state legislation, the Family Relationships Act effectively translated what used to be called 'de factos' into 'domestic partners', and registered relationships, under this current bill, do not have to be between a man and a woman, they can be between heterosexual couples or non-heterosexual couples.

The Hon. D.G.E. HOOD: I have two more questions on clause 1. The government has indicated in the second reading speech that only relationships from certain jurisdictions will be recognised under the proposed regulations, and the Hon. Mr Lucas touched on this in his contribution. I wonder if the minister can provide exactly what jurisdictions will be recognised under the proposed regulations?

The Hon. I.K. HUNTER: My advice is that those regulations have not currently been drafted, but they will be modelled on the Victorian model where they set certain criteria and established that countries such as the UK, Ireland and Canada will qualify. Any regulations, of course, that are drafted will be subject to the Legislative Review Committee process, as is normal.

The Hon. S.G. WADE: I have questions on an issue, but I do not know if the Chair would rather I deal with that under section 26 which, I understand, is the relevant clause?

The CHAIR: We do not have an opportunity to question each clause and, as you know, there are no amendments, so I will be seeking an indication of any clauses you want me to stop at.

The Hon. D.G.E. HOOD: Thank you, Chair. As I said, I only have a couple of questions on clause 1, and this is more by way of supplementary to my previous question. We could probably guess the answer to this, but I would like the minister to clarify. The reason I asked about the specific jurisdictions is that, as the Hon. Mr Lucas alluded to, there are varying laws about what is recognised as an overseas marriage. For example, in some countries, they allow what we would consider underage marriages, that is, 16 year olds to be married, even in South America, which surprised me when I learnt that. In regard to somebody who is married in a South American country, for example, a 16 year old, would that be a recognised registerable relationship under this bill should it become an act?

The Hon. I.K. HUNTER: Regardless of the issue about the regulations and what model we will be adopting, I draw the honourable member's attention to part 2—Registered relationships, Eligibility for registration, and any partnerships recognised under our legislation must meet these requirements. Clause 6(1)(a)(i) to (vii) provides:

> (i) that the person wishes to register the relationship;
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> (ii) that the person is in a relationship as a couple with the other person;
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> (iii) that the person is not married;
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> (iv) that the person is not registered under this Act or a corresponding law as being in a relationship or a corresponding law registered relationship;
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> (v) that the person is not in a relationship as a couple with a person other than the other applicant;
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> (vi) that the person does or does not reside in South Australia;
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> (vii) that the person is not related to the other applicant by family; and
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> (b) evidence of the identity and age of each person in the relationship…

So, there is some comfort to be had there for the Hon. Mr Hood in terms of what sort of relationships would attract that mutual recognition.

The Hon. S.G. WADE: Mr Chair, by the way the debate is proceeding, I take it that we are going to consider this issue at large?

The CHAIR: That is right.

The Hon. S.G. WADE: With all due respect, minister, I think the Hon. Dennis Hood's question is really in relation to relationships that have already been recognised in other jurisdictions. My understanding of the bill is that the criteria that you brought to the attention of the council in relation to clause 6 are criteria for relationships to be registered under this bill. So, the Hon. Dennis Hood's query in relation to those that are recognised, shall we say by reference, would not necessarily meet those criteria?

The Hon. I.K. HUNTER: The Hon. Mr Wade is quite right, of course. I draw the attention of the Hons Mr Wade and Mr Hood to part 4—Recognition of corresponding law registered relationships. Clause 26, which the Hon. Mr Wade alluded to earlier, provides:

> (2) For the purposes of subsection (1), the general requirements for a corresponding law are that, to be registered or formally recognised under that law, a relationship—
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> (a) must be between 2 adult persons; and
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> (b) must have been entered into consensually; and
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> (c) must not be between persons who are related by family; and
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> (d) must not be entered into by a person who is already in a union that is recognised as a marriage under the Marriage Act 1961 of the Commonwealth; and
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> (e) must not be entered into by a person who is already in a relationship that is registered or formally recognised under that law.

The Hon. S.G. WADE: That brings me to a question in relation to clause 26(2). When the clause says that, to be a corresponding law, the law needs to meet the following general requirements, does that mean that the law must meet all those requirements? For example, subclause (2)(a) provides that the relationship 'must be between two adult persons'. If a law of another jurisdiction allows for a marriage below the age of 18—which is what we say an adult is in this bill—does that mean that that law would not be a corresponding law and therefore that relationship could not be recognised?

The Hon. I.K. HUNTER: My advice is that that is correct, because each of those separate subclauses operates with the modifier 'and' at the end of the sentence.

The Hon. S.G. WADE: That being the case, minister, I wonder whether we might be excluding a large number of jurisdictions that might not otherwise raise concern. The one that comes to mind is Spain, which has increased the age of marriage from 14 to 16, but that is still not within subclause (2)(a). Therefore, presumably, their law could not be a corresponding law under this bill. Other jurisdictions that come to mind, even within the Western realm, include Ukraine, which has a marriage age of 14, and Estonia, which has a marriage age of 15.

The Hon. I.K. HUNTER: The Hon. Mr Wade may very well be correct, but my understanding and my advice is that the registration process we are trying to set up still restricts it to two adults. For that purpose, two non-adults married somewhere else, my advice is, would not be recognised for the purposes of this act.

The Hon. S.G. WADE: My reading of the bill is not that individual relationships are recognised or not recognised; rather, other laws either meet the general requirements for a corresponding law or do not meet the general requirements for a corresponding law. My understanding is that a Spanish couple who married at age 60 would not be able to have their relationship recognised under this bill because the law under which they were married is not a corresponding law because it allows people who are not adults to be married.

The Hon. I.K. HUNTER: My advice is that that is probably true, but it would be seen by the registrar more as an interpretive measure. The issue would be: are the applicants at the time of their application adults (for our purposes, over the age of 18)? In that case, the registrar would probably use their discretion in the case of an application. Alternatively, if that was not the case, there would

be some avenue through the courts. The act does purely countenance registered partnerships for adults.

The Hon. S.G. WADE: I respect that and I support that intent of the bill, but I draw the attention of the committee to the fact that a large number of jurisdictions in the world would be excluded by the current drafting of the bill. In that respect, the issue is not merely the minimum marriage age or, if you like, the general marriage age. There are a large number of jurisdictions, particularly in the United States of America, that allow marriage between people below the age of 18 with parental consent. I am not expecting a response to this issue, but I flag that that law, also, would not be a corresponding law under this bill.

I would suggest that there will be a lot of people who, like the visiting British couple, will not be able to achieve the status of a corresponding law. What I would like to ask as an explicit question is: considering 26(2) has general requirements for a corresponding law, and it seems to me that is a statutory condition on the regulations under subclause (1), would the declaration of a law, as a corresponding law which does not comply with those requirements, be void or legally challengeable with or without a disallowance motion of either house of parliament?

The Hon. I.K. HUNTER: There are two points to be made here: one going to the more general question asked by the Hon. Mr Wade, and the other to the more explicit one. This register is based on and modelled on the registers in Victoria and New South Wales. To our knowledge, to the knowledge of my advisers, there has been no particular problem raised in those jurisdictions by the situation contemplated by the Hon. Mr Wade in his questioning. In any case, in terms of the recognition or declaration of a corresponding law in a corresponding country, my advice is that law would have to meet the general requirements for it to be listed as a corresponding law.

The Hon. S.G. WADE: As a matter of law, if it did not meet those requirements, would the regulation be null? I am not sure what the legal status would be. Would the regulation be invalid with or without a disallowance?

The Hon. I.K. HUNTER: My advice is that, in fact, a corresponding law would not be listed should it not meet those general requirements. The Hon. Mr Wade is asking the hypothetical question of what if, for example, a country that has a law that does not meet these basic requirements under subclause (2) is listed, but my advice is it could not be listed if it does not meet these basic general requirements.

The Hon. S.G. WADE: I will take the minister's answer at face value but, to be frank, drafters do make mistakes from time to time. My understanding of the bill is that if a government purported to make a regulation and it did not meet subclause (2), it would be invalid. That invalidity may not be recognised until somebody chose to challenge it in a court or similar, but in that sense it would not actually require an action of this parliament, in either chamber, to disallow it.

As I said, I support the bill. I have supported non-discrimination in relationship recognition a number of times before, but I would flag to government that I think this might well be a provision that we might need to revisit over time. I appreciate that, right around Australia, these pieces of legislation are still quite young, but I suspect this is an area that we may well need to revisit.

The Hon. T.A. FRANKS: Could the minister clarify, is it not the case in Australia that one can get married between the ages of 16 and 18 with a court order if the other person in the proposed marriage is an adult?

The Hon. I.K. HUNTER: My advice is that is correct, but a court would have to make a determination to give permission for that based on exceptional circumstances.

The Hon. T.A. FRANKS: I have a final question. It is customary for members of parliament to declare a self-interest when one votes on a bill. At one point, I thought the minister might declare a self-interest, but of course this bill applies to us all regardless of our sexuality, so I would like to declare my self-interest. As I vowed never to marry again, this bill might indeed be something that I will be looking forward to, in registering a relationship rather than engaging in another marriage. I certainly do not wish to marry again, but I certainly hope that I will fall in love again and perhaps be able to avail myself of these particular provisions given that circumstance. I ask the minister: is he

looking forward to his marriage to his long-term partner, Leith, being recognised in the South Australian laws?

The Hon. I.K. HUNTER: I thank the Hon. Tammy Franks very much for allowing me an opportunity to stray away from my ministerial responsibilities. I am, of course, legally married in the country of Spain. It will be a welcome situation for me to be able to utilise that marriage certificate here if I ever needed to prove my relationship to my husband for any purpose. To date, I have rarely had cause to agitate this issue with authorities—I have in the past, but less and less these days. I will be very grateful, should this bill pass, that my marriage certificate, valid in Spain, would be recognised here for the purposes of this act.

The Hon. D.G.E. HOOD: There is one last topic for me to explore with the minister in relation to clause 1. I wonder if the minister will bear with me on this, because I am thinking it through as we go. The original impetus for this bill was, as I understand it, the unfortunate incident involving the couple from the UK, where one of the gentlemen died in South Australia and it created legal headaches for his partner. Can the minister explain to the chamber the difference in that circumstance should this bill pass?

The Hon. I.K. HUNTER: In the situation of Mr Bulmer-Rizzi which I referred to before, essentially what would happen is that, through the actions of this legislation, he would have the same legal status in South Australia as domestic partners do. That means he would have the ability to have his registered relationship recorded on the death certificate, which would then give him some control over his husband's remains and be able to make decisions in relation to the repatriation of the husband's body back to his home country for burial—the ashes, in this case—and suchlike. It would give recognition to his ability to act as any other partner or married person could in relation to their partner for the purposes of our state legislation.

The Hon. S.G. WADE: Minister, would that apply right across state legislation? For example, I am thinking of what might not be an uncommon situation, where tourists might find themselves in a situation requiring medical attention and the consent of their next of kin being sought.

The Hon. I.K. HUNTER: My advice is yes, exactly as it would for other domestic partners.

The Hon. D.G.E. HOOD: I thank the minister for his answer. By way of supplementary to the minister's answer, in that case, would we see a situation where it is not required—I think I am right in saying this—that people pre-register their relationship, and it would be recognised after the event?

The Hon. I.K. HUNTER: My advice is, yes, it would be automatic recognition. The instance of pre-registration means that you would have to have full knowledge, as an overseas tourists coming to South Australia, of the legal situation that pertains here. Some people might do that research; I would assume that the majority would not. So, we think asking them to pre-register would be overly cumbersome and burdensome for our tourist population.

The Hon. R.I. LUCAS: I want to return to some earlier questions that the Hon. Mr Hood raised, and the minister responded to, in relation to the amendments to the definition of 'domestic partners'. The current definition of 'domestic partners' in this legislation, as outlined in the Domestic Partners Property Act 1996, which is complicated, provides:

> domestic partner means a person who lives in a close personal relationship and includes—
>
> (a) a person who is about to enter a close personal relationship…

Which is interesting in itself. It continues:

> (b) a person who has lived in a close personal relationship;

It also defines 'close personal relationship':

> …means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—
>
> (a) the relationship between a legally married couple; or
>
> (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind;

There is a note underneath the definition, which states:

> Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

This legislation seeks to amend the definition of 'domestic partner' and 'close personal relationship' to introduce the element of registered relationships into the definition. In response to the earlier questions, clearly the definition of 'domestic partner', which necessarily involves the definition of 'close personal relationship', is now in a number of pieces of state legislation right across the board, too many to refer to. If this legislation passes, is it correct to say that someone with a registered relationship under this legislation will have the same legal rights and entitlements in South Australian law as a married couple?

The Hon. I.K. HUNTER: My advice is that partnerships recognised for the purposes of this legislation will not be seen as a marriage. They will be given the same status and equivalent rights as domestic partners. My understanding is that the main definition of 'domestic partners' sits under the Family Relationships Act.

The Hon. R.I. LUCAS: I understand that, but my question is, for example, about a whole range of issues that relate to access to medical treatment, inheritance and all the other issues that are raised in relation to legal rights and entitlements of couples. Is it not correct that a relationship registered under this proposed legislation will have all those same legal rights and entitlements that a married couple would have in relation to those particular areas?

The Hon. I.K. HUNTER: My advice is that some acts do contemplate domestic partnerships having rights accorded under those acts and some acts do not. Some acts might reference marriage and domestic partnerships or marriage alone, so the rights that are accrued to someone who is in a registered relationship would depend on how each individual act nuanced the rights that are available under that legislation.

The Hon. R.I. LUCAS: Clearly, this package of legislation will address issues such as surrogacy, adoption and those sorts of things, so that is part of the package. Putting aside those specific issues which we are going to address one way or another in this package of bills, can the minister give us an example of a legal right or entitlement that a married couple has that a registered relationship under this proposed process would not have?

The Hon. I.K. HUNTER: I have examined the Hon. Mr Lucas's question with my advisers and I cannot currently come up with any examples to give him today.

The Hon. R.I. LUCAS: I do not personally intend to prolong the debate on this issue any longer, other than to note that, in discussions I have had with people in relation to forming a view on the legislation—and I am not a lawyer and neither is the minister—the point of view put to me by some lawyers is that, if you look beyond the package of legislation that we are looking at, should this legislation pass, someone who registers a relationship under South Australian law will essentially have all the same legal rights and entitlements as a married couple.

The Hon. R.L. Brokenshire: Of course they do.

The Hon. R.I. LUCAS: That is a separate issue. It is not going to be defined as marriage under this particular legislation; that is not the particular issue I am prosecuting in this case. The point here is that it is possible that this parliament in this legislation may well provide a couple with all the issues that have been raised over the years, that is, someone is not consulted in relation to medical treatment or someone is not entitled to a particular inheritance or to prosecute a case in relation to an inheritance issue—all those sorts of issues that members of this parliament have debated over many years as to whether or not there should be legal rights and entitlements.

Essentially, with the passage of legislation over the years and with this particular legislation, a couple who registers a relationship will have the same legal rights and entitlements as a married couple for all those issues. There will still be some who will say, 'We still want to be referred to as a married couple and be recognised as a marriage.' I accept that is their view, and that is a separate issue and not for this particular debate directly.

However, in relation to the argument that there would be ongoing discrimination about various forms of relationships, the legal advice given to me is that this legislation that the parliament is considering passing will give that registered relationship the same legal rights and entitlements as a married couple, and I think that is an important part of it. As I said, I am prepared to support the second reading of the legislation and I am likely to support the third reading of the legislation because I think couples, however they are constituted, will be able to argue that they are being treated in the same way.

Some of us will draw a line differently when we look at other parts of the package of legislation when it comes to issues of adoption, surrogacy or whatever else. We might draw the line differently in relation to that but, when it comes to the range of other issues that this parliament has debated in the past in terms of inheritance, access to medical treatment, the right to be consulted about family disputes and other issues, registered relationship couples—if we can refer to the process in that way—will have the same legal rights and entitlements in South Australia as a married couple. I place on the record the advice that I have received and note the minister's answer, which is not inconsistent with that. From my viewpoint, I do not intend to delay clause 1 any longer on that issue.

The Hon. I.K. HUNTER: On reflection during the Hon. Mr Lucas's contribution, I think he is largely right, but I suspect we have already done that in previous legislation. When we passed the Statutes Amendment (Domestic Partners) Bill, we provided those rights, in many instances, to South Australians who were in domestic partnerships. Today's bill, I suppose, extends that a little bit further to recognise relationships entered into in registers in those other jurisdictions that I referred to earlier, and it also provides an ability for those domestic partners in South Australia currently to then go that extra step of registering their domestic partnership. In essence, I think the Hon. Mr Lucas is quite correct.

The Hon. R.I. Lucas: And you can get a certificate.

The Hon. I.K. HUNTER: That is right, yes.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

The Hon. D.G.E. HOOD: I have a simple question for the minister, I expect. Clause 6 talks about fees and whatnot with respect to registering relationships under this bill. Have the fees been determined yet and, if so, what are they?

The Hon. I.K. HUNTER: My advice is that we have advice from the registrar that the fees will be consistent with the current fees that apply to similar registrations. I do not have the current fee structure in front of me. I am advised that there is a slight increase year on year as we pass the budget bills.

Clause passed.

Clauses 7 to 17 passed.

Clause 18.

The Hon. D.G.E. HOOD: This clause deals with who might have access to the register of relationships. Under this bill, there is a requirement for the registrar to keep a record (which makes perfect sense) of who has registered a relationship and who has not. This particular clause talks about who might want access and the registrar deciding if they will grant access and under what circumstances. I am just wondering, from the government's perspective, who it might envisage might want access to the register?

The Hon. I.K. HUNTER: My advice is that this is exactly the same provision that exists in the Births, Deaths and Marriages Registration Act currently, so, at clause 1(a), anyone who has an adequate reason to apply, but the registrar, as always, has discretion in how they respond.

Clause passed.

Clauses 19 to 25 passed.

Clause 26.

The Hon. D.G.E. HOOD: The question I had prepared here the minister has answered in one of his previous answers.

Clause passed.

Clauses 27 to 31 passed.

Schedule.

The Hon. D.G.E. HOOD: I think this is my last question, but there may be one more. There is some interesting wording in this clause and, as we have all agreed, I am not a lawyer and nor are others here. Part 4 of the schedule talks about a person being treated unfavourably because of their particular status. Is there is a definition provided of the term 'unfavourably' and, if so, could the minister please explain it?

The Hon. I.K. HUNTER: My advice is that there is no change in terms of the definition of 'unfavourable'. I am advised that this provision tries to contemplate intersex status—which the current Equal Opportunity Act does not—and we are trying to make the current Equal Opportunity Act consistent with the commonwealth legislation.

Schedule and title passed.

Bill reported without 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) (11:16): I move:

That this bill be now read a third time.

The Hon. D.G.E. HOOD (11:16): I do not want to delay the chamber but I indicate that we will be opposing it. We will not call 'divide'; we do not want to delay the chamber, but that is our position.

Bill read a third time and passed.

ADOPTION (REVIEW) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 December 2016.)

The Hon. J.M.A. LENSINK (11:17): I rise to make some brief remarks in relation to this bill. My colleague the Hon. Stephen Wade provided the Liberal Party position on the parts which are not a conscience vote for honourable members. Having read through a range of material on this matter, I think adoption certainly is an area that we all understand has been fraught for many years. Clearly, the best interests of the child were not always considered in the past and a number of changes were made. I will not go through all of those again because I think they have been more than adequately covered.

I was pleased to read in the report of Professor Lorna Hallahan that the matter of people's identity was given significant consideration. I think this is something that probably has been overlooked in the past. The paternalistic attitude of authorities has been that certain people under their particular circumstances, and perhaps their relationship status, would not provide the sort of home that good folk might think is in the best interests of the child, yet identity is one of the areas that needs to be given very significant consideration. I think a lot of people go through searches for their heritage. I have seen that amongst many people who start researching their family history and so forth in many areas and it is a very important consideration.

Clearly, the primary consideration needs to be the best interests of the child and, in the first instance, matters of safety must be absolutely paramount. It is a complicated area and there has

been some debate particularly on the conscience matter of whether same-sex couples are appropriate parents, to which I would say that they clearly are.

We have had this highlighted through a couple who live not far from me in the Adelaide Hills, Shaun and Blue Douglas-Galley, who adopted children from their birth country in the UK. They arrived in Australia in October 2013 and have not been able to be legally recognised under our law because of our particular laws here. I commend them for being public about their situation which must be very difficult for them.

In reality, there are not a lot of children available for adoption. I think the member for Hammond outlined that in his contribution about the process. It is certainly something that my husband and I looked into and, having been through three years of IVF, we decided that was not going to be the route we chose to take because it would have been more trauma on top of the IVF, with the waiting periods and so forth. Also, because of our advanced age, we would not have qualified for some of the overseas countries.

I was disappointed to see that the House of Assembly made it more difficult for single people to adopt. The reality in a lot of the adoptions by single people would be that they would be people who have been caring for those children for some time in any case, and I think that is very disappointing that that is not in this legislation.

The member for Waite's comments just blew me away, and I cannot let them go by without responding to them in some way, that there is no nice, easy and convenient path for single people who find it an inconvenience to get into a relationship. I think he needs perhaps to spend more time with some of his constituents to discover that the reality of life these days is quite different. It has spawned a whole range of TV series which are well watched in the popular culture, be it *Girls* or *Sex and the City* and a whole range of things, which explain what modern life is like for a lot of people in single relationships.

Having been one of those people for some time, we do not appreciate the smug commentary from people in straight relationships with children judging those of us who might not have been in those relationships, nor does the gay community appreciate that sort of smug judgement, thank you very much. With those remarks, I indicate that I will be supporting the substantive bill but also the conscience elements.

The Hon. T.J. STEPHENS (11:22): I rise to speak to the Adoption (Review) Amendment Bill. I indicate that I will be supporting the bulk of this bill as per the Liberal Party position. There are many aspects of this bill which have merit and should be welcomed. These include the sensible reforms in the areas of adult adoption, retention of the child's name and the discharging of adoption orders. The Hon. Mr Wade has carriage of this bill for the Liberal Party and he has already spoken to the detail.

There are a few issues with certain clauses that I wish to address—firstly, the issue of an adoptee's right to veto information requests by birth parents. The honourable member for Adelaide in another place negotiated with the government on an amendment which protects the legislated privacy of individuals adopted prior to what is termed 'open adoption', that is, those adopted prior to 17 August 1989. The government's amendment, as it now appears in clause 19, gives power to the chief executive to determine whether it is appropriate for information not to be released based on whether the person was adopted prior to 17 August 1989. An astute question was raised by the member for Adelaide regarding whether this determination by the chief executive is subject to appeal.

The minister resolved to discuss this with the Attorney-General and to communicate the determination to this place. My question to the Minister for Sustainability, Environment and Conservation is whether the decision is subject to appeal and what the mechanism for appeal is. I would like this to be answered in his second reading summing up. Secondly, I address the issue of a qualifying relationship in regard to prospective adoptive parents. I have a clear and simple view: I believe that every child has a right to a mother and a father.

As the Hon. Mr Hood has pointed out in his contribution, this is a family arrangement, I think, which best serves a child and I believe it is also the way nature intends. However, I also acknowledge that there are family arrangements that fall short of this aspirational ideal for whatever reason,

whether it be divorce or death, and those parents in those situations do an amazing job given the circumstances.

Adoptive parents are altruistic arrangements on the part of the parents insofar as they have biological interest in raising this child. However, there is an emotional need that is filled for both parents and child. Adoption mirrors the ideal state of the family unit and the law should reflect this. The state should not be removing children from deficient family situations where the child is unwanted only to put them in an equally deficient family situation where the needs of the child are not met. It is for this reason that I cannot support clause 5 in its current form.

I acknowledge that Liberal members are able to vote according to their conscience on this specific clause and, whilst it remains a substantive part of the bill, I cannot support it. My understanding is that the Hon. Mr Brokenshire may have an amendment seeking to change this clause, and I will look at that during the committee stage. I implore all members in this place to think carefully before voting.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (11:25): I rise to make some very brief comments and repeat some of those my colleagues have made. As the Hon. Terry Stephens and the Hon. Michelle Lensink mentioned, the Hon. Stephen Wade has carriage of this bill for the Liberal Party. I support the Liberal Party components of the bill that are not conscience; however, I will not be supporting the conscience aspects of this particular bill.

I do not wish to talk ill of anybody in our community, but in my traditional view of the world and my traditional view of a family, my traditional view of people who should perhaps be given priority in adoption still holds really firm for me. I am reminded of cousins of mine who were for many years in the queue on a waiting list to eventually adopt a child from overseas. I cannot support some of the aspects of the bill that are conscience, but certainly I am very happy to support those that are not. I look forward to the amendments that may be on file so that we can perhaps address some of the concerns I have, although I suspect that will be difficult.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (11:27): I rise to close the debate on the Adoption (Review) Amendment Bill. I would like to thank honourable members for their thoughtful contributions to the debate. This government bill makes significant amendments to the current Adoption Act to implement the recommendations of the extensive review of adoption undertaken by Associate Professor Lorna Hallahan. It modernises the act to ensure the optimum conditions for adoption practice in South Australia into the future.

I do thank those members who have indicated broad support for the bill and the many important reforms it implements. A number of members have spoken in relation to two aspects of the bill here and also in the other place, including the provision for same-sex couples to be eligible to adopt on par with other couples and the removal of adoption information vetoes. The bill provides for same-sex couples to be eligible to adopt on par with other couples. This is subject to a conscience vote for government members, which will occur at clause 5, in respect of the definition of 'qualifying relationship'.

The bill defines a qualifying relationship to mean a relationship between two persons who are living together in a marriage or marriage-like relationship, irrespective of their sex or gender identity. If that definition is supported by members, the flow-on effect will be that same-sex couples will be treated just like any other couple in respect of their eligibility to adopt a child, including being subject to the same rigorous assessment process set out in the regulations.

In terms of the vetoes—and a number of members have spoken about the issue of adoption information vetoes and the impact of the proposed removal of information vetoes on some adopted persons—it is the government's intention that the department will contact all veto holders during the five-year transition period to offer them support to prepare for the removal of their veto. I am confident that most veto holders will benefit from that support. However, the government acknowledges the concerns of some adopted persons who are worried about the release of identifying information to the other parties to their adoption.

Amendments made in the other place have resulted in the inclusion of additional discretion to the chief executive to withhold access to the adoption information of an adopted person born before 17 August 1989 where the chief executive determines that its disclosure is not in the best interests of that adopted person, taking into account the adopted person's rights and interests. This is provided for in clause 19 of the bill.

Adopted persons will have an opportunity to raise their concerns with the department during the five-year transition period and, as outlined previously, will be offered relevant support if an adopted person remains of the view that disclosure of their identifying information would not be in their best interests. They may express those views to the department. The exercise of the chief executive's discretion will be subject to guidelines to be issued by the chief executive under section 27(6), I am advised.

The Hon. Terry Stephens asked a question of me a few moments ago about appeal processes. The scheme established in this bill aims to allow the department to work with current veto holders during the five-year transition period in respect to addressing concerns about the release of identifying information. In respect of adopted persons who are currently eligible to hold vetoes, it provides for information to be withheld where its release is not in the adopted person's best interests.

There is currently no provision for appeal in respect of the chief executive's discretion under section 27(5), and no such provision has been added by way of the bill. A person aggrieved by a decision of the chief executive to release or withhold information could make a complaint to the Ombudsman's office or seek judicial review of that decision.

Following debate in the other place, consideration was given to establishing a legislative provision for appeal in respect to decisions made by the chief executive under 27(5)(c). However, specific provision for such appeals was not considered feasible because of the discretionary nature of section 27(5). We do not wish to establish an adversarial system in regard to access to adoption information. We are trying to establish a system that aims to address the legacy of past adoption secrecy in a compassionate way that considers the best interests of all parties but, particularly, the adopted persons. I commend the bill to the house.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. T.J. STEPHENS: Minister, I have a couple of questions so that I can be totally clear. How many children are granted adoption to adoptive parents in South Australia per year? Can you give me an indication of the people who are on a waiting list for adoption, what numbers of people are currently waiting to adopt in South Australia?

The Hon. I.K. HUNTER: My advice is that the number of children adopted per year who are South Australian children surrendered for adoption is between zero and three per year, in the last few years. There are 14 intercountry adoptions, and the number of couples in the pool of adoptive parents is about 150.

The Hon. D.G.E. HOOD: My question to the minister is: if this bill passes, is it correct to assume that both those in a registered and an unregistered same-sex relationship (given the bill that has just passed in this place) will be eligible to apply for adoption?

The Hon. I.K. HUNTER: Clause 5 provides:

qualifying relationship means the relationship between 2 persons who are living together in a marriage or marriage-like relationship (irrespective of their sex or gender identity);

The Hon. D.G.E. HOOD: Is there any qualifying period, for those couples to qualify?

The Hon. I.K. HUNTER: As I understand it, regardless of the status of your relationship, as long as you meet the qualifying requirements the prescribed period is five years.

The Hon. R.L. BROKENSHIRE: Prior to this legislation being introduced by the government, did the government have a specific policy around facilitating and/or encouraging adoption? What was the government's situation regarding adoption?

The Hon. I.K. HUNTER: As best I can explain, the government's policy in regard to adoption in previous years, prior to the Nyland royal commission, was to pursue adoption when it was in the best interests of the child.

The Hon. R.L. BROKENSHIRE: If this legislation were to get through unamended, what is the intention of the government when it comes to the 150 couples who are seeking adoption (who have, I assume, been qualified as being eligible)? I would like some clarification on that. What would be the situation with those 150 regarding the priority for them to adopt, if there were to be a change of the legislation as proposed?

The Hon. I.K. HUNTER: My advice is that how the children are adopted is really done by determining what are the child's needs and then working out what the best placement, the best fit, is for that child with regard to the pool of potential adoptive parents. It is not a situation where you have a list and your turn comes up. In fact, it is not about the eligible couples; it is more about the requirements of the child, what their circumstances are, what their needs are, what connections they may have to their relinquishing parent and how they would be best positioned going forward.

The Hon. R.L. BROKENSHIRE: Just for further clarification on that, I take it that notwithstanding that there are 150 families that have been seeking adoption—and I foreshadow that I will ask what length of time some of those have been waiting—and so that we understand the answer exactly, is the minister saying that notwithstanding the 150 families at this point in time, heterosexual families, who have been waiting for adoption, it could be that a non-heterosexual family, if it were decided that the child was better suited with a non-heterosexual family, could come up the list over and above any of those 150?

The Hon. I.K. HUNTER: My advice is that we need to make a distinction between intercountry adoptions and local adoptions. It could be said that intercountry adoptions are more like a list in the way they work. My advice is the placement assessment is made by the jurisdiction that the child is coming from; therefore, anyone new going onto the list would not displace people who have been on the waiting list for some time in that regard. My further advice—even though the question has not been asked yet, it is bound to be—is that currently the only country that will allow children to be adopted by non-heterosexual couples is South Africa.

The Hon. R.L. BROKENSHIRE: Let's forget overseas adoption at this point in time and focus on adoption of South Australian children in South Australia. A massive number of three on average a year in the last few years—

The Hon. S.G. Wade: Zero to three; don't overstate it.

The Hon. R.L. BROKENSHIRE: Zero to three. Would there be any priority given to those people already seeking adoption in South Australia for South Australian children before any changes that may occur in this chamber today allow other options?

The Hon. I.K. HUNTER: My advice is that at this point in time there are only five couples who are looking to adopt locally (that is, from South Australia) so there is not a large waiting list. In any case, the previous information that I provided to the house stands: determinations are made on the best interests of the child, not in terms of the adopting couple. The child's best interests and needs are looked at and addressed and then matched to whoever might be waiting on the adoption list to give the child the best possible outcome.

The Hon. R.L. BROKENSHIRE: If there are only five South Australian couples waiting to adopt South Australian children, does the minister have any information as to how many South Australian couples were waiting to adopt South Australian children five or 10 years ago?

The Hon. I.K. HUNTER: I can only give an approximation based on the experience of one of my advisers. Up to about 10 years ago, the number of couples wanting to adopt locally was higher. It would have been in the order of—again this is just an approximation—20 couples.

The Hon. T.T. NGO: I have one quick question arising from the previous answers: can the minister tell the house how many children are on the waiting list to be adopted?

The Hon. I.K. HUNTER: There is no waiting list.

Clause passed.

Clauses 2 to 4 passed.

Clause 5.

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

Amendment No 1 [Broke–1]—

Page 5, lines 12 to 14 [clause 5(6), definition of *qualifying relationship*]—

Delete the definition of *qualifying relationship* and substitute:

qualifying relationship means the relationship between 2 persons who are living together in a union that is recognised as a marriage under the *Marriage Act 1961* of the Commonwealth or as *de facto* husband and wife;

The amendment is straightforward but, for the benefit of the committee, I will let everyone know that it relates to the definition of a 'qualifying relationship'. This amendment moves to delete the definition of 'qualifying relationship' and to substitute it with:

…qualifying relationship means the relationship between 2 persons who are living together in a union that is recognised as a marriage under the Marriage Act 1961 of the Commonwealth of Australia or as de facto husband and wife;

The Hon. T.A. FRANKS: I have a question for the mover (the Hon. Mr Brokenshire): would this define a qualifying relationship in the case of federal law reform for marriage equality as a same-sex couple, should that occur federally? Is that the case?

The Hon. R.L. BROKENSHIRE: I am dealing with the case as it is at the moment, and the case at the moment is not futuristic; it is realistic. The law of the Commonwealth of Australia is that marriage is between a man and a woman.

The Hon. T.A. FRANKS: The mover made his position on same-sex marriage clear—and I note that none of these bills today deal with same-sex marriage, but he said he opposed all four 'same-sex marriage bills currently before us' earlier on in the debate. Is he not here advocating for the rights of same-sex couples to adopt in the future should the federal laws change? Does he realise that there is an inconsistency in his position?

The Hon. R.L. BROKENSHIRE: No, there is no inconsistency at all. I make it very clear to the house that as long as I am in the parliament I will oppose same-sex marriage. You cannot deal with futuristic law and pre-empt situations. We will deal with that one if and when it comes, but at this point in time the fact is that only a man and a woman can marry in Australia. This is specific to the law of the day, not the law that some may hope to see in the future.

The Hon. I.K. HUNTER: The definition of 'qualifying relationship' in the bill, if it is accepted, simply means that same-sex couples will be treated on par with different-sex couples for the purposes of the Adoption Act. The amendment moved by the Hon. Mr Brokenshire effectively maintains the status quo and excludes same-sex couples from adopting. I must congratulate the Hon. Tammy Franks for her question to the mover of the amendment—

The Hon. T.A. Franks: I have another one.

The Hon. I.K. HUNTER: I am sure you do—because, in fact, I think she is right. Should the Hon. Mr Brokenshire's amendment get up, then when the federal government changes the Marriage Act it would automatically flow through, via the Hon. Mr Brokenshire's amendment, to mean that same-sex couples who are married, I presume, will be able to adopt anyway. We are trying to get there first through our 'qualifying relationships' definition at clause 5. I certainly will not be supporting the Hon. Mr Brokenshire's amendment. I do note that this is a conscience vote for members of the Labor Party.

The Hon. D.G.E. HOOD: I indicate that—and this is hypothetical, of course—should the commonwealth parliament decide to change their definition of marriage at some future point to include same-sex couples then, when and if that occurs, by that very action, same-sex couples will have access to adoption anyway. Regardless of whether the Hon. Mr Brokenshire's amendment passes or fails, the reality is that same-sex couples will be afforded those rights simply by changing the Marriage Act at commonwealth level. That remains to be seen; we will watch and see. Perhaps I will not get distracted by that, but we will see what happens in that regard.

With respect to the amendment that my colleague has moved, it will surprise no-one here to know that I will be voting for it and supporting the amendment, as did 16 members in the other place when an identical amendment was moved some two weeks ago when it was debated in the chamber. We have been through the reasons for that a number of times in this place and I will not labour those again except to say that I do firmly believe that it is to the benefit of a child, where possible, to have a mother and a father. I think they are complementary roles and both important in their own way. For that reason, I will be supporting the amendment.

The Hon. T.A. FRANKS: I have a further question for the mover of the amendment. Many members of this place have met a gorgeous family, Shaun and Blue Douglas-Galley and their two little boys, Joshi and Dylan. What will be the legal status of Joshi and Dylan if this amendment succeeds today? Will they have recognition of their two dads or will they be somehow orphaned?

The Hon. R.L. BROKENSHIRE: I believe that the honourable member had quite a bit to do with that particular matter at the time. The situation would be the same as it is, as I understand.

The Hon. T.A. FRANKS: Could the honourable mover outline the current situation as it is, as he understands?

The Hon. R.L. BROKENSHIRE: I think the honourable member is asking a question that she knows the answer to, because if I—

The Hon. T.A. FRANKS: I do; I am wondering if you do.

The Hon. R.L. BROKENSHIRE: Yes, because you put the legislation forward.

The Hon. T.A. FRANKS: No, I did not.

The CHAIR: Order! Let the honourable member answer the question without interference.

The Hon. R.L. BROKENSHIRE: As a point of clarification so I can better understand the question, I asked the member to explain. You talked about two particular young boys—

The Hon. T.A. FRANKS: That is right, Joshi and Dylan.

The Hon. R.L. BROKENSHIRE: —who I believe you may or may not have had in this chamber at some point in time.

The Hon. T.A. FRANKS: They have visited the parliament, but I do not think they have been in this chamber. They have certainly not been the subject of any legislation before this place.

The Hon. R.L. BROKENSHIRE: The legislation that I am putting up as an amendment is quite clear. At the moment, the situation is that same-sex couples cannot adopt—that is the situation at present. There is a change to that with respect to this legislation put up by the government regarding the definition of 'qualifying relationship' under clause 5(6). I am specifically moving an amendment that clearly says that 'qualifying relationship' means:

> …2 persons who are living together in a union that is recognised as a marriage under the Marriage Act 1961 of the Commonwealth or as de facto husband and wife;

It is that clear. It is a marriage between a female and male or a de facto relationship between a female and male.

The Hon. T.A. FRANKS: For the information of the mover, I shall clarify the situation that I asked him the question about, and he might like to have another go. The Douglas-Galley family moved here from the UK. They are a family headed by two males with two young boys. These boys were in the institutionalised care system in the UK and were adopted by this couple, Shaun and Blue, and taken from a life that would have been, in this state, residential care and given a loving family

home. They have moved to this state. What is their legal status, and how will this amendment affect their legal status?

The Hon. R.L. BROKENSHIRE: I am not privy to an adviser, which the government has. My understanding is not 100 per cent on this because this couple were able to do that under the law of another country. If the adviser is in a position to be able to clarify this through the minister, then I would seek that. However, I am not dealing with laws of another country here; I am dealing with the South Australian law, and what I am moving is very clear.

The Hon. T.A. FRANKS: I rise to indicate, with no surprise to the honourable mover, that the Greens will be opposing this amendment. I think it is sloppily worded, even if you do agree with the content. It actually provides the very opposite of what the member believes it provides. Indeed, it will open the way for same-sex couples to adopt children in the future, and I welcome Family First's progressive steps today towards that.

Certainly, the Greens have long stood for LGBTIQ equality, and we will be opposing this amendment. We also caution members who are not understanding the framework in which they operate when they move such an amendment is this. We are looking at a situation here that would stop a family currently in South Australia from having legal rights that protect the rights of the child. Joshi and Dylan deserve that protection, so that is why I will be opposing this amendment today.

The Hon. R.I. LUCAS: For the reasons I outlined in the Relationships Register (No 1) Bill, I will be supporting the amendment. However, in relation to the interesting discussion between the Hon. Ms Franks and the Hon. Mr Brokenshire, I am not a lawyer, but I can proffer the view that whatever the legal position is at the moment will be the legal position should the amendment pass, because this is seeking to reinforce the current legal position. Again, not being a lawyer, I cannot offer any legal advice to the Hon. Ms Franks, and I do not intend to, but I can offer an observation; that is, if the amendment is passed, it will just be the existing position.

Whatever the legal status is of the family in question that the Hon. Ms Franks is speaking about, and I have no direct knowledge of their personal circumstances, the status will remain the same. Should this particular amendment pass, it will maintain the status quo in terms of the state legislation as it would relate to anybody.

The Hon. K.L. VINCENT: Given that what is in the bill is the recommendation of a very comprehensive review that was done of the state's adoption law—which found that it is in the best interests of the child or children to allow same-sex couples to adopt, and that same-sex couples would have to undergo the same checks and balances when applying to adopt as any other couple in terms of their ability to financially, materially and emotionally provide for and care for a child—I do not think it will be surprising to anyone that I will oppose this particular amendment, particularly given that the majority of this parliament has agreed to establishing a relationships register because we find that marriage is not always the most suitable situation for everyone.

Given those two factors, that the majority of this parliament, as I understand it, agrees to a relationships register separate from marriage, and that a very comprehensive review has found that same-sex couples should be able to adopt in the best interests of the child and to go through the same checks and balances as anyone else, I see no need for this amendment.

The committee divided on the amendment:

Ayes 4
Noes 13
Majority..... 9

AYES

Brokenshire, R.L. (teller)	Hood, D.G.E.	Lee, J.S.
Lucas, R.I.		

NOES

Darley, J.A.	Dawkins, J.S.L.	Franks, T.A.

NOES

Gazzola, J.M.	Hunter, I.K. (teller)	Lensink, J.M.A.
Maher, K.J.	Malinauskas, P.	McLachlan, A.L.
Ngo, T.T.	Parnell, M.C.	Vincent, K.L.
Wade, S.G.		

PAIRS

Ridgway, D.W.	Kandelaars, G.A.	Stephens, T.J.
Gago, G.E.		

Amendment thus negatived; clause passed.

Clauses 6 to 18 passed.

New clause 18A.

The Hon. S.G. WADE: Sir, by way of clarification, you mentioned that a new amendment has been distributed. I indicate that I have not seen the amendment. I would be extremely uncomfortable with the committee progressing without due consideration of the amendment.

The Hon. I.K. HUNTER: Mr Chairman, given that the amendment has been tabled, I wonder whether the mover would like to explain it for the chamber's benefit before we determine how to proceed.

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

Amendment No 1 [Broke–2]—

Page 12, after line 31—Insert:

18A—Insertion of section 26B

After section 26A insert:

26B—Selection of applicants for adoption order—married and *de facto* couples to be given priority

(1) The Chief Executive must, in selecting prospective adoptive parents to be applicants for an adoption order, ensure that persons on a register or subregister kept for the purpose of selecting such applicants who are living together as husband and wife or *de facto* husband and wife are given priority over a person or persons on the register or subregister who are not living together as husband and wife or *de facto* husband and wife.

(2) Subsection (1) does not apply to prospective adoptive parents registered as applicants for an adoption order before the commencement of that subsection.

I apologise to colleagues for the lateness of this amendment. It is not the first time an amendment has been filed during proceedings. In summary, this amendment would ensure at law that, in selecting prospective adoptive parents, the chief executive officer must focus on married couples or de facto couples.

The Hon. T.A. FRANKS: Both the Hon. Michelle Lensink and I have reflected on the provisions in this bill that restrict access to adoption for single people. Indeed, it is in special circumstances where often these single people have cared for the child for a very long period of time and where that child has special needs. Does the mover of the amendment anticipate that, in such a case, a married couple will simply be able to come in and jump the line over that single person who has cared for a child for an extensive period of time?

The Hon. R.L. BROKENSHIRE: It is a straightforward amendment. In circumstances where children have been chosen through the department to be made available for adoption, and there are people who have passed the requirements from the point of view of qualification (if I can put it that way), married or de facto couples—husbands and wives—will have a priority on registration. A child

is not adopted until the child is adopted. There may be a child in care, there may be a child in foster care but, until formal adoption occurs, there is no adoption under law. This specifically says that a male and a female, a married couple or a de facto couple, have a priority for adoption.

The Hon. I.K. HUNTER: In a brief glance at this amendment that has been dropped on us, it does a couple of things. It does one thing clearly, and that is to try to make sure that heterosexual couples have priority over non-heterosexual couples—

The Hon. J.M.A. Lensink: And single people.

The Hon. I.K. HUNTER: Yes, indeed. As alluded to by the Hon. Michelle Lensink and the Hon. Tammy Franks, it also applies to single people in dropping them down the order. Let's be quite clear about this: what it actually does is oppose the recommendation of Lorna Hallahan, which is to put the children's best interest first.

The whole process of the drafting of this legislation is actually to put the child at the focus of everything we do under the Adoption Act. The child's interests, and where they are placed, are determined on the basis of their best future life. What this amendment is trying to do is say, no, that will now be second place to the interests of married or de facto heterosexual couples. Let's be very clear about this amendment: it puts couples above the interests of children, and for that reason the government will be opposing it.

The Hon. K.L. VINCENT: I have a couple of questions, first to the mover of the amendment, and then on some further information from the minister which I think might be useful. To reword the Hon. Ms Franks' question slightly, just to ensure that we get this point across, as the Hon. Ms Franks has said, single people under the existing adoption law can already adopt where there is an extenuating circumstance, if I can call it that, including where they might have a long-term parent-like caring relationship for a child or young person with special needs, as the legislation calls it; I do not particularly like that term myself. That would obviously include a disability.

Is the mover suggesting that, rather than that child or young person remaining with the person who has been caring for them for a long time and understands their particular needs to do with their disability or health condition, they instead be given priority to move to another couple who might be less familiar with their needs, particularly if they have, say, a communication difference or other particular needs? Is that truly the mover's preference?

The Hon. R.L. BROKENSHIRE: New subsection (2) provides:

> Subsection (1) does not apply to prospective adoptive parents registered as applicants for an adoption order before the commencement of that subsection.

There are a range of examples where children who are in foster care or under the guardianship of the minister are cared for by people now, but this clause quite clearly says that if this were to be passed then in future the priority would be towards a married couple under the commonwealth recognition of a married couple, which is a husband and wife or a de facto husband and wife. So, yes, they would have priority over a person or persons on the register or subregister who are not living in a marriage as a husband and wife, or in a de facto situation as a husband and wife.

The Hon. K.L. VINCENT: I will ask a further question of the mover, if I may have the floor, because, with all due respect, I do not think he has addressed the question at all. Does the mover believe that his amendment does or does not apply to where there is an existing caring relationship and, if there is an existing relationship, would the preference still be given under the mover's amendment to that existing caring relationship, particularly where the child has a disability or an additional health condition?

The Hon. R.L. BROKENSHIRE: While I wait for the minister, I want to reinforce that I have said that there is a clause that makes this not retrospective; it is not a retrospective amendment.

The Hon. S.G. WADE: I am certainly not going to move the motion, but I think it is important to clarify for the house that, as shadow minister responsible for this bill, my view is that this would be a conscience matter for our party. It is certainly my view that our members need more time to consider it. I would be happy to continue unpacking it, and I have a couple of comments and questions of my own. My comments and questions will be personal because this is a conscience matter.

The Hon. I.K. HUNTER: In terms of the issue the Hon. Kelly Vincent is pursuing with the mover of the motion, my concern would be, in that line of questioning, that a long-term foster carer, for example, who has a foster care relationship with a child, who may not be registered to adopt, and if they are not registered to adopt by the time that this amendment comes into commencement, then they will be precluded.

Of course, you would think that a person in that situation might be advised of this amendment coming into place, but possibly not. So, someone who has a long-term foster care situation with a child, who is not currently registered as an adoptive parent or in the pool of adoptive parents (and certainly single people usually are not because they are not allowed to be, except under special circumstances), would be caught by this.

The Hon. S.G. WADE: As I mentioned earlier, my comments will be personal; it is a conscience matter. I am drawn to the minister's logic earlier when he reminded the house that this amendment threatens, if you like, the centre tent pole of the bill, that is, that the best interests of the child are paramount. I think that in recent days some unhelpful comments have been made right across the spectrum in relation to this bill. I would remind people that new section 3(1)(a) in the objects of this act provides:

> the best interests, welfare and rights of the child concerned, both in childhood and in later life, must be the paramount consideration;

Then new subsection (2)(d) very wisely states that 'no adult has a right to adopt a child'. Whether they are a same-sex couple or a heterosexual couple, the right of the child must be paramount, so I am puzzled to see how this amendment could fit into that schema because it says that a heterosexual couple will take priority. Does that mean that somehow the child's rights are not paramount?

Because of my legal education—I stress that, unlike the Hon. Kyam Maher, I am not a lawyer but I have had some legal education—I would have expected to see this clause more in terms of, if one wanted to have a bias towards heterosexual couples, all other things being equal. In other words, if the best interests of the child could not be distinguishably differentiated between two prospective couples, one may—I am not suggesting this—want to give priority to a heterosexual couple. This does not say that. This almost says, 'Ignore the paramount rights of the child and assert the rights of heterosexual couples, in contrast to any other couples.'

As I said, they are personal comments on a conscience matter. I will give it further consideration. At this stage, I think it raises significant issues for what is almost a holy principle of this act. From the decades of harm that our state laws and practices have done to children, we know that we should tread very carefully in this area. I think that anything that would challenge that principle of paramountcy of the best interests of a child should be treated with great caution.

The Hon. T.A. FRANKS: When did the mover decide that this was an appropriate course of action? When did he come up with this amendment?

The Hon. R.L. BROKENSHIRE: I have considered a number of amendments for some time. I put this amendment up in consideration of other amendments I had already tabled. I am not moving any change to the objects and guiding principles. The objects of this bill are to emphasise that the best interests, welfare and rights of the child concerned, both in childhood and in later life, must be the paramount consideration in adoption law and practice. That is not changing. What is changing is the proposal that there be a priority to a married couple, a husband and wife or, for that matter, a de facto couple.

I personally believe, although others may not, that in the interests of obtaining what is the focus of paragraph (a) of the objects and guiding principles, the best outcome is for the adopted child to be with a married couple as recognised under the commonwealth Marriage Act, namely, a male and a female, a mother and a father, or a de facto mother and father.

The Hon. T.A. FRANKS: My question was not answered. I asked the mover when he decided that this was a good course of action, because the date on the draft of the amendments tabled—not properly filed, but in fact a draft—is 4.36pm on 29 November.

The Hon. R.L. BROKENSHIRE: I did have a draft done. When did I decide to file it? Once I saw, after listening to the debate, that there was going to be no chance of getting the first amendment up.

The Hon. R.I. LUCAS: Mr Chairman, I am quite interested to listen to the debate going backwards and forwards, but I have a very strong view that, as someone who has not formed a view and who has only just seen the amendment, it would be appropriate not to be forced to vote on it at the moment. We should report progress so that we can consider whether or not we want to support it. The Hon. Mr Brokenshire might even consider the advice of the Hon. Mr Wade to see whether, upon advice, he wants to move it in a different way.

My position is pretty simple in relation to this. We have been asked to come back and sit for the optional week; the slackers in the other place have not, so this is not going to be resolved ultimately until February. I am not asking for it to be resolved in February, from our position. We are here for three days. We have three days—today, tomorrow and Thursday—to resolve these issues. From my viewpoint, and I know from my colleagues' viewpoint, we are quite happy in this chamber to resolve by Thursday whatever it is we need to do with these four bills. No-one is arguing to delay them until February. It may well be because the house is not sitting that some issues will have to be resolved in February.

It would be appalling parliamentary practice if we were forced to vote on this issue. I foreshadow that, in relation to the surrogacy eligibility bill, we have two pages of amendments which the Hon. Mr Hood has flagged which I have not yet had a chance to consider. We have all been sitting here assiduously debating these other issues. I would like to take advice and reflect on those and form a view as to whether or not I support them so that we can vote on them tomorrow or Thursday. We are here for three days. We can complete these bills—we have done one already—within the optional sitting week we have talked about.

In my view, it would be appalling parliamentary practice to be required to vote on the issues now. If the minister in charge of the bill—I do not have a problem with the further exploration of issues, if he wishes—is ultimately not prepared to report progress on this issue now, I foreshadow that at some stage after the debate has continued for a while I will move to report progress and test the will of the committee as to whether there are others who agree with the view that I put.

The Hon. D.G.E. HOOD: I will be very brief. On the response of the Hon. Mr Lucas, I indicate that in my amendment, whilst it does spill onto a second page, there is really only one issue on that particular bill, and I do not think it is the sort of thing that would warrant a great deal of consideration, but that is a matter for the chamber.

The Hon. S.G. WADE: I took the minister's earlier response to my comments about reporting progress to mean that he was not going to object to reporting progress. In the light of the Hon. Robert Lucas's comments, I suggest to the government that it might be orderly to adjourn this matter until tomorrow, not on motion—when we have as many views in the chamber as we have members, it is difficult to have a debate that is not, shall we say, marshalled by our whips—and I think that would be orderly practice.

The Hon. I.K. HUNTER: I concur with the views put about having further consideration on this amendment. I note the Hon. Tammy Franks' questions about the lateness of the tabling of the amendment. I invite the honourable member, and any other members who are sitting on any amendments potentially, to do the chamber the courtesy of tabling them now so that we do not find ourselves in this situation two, three or four more times during the course of today or tomorrow. I do think it is sensible to report progress; however, I will be asking to report progress on motion.

The Hon. S.G. WADE: I take the points made about the late tabling of this amendment but, with all due respect to the minister's comments, the Hon. Robert Brokenshire's second amendment would be totally irrelevant if same-sex couples did not have access to adoption. It needed to be late breaking because his previous amendment was dismissed.

Progress reported; committee to sit again.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION (GENDER IDENTITY) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 December 2016.)

The Hon. R.I. LUCAS (12:21): I rise to support the second reading, and for those 25 assiduous readers of *Hansard* I refer to my remarks in the Relationships Register (No 1) Bill which govern my personal views and the way in which I have sought to form positions on each of these four bills. I indicate at the outset that I will support the second reading of the bill to allow debate through the committee stage but, subject to what occurs in the committee stage, I will at least foreshadow that I am unlikely to support the third reading of the legislation. I have some concerns about some significant aspects of the bill, which, to a greater degree, will be explored in the committee stage.

Reflecting on the debate in the House of Assembly and the many submissions that we have received both for and against the legislation, I indicate my personal view is that I am prepared to consider some limited changes in this area but not some of the more significant ones that have been included in the legislation as it stands. The change which moves the process for somebody seeking to change their sex or gender identity from the courts and the magistracy to a Births, Deaths and Marriages administrative process is one I am prepared to support.

I have taken submissions about the difficulties some individuals experience in terms of current processes and exposing themselves to the court process or the magistracy, and their inclination to support the proposed process which involves Births, Deaths and Marriages. I am prepared to support that limited aspect of the change to the legislation.

Also under the proposed changes, an individual would have access to a new birth certificate through this proposed process of Births, Deaths and Marriages. I can understand and accept that proposed process in certain limited circumstances, whilst retaining, I think by way of an amendment that was moved in the House of Assembly, that the original detail in relation to that individual (and that essentially means their original birth certificate) would be retained by Births, Deaths and Marriages for various legal processes.

Clearly, in some of the discussions that I have had, if someone changes their sex or gender identity and has a new birth certificate, it may well be that old grandfather Frank or grandmother Freda, or whoever it is, might have left some part of his or her inheritance to a so designated grandson or granddaughter as per an original birth certificate, and the legal position—again, I do not profess to be a fully qualified lawyer practising in this jurisdiction—might create problems if there was not access in certain circumstances to the original documentation. I think that has been canvassed by the House of Assembly, and the amendments that were passed by the House of Assembly do cater for those sorts of circumstances.

Those aspects of the bill that relate to a changed process to the extent of possible removal from the magistracy or the court process and leaving it with Birth, Deaths and Marriages, the retention of the original certification for various legal purposes within Births, Deaths and Marriages, providing particular individuals who have successfully gone through a process to change sex or their gender identity and arming those individuals with a new birth certificate, I am sympathetic to and prepared to support.

I have concerns about some of the more significant aspects of the legislation. The process that we are being asked to support, which would allow an individual to change gender identity with, in essence, some unspecified minimum period of counselling from a medical professional, is insufficient. Whether there is some middle ground between what is proposed in the legislation and the current situation, I am not sure. There is certainly nothing before us by way of an amendment from anyone which provides some middle ground between what is proposed in the bill and the current set of circumstances, so I am left with either supporting the status quo or supporting the change, and my position is that I cannot support the change in this particular area.

It does raise the issue of the possibility of forum shopping for psychologists and psychiatrists. Those of us who have had exposure to the workers compensation jurisdiction know that there is a decades-long debate or dispute where there are medical professionals who are known to be prepared to support workers in disputes in relation to bad backs or stress-related issues or whatever it might happen to be and, on the other hand, medical professionals who are prepared to support the employers' position.

In relation to medical issues such as bad backs, repetitive strain injuries or stress injuries, issues about which it is sometimes difficult, by way of clear physical evidence, to demonstrate the rightness or wrongness of the medical diagnosis, there is clearly forum shopping, where you have medical professionals more inclined than not to support one side of the argument, and medical professionals on the other side who are more inclined than not to support the other side of the argument.

I have no doubt that, as it is possibly likely that this measure may well go through the parliament, 10 years down the track we will be having the debate about forum shopping and a dispute or an argument about those medical professionals in the particular jurisdiction who are prepared to, in essence, sign off on an individual who wants to change their gender identity, in particular.

I also note, in the House of Assembly debate, the statements made by the member for Schubert. I suspect that minister Hunter, even without my prompting, may or may not have been indicating his view of the accuracy of the conversation that the two of them had. However, to place it on the public record, the member for Schubert put on *Hansard* that minister Hunter had told him during a discussion on the issue that there was 'no way to close the gay marriage loophole'.

The member for Schubert and a number of other members who opposed this aspect of the legislation asked a series of questions of the proponents of the legislation in the House of Assembly and identified the issue which they described as the 'gay marriage loophole'. If two males, for example, were in a same-sex relationship and one, undertaking whatever the minimum period of counselling might be through a medical professional, identifies as changing their identity and changes to female, it would then be possible, so this contention goes, to get married and continue the relationship. Then, potentially down the path of undertaking counselling, they could revert their gender identity back to male.

That is what members in House of Assembly described as the 'gay marriage loophole'. As I said, the member for Schubert quotes minister Hunter as having told him that there was no way to close that 'gay marriage loophole' in the legislation. As I said, either in response to the second reading or certainly by way of questions in committee, I am seeking minister Hunter's response to that particular claim made by the member for Schubert in the House of Assembly debate.

Another issue I have concerns about relates to under-18s being able to access the proposed process for changing gender identity, albeit with a magistracy process involved. I think there is already an amendment that seeks to address that issue and my inclination is to support that particular amendment as well. With those relatively brief comments, I again indicate my willingness to support the second reading to allow debate to continue in the committee stage, but flag at this stage that I am unlikely to support the third reading of the legislation.

The Hon. T.J. STEPHENS (12:32): I rise to speak to the Births, Deaths and Marriages Registration (Gender Identity) Amendment Bill. This bill seeks to change the way personal biographical information is registered, stored and retrieved by the state and its citizens within South Australia. My understanding of the reasons for this bill is that transgender and intersex people may often have identity documents which are inconsistent with their current status. This prevents these people from fully accessing further services which require multiple documents to prove their identity, as the inconsistencies prohibit access.

I believe that it was confirmed in the other place and by the minister at briefings that the information recorded at the person's birth is not erased, nor is it changed, but new information is added when a person changes their gender. I would like him to confirm this during his summing up. Furthermore, I understand when a request for a copy of a birth certificate is made, only a person's current information is pulled from the register, so it remains up to date and consistent. I want to know if I am correct in this assumption.

My concerns with the bill are not specifically around this issue, as this seems entirely practical. I do have an issue with some of the potential loopholes or unintended consequences of allowing people to change their gender at will. First and foremost, there is a concern about the required threshold for changing one's gender. It is such a big decision and a permanent one, and should remain as such. We should not be reducing gender to something as fluid as a mood or a whim. In the other place, there were a number of amendments moved by the member for Schubert which sought to strengthen this threshold by imposing a minimum period of treatment, which is to be prescribed by regulation. I would like the minister to give an indication of what this time period would be.

Given that this bill repeals the Sexual Reassignment Act and replaces the current surgical threshold with a therapeutic one, I think these details are important enough for the council to be made aware of before a decision is made on such reform. By extension, children with psychological gender dysphoria would be able to change their gender more easily whereas before it may have required a diagnosed medical or biological anomaly.

I acknowledge the need to allow children who have actual biological anomalies which may require a change in gender early in their lives, and the law should accommodate this, as I believe the current act does. However, we must be very careful not to allow modern gender theory and ideology to pervert such a delicate process. I would not want to see this bill allow a parent with a certain ideological bent coerce or encourage their children to change their gender when there is no medical or biological need to do so. We must be very careful when it comes to the psychology of children and we must remember that children can change dramatically as they mature, and it is important that we do not allow a situation where children are having to reverse changes in gender because they were made without the appropriate level of scrutiny and discernment.

In regard to another issue with the bill, the honourable member for Hammond in another place raised the question of whether allowing such freedom to change one's gender could act as a backdoor path to same-sex marriage. Unfortunately, the minister could not offer any reassurance to the member for Hammond and, as I heard previously from the contribution of the Hon. Ms Franks, it seems that this is actually a reason for the bill to go ahead.

Regardless of what one's views are on the issue of same-sex marriage, this council should not be seeking to undermine the commonwealth Marriage Act and the commonwealth's exclusive constitutional power over marriage. Until the commonwealth Marriage Act changes, we should not be encouraging any behaviour or action contrary to it. The minister may also want to address this concern. Finally, I want to note a concern around the definition of gender by regulation which is what the bill allows for in its current form. Can the minister confirm which genders will be allowable for identification? Furthermore, why would they not be prescribed in legislation, given that any progress could be removed with a future minister's pen stroke?

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:37): I rise to make some very brief comments on the Births, Deaths and Marriages Registration (Gender Identity) Amendment Bill 2016. My colleagues who have just spoken—the Hon. Terry Stephens and the Hon. Rob Lucas—have posed a number of questions which I would have posed if they had not, so I will look forward to the answers that the minister may give in relation to those questions. My starting position is that some people have some real issues at birth, and my colleague the Hon. Terry Stephens mentioned that the current law allows for them to be satisfactorily dealt with through the legal process and their sex displayed adequately on any documentation, birth certificates, etc.

I have a fundamental view that if a person is born male or born female, that should be recorded. I really have no problem with what people do with their lives, but at the end of the day that was the fact and the reality at the time, so I do not see that there is any real benefit to be gained from this. Of course, you also have all the questions that have been raised by my colleagues that may lead to some other issues. I think all of us have received a number of emails and correspondence from people who are quite concerned about the unintended consequences of this particular legislation. Often when we look at these very emotive conscience issues, from the Liberal Party's point of view, we have to be careful of the unintended consequences of the journey that legislation may lead us on over the next 10 or 20 years.

I am concerned that this bill will lead to a whole range of unintended consequences that may be very difficult for the community to deal with. I have indicated that I look forward to the answers given to the questions that the Hon. Rob Lucas and the Hon. Terry Stephens have posed. I indicate that at this point in time I will support the second reading of the bill, because I think it is always important to do so, but I am unlikely to support the bill in its final stages.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (12:40): I rise to close the debate at the second reading stage. I would like to thank honourable members for their important contributions. I am told that changing one's gender is a very significant life decision and not one that individuals take very lightly. This was highlighted, of course, in the many submissions made by transgender South Australians to the South Australian Law Reform Institute.

As the council would be aware, the South Australian Law Reform Institute has recommended a suite of legislative reforms that help to remove some of the state's discriminatory laws for LGBTIQ South Australians. This bill forms the basis of the government's response to the SALRI report and the government's intention to remove some of these discriminatory barriers for the LGBTIQ community.

South Australia's statute book has often been the home of many firsts. For example, in South Australia the Sexual Reassignment Act 1988 was one of the first in the nation, I think, when it was enacted. However, this act is now somewhat outdated and overly bureaucratic. Transgender people elsewhere in our nation can have their change in gender accepted and new birth certificates issued without the need for invasive surgery or complicated procedures.

A transgendered South Australian can, like any other Australian, get a passport issued according to their gender identity by the federal government and recognised internationally, according to the rules of the International Civil Aviation Organization, without the need for invasive surgery. That has been law in Australia for the past five years, I understand, and reflects widely accepted practices in other countries, including the United States, countries of the European Union and our neighbours across the Tasman.

This bill will bring South Australian law that once was at the forefront into line with national and international best practice. Importantly, it also makes a significant and practical difference to the lives of those South Australians whom it affects directly. It is important to note that this bill, like the other SALRI bills, comes after extensive engagement, research and analysis. This has included consultation with South Australia's LGBTIQ community, the medical profession, the legal community and other parties, and it is clear that there is wide support for this legislation.

I would like to take this opportunity to address some of the questions raised by the Hon. John Dawkins. I was asked in his contribution to this bill whether an individual in a same-sex relationship could apply to change their gender identity without physical alteration and then marry their previously same-sex partner under the commonwealth Marriage Act 1961. I was also asked to confirm whether, after the marriage was solemnised, the individual could undertake to have their gender identity changed again. I suppose this is theoretically possible. A registered medical practitioner or psychologist, however, must make a legitimate assessment of the circumstances of an individual's case.

In relation to the question of whether certain medical practitioners or psychologists could become go-to medical professionals for those wishing to access marriage in this way—as others have suggested, this 'shop around' type of professional—I can advise that there are provisions within the bill and the Birth, Deaths and Marriages Registration Act to protect from and penalise false and misleading declarations made in relation to any application under the bill. Providing a false or misleading declaration would also result in a medical professional risking a breach of the code of conduct pertaining to their profession.

The Hon. John Dawkins also asked about the experience of other jurisdictions. I do not have any advice about issues being experienced in other jurisdictions, but I do note that provisions that exist for gender reassignment and changes to birth registrations vary amongst Australian jurisdictions. The Victorian parliament is currently considering draft legislation, I am advised, whereby a person can apply to have their birth registration amended without the need to provide evidence of

medical or clinical intervention. Instead, they must simply provide a supporting statement from another adult who has known the applicant for at least 12 months. This person must support the application and believe it has been made in good faith.

Members would be aware that, when this bill passed through the other place, an amendment was passed requiring that an appropriate amount of clinical treatment be prescribed by regulation. These regulations will be developed through consultation with stakeholders and the medical profession, obviously. It is necessary to acknowledge that no individual is the same and that clinical treatment needs to be able to reflect this, and members of the medical profession are the best placed individuals to advise us on this.

Finally, the Hon. John Dawkins asked how the bill ensures that children and minors who, either themselves or through their parents or legal guardians, access this legislation are psychologically capable of contemplating a decision that will affect the rest of their lives and also ensure they are not being coerced by other parties.

With regard to children, the bill will continue to require that the Magistrates Court make an assessment as to the best interests of the child who is subject to the application. I understand that is the existing provision. In determining whether or not to grant an approval, the court must take into account a variety of factors, including whether or not the child understands the meaning and implications of the decision and whether the child has the capacity to consent.

The court has the power to inform itself as it sees fit when it requires further evidence or certainty when assessing an application concerning a child. South Australians have had a long history of supporting reforms that expand justice into spaces where it does not yet shine. South Australians expect lawmakers like us to remedy wrongs where we can, and they expect us to stand up for the most vulnerable in our communities.

Often we have been too slow to keep social reform up to date with contemporary practice and social attitudes. Throughout the suite of reforms we are discussing this morning, I see an important commitment to make amends, a commitment that I am proud to say is shared and held by many of us in this place and also in the other place. If we want to be known as a progressive, socially advanced, creative and diverse community, we must not rest on our laurels of past achievement. We must honour our progressive past and continue to strive for equality and justice for our citizens and make our legislation the best legislation it can be in terms of current practice. I believe this bill before us does that work.

The Hon. Mr Lucas asked a question relating to the *Hansard* in the other place in relation to the contribution by the member for Schubert, where some discussions we had were paraphrased. I will just say at the outset that, whilst the gist of it was true, the member for Schubert did not go on to say why it was impossible or why there was no way of closing the loophole that was referred to. Indeed, I use the language of those opposing this bill in the other place: I think it was called the 'gay marriage loophole'. That is not my choice of words but that of others.

The reason for that, of course, is—and I will not table this letter because I think the Hon. Tammy Franks intends to do that later on in the debate—

The Hon. T.A. Franks: Go for it.

The Hon. I.K. HUNTER: Go for it? I seek leave then to table a letter from the Attorney-General, the Hon. Robert McClelland MP, to Mr Alex Greenwich, National Secretary of Australian Marriage Equality, dated 16 December 2008.

Leave granted.

The Hon. I.K. HUNTER: I will go to the second to last paragraph. The answer to the question, which I went on to explain to the member for Schubert and which I do not think he included in his contribution that is in *Hansard*, is this:

> Your letter also raises the question of why marriages which are validly entered into in Australia continue to be valid after one of the parties to the marriage has undergone gender reassignment surgery. The decision of the Full Family Court in Re Kevin [2001] FamCA—

I think that probably means Family Court of Australia—

1074 establishes that the validity of a marriage is determined at the time it is solemnised. The definition in the Marriage Act does not mean that a marriage will be annulled or made invalid because one of the parties to it undergoes gender re-assignment surgery. The decision of Purvis DP in Abrams and the Minister for Foreign Affairs and Trade [2007] AATA 1816—

I guess that is the Administrative Appeals Tribunal of Australia—

is consistent with the decision in Re Kevin.

That is the reason that the so-called gay marriage loophole cannot be closed: because this state parliament does not have an ability to pass legislation that would override a decision of the full Family Court or, indeed, the Administrative Appeals Tribunal of Australia. Whether or not it is in fact a loophole is arguable, of course. I cannot imagine someone wishing, in this place anyway, to force a divorce on a couple simply because one member of that relationship decided, after a point in time when they had married, that they wished to change their gender. I do not believe anyone would really wish that on a married couple and that is why, in effect, the so-called loophole exists.

However, I go back to my original comments and say that, in passing this legislation, we will be doing a powerful world of good for those few people in our community who would use this legislation. Essentially, this legislation enables people to have a notation placed on their birth certificate that states they are the gender that they choose to be, with the appropriate safeguards of recording the original birth gender in the register for perpetuity, accessible to those people who have authority to access it. I commend the bill to the house.

Bill read a second time.

Sitting suspended from 12:50 to 14:17.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the President—

Reports, 2015-16—
- Corporations—
  - City of Charles Sturt
  - City of Mount Gambier
  - City of Tea Tree Gully
  - City of Victor Harbor
- District Councils—
  - Mount Barker
  - Mount Remarkable
  - Streaky Bay
  - Wakefield Regional

Question Time

MOBILE BLACK SPOT PROGRAM

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:18): I seek leave to make a brief explanation before asking the Minister for Manufacturing and Innovation and for Science and Information Economy questions regarding mobile blackspot funding.

Leave granted.

The Hon. D.W. RIDGWAY: In round 1 of the Mobile Black Spot Program, the South Australian state government was the only one in the country to contribute absolutely nothing to that program. In round 2 the state government contributed only $2 million. So, across both rounds thus far, the South Australian state government has contributed only about $2 million of the $141.5 million contributed by all state governments, a mere 1.4 per cent of the total amount of state government funding. My questions to the minister are:

1. Why didn't the state government commit any funding at all in round 1?

2. Quite specifically, how much will the state government commit to round 3 of this program?

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) (14:19): I thank the honourable member for his question. Everything he says completely falls over when you consider that the federal government did not even take all of our funding in round 2. The honourable member is quite right in part of what he said, but he is only half right, as he often is. We put up $2 million in round 2. The federal government effectively turned away a third of that and refused to fund mobile blackspots here for that final $700,000. If they don't accept all of our money, there is absolutely no point in putting in further money. They would not accept it. They would not accept all of the money we put up this time.

If you look at a comparison with other states, Tasmania, over two rounds, put in a total of $700,000 and received 37 mobile blackspots. Over two rounds, we offered $2 million, only $1.3 million of that was accepted in round 2 and we received a combined 31 mobile blackspots, so we have had double the amount accepted by the federal government compared with Tasmania and have fewer mobile blackspots for it. I am sure the honourable member would agree that we should not be wasting our money, particularly when not all of our money is accepted and we get a raw deal, even worse than Tasmania's.

MOBILE BLACK SPOT PROGRAM

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:20): Supplementary: can the minister confirm that there will be no state government contribution to round 3 of the program?

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) (14:20): I thank the honourable member for his question. I will happily find some radio interviews where a federal Liberal member said that there won't be a call from state governments for round 3. That's embarrassing if there is someone on record saying there will not be a call from state governments for round 3, isn't it?

Members interjecting:

The PRESIDENT: Order! The Hon. Ms Lensink.

SA WATER

The Hon. J.M.A. LENSINK (14:21): I seek leave to make a brief explanation before directing a question to the Minister for Water and the River Murray regarding SA Water.

Leave granted.

The Hon. J.M.A. LENSINK: On Friday 18 November, a blocked pipe sent sewage flooding into a family property in Gawler East, soaking almost every room in the house with up to 15 centimetres of raw effluent. The damage this blocked pipe inflicted has been estimated to keep the family out of their home until after Christmas, yet, in spite of this, the family says they were given no support in packing up their damaged belongings and cleaning their property so that the repairs could begin, but were instead given a $100 Coles Myer voucher and one night's emergency accommodation, for which they had to foot the bill.

SA Water, I understand, was supposed to have a unit which was going to improve its response to these particular incidents. What has that particular unit done for this family and does the minister consider that SA Water's response has been adequate in this situation?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:22): I thank the honourable member for her most important question about a blocked sewerage pipe in Gawler East. The honourable member didn't put a lot of detail in her question. I invite her to approach me with the details of that particular incident and I will see what I can do about it. I don't have any information at hand about this. In terms of blockages, if they are on the landowner's side, of course, they are the

responsibility of the landowner, in terms of sewerage and also water pipes. SA Water's responsibility starts at the boundary line, or where the meter is, I should say.

In the case of sewerage, SA Water does everything it can to help, particularly home owners, when there is a problem. These are presumably home owners, but, again, I don't know. I invite the honourable member to give me further details so I can check on her behalf for the constituent she is inquiring about. I don't know whether they contacted SA Water or SA Water had a contact posted to them through another source. Nonetheless, SA Water does have a customer assist team, particularly for major breaks, that goes out and talks to impacted households and offers them support, be it in terms of either a quick response voucher or emergency accommodation, should it be required, and gives them advice about the length of time the service will be out for and how long it will take to complete any repairs.

In addition to sewerage, of course, SA Water is also very helpful, as I know from a situation that occurred out at Globe Derby, in terms of getting clean-up crews to assist home owners. Again, I don't know the particulars of this particular event. I invite the honourable member to share with me the details so I can check with SA Water.

ABORIGINAL EMPLOYMENT TARGETS

The Hon. S.G. WADE (14:24): I seek leave to make a brief explanation before asking questions to the Minister for Correctional Services in relation to Aboriginal employment targets.

Leave granted.

The Hon. S.G. WADE: In June 2011, the Department for Correctional Services reaffirmed its commitment to reconciliation with the renewed declaration of reconciliation signed by the then minister for correctional services and the department's chief executive. As part of the declaration, the department promised to facilitate reconciliation in a number of ways, including by:

- Increasing opportunities for…career advancement of Aboriginal and Torres Strait Islander people across all levels within the Department...

At the time the declaration was signed, the department employed 58 Aboriginal and Torres Strait Islander people, almost half of whom were employed in the lowest salary bracket. Four years later, as of June 2015, there was a mere three-person increase in absolute ATSI staff numbers, but the proportion of Aboriginal staff employed in the department's lowest salary bracket had increased to 62 per cent. Last week, the minister tabled the department's annual report for 2015-16. In contrast to earlier reports, this report does not include the number of Aboriginal and Torres Strait Islander staff, nor how many of those staff remain focused in the lowest salary bracket. My questions to the minister are:

1. Why was detailed information on the number of Aboriginal and Torres Strait Islander employees and their level of remuneration not included in the department's most recent annual report?

2. How many ATSI employees did the department employ last year?

3. What proportion of those employees were employed in the lowest salary bracket?

4. What new opportunities for career advancement did the department offer Aboriginal and Torres Strait Islander employees last year?

5. Given the government's failure to promote career advancement for Aboriginal and Torres Strait Islander employees, what will the minister be doing in the coming financial year to immediately address this problem?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:26): Let me thank the Hon. Mr Wade for his important question. Let me answer it rather succinctly by saying that I don't have any information immediately at hand or that I can recall in respect to the specific number of Aboriginal people employed by the department. However, I am very conscious of the fact that the Department for Correctional Services remains absolutely committed to ensuring that it does employ

a number of Aboriginal and Torres Strait Islander persons within the department in a range of roles, particularly through the Aboriginal Services Unit.

There is clearly a public policy benefit and a benefit to the South Australian community and offenders generally, particularly amongst the Aboriginal offending population, if there are people employed by DCS who have a greater degree of cultural awareness with those particular offenders. I'm happy to take on notice the particular questions that the Hon. Mr Wade has asked. In regard to your question regarding the annual report, to the best of my knowledge, that change in the annual report was certainly not a consequence of any actions within my office, and certainly not myself. So, I am not sure why any information, if indeed it has not been included this time round, has not been, but I'm more than happy to seek information regarding the actual numbers that the Hon. Mr Wade is asking about and bring that information back to him as soon as possible.

MOBILE BLACK SPOT PROGRAM

The Hon. T.T. NGO (14:28): I have a question for the Minister for Science and Information Economy. The minister responded earlier about the $2 million that the state government contributed to mobile blackspots. Has the minister raised concerns with the federal Auditor-General about the federal Liberal government's Mobile Black Spot Program?

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) (14:28): I thank the honourable member for his question. Yes, the state government has. As we have already very briefly discussed in this chamber today, the federal Liberal government announced last week sites to be funded under round 2 of the Mobile Black Spot Program for South Australia, and as a result, confirmed their failure to many regional communities in this state.

The federal Liberal government announced that 20 sites will be funded through this program. It was particularly disappointing that of the $2 million that the state government was prepared to contribute, the federal Liberal government only accepted $1.3 million of this support. The Hon. David Ridgway asked about this under, I think, the mistaken belief that all $2 million was used; no, only two-thirds of it was used. It appears maybe someone set David Ridgway up to make him look particularly stupid, but I think he does a fine job of doing that himself. The state government has written—

The Hon. J.S.L. DAWKINS: Point of order, sir: I think we have had exception taken to language in the past. We had 'numbskull' last week and now the leader has been referred to as 'particularly stupid'. I would ask you to ask the minister to withdraw that.

The PRESIDENT: Minister, in particular, none of this language will be tolerated. As Leader of the Government, you should be very wary of what you say. Withdraw the—

The Hon. K.J. MAHER: Thank you, Mr President, I—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.J. MAHER: I apologise and withdraw for that particular piece of language, Mr President.

The PRESIDENT: Good.

The Hon. K.J. MAHER: The state government has written to the commonwealth Auditor-General requesting a full investigation into this program, as the lack of transparency in deciding sites is of very significant concern not just to the South Australian government but other state governments around Australia. There is absolutely no clarity or transparency as to how these sites were allocated, and we are not aware of any specific criteria that were used for determining successful sites.

What's particularly disturbing is that it would appear that a number of these sites were used for purely political purposes with federal taxpayers' money. We have asked for an inquiry into this program because, as the National Audit Office said when they inquired into round 1 of this program,

the process is not transparent and it has proven to provide little benefit to some areas of regional Australia—this is from the National Audit Office under round 1 of the program.

What is particularly disappointing is the federal government's announcement that they wouldn't fund some sites that were of exceptionally high priority not just to South Australia but also to Victoria. A number of these sites were in areas that are bushfire prone areas. The Wasleys base station was a very high priority for South Australia but did not receive funding under this program. Similarly, in Victoria, there were a number of areas that were of exceptionally high priority but did not receive funding.

What strikes a chord is that not one of these sites was in a federal Labor electorate. None of the sites were in the Clare Valley or the Mid North region that is in federal Wakefield despite assurances that those areas of Wakefield specifically were eligible for this program—not a single site in a Labor-held area—and this is repeated in areas in Victoria.

Another aspect of this is the blatant broken promises by many members in the federal Liberal Party. During the election campaign earlier this year, federal Liberal members promised to fund nine base stations in their electorates but, in last week's announcement, only three were announced to be going ahead. Communities such as Bute, Robertstown, Ashbourne in the Adelaide Hills, Gosse on Kangaroo Island, Kybybolite and Kalangadoo have all missed out in this announcement last week by the federal government. There are quotes from members before the last election. The former member for Mayo Jamie Briggs said:

> A new mobile base station in Gosse and Stokes Bay, Kangaroo Island will bring a much-needed boost to mobile coverage…

The member for Grey said:

> I am particularly pleased as part of this new commitment the Prime Minister has authorised me to guarantee that three of my nominated preference sites, Marree, Robertstown and Bute/Alford will be guaranteed to proceed.

Unusually, he used the word 'guarantee' twice in that sentence, and what do we find? Marree gets funded, and the other two that were guaranteed twice—not once but twice in the one sentence—are not going ahead. Similarly, guaranteed sites at Kybybolite and Kalangadoo in the seat of Barker were not funded.

The fact that all of the 20 sites being supported, as I said, are in Liberal or formerly-held Liberal electorates smacks of pork-barrelling, and I am absolutely certain that the National Audit Office will have a very good look at this. It is all over the place. The Hon. David Ridgway asked about round 3. No-one knows what's happening with round 3. On the federal government's website, it says, 'A competitive process to allocate round 3 funding is expected to commence in 2017.'

Tony Pasin, the member for Barker, said that the number of sites in round 3 were absolutely guaranteed; they are on the list. He said, 'Round 3 is resolved.' Tony Pasin, the federal member for Barker, has already said round 3 is resolved, yet their own website claimed a competitive tender process. It makes absolutely no sense. Those two things just can't be true.

Tony Pasin, in particular, has completely and utterly failed his electorate—not once—under either round: 11 in the first and 20 in the second, not one single mobile phone tower in the Limestone Coast, not a single one. Tony Pasin has shown himself to be an abject failure once again. He is one of only two members for this exceptionally safe seat never to have made the front bench. I think the way he is treated and the amount of pull he gets in his federal party and the federal parliament reflects this.

MOBILE BLACK SPOT PROGRAM

The Hon. J.S.L. DAWKINS (14:35): Supplementary: in addition to Marree, will the minister confirm that the isolated communities of William Creek, Innamincka and Blinman were included in the blackspots round 2?

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 can confirm that. There were a number of areas, and areas that are important for economic development and tourism,

that were allocated, and the vast majority of those sites that were allocated had state government funding for them. But there were quite a few further sites where the federal Liberal government said, 'Have your money back, South Australia, we don't want your money. We don't want to fund them in South Australia.'

MOBILE BLACK SPOT PROGRAM

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:36): Supplementary: what discussions has the minister had with the telcos—Telstra, Vodafone, Optus—in South Australia, given that I think it was Vodafone's push in Tasmania that primarily got the extra towers there?

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) (14:36): My department, including myself on at least one occasion, has had discussions with the mobile network operators. I can tell you, Mr President, that one thing we are doing is seeking legal advice as a state government about whether any mobile network operator in this state has breached any confidentiality or other provisions in providing information to third parties, particularly political parties.

Members interjecting:

The PRESIDENT: Order!

MOBILE BLACK SPOT PROGRAM

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:37): Can the minister confirm he has had no discussions personally with any of the telcos?

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) (14:37): No; *Hansard* reflects that what the Hon. David Ridgway is saying is not correct.

MOBILE BLACK SPOT PROGRAM

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:37): Supplementary: so you have had discussions then? It's pretty simple: have you had any discussions with any of the telcos?

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) (14:37): The question is: have I had any discussions with any mobile network operators in the lead-up to this round 2? Yes.

Members interjecting:

The PRESIDENT: Order!

ROAD MAINTENANCE

The Hon. R.L. BROKENSHIRE (14:37): I seek leave to make a brief explanation before asking the Minister for Road Safety a question about road infrastructure.

Leave granted.

The Hon. R.L. BROKENSHIRE: Looking after roads in South Australia is a shared responsibility of all levels of government and something that is a matter of utter importance for driver safety. Anyone who has driven on a country road like Kulpara to Maitland, Myponga to Willunga Hill or, indeed, during the wet winter we've just had, Echunga to Meadows, would note those as examples of state government roads in a very bad state of repair.

People attest to the fact that our roads need more attention, and this is not just my opinion. A recent RAA survey shows that the majority of South Australians believe that the government should pay greater attention to fixing this state's appalling road infrastructure, particularly our country roads. My questions to the minister are:

1. The RAA's General Manager for Innovation and Engagement says that nearly 40 per cent of South Australia's highways have a safety rating of just one or two stars. Besides putting more fixed speed cameras on our roads, what is the government doing to address the state of our country roads, highways and freeways to make them safe for motorists to drive on?

2. Losing control of a vehicle accounted for 59 per cent of all fatal and serious injury crashes on rural roads between 2008 and 2010, and unsealed road shoulders were a major contributor to this unsettling figure. Can the minister tell members how many kilometres of rural road shoulders have been sealed so far, as outlined as a priority in the document Towards Zero Together: South Australia's Road Safety Strategy 2020?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:39): I thank the honourable member for his question. I acknowledge his interest in road safety generally and the status of roads in regional South Australia. The state government shares the passion of the Hon. Mr Brokenshire when it comes to improving road safety, as do most South Australians. The state government's record in respect of a range of different measures to try to reduce our road toll and the number of serious injuries that occur on our roads is particularly strong.

In the context of the Hon. Mr Brokenshire's immediate question regarding what we are doing about fixing regional roads, the answer is plenty. Throughout the course of this financial year, $202 million has been allocated to improve and maintain regional roads in South Australia. Of this, the state government has allocated around $110 million specifically, in conjunction with the feds, who have allocated approximately $92 million. Spending to be undertaken on regional roads includes:

- $31.3 million towards upgrading roads in the APY lands;
- $10 million to improve critical road infrastructure, and continuation of freight productivity and safety improvements on the Sturt Highway;
- $64 million under the annual Asset Improvement Program, including rural intersection upgrades, road section improvements, shoulder sealing, rest area upgrades and rural and remote road improvements in outback South Australia;
- $18.3 million for freight access road improvement projects, including a roundabout at the Copper Coast Highway and Yorke Highway junction, two new overtaking lanes and targeted road widening on the Yorke Highway, and other priority projects identified as part of the 90-day agricultural project;
- $16 million on regional roads under the annual asset management program; and
- $6 million towards the Bald Hills Road interchange on the South Eastern Freeway at Mount Barker.

Of course, this is on top of a whole range of different measures and a similarly long list that the government saw take place during the course of last financial year. Addressing road safety in our regions really needs a multifaceted approach beyond just investing in rural roads. Maintaining roads and investments in things like shoulder sealing are clearly critical to improving road safety on our regional roads.

The honourable member I think may have pointed out that a very significant proportion of road deaths in South Australia—indeed, a disproportionate number—occur on our regional roads, and those are deaths of people from our regions. The more we can do in these areas the better, but it is about more than just investing in new roads. It is also about making sure that we are addressing issues of cultural change within drivers and the attitudes they have to their own safety on the road as they navigate our extensive regional road network.

That speaks to other issues, of course, like speeding. The honourable member referred to the government's investment in road safety cameras; we know that these make a difference. It does not take a political scientist to work out that speed cameras are not universally popular. Clearly, they do not have enormous popular support within the community, but make no mistake: they are absolutely a key feature in ensuring that we do see cultural change taking place when it comes to driving attitudes. Some reports demonstrate that this is making a difference, which is one of the

reasons we are seeing a decline in areas in terms of the number of people speeding within our community.

That, in no small part, has something to do with people changing their behaviour on the back of the prospect of being caught if they do speed and compromise the safety of their own lives and those of other road users as well. So, it needs to be a multifaceted approach. We need to have an enforcement element to this. We need to have an educational element to people's attitudes regarding road safety. Then, of course, there needs to be a subsequent investment back into the community and back into road infrastructure to ensure that, if an error of judgement does take place on regional roads, the likelihood of survival is maximised.

ROAD MAINTENANCE

The Hon. R.L. BROKENSHIRE (14:44): Supplementary: can the minister assure the house that, when the final proceeds of MAC have gone into the recurrent budget, money will be made available equal to the amount MAC has been putting into particularly road shoulder initiatives in country South Australia?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:44): The government remains utterly committed to ensuring that programs like the ones that the honourable member just referred to in terms of shoulder sealing—which we know make a significant impact improving the safety of roads, because they minimise the likelihood of an accident taking place where an error of judgement has occurred on behalf of the driver, or a driver from another car—will continue to be funded by the state government. This is an important investment that we expect to continue to occur in due course, irrespective of what takes place regarding the MAC sale.

CARBON NEUTRAL ADELAIDE

The Hon. R.I. LUCAS (14:45): I seek leave to make an explanation prior to directing a question to the Minister for Environment on the subject of a carbon neutral Adelaide.

Leave granted.

The Hon. R.I. LUCAS: Last week, I asked the minister a question about the government's goal to have Adelaide be the world's first carbon neutral city. Given the fact that the goal is now to achieve it by 2025, I asked how that can be achieved when Melbourne has a goal of achieving carbon neutrality by 2020. Not unsurprisingly, the minister responded aggressively in the following terms:

> …there is a degree of confusion in the mind of the Hon. Mr Lucas…he is not comparing apples with apples…

He goes on to say:

> …and the promises and the ambitions are quite different. Melbourne's commitment, as I understand it, is just for the city council. It does not apply to the city itself, it does not apply to the government's involvement, it does not apply [to the] residents of the city of Melbourne, and it does not apply to businesses. It is just for the operations of the Melbourne city council or, however they style themselves.

He then went on to aggressively attack me in other unflattering terms.

The Hon. T.J. Stephens: Not unusual.

The Hon. R.I. LUCAS: Not unusual. I refer the minister to the City of Melbourne's website and their most recent publication called 'Zero net emissions by 2020: a collaborative approach to the next four years of action'. In that, the City of Melbourne highlights, 'Council operations make up less than one per cent of the greenhouse gas emissions of the municipality.' It also notes on page 4, 'City of Melbourne became a certified carbon neutral organisation for the first time in 2011-12.' The City of Melbourne says that, in 2011-12, they, as an organisation—that is, the council, the city—became a carbon neutral organisation and were certified as such.

On page 4 of the document, in outlining their Zero Net Emissions by 2020 strategy for the City of Melbourne, they outline their targets. In summary, they list them under the following headings: council operations and leadership, commercial buildings and industry, residential buildings, stationary energy supply, transport and freight, and waste management. My question to the minister

is: did the minister in his response to the council last Thursday mislead this council in relation to this issue, or did he just misunderstand the issue?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:48): I thank the honourable member for his most important question and clear interest in making Adelaide the world's first carbon neutral city. I am very pleased with that interest. There are a number of things that are different, that set Adelaide and Melbourne apart. First of all, Adelaide has a unique partnership in that the city and the state government both commit to an ambition to making Adelaide the world's first carbon neutral city.

We are also seeing the community and business joining with us in this ambition. For example, I am advised that the University of Adelaide, which has a significant presence in the CBD, has already agreed to reduce emissions, improve energy efficiency and continue to engage their staff and student community in sustainability. I am hopeful that many more institutions and businesses will sign up to the Carbon Neutral Adelaide partnership program, like the university. Adelaide has also been internationally recognised for its measuring and reporting of carbon emissions. The Carbon Disclosure Project ranked Adelaide in the top 10 of 308 cities in the world for its comprehensive and transparent climate change reporting.

Between 2007 and 2013, the city's emissions were approximately 20 per cent lower, I am advised, and during this time the city's population and commercial office floor space has also increased. In contrast, I am advised also that Melbourne's emissions in 2013 were up on the preceding year and are forecast to keep growing until 2020. Adelaide's, and indeed South Australia's, efforts are being recognised around the world. For example, a recent opinion piece in *The New York Times* on 30 November 2016 praised Adelaide by stating:

> …the Australian city of Adelaide reduced its carbon emissions by 20 percent from 2007 to 2013, even as the population grew by 27 percent and the economy increased by 28 percent. The city experienced a boom in green jobs, the development of walkable neighborhoods powered by solar energy, the conversion of urban waste to compost and a revamped local food industry. The city also planted three million trees to absorb carbon dioxide.

That is *The New York Times* recognising the city of Adelaide and the state government's ambitions. Also, just for your interest, I am advised that senior executives from IKEA and apparently Siemens have praised Adelaide and South Australia in front of audiences, including business representatives, both in Paris and New York respectively. So, we are well placed amongst international counterparts to achieve the goal of making it the first carbon neutral city.

The advice that I have had from my agency is that indeed we are different. Melbourne is doing carbon neutral for the city itself, the operations of the City of Melbourne. I haven't looked at the document that the Hon. Mr Lucas has been referring to and quoting about targets. I will find someone in my agency who has that document and check those claims, whether the targets in that document actually match up to Melbourne's ambitions for its own emissions or whether they refer to something more broadly.

CARBON NEUTRAL ADELAIDE

The Hon. R.I. LUCAS (14:51): Supplementary arising out of the minister's answer: will the minister admit that he was wrong last Thursday when he said:

> [the Melbourne target] does not apply [to the] residents of the city of Melbourne, and it does not apply to businesses.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:51): I have said in my answer that that is the advice I have had from my agency. I will check—

The Hon. R.I. Lucas: No, you just made it up. You just made it up.

The PRESIDENT: Order!

The Hon. I.K. HUNTER: I will check the document that the Hon. Mr Lucas was referring to because, as we in this place know, the Hon. Mr Lucas comes into this place from time to time with

documentation or fabrications and then tries to seek ministers to respond to those fabrications. I will check the documentation first before coming back with an answer.

SA WATER INFRASTRUCTURE

The Hon. J.M. GAZZOLA (14:51): My question is to the Minister for Water and the River Murray. Will the minister inform the chamber how the government is investing in new technology to improve the city's water infrastructure?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:51): I thank the honourable member for his most important question. As I have demonstrated in this place time and time again, the South Australian government is committed to continually investing in our water infrastructure to ensure a reliable water network for South Australia. Recently, I announced that more than $4 million is being invested in an emerging smart technology to help manage the water supply network in Adelaide's CBD.

Through a network of flow meters, water quality sensors, leakage sensors, pressure meters and other smart meters that are being attached to businesses, SA Water will be able to respond, we hope, more swiftly to issues and deliver a better customer experience as a result of that information. This smart network in the Adelaide CBD will ensure businesses can continue to access the water they need to serve the community and to contribute to a thriving economy.

To improve customer service, water utilities are recognising the value of collecting network performance data in real time. Commonly termed as smart networks, this involves information collection and monitoring systems that review parameters such as flow, pressure, water quality, leakage, and real-time and acoustic data in our water networks. By collecting and analysing this information, water utilities are able to better optimise asset life and deliver greater reliability of service to their customers. The drive to move to a smart meter network for the broader industry is also relevant for our state and also for the utility, SA Water, as we work to achieve our vision of a world-class water service for a better life.

SA Water is one of the first Australian water utilities to adopt this smart technology in the size and configuration that we are doing in the CBD, as I understand. One of the most exciting parts of this project is acoustic leak detection, where acoustic loggers will listen for vibrations that indicate where in the network a leak might be occurring. Nobody of course wants bursts or leaks in the system, even though our leakage rates compare favourably to other states. We know these are disruptive events for our community and also particularly for commuters. The project is about taking proactive action to manage water main incidents and minimise impacts. Once tested and proven, we will look to expand this technology to other parts of the state, delivering significant benefits to our water customers and to the community more broadly.

A smart network will involve the installation of flow meters. Mass or network flow meters apparently measure flows in and out of the network to enable enhanced understanding of the network performance and likely changes in demand. The benefits of these meters is that they allow monitoring of minimum flows that generally occur during the night and undertaking flow balances to help with leakage monitoring and demand management.

Smart meters for large customers within the Adelaide CBD will assist with flow balance calculations and measurement of demand for future demand planning by those businesses. This will enable SA Water's business customers to better understand their water usage, to look for efficiencies and help to keep down their water bills. We will also be installing pressure sensors which measure pressure at key locations in and out of the CBD network. These sensors allow for measurement and understanding of the network performance to help look for leakage and to monitor pressure management as well.

High-speed or transient loggers are also being installed to record and allow analysis of the cause of pressure transients within the network. Transients can cause fatigue of the network, shorten the life of pipes and contribute to bursts. These loggers trace the source of the pressure spikes and help to reduce the effect of spikes within the network. We are also improving leakage monitoring through the acoustic leak detection I mentioned earlier. When a pressurised pipe is leaking, I am

advised that a vibration is created at the point from where the water is leaking and the acoustic loggers will listen for this vibration and provide an indication of the location of the leak. This technique helps limit potential disruption to our customers and more broadly to the community.

Water quality monitoring centres will also be installed within the network and will consider a number of parameters such as pH and water turbidity. The sensors allow for chemical dosage management at treatment plants. Monitoring within the network will tell us whether we will need to dose further or less, and it will provide the ability to improve aesthetics of water and therefore overall level of service in terms of water quality and taste. It is good to see that even those opposite are able to appreciate the great innovation of this investment in the CBD. I think the opposition spokesperson, David Pisoni, was incredibly pleased to see it being introduced, I am told.

This government is committed to providing all South Australians with reliable, high quality and affordable water. We delivered an average $87 reduction on the average water and sewerage bill in 2016-17 through ESCOSA's regulation of SA Water, and this is on top of the $44 average reduction, when the government first appointed the Essential Services Commission of South Australia to independently regulate water services during the first regulatory period. Our investment into making our network smarter is another demonstration of our commitment to the state's water supply and quality of service to our customers.

WATER QUALITY

The Hon. M.C. PARNELL (14:57): I seek leave to make a brief explanation before asking the Minister for Water and the River Murray another question about water quality and, in particular, the presence of trihalomethanes in Adelaide's drinking water.

Leave granted.

The Hon. M.C. PARNELL: The issue of trihalomethanes in drinking water has arisen most recently during debate over the expansion of Adelaide Hills townships and extra residential development in the Mount Lofty Ranges water protection area. Trihalomethanes are compounds that can occur in chlorinated water supplies as a by-product of organic materials present in the water reacting with the chlorine.

One of the submissions to the Adelaide Hills Council's public consultation on increasing development in the Adelaide Hills refers to this problem and suggests that, as the amount of housing increases, the quality of water will decrease and the amount of chlorine required to treat Adelaide's water supply will increase. The submission goes on to say that they believe that Adelaide has one of the highest levels of THM (trihalomethanes) of any city in the developed world.

A quick look at the SA Water Drinking Water Quality Report 2014-15 shows that, of all the different pollutants in our water that we measure, the only one that failed across the metropolitan area was trihalomethanes. I also note that the health level that it failed to meet is actually three times the US level. We already have, it seems, on the government's own data a problem with this pollutant in our drinking water.

My question to the minister is: what steps is he taking to ensure that the quality and safety of drinking water in Adelaide will not be compromised by increased development in the Mount Lofty Ranges water protection area?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:59): I am not exactly sure what the honourable member is referring to in terms of increased development. Is he suggesting perhaps (and I do this by way of a hypothetical because I know that he can't respond, and undertake to check this out for him) that further housing development in the Adelaide Hills area—for example, Mount Barker, Murray Bridge or other areas—will put increased pressure on the water supply and therefore increase interactions between organic matter that is in the water system currently with chlorine, resulting in chloramines, which is the chlorine smell people have coming out of their taps; or is he saying that in fact increased development means more run-off into the water supply reservoirs?

The Hon. M.C. Parnell interjecting:

The Hon. I.K. HUNTER: He is nodding and saying that's exactly what he means. Indeed, we have a big problem in the Adelaide Hills in particular, but in South Australia I suppose, in terms of our water storages because they are very close indeed to developed areas and agricultural and farming areas. If you fly over Victoria or New South Wales, for example, and glance out of the plane as you do, you will see that most of those large water storages—which hold water at great depth and in great quantity and provide those cities with water security for a period of years compared to our storages, which provide storage security for a period of months—are in fact often surrounded by vast areas of either commercial forest or natural native vegetation.

That is not the situation with us. We have to work with what we've got—low hills, essentially with country towns or hills-based towns and, cheek by jowl, you will find agricultural production. So, you get all these effects that you get from town run-off, road run-off and agricultural production in terms of, for example, manure and urine run-off, and chemicals of course used for agricultural production. These are all issues that challenge our water supply system, not the least of those being town run-off as well, but these are areas in which SA Water has great expertise in managing.

We have dosing stations at most of our storages that supply water to actually do what we need to do: to decrease the amounts of chemicals that are coming into the system, usually by treating them with other chemicals and floating them out of the system or some other method perhaps using membranes, and additionally to treat it with levels of chlorine which will make it safe, and particularly with agricultural practices, you have to worry about cryptosporidium, which is one of the obvious ones. These are things that SA Water has great expertise in. They have great expertise in this in terms of the metropolitan area and also our storages in the Hills, and I have no reason to suspect that they won't be able to manage this into the future.

The PRESIDENT: The Hon. Mr Parnell, supplementary.

WATER QUALITY

The Hon. M.C. PARNELL (15:02): I thank the minister for his answer, but will he take on notice that part of my question that related to his investigating the potential future safety of Adelaide's water because the chemical that I am talking about is in fact a by-product of the chlorination process—the more chlorine you add, the more of these toxic, carcinogenic by-products you get? Could the minister take that on notice?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:02): I am very happy to indicate that I will take that on notice and try to get some advice from the Department for Health and Ageing as well for the honourable member in relation to that chemical in particular. But, of course, unless you are using some other form of disinfection, which probably has cost impacts as well, we will probably always be in a position where we need to use chlorination for our water system in this state.

DRUG AND ALCOHOL TESTING

The Hon. T.J. STEPHENS (15:03): I seek leave to make a brief explanation before asking the Minister for Police questions regarding drug testing for drivers.

Leave granted.

The Hon. T.J. STEPHENS: In 2015-16, there were 2,174 fewer drug tests conducted by SAPOL on drivers, yet over the last five years there has been an increasing trend of positive tests, indicating an escalating drug driving problem. The RAA has publicly stated that there needs to be greater testing. The *Sunday Mail* recently reported that minister Malinauskas refused to say why police have reduced drug driving tests. My questions are:

1. Can the minister confirm that the reduction in drug driving tests is due to budgetary constraints?

2. Given that the minister attempted to justify his decision to close metropolitan police stations by having more officers in the community, how can the minister explain the reduction in drug driving tests, and what is the subsequent impact on road safety in South Australia?

3. I have asked the minister a number of times to describe to this chamber the police process regarding drug testing and we still haven't had an answer. When can we expect one?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:04): Normally, I start this process by thanking honourable members for their question. That is somewhat harder to do in this particular instance because I think the Hon. Mr Stephens is better than the question he just asked. He knows all too well that operational decisions regarding police are a matter for the police commissioner. The honourable member—

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

The PRESIDENT: Order!

The Hon. P. MALINAUSKAS: The honourable member suggested in his question that I made a decision to close police stations. I did not make—

The Hon. T.J. Stephens: I didn't.

The Hon. P. MALINAUSKAS: Yes, that's what you said. Check the *Hansard*. I did not make a decision to close any police stations or reduce any police station hours. That was a decision that was made by the police commissioner, as the Hon. Mr Stephens well knows. The reason why the police commissioner decided to make that decision—as I am sure is the reason why he makes a whole range of different operational decisions—was to work out how he can use his resources (which are increasing to a now record level that we have never seen as high before in the state's history) in such a way as to best deliver public safety outcomes.

With respect to drug driving, it is not because he has had budget cuts. SAPOL hasn't had budget cuts. SAPOL's budget continues to grow in real terms, as it consistently has throughout the course of this government's history. What he may have done is make decisions around what is the best way to effect an outcome with respect to reducing drug driving. Enforcement is clearly a fundamental tool that is required if we are going to get drug driving stats down in our community, because it is a significant problem, as I have regularly acknowledged in this place.

What SAPOL is doing is using an intelligence-based policing model to look at the way they capture people who are drug driving. They are using fewer tests and capturing more people, because the way they go about it is less random and more intelligence based or specified on trying to hone in on a particular cohort of drivers who are likely to be at risk of being drug drivers, which I think makes a lot of sense.

As I was saying, the police are using a mechanism to ensure that they are using an intelligence-based policing model, which means they are getting more of an outcome with fewer actual tests. The number of tests itself is not indicative of SAPOL's commitment to the issue or the government's commitment to the issue; quite the opposite. We support SAPOL going about the business of using an intelligence-based policing model to ensure that we are capturing as many of the people who are doing the wrong thing as we reasonably can. That is the advice that I have received from SAPOL.

I am not going to be the police minister who departs from decades of convention that has been time honoured by both sides of politics in this place by starting to intervene in what are legitimate operational police matters. Unless honourable members opposite, including the Hon. Mr Dawkins—who, I think, is probably only second to the Hon. Mr Brokenshire in his appetite to be police commissioner—believe that we should be intervening in the police commissioner's legitimate authority to go about policing and making operational decisions accordingly, then I think we should heed the advice of SAPOL and support the fact that they are getting a better public policy outcome in terms of capturing more people and using fewer tests to do it.

DRUG AND ALCOHOL TESTING

The Hon. T.J. STEPHENS (15:08): Supplementary: does the minister actually know the process by which police conduct drug testing? Does every patrol car have the ability to drug test? Is there only one unit? Are there two units? Are there five units? Please explain to the chamber how these drug tests take place.

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:08): My understanding is that the majority of drug driving tests are conducted as a result of a drug driving operation similar to an RBT, but in terms of who does it, where it is done and the times at which it is done, that is being done on an intelligence-based policing model. With respect to the testing regime itself, it is entirely different to drink driving, in that the nature of the test itself is different in terms of its detection. With drug driving, it simply detects a presence as distinct from detecting the level of impairment.

With drink driving there is technology in place for a testing regime through breath analysis and a subsequent test following that to be able to test the level of impairment. My advice is that that technology does not currently exist or hasn't been in existence and been practised or utilised, basically, anywhere in the world. Rather, what is tested for here and in all Australian jurisdictions is the presence of drugs in the system as distinct from the level of impairment.

The nature of the test is as follows—and if my memory serves me correctly, I have articulated this in this place before—normally a drug driver is pulled over, they submit a test at the roadside and if that delivers a positive result then there is a secondary test conducted on site, normally in the bus or the van, so to speak, which is a second analysis and that, again, adds another degree of robustness to the initial test. If that delivers a positive result, that initiates a third test to be conducted forensically. It is a three-stage process.

It may be the case that that process needs to be changed in order to maximise efficiency and also by the changing nature of technology, but that is the three-test process that currently applies for the overall majority, if not all, drug driving tests that occur in this state.

DRUG AND ALCOHOL TESTING

The Hon. T.J. STEPHENS (15:11): I have a supplementary question: how many units or drug driving buses does SAPOL have at its disposal? Many years ago I asked similar questions and we only had one. Can you tell me how many we now have?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:11): I am happy to take that question on notice.

DRUG AND ALCOHOL TESTING

The Hon. R.L. BROKENSHIRE (15:11): I have a supplementary question for the minister based on the answer. Given that now over 10 per cent of all drivers tested for illicit drugs prove positive, and the fact that only 15 per cent of operational police are trained to do drug testing, is the minister satisfied that he has enough resources for this, or is he talking to the commissioner about accelerating the drug driving training for police officers?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:12): It won't surprise a former minister for police and a budding aspirant to the police commissioner's position that I am not going to start disclosing every conversation that I have in confidence with the police commissioner. However, I will say that on a regular basis the police commissioner and I meet and we discuss a whole range of issues. When it comes to resourcing, I haven't received, up until this point, any formal request from SAPOL in respect of additional resources regarding drug driving.

If the police commissioner ever has a particular desire for a particular piece of kit or technology or an additional resource that he thinks will demonstrably assist him in the pursuit of improving community safety in any particular area of community safety—and that could easily include drug driving—that is something the government will contemplate and consider. As yet, I can't recall receiving such a formal request.

Drug driving is a concern and I have stated that on more than one occasion in this place. It is particularly concerning considering that approximately 22 per cent of all people who die on our state's roads, drivers or motorcycle riders, have delivered a positive test result. It is an astonishing statistic. The number of people who are getting caught drug driving is increasing and that is of major concern. It is a major concern not just in the context of actual road safety but also the problem we

are facing as a public health issue, the rise of some use of drugs, particularly the most insidious drugs that currently pervade our society in the form of ice and methamphetamine.

All of these things are of concern and SAPOL is but one component of a public policy response to it. As I have previously stated on the record, both here and publicly, the government is in the process of working with SAPOL and other interested parties, including the Department of Planning, Transport and Infrastructure which has a major interest in road safety, about ways that we can improve drug driving laws. All that work remains in train but, as it stands, SAPOL is doing a good job in acknowledging that there is a significant problem at hand and using an intelligence-based policing model to capture more people who are doing the wrong thing.

Parliamentary Procedure

VISITORS

The PRESIDENT: I advise members of the presence in the gallery today of former premier Lynn Arnold. Welcome.

The Hon. R.L. Brokenshire: A very good one, too, he was.

The PRESIDENT: That's not what you said about him last week.

Question Time

BUSHFIRE PREPAREDNESS

The Hon. T.T. NGO (15:14): My question is to the Minister for Emergency Services. Can the minister tell the chamber about the fire danger season?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:15): I can, and let me thank the honourable member for his important question. As members should be well aware, last Thursday, 1 December, marked the start of the 2016-17 fire danger season with a statewide fire ban now in effect. On Thursday, I was in Newland Reserve with representatives of the CFS, the MFS, the State Emergency Service and South Australia Police to officially declare the beginning of the fire danger season. It was a fitting and illustrative location on the outskirts of metropolitan Adelaide, a spot in which the Ash Wednesday bushfire came dangerously close to ripping through only three decades ago. This memory should serve to remind us all of the potential risk that exists when suburban homes are dotted amongst bushland.

The CFS is urging all residents to get prepared, as independent research conducted by McGregor Tan has shown that only 56 per cent of at-risk people are aware that they live in a bushfire-prone area. Of particular concern is that only 32 per cent of people living in bushfire areas actually have a bushfire action plan. As we look back to major bushfire emergencies like Sampson Flat, communities living in urban fringe areas, and the Adelaide Hills in particular, should be aware of their bushfire risk. While we have experienced a particularly wet winter, there is one thing that is certain this summer, and that is that bushfires will happen. As such, we are asking everyone to plan to survive instead of leaving it until it is too late.

I would also like to use this opportunity to remind members of the CFS's new online tool they have launched, called 'My plan to survive'. This is an easy-to-use tool which enables you to create a digital survival plan which you can save to your phone and have at your fingertips should the need arise. The CFS is reminding the community that bushfire survival plans should contemplate not only your own personal safety but also the safety of your family and other loved ones, pets and livestock. The importance of preparing a bushfire action plan simply cannot be understated as the risks in leaving decisions to the last minute are potentially fatal.

We are asking all South Australians to take the time to write and practise their plans and think about alternatives should the plan not work. Just because someone may live in the city or a suburban area away from places at risk, they still need a plan in case they choose to travel or holiday in a bushfire-prone area. South Australians should be aware that fire danger season means that fire permits are required for all burning activities during the fire danger season or on days when a total fire ban is declared.

Strict penalties, including fines and imprisonment, may apply where a person is found guilty of lighting a fire without a permit during the fire danger season. If residents are unsure of what they can and cannot do during a fire ban, I encourage them to visit the CFS website. Some restrictions include having burn-offs without permission, burning rubbish or grass clippings, and having fires in forests and private reserves. SAPOL, last Thursday, also launched Operation Nomad which has had great success in patrolling areas at risk of arson as well as monitoring those with a history of arson-related offences. The public can remain informed and updated on warnings and emergencies through both the CFS website and the Alert SA app and website.

With all this in mind, it is important to remember that it is our men and women, both volunteer and paid professionals, who put themselves at risk each and every fire danger season when protecting our lives, property, pets, livestock and environment. We owe it to these men and women to ensure we are all aware of the fire bans and that we have proper plans in place should a bushfire occur, as it will be them who will be putting themselves in harm's way to save us if an emergency does arise.

BUSHFIRE PREPAREDNESS

The Hon. K.L. VINCENT (15:19): Supplementary: will the minister consider extending the eligibility for the provision of Auslan interpreters to make sure it covers the announcements surrounding the commencement of the fire danger season, given that I understand an interpreter was not available for the announcement last week?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:20): Let me thank the honourable member for her question and acknowledge her ongoing passion for the area of Auslan interpreters during the course of emergency announcements or things regarding the emergency services sector.

The State Emergency Management Plan does specifically contemplate the use of Auslan interpreters. They are and will be made available for major or declared events to ensure that when emergency warnings need to be given to the community, those people who are hearing impaired are also able to get easy and ready access to those messages once they are in the process of being produced and delivered to the community.

The most recent media event that the Hon. Ms Vincent refers to wasn't in that category and, as such, an Auslan interpreter was not available. But I understand a whole range of information is available on the CFS website, which of course is always available to those people who are hearing impaired who are seeking the same information that all community members should be seeking to be aware of regarding having bushfire action plans in place and when and how fire bans should operate during the season.

Bills

BIRTHS, DEATHS AND MARRIAGES REGISTRATION (GENDER IDENTITY) AMENDMENT BILL

Committee Stage

In committee.

The Hon. I.K. HUNTER: Whilst I am waiting for my advisers, I might put on the record some answers to questions asked by the Hon. Mr Stephens in his second reading speech. In relation to information being retained by the registrar, the Hon. Mr Stephens is correct. Original information on a birth certificate will be retained by the registrar and made available by application from the individual it relates to, a child of the individual it relates to or appropriate persons or entities that may be made by regulation.

In relation to any specified time period for treatment to take place, a medical practitioner is best placed to determine the level of treatment for any individual and it is not intended to have this time period legislated. I can advise the council that, under the proposed legislation, children would need to have a magistrate determine any application for gender change in conjunction with advice from a medical professional. Any concern that the member has in relation to those persons under

the age of 18 hopefully can by allayed by the knowledge that a medical professional and a magistrate would need to determine an application to change gender on the register.

It is important to remind honourable members that this legislation does not go to a sex change operation, for example, or hormonal treatment itself; that is a medical procedure. What we are dealing with here today is the ability to change details on one's birth certificate; that is essentially what we are doing here. In addition, as I highlighted earlier, there are provisions in the bill and the Births, Deaths and Marriages Registration Act that protect against and penalise false and misleading declarations that are made in relation to any application under the bill.

This bill in no way seeks to undermine the commonwealth Marriage Act, but simply seeks to allow an individual to have their recognised gender on the legal documents they need for their everyday lives. I think I gave a more comprehensive answer on that issue in my second reading closing speech. The last concern the member raised in his speech was the regulations that are relating to the bill. Gender identities, I am advised, will be reflected in regulations and they will follow broad consultation, which will include review by the Legislative Review Committee so that there will be some oversight of those regulatory categories.

Clause 1.

The Hon. D.G.E. HOOD: I have a few questions on clause 1—not several but a few. The minister did allude briefly to my first question in his summing up, but I am looking for some more information, if possible. I understand the regulations will cover this, but can the minister provide at least a preliminary list of what genders will be declared and how many there are? What can he tell us about them?

The Hon. I.K. HUNTER: My advice is—and this is what happens interstate, I think—that there are obviously two categories, male and female, and there is also another category, the non-binary status, which attempts to take into consideration the category for people who are of intersex status. My understanding is that in Victoria at least—I am not sure about other jurisdictions—rather than have that category determined, there is the ability for the applicant to state how they prefer to be known, either 'unknown', 'indeterminate' or 'intersex'. We will consult with the community, the relevant medical professionals and those people impacted and affected by this legislation before we determine what that will be in the regulations.

The Hon. D.G.E. HOOD: Does that mean that there is potentially an unlimited number, or is there some sense of what would be reasonable?

The Hon. I.K. HUNTER: My advice is that the list, whatever amount of categories are on it, would have to be appropriate to be administered by the registrar. Clearly, if the list was too long then it would make it impossible for the registrar to administer it. Whilst I can understand that you want to have a list presented to you now, that would be pre-empting the consultation process that we have indicated we will be undertaking. In that case, all I can say is that it will be male and female, obviously, and then some other non-binary category to take into account people of an intersex status. We will go out and talk to the professionals and people of that status to find out what their preferred category name would be.

The Hon. S.G. WADE: I understand from the minister's response that he anticipates there will be three categories.

The Hon. I.K. HUNTER: That would be my expectation. Arising from our consultations, it might end up being four; I could not say.

The Hon. D.G.E. HOOD: The minister mentioned Victoria as another jurisdiction. Are there any other jurisdictions in Australia that have similar legislation?

The Hon. I.K. HUNTER: My advice is that the ACT has a similar regulatory regime that we are moving to adopt through this process. I think we intimated earlier that Victoria is moving to a much more open regulatory regime than what we are proposing in this legislation.

The Hon. D.G.E. HOOD: Moving to a new group of questions, are there any specific provisions in the bill—you did touch on this in your contribution earlier, but for the sake of clarity—which would restrict, limit or prevent an individual from changing their gender post marriage? In other

words, they have married someone, they were previously regarded as a woman, they change their gender to a man on their birth certificate, and they are married to a man. Is there anything to prevent that sort of thing from happening?

The Hon. I.K. HUNTER: My advice is that we are doing the opposite to what the honourable member might have suggested. We are not requiring people to divorce. Should they be in a marriage—a male and female currently, of course—and one of them transitions to another gender, we would not require them, through the action of this legislation, to divorce from that marriage they had entered into at some other time. In the second reading I think I read into the record some correspondence from the Attorney-General which advised of a higher commonwealth court, I think it was the Family Court, which had ruled that was unnecessary.

The Hon. D.G.E. HOOD: I thank the minister for his answer. To clarify, we are certainly not suggesting anyone should get divorced under any circumstances really. I would like to explore that a little more. If you have a situation where, for example, a couple is in a lesbian relationship and have previously been known as women, then one of them decides to declare herself a male, is that couple able to marry under this legislation?

The Hon. I.K. HUNTER: I will unpack that question a little bit. The honourable member asked about two women who were in a relationship and one declared herself to be a man. I do not think you can find that in the operation of this act; they would have to go through the process that is laid out in this bill. They would need to have the appropriate medical treatment, whatever that might be, as defined in this proposed legislation. They could not just one day declare that they were a man. I suspect they would need to have actually transitioned and have met the requirements under the legislation.

If, then, one of those persons was legally recognised as a man, I imagine they would probably satisfy the eligibility requirements of the federal Marriage Act. However, it is not a quick or easy decision, and I do not think it would be one that too many people would be taking, to just go off and satisfy themselves about the Marriage Act. I think it would be far simpler to go over to New Zealand and get married.

The Hon. D.G.E. HOOD: I have a couple more questions on clause 1. Is there potential for gender-specific clubs to somehow be affected by this legislation? For instance, if there is a women's bowling club, tennis club or whatever it might be, and someone who is perhaps physically a man but who regards themself as a woman, who goes through the process and gets a legal declaration as a woman, under these provisions will they then be able to participate in an otherwise all-women's club of some form?

The Hon. I.K. HUNTER: I get the gist of the honourable member's question. My answer would be that nothing in the operation of this legislation would cause that. However, let's step back. People already transition, people already change their gender, and any impact in terms of what the honourable member was positing would, I imagine, be impacted by the Equal Opportunity Act, not this piece of legislation.

Clause passed.

Clauses 2 to 5 passed.

Clause 6.

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

Amendment No 1 [Hood–1]—

Page 4 lines 21 to 40 and page 5 lines 1 to 12 [clause 6, inserted section 29J]—Delete inserted section 29J

This is a fairly simple amendment; it may look a little complicated on the paper there, but it is fairly simple. Essentially, what it does is change the age of eligibility to 18. Under this circumstance, it would be required that the person, to change their gender, was an adult. I understand at the moment it is 16, if I am not mistaken. Or there is no specific age; is that right? Anyway, this amendment will make it 18.

I understand it is subject to a magistrate's consideration at the moment, regardless of their age. There are a number of reasons for that. We impose the age of 18 on people for a number of reasons. Obviously, they can vote at 18, legally drink alcohol and all those sorts of things. It is the age at which people are considered adults in our society.

Obviously, to change gender is a very serious decision for anyone to make, which may have very long-term consequences. There is a large body of data that supports the fact that—and I suspect even the minister might concede—whilst there is a lot of gender confusion amongst the young, often a good number of those individuals actually decide to go with their birth gender, if you like, longer term—not all, of course, but certainly a good number.

There are a number of studies that I could quote, but there is one study called the 'Psychosexual outcome of gender-dysphoric children' by Madeleine Wallien PhD and Peggy Cohen-Kettenis PhD. The objective of their study was to establish the psychosexual outcome of gender-dysphoric children at the age of 16 or older and to examine childhood characteristics related to psychosexual outcome. I am happy to make this available to any members who might want to look at it.

The study basically studied 77 children under 18 who had been referred in childhood to their clinic, which looks at these issues, because of gender dysphoria. There were 59 boys and 18 girls, with quite a young mean age of only 8.4 years, but the range in age was between five and 12. What they did was they measured the cross-gender identification and discomfort with their own sex and gender roles, and they have a very sophisticated group of tools to do that. They then followed up on those children a number of years later when they were adults. The age at which they followed them up was up to 28 years of age, so quite a bit older. Of course, this was a self-selecting study, so the people had to agree to participate.

What they found was that 30 per cent of them did not agree to participate, so you need to exclude those people. They just did not want to be involved. They found that 27 per cent of the remaining people were still gender dysphoric when they were later interviewed, up to the age of 28 but as young as 16 or 17. However, 43 per cent were no longer gender dysphoric, that is, they decided that they were their original birth sex. In fact, in that group, all of the girls, interestingly—I do not know whether or not that is just a coincidence in this study—and half of the boys actually identified themselves at that later stage, that second time they were interviewed and questioned, as having heterosexual orientation, that is, being what we might call straight, for example.

People generally agree that this is an area in which an increasing amount of work has been done and, as far as I am aware anyway, all of those studies have shown at least a significant minority, if not a majority, of gender-dysphoric children later in life decide that they are, and will act as and live out the life of, their original birth gender.

The purpose of my amendment is to say that these are significant decisions for children to make. I know they do not make them on their own, but they are significant decisions, nonetheless, and a little bit of time would not go astray, thus making it 18 years before this decision could be made, when, of course, they are adults and are free to make any decision they wish.

I indicate that a similar amendment was moved in the House of Assembly by the member for Schubert, and it was supported by 19 of the lower house members. It was defeated, in fairness, opposed by 26 members in the House of Assembly.

The study that I referred to was published in the *Journal of the American Academy of Child & Adolescent Psychiatry*. I will read a little bit of the conclusion because that is the point of it. It states, 'Most children with gender dysphoria will not remain gender dysphoric after puberty.' That is the conclusion of expert people. There are other studies I could quote, of course, but there is one more that I would like to mention that was published in the *Diagnostic and Statistical Manual,* the fifth edition. It states:

> …as many as 98 per cent—

that is the highest amount—

> of gender-confused boys and 88 per cent of gender-confused girls eventually accept their biological sex after naturally passing through puberty.

That is their finding. I will leave it at that.

The Hon. J.S.L. DAWKINS: First, I have a question for the minister and then, at an appropriate stage, I can indicate my position on the Hon. Mr Hood's amendment. Initially, I would like to thank the minister for his response to a number of the questions that I put on the record in the second reading stage. The minister well understands the experience I have had regarding delays in the development of regulations. Which minister will be responsible for the consultation on the development of the regulations, and when would it be reasonably expected that those regulations would be gazetted?

The Hon. I.K. HUNTER: My understanding is that this legislation was developed in the Premier's agency (DPC) and the development of regulations will probably stay there as well. My understanding is also that we would want the regulations done as soon as possible. We want to get the appropriate consultation done and then make the regulations.

Whilst I am on my feet, in relation to the Hon. Mr Hood's amendment, can I say that this is quite alarming. I will say at the outset that I do not think the amendment does what the Hon. Mr Hood has said it does. The bill has already changed the age from 16 to 18. That is already in the legislation, you do not need an amendment to do that. The original bill that was first defeated in the lower house had the age of 16; we made that amendment and changed it to 18 to ease its passage through the lower house.

The age in the bill before us is 18. What the Hon. Mr Hood is suggesting in his amendment is to repeal, completely, sections 29J and 29P, and that takes away an existing right. Because this legislation is also repealing the Sexual Reassignment Act, what you are doing is actually removing from this legislation the existing right that children have now. Taking away sections 29J and 29P is a massive imposition on rights that already exist under legislation in this state. We need to think long and hard before we talk about supporting your amendments. I am not sure, but that is probably why it was defeated in the lower house, because it is actually taking away an existing right of children in transition right now.

The Hon. R.I. Lucas: The right to do what at the moment?

The Hon. I.K. HUNTER: Transition.

The Hon. J.S.L. DAWKINS: I stated in my second reading contribution that I would not support provisions within this bill that allowed for children carte blanche to apply to a court to have their registered sex or gender identity altered. I am still of this view and believe that the clause, as it stands in the bill, is too wide. However, under the current Sexual Reassignment Act 1988 minors already have the ability to apply to a court to have their gender changed after undergoing clinical treatment.

While I imagine this is a rarely used right, it currently exists and I can contemplate a limited set of circumstances where such an ability is necessary, such as a child being born with sets of both male and female genitalia and was registered by a doctor as one gender at birth but in hindsight, perhaps years later, that determination of gender may have been incorrect. Therefore, while I appreciate what the Hon. Mr Hood is trying to achieve with his amendments, namely to protect children within this bill, I believe his amendments go too far and I will not support them.

Essentially, if they are passed they will remove the right of anybody under the age of 18 for any reason to access the ability to change their sex or gender identity. However, I want to reiterate that I believe that the provisions of this clause should be narrowed to allow for changes in a minor's gender only in such scenarios as I have indicated, not as widely as the bill intended. I will oppose the Hon. Mr Hood's amendments, but I also oppose the clause.

The Hon. I.K. HUNTER: I just want to correct what I said in cross-chamber discussion with the Hon. Mr Lucas where I used the word 'transition'. I should have said 'gender change'. So, the right that currently exists is to go to a magistrate and have that legal change made.

The Hon. D.G.E. HOOD: Can I just clarify with the minister the change he referred to being made in the House of Assembly? Where is that in the bill, please? Is it 29I?

The Hon. I.K. HUNTER: I am advised that, in the original bill at 29I(1), the age was 16 years or over. It has now been changed to 18 years.

The Hon. D.G.E. HOOD: For clarity then, how does that impact on the other issue? Is it because the bill is not retrospective that it does not impact on the other issue he is mentioning with respect to current capacity to change one's gender at a younger age?

The Hon. I.K. HUNTER: The bill provides a process for adults and also for children under the age of 18, as currently written. As I understand it, the Hon. Mr Hood's amendment will remove those aspects that relate to children, currently in the bill, under 18, which means there will be no provision whatsoever for children under 18 to go to a magistrate and seek to have their gender changed on the birth certificate.

The Hon. R.I. LUCAS: I must admit I am thoroughly confused at the moment in relation to this particular provision. I understand the point the Hon. Mr Dawkins has made. If I interpret him correctly, I think the Hon. Mr Dawkins was prepared to support the old provisions, but this bill now extends it wider and he is not supporting that.

If I can just clarify the existing right under the old bill—the argument that the minister was talking about—as I understood it, a 16 to 18 year old could go to court and argue a case, and the treatment would have to be what the House of Assembly members were referring to as 'invasive treatment'. It was not simply counselling by a medical professional: it was medical treatment of an invasive form—either surgical treatment, hormonal treatment or something like that. If my understanding of that is correct, is the minister saying that this amendment will now remove that entitlement? That is the first question.

I have a second and related question. As the bill is before us now, before the amendment from the Hon. Mr Hood, the minister says that 18 is still there. I am assuming 18 is still there, however, to allow a 16 to 18 year old to go to court and argue before a magistrate to do what they did before—that is, if they had had invasive surgical or hormonal treatment—but does it also extend it to someone undertaking a minimum period of counselling with a medical professional at the age of 16 and the medical professional saying, 'I agree that you now identify as a different gender'? Is the 16 year old able to go to the Magistrates Court and now argue, 'I have done my X hours of counselling. I now have an agreement from a medical professional that I should identify as a different gender, and I want you, the magistrate, to agree to that change'?

The Hon. I.K. HUNTER: Let me pick my way through that. The Sexual Reassignment Act 1988, which is being repealed by this bill, currently has provisions to allow a child—someone under 18—to go through a process of applying to a magistrate to have their birth certificate changed to reflect the gender they want to be. This bill will repeal that act, so we need to have provisions in this act that allow someone under 18 to do exactly the same thing. Under 29J, you will see at subclauses (1) through to (7) the sorts of things that a court may, on application by a person, take into consideration and grant for approval for the purposes of subsection (2)(b) if the court is satisfied that it is in the best interests of the child that the approval be granted:

> (5) In determining whether or not to grant an approval, the Court must take into account—
>
> (a) whether the child understands the meaning and implications of the making of an application to the Registrar; and
>
> (b) whether the child has the capacity to consent to the application and, if so, the child's position in relation to the making of the application; and
>
> (c) whether the child has undertaken a sufficient amount of appropriate clinical treatment in relation to the child's sex or gender identity—

which may well be invasive or counselling under this bill, and—

> (d) whether a designated certificate or a prescribed notification has been provided.

The Hon. Mr Lucas is correct in his assumption: there is an existing right to a child under 18 in the Sexual Reassignment Act 1988 which, on the passage of the Hon. Mr Hood's amendment, would be wiped from this legislation.

The Hon. R.I. LUCAS: This bill extends the old sexual reassignment right to counsel.

The Hon. I.K. HUNTER: Yes.

The Hon. S.G. WADE: I am happy to confess that I, too, like the Hon. Rob Lucas, might be experiencing some confusion. In relation to new subsection (5)(c), which the minister has just referred to, namely, 'whether the child has undertaken a sufficient amount of appropriate clinical treatment in relation to the child's sex or gender identity', my understanding is that section 6 of the Consent to Medical Treatment and Palliative Care Act provides:

> A person of or over 16 years of age may make decisions about his or her own medical treatment as validly and effectively as an adult.

Is there a potential implication in the Hon. Mr Hood's amendment that between the ages of 16 and 18 a person can consent to quite invasive medical treatment to express their identity, and be allowed to do it completely in medicine, but not allowed to do it at law?

The Hon. I.K. HUNTER: My advice is that the Hon. Mr Wade is quite correct. If the Hon. Mr Hood's amendments are supported, that would be the case. They could transition, have the medical treatment, but not at law be able to get their gender changed.

The Hon. S.G. WADE: My view on that is that if we accept the competency of a person to make quite dramatic changes in the medical context, why would we think that they had less capacity to change their documentation?

The Hon. D.G.E. HOOD: I agree. It certainly was not my intention for that to be the case and, if that is the outcome of the amendment, I am inclined to withdraw it. I would like to have some time to consult, if I could. It certainly was not my intention, but if I could have a few minutes to consult with parliamentary counsel, and the minister is happy.

The Hon. R.I. LUCAS: To me, the issue the Hon. Mr Dawkins has raised and these subsequent questions is that there may well be a position between the position the Hon. Mr Hood has moved and the position of the bill; that is, there can be a position which protects an existing right or entitlement, which was the old law.

As I understand it, the minister is saying that the old law, as it exists at the moment, is that you can go to a court and argue in the circumstances where you have utilised invasive treatment—that is, hormonal treatment or surgical treatment, or whatever else it might happen to be—but that you do not open it up to the issue of 'merely', my word, going along to a medical professional and having a minimum period of counselling and, at the end of that, having the medical professional saying, 'I agree with you: you now identify as a different gender', and you then have that entitlement.

The current law distinguishes between that, and this bill is seeking to change that. It is extending the entitlement beyond an invasive procedure, such as surgery or hormonal treatment, to say, 'You don't have to do that. You can go down the path of having a minimum period of counselling', and that could be sufficient in certain circumstances to change your identity.

There appears to be a position in between the position currently described by the Hon. Mr Hood's amendment as it is now being teased out. The Hon. Mr Hood is saying that that was not his intention, but it is possible to have a middle ground position, and that would require potentially redrafting an amendment by parliamentary counsel in terms of meeting a protection of an existing entitlement, if you want to put it that way, but not extending it beyond that for persons under the age of 18.

I note another point in relation to this. I have been talking about 16 to 18 year olds, but it is not really 16 to 18: it is any child under the age of 18, is it not? The consent bill the Hon. Mr Wade mentioned talks about 16 to 18, but this bill is talking about any child under the age of 18. So, I guess I was wrong in my impression and what I said, that it is only talking about 16 to 18 year olds. It could be any child, and they will have to meet these criteria that have been outlined, or the parents end up speaking on their behalf in certain circumstances, but we are not talking about just 16 to 18 year olds. We could be talking about children younger than the age of 16. All of us would be aware of the early onset of puberty with young girls and young boys these days. These issues may or may not become more starkly apparent much earlier than they might have decades ago.

The Hon. D.G.E. HOOD: I thank the chamber for its indulgence. I do not think I have ever done that before and it is not my intention to make a habit of it. For the record, I state clearly that it has never been my intention to create a situation that makes things more difficult for somebody who was born—I think 'indeterminate' is the language: it is not quite clear what sex they are or what gender they are. I acknowledge that these things happen and it is tragic.

It has never been my intention to make it more difficult for those individuals but, because this bill will actually repeal the Sexual Reassignment Act, there is that potential. That said, I believe it could be fixed in subsequent legislation, so it is probably not absolute in the sense that it determines the issue forever. That was never my intention; I simply wanted to move the age to 18. I am told that to create an amendment to that effect would take at least a couple of days. We do not have a couple of days. We are sitting tomorrow, I understand, but maybe not Thursday. That is yet to be determined.

The Hon. S.G. Wade: We're coming back next year.

The Hon. D.G.E. HOOD: And we are coming back next year, that is right. On that basis, I withdraw this amendment.

Leave granted; amendment withdrawn.

The Hon. R.I. LUCAS: This highlights a potentially appalling practice for this chamber. I make no criticism of the Hon. Mr Hood and I make no criticism of parliamentary counsel. An issue has been identified by a number of members, including the Hon. Mr Dawkins and the Hon. Mr Hood, and I have struggled to keep up with it. The Hon. Mr Wade has thrown a little bit of light on the subject as well. It appeared that there was some position, in between the drafting of the amendment that the Hon. Mr Hood had drafted and the position that is outlined in the bill, that a number of members, the Hon. Mr Hood and myself included, would have been prepared to consider.

As I said, it is no criticism of parliamentary counsel. They say it is going to take them two days to draft an appropriate amendment for the chamber to consider. On that basis, this chamber and this committee may well say it is all too hard and just roll over and vote on it at the moment. As a number of us have highlighted with this package of bills—and we do not know whether the next amendment will get up or not; I have no idea—if the bill is amended, then it requires the House of Assembly to agree to it in February, anyway.

If there is an issue here that deserves to be treated appropriately, that is, the will of the committee and the will of the parliament are tested by an alternative amendment along the lines of a compromise on the Hon. Mr Hood's position on what is in the current bill, then my view is that should be the course of action that we should adopt. There are two alternatives. My view is we have been asked to sit this week as an optional sitting week, and we have agreed. The optional sitting week is Tuesday, Wednesday and Thursday. It might not be the government's wish to sit Thursday, but it is entirely a decision for the chamber to take as to whether or not we actually do what we are paid to do.

If it is an optional sitting week and we are here to sit, we certainly have plenty of government bills other than these four to do. We could potentially do it on Thursday, if it takes two days for parliamentary counsel to draft it, or, as someone interjected, this particular issue could be left to be determined in the first week of February when we come back. I think either of those courses are preferable to shrugging our shoulders on the basis that the government says they do not want to be here Thursday. Parliamentary counsel does not have time to draft an amendment, so let us just shrug our shoulders, grin and bear it, and not look for what the best alternative amendment might be.

The Hon. I.K. HUNTER: I have an alternative view, obviously. It is not clear to me at all what in fact we are arguing about now because, as I pointed out in our earlier discussion, the current age is 18 years. It was amended with the original bill that was brought back into the lower house, and as I understood it that is what the Hon. Mr Hood wanted to achieve. It is here now, at 29I and 29J. Eighteen years is the age of operation for someone being an adult, and someone under the age of 18 years has to go through this process of applying to a magistrate.

Clause passed.

Schedule and title passed.

Bill reported without 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) (16:03): I move:

That this bill be now read a third time.

The council divided on the third reading:

Ayes.....10
Noes 7
Majority 3

AYES

Darley, J.A.	Franks, T.A.	Gazzola, J.M.
Hunter, I.K. (teller)	Lensink, J.M.A.	Maher, K.J.
Malinauskas, P.	Parnell, M.C.	Vincent, K.L.
Wade, S.G.		

NOES

Brokenshire, R.L.	Dawkins, J.S.L. (teller)	Hood, D.G.E.
Lee, J.S.	Lucas, R.I.	McLachlan, A.L.
Ngo, T.T.		

PAIRS

Gago, G.E.	Stephens, T.J.	Kandelaars, G.A.
Ridgway, D.W.		

Third reading thus carried; bill passed.

STATUTES AMENDMENT (SURROGACY ELIGIBILITY) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 December 2016.)

The Hon. J.M.A. LENSINK (16:08): I rise to make some remarks in relation to this bill and indicate support for legislation which amends the Assisted Reproductive Treatment Act, the Equal Opportunity Act and the Family Relationships Act. My understanding of the changes to the Equal Opportunity Act is that services will now be covered by the Equal Opportunity Act, which were not previously. In effect, assisted reproductive services could discriminate on certain grounds but some obviously chose not to, so it addresses the medically versus socially infertile matter. The Family Relationships Act amendments are to allow non-heterosexual couples to have access to surrogacy agreements.

I think that essentially covers the changes to the legislation; clearly, I support those. I think it is time that our parliament addressed matters where people are commissioning these services interstate and overseas. We need to make sure that we are keeping up to date with some of those practices and not disadvantaging South Australians who are going overseas or interstate to obtain services that they could otherwise obtain here.

I would also like to commend my colleague, the Hon. John Dawkins, for his persistent oversight of ensuring that the people he has fought for for such a long time to obtain surrogacy treatment will continue to be covered under legislation. I understand that there are some

amendments to, in effect, enable that to continue under this legislation. With those brief remarks, I commend the bill to the house.

The Hon. R.I. LUCAS (16:10): I rise to speak to the second reading of the bill. As I outlined in my second reading comments on the relationships register bill, I indicated my general approach to these four pieces of legislation. Whilst I will support the second reading of the bill to allow discussion and debate in the committee stage, it will be my intention to not support the third reading of the legislation. The second reading of this bill, as the Hon. Mr Dawkins outlined in his contribution, was a mess in terms of its parliamentary procedure, if I can put it that way, in the House of Assembly debate.

It was a bill that was debated without a second reading explanation because it was carved out of the original draft bill and split into two, which made following what was going on in the House of Assembly debate very difficult. At least in the Legislative Council debate we have a second reading explanation from the minister who is moving it and an appropriate process for consideration of the aspects of the legislation. As the minister outlined in his second reading explanation, the bill seeks amendments to the Assisted Reproductive Treatment Act, the Equal Opportunity Act and the Family Relationships Act to:

> ...alter the access and eligibility provisions and the rules dealing with surrogacy, access to assisted reproductive treatment and the recognition of legal parentage.

The bill will allow for much broader access to the LGBTIQ community to assisted reproductive treatment and surrogacy agreements, according to the minister. To quote the minister:

> The discrimination in the law, as it currently stands, makes what is already a complicated and stressful process even more complicated and stressful. This Bill will remedy that.

Further on, the minister states:

> This Bill does that by allowing members of the LGBTIQ to create their own families through access to assisted reproductive treatment and surrogacy agreements.

Further on, without reading the whole section, the second reading explanation highlights that people's access to that treatment will not be 'discriminated against on the basis of their sexual orientation, marital status or religion.' The Family Relationships Act will be amended so that:

> ...with respect to surrogacy, permit access to surrogacy for domestic partners (including parties to a registered relationship), regardless of sex, gender identity or marital status.

In relation to the surrogacy issue, we in this chamber have been exposed to part of the debate on this bill over a period of time. Minister Hunter either moved or was going to move (I cannot recall the exact end result) amendments to extend access to surrogacy agreements to—

The Hon. I.K. Hunter interjecting:

The Hon. R.I. LUCAS: He moved it and lost, according to Mr Hunter. The Hon. Mr Dawkins made it quite clear that his amendments were not open to same-sex couples. He and others, according to the Hon. Mr Hunter, opposed the Hon. Mr Hunter's amendment on that particular occasion. Amongst other things, this is seeking to reverse that previous decision in this legislation. My position was clear at that time: I opposed the extension to same-sex couples for surrogacy agreements. That remains my position in relation to this particular legislation. For those reasons and the reasons I outlined in my second reading contribution to the Relationships Register (No 1) Bill, I will oppose the third reading of the legislation as well.

The Hon. S.G. WADE (16:15): As I enter this debate, I would like to join my colleagues in acknowledging the work that the Hon. John Dawkins has done in relation to the issue of surrogacy over the past decade. The Hon. Mr Dawkins has led reform in this area and it is a rare example of legislative reform by an opposition member. In that context, I gave particular regard to his views on this matter and I was disturbed to hear earlier in the debate that there was the potential—unintended, I assume—to withdraw the rights to surrogacy for certain groups of people.

I understand the honourable minister and the Hon. Mr Dawkins had discussions and that there was the possibility of a statement on the record. The Legislative Council has made me a cynical person and I am very uncomfortable with statements on the record. I am delighted that there is an

amendment before us which will address the concern that the minister and the honourable member discussed. I think it is very important in this area that we be clear and that the legislation does not have any unintended consequences.

In terms of my personal position on this bill, I have said before that in approaching this bill, as with a number of bills that we have been considering recently, I seek to give primacy to the best interests of the child. My contribution to one of the Hon. John Dawkins's battles on surrogacy: I was a member of the Social Development Committee into gestational surrogacy, which reported in 2007 or 2008, I think. In that report, the committee said:

> The committee seeks to give primacy to the best interests of the child. The committee is particularly mindful that children should not be denied access to information regarding their genetic history or the circumstances of their birth.

In previous legislative consideration, in particular in relation to the Reproductive Technology (Clinical Practices) (Miscellaneous) Amendment Bill, I have supported making surrogacy available to a broader range of people because, as I said in that bill:

> I am very concerned that children being conceived outside the framework of the [act] are not being provided with a range of protections. For example, they would not be given the protection of the assessment and counselling services, they would not be given the protection of the full medical support of ART services and they would not be given the protection of screening to avoid the transmission of sexual diseases and genetic conditions.

Consistent with that position, I will be supporting this bill.

The Hon. J.M. GAZZOLA (16:18): I will be supporting the bill.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (16:19): I would like to thank all members for their contributions to this debate in amending the Assisted Reproductive Treatment Act 1988, the Equal Opportunity Act 1984 and the Family Relationships Act 1975. This bill is an important step in giving fuller access to surrogacy for South Australians, including members of the LGBTIQ community. However, before going into depth about the bill and reminding the council about some of the main components of the bill, I would like to pay tribute to the Hon. John Dawkins and his important work in surrogacy reform.

As many in this council would know, the Hon. John Dawkins has been a fierce advocate for surrogacy for the state of South Australia. He has worked tirelessly for the past decade to create, essentially, the state's surrogacy laws. I would like to outline to the council some of the legislative work that the Hon. John Dawkins has done on surrogacy. We occasionally have vague memories of what has gone on 10 years ago but, when considering this legislation, it is good to go back and look at the record.

The Hon. John Dawkins' work in this council started in 2006 in relation to the development of the Statutes Amendment (Surrogacy) Bill 2006. The purpose of the bill was to legalise altruistic gestational surrogacy, as well as recognition on birth certificates of the genetic parents of children born via such a process. The bill sought to amend the Family Relationships Act 1975 to establish recognised surrogacy agreements. In that agreement, a woman (the surrogate mother) would agree firstly to become pregnant, or to seek to become pregnant and, secondly, to surrender custody of all rights in relation to a child born as a result of a pregnancy to two other persons, otherwise known as the commissioning parents.

That is a major step for someone to take. The parties to the agreement are, of course, the surrogate mother and, if she is married, her husband, and the commissioning parents, and no other person. At the time, the bill applied to heterosexual couples, utilising a close relative as a surrogate mother where no money changed hands. The bill, I think, for its time was a good piece of legislation, making good policy.

After being referred to the Social Development Committee, reintroduced in 2008 and then prorogued, the bill was reintroduced. Through the Hon. John Dawkins' hard work, his negotiation, his passion and his persistence, I think, that bill was assented to on 1 December 2009. This was an important milestone, but the Hon. John Dawkins did not stop at that. In 2010, the honourable member

introduced the Statutes Amendment (Surrogacy) Amendment Bill 2010, amending a transitional provision of the surrogacy act.

Finally, the Hon. John Dawkins further improved the state's surrogacy laws with the development and passing of the Family Relationships (Surrogacy) Amendment Bill 2014. This bill sought to amend the Family Relationships Act 1975 and to make a related amendment to the Assisted Reproductive Treatment Act 1988 in relation to altruistic surrogacy. This further sought to allow for the reasonable reimbursement of costs incurred by a surrogate mother. This bill, I think, helped to establish a framework that would enable a register of approved surrogates to be established and to be accessed by approved medical institutions. It is a stepwise evolution of the very first attempts the Hon. Mr Dawkins made in this place in 2006 to introduce this concept into our legislation.

As the council would be aware, at the time of the bill's introduction, the situation of people wishing to seek surrogacy arrangements was limited to people seeking a surrogate from their family and friends. If no family or friends were available for surrogacy, then people were forced to go into the overseas commercial surrogacy market. This bill was pivotal in making it possible for a commissioning couple to contact a surrogate via, firstly, an approved medical institution and, secondly, the register. In this sense, the bill made surrogacy much more accessible to many more people.

The regulation of overseas surrogacy agreements was also included in this important bill. These provisions mirrored the process already in place at the time for overseas adoptions, which makes good sense, too. The bill really determined a solution, maybe not wholly, but partly, to issues that were recently raised at the time of the current laws, and that has been referred to in this debate previously by the baby Gammy issue. The bill sought to ensure that the minister reviews the framework for the upkeep of a surrogate register and approvals of surrogacy agreements at least every three years to ensure that it is in line with current community expectations.

Today, without putting any words in your mouth whatsoever, I think the Statutes Amendment (Surrogacy Eligibility) Bill 2016 is further development on the Hon. John Dawkins' body of work on surrogacy. As the council will probably be aware by now, the South Australian Law Reform Institute released a report about surrogacy in the state, entitled 'Rainbow families: equal recognition of relationships and access to existing laws related to parentage, assisted reproductive treatment and surrogacy'.

The report set out SALRI's review of equal recognition of parental rights and access, including surrogacy, in the state and made a number of recommendations. The bill is, in part, a response to those recommendations and provides access to and sets out rules for dealing with surrogacy. Most importantly, the bill builds on the work mentioned earlier of the Hon. John Dawkins throughout the last decade by at last providing, if the bill is successful, for LGBTIQ couples to access surrogacy agreements in this state. I understand that the Hon. John Dawkins has raised some concerns with a particular provision of this bill, namely, the eligibility criteria that are currently available at section 10HA of the Family Relationships Act 1975 for women wanting to access surrogacy in South Australia but who are unable to safely carry a baby to term.

There was no intention for this bill to limit the availability of surrogacy in the states. However, to put this matter beyond doubt, to move aside from a statement that the Hon. Mr Wade delicately put that he has less faith in than the provisions of legislation, I will be moving an amendment that makes it abundantly clear that surrogacy continues to be available in all of those circumstances outlined in the current act.

The Hon. Mr Dawkins also asked about the regulations for the current provisions of the Family Relationships Act 1975. I can indicate that the government is committed to progressing the consultation which is required by the comprehensive process outlined in the act and that the time line will depend on the issues raised in that consultation. With regard to regulations under the current bill, again, there will be a need for a consultation process to be undertaken, but I fully expect that that process will not be protracted and I will utilise my best abilities to make sure that these things are dealt with in speedy time. I commend the bill to the house.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. R.I. LUCAS: I indicate that at some time during the committee stage I intend to test the committee's view on reporting progress. I did not repeat this issue during the second reading of this bill but I did on an earlier bill. I have not had a chance to consult anyone, other than a brief conversation in the corridor with the mover, the Hon. Mr Hood, in relation to his two pages of amendments. He said in this chamber and I think briefly in our conversation that it really relates to one particular issue, but I have not had the opportunity to consider it, reflect on it or, indeed, speak to anyone about it. In the brief conversation that I had with the Hon. Mr Hood, I asked him whether there is a precedent for this in any other jurisdiction. I think he—

The Hon. D.G.E. Hood: Overseas there is.

The Hon. R.I. LUCAS: Okay. I thought his answer to me in the corridor was that there was not but, since then, he has established that there is overseas. At some stage, if he gets a chance during this debate, he can outline what the precedents are and what the amendments are seeking to do and their impact. Some of us may want to reflect on the government's position on it as well. I will just flag that before we conclude the committee stage of the debate and vote on that particular amendment, I will move that we report progress so that we can at least give members the opportunity overnight to consider the amendments.

The Hon. J.S.L. DAWKINS: In a similar vein, I suppose, I have reflected to a limited extent on the Hon. Mr Hood's amendments but I do not yet feel in a position to make a determination on them. In the second reading summary, the minister was very generous in his outline of the work I have done in this field and the work and the amount of effort that other colleagues have put in to support me—not all, but many—even those who do not necessarily agree with it. They have generally tried to advance the legislation.

Having noted the amount of time that this chamber has spent, as the minister outlined, over a decade on this issue, I would like to get it right. I indicate now that I would support a move to report progress after we have done some work on this, and perhaps the minister will consider that favourably because we could well conclude that work tomorrow. That is my personal preference.

The Hon. D.G.E. HOOD: I would like to ask the minister a question at clause 1, if I may. Does the government keep any statistics with respect to surrogacy arrangements in South Australia; that is, how many occur on average per year, how many in the last five years, etc.?

The Hon. I.K. HUNTER: I do not have that data at hand. I imagine the Department for Health and Ageing would. We will seek that data tonight and, as indicated by the Hon. Mr Lucas and the Hon. Mr Dawkins, there will be some move at some stage—probably after you have moved your amendment, the Hon. Mr Hood—to report progress. We could either do that or come back and revisit it. I am reasonably flexible. However, if we report progress on this one, as we have done with adoption, then we will certainly need to deal with both of those tomorrow. If people are happy with that process, I indicate that I am pretty flexible about that.

The Hon. S.G. WADE: I look forward to hearing the Hon. Mr Hood's contribution on clause 3, but it raises issues of general equal opportunities law. I indicate my support for the views of my honourable colleagues that we not try to deal with these issues substantively tomorrow. I remind members that we always have Thursday and we always have February.

The Hon. J.S.L. DAWKINS: In relation to the question that the Hon. Mr Hood asked the minister, it will be good to get that data if it is available, but my own personal experience is that I have often been asked how many people utilise the surrogacy arrangements. I find it very difficult to give any definitive answer to that because other than Ms Kerry Faggotter, who we have all come to know through her advocacy, just about everybody else involved is extraordinarily private and does not particularly want the community to know.

However, I would make a comment about the legislation that was passed through both houses in July last year. I think if the regulations had been developed by now—and the minister

laughs and I understand why he is laughing because he understands my frustration, as most do—there is no doubt that if the regulations concerned with that bill had been promulgated by the Attorney-General at a reasonable time, then there would have been a lot more South Australians able to access surrogacy in South Australia than is currently the case.

The Hon. D.G.E. HOOD: I thank the Hon. Mr Dawkins for his response. I fully understand that these will be difficult statistics to keep for many obvious reasons, so that is why I ask the question: does the government keep these statistics and, if so, what are they?

Clause passed.

Clauses 2 and 3 passed.

New clauses 3A, 3B and 3C.

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

Amendment No 1 [Hood–1]—

Page 2, after line 11—Before clause 4 insert:

3A—Amendment of section 3—Interpretation

Section 3—after the definition of *recognised surrogacy agreement* insert:

registered objector—see section 8(3).

3B—Amendment of section 6—Eligibility for registration

Section 6—after its present contents (now to be designated as subsection (1)) insert:

(2) The fact that an applicant for registration has a moral or religious objection to the provision of assisted reproductive treatment to another on the basis of the other's sexual orientation or gender identity, marital status, or religious beliefs is not, of itself, grounds for finding that a person is not fit and proper to be registered.

3C—Amendment of section 8—Registration

(1) Section 8(2)—after paragraph (b) insert:

(ab) if the person notifies the Minister that the person has a moral or religious objection to the provision of assisted reproductive treatment to another on the basis of the other's sexual orientation or gender identity, marital status, or religious beliefs—that fact; and

(2) Section 8—after subsection (2) insert:

(3) A person referred to in subsection (2)(ab) may, for the purposes of this or any other Act, be referred to as a *registered objector*.

Under clause 4(1) of this bill, a person is prohibited from refusing to provide assisted reproductive treatment to anyone else (to a person requesting it) on the basis of that other person's sexual orientation or gender identity, marital status or religious beliefs. That is what is in the bill at the moment. My amendments—although it is really only one substantive amendment, there are four in all that actually do it—will provide an exception to clause 4(1), which I have just outlined, that is currently in the bill, which is that a person who has a moral or religious objection to providing assisted reproductive technology to someone will be able to register this objection and be known as what my amendment will designate as a 'registered objector'. That is the term, a 'registered objector'.

This objection or that person's identity would be noted on the register kept under the act. The act already requires that a register is kept, and the bill reinforces that. This objector and their objection would be noted on the register alongside other particulars the act requires, that is, the person's name, their business name, business address and any other prescribed information.

Where the registered objector wishes to exercise their right to object to providing assisted reproductive treatment, they have an obligation to refer that person seeking assisted reproductive treatment to another provider. They cannot just say, 'No, I am not going to do this, I have a religious objection', or whatever it may be. Under my amendments, they are compelled to refer that individual to someone who will offer them the services they want.

It is important to note that the registered objector will be provided with protections under my amendments. Being a registered objector is not in itself a ground for finding a person to be unfit and improper in regard to the person's eligibility to be registered under the act. What this bill does is say that if somebody refuses to provide assisted reproductive technology to someone for whatever reason, on the basis of their sexuality, etc., then that person can be deregistered. That is what the bill actually says at the moment. My amendments would prevent that happening by providing these protections.

Moreover, being a registered objector and exercising the right to object (that is, not do it) will not contravene the Equal Opportunity Act 1984. If my amendments do not pass, a medical person refusing to offer this form of treatment (IVF, as we used to call it, or ART as we call it these days) will be subject to all the potential consequences under the Equal Opportunity Act. They are quite substantial, and I will go through them in a moment.

The purpose of the amendment is to accommodate people who are not comfortable providing such treatments based on their personal beliefs, whatever they may be. Such people should not be persecuted by the law, in my view, and it is important to re-emphasise that under my amendment, significantly, the patient seeking the treatment from the doctor would have to be referred to somebody who is happy to perform the treatment. I point out that there are similar provisions in the US and the UK in their assisted reproductive treatment acts and various pieces of legislation around that issue. They have various titles for them, including 'conscientious objector'. For some reason, our parliamentary counsel has called them a registered objector here.

I mentioned the significant consequences faced by a person—a doctor, I guess, or maybe a nurse, but typically a doctor—who refuses to provide this treatment under this bill, because they would then be subject to the equal opportunity penalties, if you like. They are numerous, and I will list a few of the penalties this bill proposes to make these people subject to. Under section 94(3) of the Equal Opportunity Act, for not complying with the notice from the commissioner (that is, the commissioner says you are in contravention of the act), they can face a maximum fine of $2,500.

Under section 95(4), for not complying or refusing to take part in conciliation proceedings, they can be subject to another fine of up to $2,500; that is, if the commissioner says, 'Well, you need to go and have conciliation and sort something out,' and the person refuses, that can be up to another $2,500. Under section 96(1)(a), in relation to an order by the tribunal to pay compensation of such amount as the tribunal thinks fit to a person for loss or damage arising from the contravention—what that loss or damage may be is not specifically spelled out—in this case, the person, or the doctor, I guess, may be required by the tribunal to make some sort of compensation payment for loss or damage.

Further, under section 96(3) of the Equal Opportunity Act, compensation may include damage to a person's feelings. If the doctor—again, typically a doctor, but it could be a nurse, a medical professional or some sort of treatment person—refuses to undertake the procedure, they may be ordered to make compensation, including compensation for damage to a person's feelings. I wonder how that could be quantified? I imagine that quite a range of possible financial quantums may be awarded in those circumstances and that, at the very least, it would be hard to get consistency about what hurting someone's feelings is worth. Is it $5 or $100,000? Who can say?

Under section 96(1)(b), in relation to an order by the tribunal where the respondent can be ordered to refrain from further contravention of the act, they can be told, essentially, 'Don't do this again,' and, if they refuse, they can be subject to the earlier provisions I mentioned, that is, $2,500. They can also face an order by the tribunal under section 96(1)(c), requiring the respondent or any other party to the proceedings to actually go ahead and perform the proceedings; that is, the tribunal can say, 'No, you have to go ahead and perform this procedure,' which I think would be the most contentious part.

There will be some people—doctors, nurses, whoever it may be—who would simply refuse. They would be a minority, a small minority perhaps, but I suspect that there will be some. What is the option for those people? When does it stop? They are subject to all these other provisions. One wonders if we are going to see a situation where these people can potentially face even prison terms. I hope not. This would result in a situation where a person is actually forced to provide ART to the

patient, if I can put it that way, despite their personal beliefs and objections, and I certainly do not agree with that.

Under section 96(4) of the Equal Opportunity Act, a person who contravenes or fails to comply with an order of the tribunal can be fined up to $5,000. You can see that these are very substantial penalties for individuals who object, on whatever grounds, to performing these procedures. At the moment, that is not the case. At the moment, the Equal Opportunity Act specifically excludes these procedures—from people being subject to discrimination provisions under these procedures. That is, if somebody—a doctor or a nurse—refuses to conduct these procedures, under the Equal Opportunity Act at the moment they are able to do so. This bill, the surrogacy eligibility bill, removes that, and they will, essentially, be forced to do it. They will have no way of refusing, unless they are prepared to go down the path of facing the Equal Opportunity Tribunal.

This bill also makes compliance with that provision—that is, that they actually go ahead and perform the assisted reproductive procedure—a condition of their registration. According to this bill, the doctor or nurse can be deregistered, so it is a very substantial step. I imagine that there will be some doctors and some nurses—there will not be many, presumably, but there will be some—who may decide that they would rather be deregistered than go down the path of performing these procedures. It is a very substantial change from what we have at the moment.

I have not been able to determine the situation in other states; we are looking at that at the moment. Certainly, in the UK and the US there are protections in place for doctors and nurses who find themselves in those situations, so they are not subject to equal opportunity provisions. That is essentially what my amendment does and why I am moving it. It is a very important principle, the principle of what we might typically call religious objection. It may not be just religious people, of course; there may be others who are not religious in any way who have a certain view for some reason. I accept that will be a very small minority, but it is possible. I think it will mainly be people who have a religious objection and they will, in some cases, simply refuse to do it, whatever the consequences.

The question for this chamber is whether we want to compel them to do it. I do not, and obviously I will be supporting my amendment, which will not compel them to do it and which will give them the protection not to. I guess the question for members—and I think we are voting on this tomorrow—is whether they want to create a situation where doctors and nurses who have a genuine, conscientious objection, for whatever reason, whether you agree with their reason or not (you may not, and that is fine, too), are compelled then to go down that path and suffer the consequences. So, that is the question before us today, and they are essentially the issues that my amendment seeks to deal with. I think I have explained that reasonably clearly.

The Hon. I.K. HUNTER: I concur with the summary of the Hon. Mr Hood in terms of the impact of his amendments. They have the effect of allowing the registration of registered objectors under the Assisted Reproductive Treatment Act 1988. A registered objector can refuse the provision of assisted reproductive treatment to a person on the basis of a person's sexual orientation or gender identity, marital status or religious beliefs. In circumstances where assisted reproductive treatment is refused on such a basis, the registered objector must take steps to refer the person seeking assisted reproductive treatment to another person who is registered under the Assisted Reproductive Treatment Act 1988.

Thus far we agree, but no further. These amendments raise a number of concerns. The amendments propose to allow discrimination by registered objectors on the basis of a person's gender identity, marital status or religious beliefs. Section 22(1) of the Sex Discrimination Act 1984 (commonwealth legislation) provides that it is unlawful to discriminate against a person on the grounds of the other person's sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, or breastfeeding.

If state legislation is found to be inconsistent with commonwealth legislation, then pursuant to section 109 of the Australian Constitution, I am advised (and our lawyers will correct me if I am wrong) that the state legislation will be invalid to the extent of the inconsistency. This has been previously tested in Pearce v South Australian Health Commission (1996) 66 SASR 486 (I think that is the South Australian Supreme Court) and in McBain v State of Victoria (2000) FCA 1009 (Family

Court of Australia, I expect that is) where, under respective state legislation, the restriction of in vitro fertilisation (IVF) treatment on the basis of marital status was declared inconsistent with the Sex Discrimination Act and thus invalid.

In summary, if the Hon. Dennis Hood's amendments are passed there is a significant risk of the provisions being found to be constitutionally invalid to the extent of their inconsistency with the provisions of the Sex Discrimination Act. I will leave that there for our lawyers to think about and respond to, perhaps tomorrow.

Finally, SA Health wrote to all providers of these ART/IVF services about this legislation, and my advice is that no opposition was submitted to the draft bill. I have not heard of any complaints of people wanting to be exempted from administering ART or IVF through their professional duties. Indeed, I suppose it would be very odd because the vast majority, if not all, of such medical administration is actually done by private businesses in the ART sector and I suppose it would hurt their market share if they were to restrict who they lawfully supplied services to. I suspect it is probably a moot point in that regard, but my stronger concern is the inconsistency that may be introduced in this legislation with the commonwealth legislation. For those reasons I will not be supporting the amendment.

The Hon. D.G.E. HOOD: I thank the minister for his response. I have two issues with regard to that. I am not doubting the minister's word that he has not had any direct correspondence—that he is aware of anyway—from anyone saying that they have any sort of issue with them performing the procedures themselves, but I think he could see the possibility of making the allowance that somebody would. Whilst it may not have happened to date, it is perfectly conceivable that someone down the track becomes aware that these provisions have changed and all of a sudden be compelled to provide these procedures against their will. I think it is entirely conceivable and, in fact, highly likely. I would be very surprised if we did not see that.

In reference to the minister's comment about this being constitutionally invalid, if that is the case then clearly our current act is constitutionally invalid because the Equal Opportunity Act 1984, section 5—Interpretation, provides:

> (2) A reference in this Act or in the repealed Sex Discrimination Act 1975 to the provision of a service does not include, and will be taken never to have included, the carrying out of either of the following fertilisation procedures:
>
> (a) artificial insemination; or
>
> (b) the procedure of fertilising an ovum outside the body and transferring the fertilised ovum into the uterus.

If that is the case and if what the minister has said is true, and I am not doubting his word, then clearly our current act is in exactly the same position. All my amendments do is provide a protection for those individuals, which I accept will be a small number and there is no question about that, who simply do not want to do this for whatever reason. My amendments will allow them the freedom to say, 'No, but I'm passing you onto somebody who will do it for you. Go with my best wishes.'

The Hon. I.K. HUNTER: Before the Hon. Mr Wade makes a contribution, can I just say that all jurisdictions—and I am not sure if everybody is aware of this, but we should be, I suppose—states and territories have been given an exemption from the commonwealth's Sex Discrimination Act until July of this year to give us time to bring our various state acts into compliance with the commonwealth's Sex Discrimination Act. That is what we are doing in this bill: updating the Equal Opportunity Act, through this process, to bring ourselves into compliance with the commonwealth's position.

Although we could, I think it would be very poor practice for this parliament to legislate for an act that is not compliant with the commonwealth's Sex Discrimination Act, given that we have been given a time frame to bring ourselves into compliance, as have all other jurisdictions. That is why this is being done. I take the point of the Hon. Mr Hood that currently we are not compliant. We know that and so does the commonwealth, and that is why we have been given this exemption period to bring ourselves into compliance.

The Hon. S.G. WADE: I thank the Hon. Mr Hood and the minister for further unpacking that for us. As I indicated in my second reading contribution, I believe that surrogacy services should be available to a broader range of people, but to say that a person has a right to services does not mean that they have the right to get them from all service providers in that sector. I completely agree with the Hon. Dennis Hood that it is highly likely that there will be some service providers in the assisted reproductive technology treatment space who will not feel comfortable with the provision of services in some of the circumstances being foreshadowed.

We have had this discussion about what has happened in other states and jurisdictions in relation to ART, but I am also reminded of the fact that we already allow for conscientious objection in medical services through the Criminal Law Consolidation Act in section 82A, which deals with the medical termination of pregnancy. It is not an equal opportunities legislation, but even without registration it gives medical practitioners the right to conscientious objection. It provides:

> (5) Subject to subsection (6), no person is under a duty, whether by contract or by any statutory or other legal requirement, to participate in any treatment authorised by this section to which he has a conscientious objection, but in any legal proceedings the burden of proof of conscientious objection rests on the person claiming to rely on it.

In my considerations over the next night, I certainly will not be backing away from my belief that people are entitled to services, but I do not necessarily think that your right to a service means that everybody is obliged, under pain of law, to provide it to you.

The Hon. R.I. LUCAS: I thank the Hon. Mr Wade for that, because I have followed at a distance what is at times a quite furious debate in Victoria in relation to the same issue. I am not sure whether the law was drafted similarly there, but there has been a considerable number of court cases where various medical practitioners were refusing to provide termination of pregnancy services and there were considerable legal arguments in relation to the position. There was clearly provision for conscientious objection, if we can put it that way, but it was being tested at law by those who opposed it.

I am not sure what the ultimate resolution of that was, and I thank the honourable member for highlighting our position. I found it very useful to hear the arguments for and against, so that we can reflect on this overnight. The minister introduced the element of his argument, which I have not seen referred to in any of the second reading speeches, that we are making all of these changes because we are under deadline from the commonwealth to make our laws compliant 'by July this year', he said. I assume that is July of next year—July 2017?

The Hon. I.K. Hunter: My reference was for this year.

The Hon. R.I. LUCAS: July 2016? So, we are actually late?

The Hon. I.K. Hunter: Yes.

The Hon. R.I. LUCAS: I am wondering whether the minister or the Attorney-General's office are in a position to email to members a copy of that requirement? I have not seen that debated in the House of Assembly debate or indeed in the second reading explanation for the minister. He has introduced it in response to this particular amendment. I would be interested to know the nature and the context of the dictate from the commonwealth that we have to do certain things by a certain time, which was July this year, and what our state's wriggle room is in relation to that. I would be surprised if it is as definitive as that.

I suppose in the end it comes down to an issue that if our law is in conflict with the federal law, there is a chance that it might be struck down if it is so challenged. But, states may well still choose to have their differences from the commonwealth legislation and test the legal waters from that viewpoint. If the minister was able to provide to members overnight, by way of email, a copy of that letter, directive or decision, or whatever it is, that would certainly assist some of us in considering the Hon. Mr Hood's amendment overnight.

The Hon. I.K. HUNTER: My advice is that exemption was in regulation at the commonwealth level, so we will look at that for you or try to get a second reading speech, for example. I am also advised that it was mentioned or agitated in the SALRI report. It does not immediately spring to mind, but I am told that it was, so we will find that for you and try to get it to you this evening.

The Hon. P. MALINAUSKAS: I have what is hopefully a simple question. If the Hon. Mr Hood's amendments were to fail, would that mean, in the event of a surrogacy, that a medical practitioner who was opposed to such a procedure for a same-sex couple would be compelled by law to provide that service?

The Hon. I.K. HUNTER: My understanding—and the Hon. Mr Hood could correct me if I am wrong—is that this amendment only relates to the provision of in vitro technology (ART). Surrogacy is not impacted by this; it is ART.

The Hon. T.A. FRANKS: I also thank the mover for his explanation, which I think was actually most informative. I am really interested to see the other jurisdictions where this has been applied, and that would be useful given that people are seeming to lean to the idea of receiving information in the next few hours to inform the debate tomorrow

In particular, I am interested in why 'religious beliefs' was one of the criteria under 3C(1)(ab) that could be included for somebody to withhold their service and register their conscientious objection. What sort of situations would that entail? Would a person be able to refuse service because somebody was Muslim, or Christian, or Hindu? Where did that thinking come from, and does that exist in other jurisdictions?

The Hon. D.G.E. HOOD: To be honest, this is something that, when we were discussing it, I saw no reason to include, but I was advised by parliamentary counsel that it should be included because there are overseas jurisdictions where there have been court cases based on people's religious views that were somehow objected to. If the member was seeking to remove that particular part of my amendment, I am certainly open to a discussion on that.

I must admit, that one was a little surprising to me as well, but you know the process in here. We submit our objective to parliamentary counsel, and they return with the wording. I think the member raises a reasonable point. It is something that is not quite clear to me either, to be frank, but the reason given to me was that there have been cases overseas where people have been compelled, under their provisions, to offer procedures to individuals they had decided not to, the reasons for which include their own religious beliefs.

I think that is highly unlikely here. It would probably more likely be a person of, say, the Islamic faith or something like that who did not want to provide those services to a same-sex couple. I think, in the real world, that is the most likely situation, but if the member wishes to amend my amendment, I am certainly open to that.

The Hon. I.K. HUNTER: Just listening to the debate, another thought has occurred to me which we might want to cogitate about overnight. If the Hon. Mr Hood is successful in his amendment, will that put a service provider—and they are probably not lawyers; they are probably qualified medical practitioners—in the invidious position of having to decide whether they obey the state law or the federal law, because they will be mutually inconsistent?

How would we expect a service provider to be able to make that distinction and decision for themselves? At the same time, are we opening up then a person who does deny service to an individual or couple, in accordance with the state amendment the Hon. Mr Hood wants to move, to challenges at the Australian Human Rights Commission or even in the High Court? Is that somewhere we want to be?

The Hon. K.L. VINCENT: If I may ask a couple more questions of the mover on top of those that have already been asked, which were certainly questions I had as well. The Hon. Mr Hood mentioned that he is moving this amendment on the assumption that there are going to be some people, however many that might be, who may object in the future to providing these services to certain people or certain groups on the grounds of their personal beliefs. My first question is: has the mover actually been contacted by anyone who has requested this amendment who objects to a future where they might have to provide these services to certain groups or certain people?

My second question is: what sort of impact does the honourable member expect this amendment to have should it pass, given that, even if a person can object to providing the services themselves, they are required to refer that person on to someone who will? If I am reading this

correctly, it will not actually stop people from accessing ART services; it simply stops certain people from having to do it. What is the real-world impact of the amendment? Those are my two questions.

The Hon. D.G.E. HOOD: Firstly, with respect to whether I have had any personal contact with anyone who has requested this, the answer to that is no, but let me explain because it is a bit more complicated than that. I am aware of a doctor who works in this field—not in South Australia but in another state—and I contacted him to paint this scenario. In his state, we understand that, under this bill as it is being proposed, he would not be forced to provide those services. I do not know this man well. I have never actually met him, but I have spoken to him on the phone. He said to me that he would have to really consider whether he just simply refused to do it.

I explained that there are very serious consequences for such decisions, and I took him through some of the things I have just outlined to the chamber, and his response was shock. He was quite surprised that he could find himself in that situation even to the point of deregistration. This is an individual who has been in that role for, I understand, around 15 to 20 years, so quite an extended period of time. I think ART has only been around for roughly that long, so he is somebody who has been there for quite some considerable time. That is my answer to the first part of your question, the Hon. Ms Vincent.

Regarding the second part of your question, you are quite right: the impact in the real world will be almost nothing because an individual who has their own reasons for not performing a particular procedure on somebody will be compelled under my amendments. They will not have a choice; they will be required to refer them to someone else. That couple or individual goes to another doctor, another facility, or whatever it is, and they have their procedure there, so no harm is done in that sense.

The difference is to the individual who does not want to provide the service because you can put them in a very difficult situation, should my amendments fail and the bill pass unamended, in that they are forced to do something against their conscience. Whether people agree with it or not is a whole different matter, but for their own reasons they have decided that they do not want to do it. The real heart of this question is: should the law compel them to do it anyway? I say no, and that is why I moved my amendments. I am not saying you necessarily feel otherwise, the Hon. Ms Vincent but, if members feel otherwise, then they have the opportunity to vote my amendment down. That is my strong position.

I would ask you to put yourself in the position of somebody who has a particularly strong feeling about something. Let's be frank, usually these are religious people who have a particularly strong feeling about something, and they just do not want to do it. It goes against their own conscience of what they believe to be right and wrong, regardless of what anyone else might think. The question is: should we be compelling them to do it? I say no.

The Hon. T.A. FRANKS: I thanked the member before for his response, particularly on the religious beliefs criteria for the conscientious or moral objection. Certainly, that does raise alarm bells with me, and I also will consider the options for further amendment.

I ask the mover: would he consider the onus being put on the person who is the conscientious objector to make that known well before a person comes to them in quite a difficult situation seeking a service that is an incredibly personal, incredibly life-changing decision? Would it not be better for all if that provider had to make it clear up-front, and now in public, that they do not provide these services before anyone even gets on the phone or walks into their office?

The Hon. D.G.E. HOOD: I thank the Hon. Tammy Franks for her question. It is a very good point, and I agree with her. As I recall when I was preparing for this amendment, the UK has a requirement—there was a very famous legal case going through their courts on this issue, and it may still be—for clinics to state if they do not provide services to certain people, for whatever reason. So, I would support an amendment to that fact.

The way this bill is structured is that the minister is responsible to keep a register of service providers and, as my amendment would require, also to keep a list of registered objectors. The minister would know who those people are. The minister could then create a regulation, I presume, whereby these people would be required to identify themselves up-front so that you do not get this situation where a same-sex couple goes to a particular clinic seeking ART services and gets partly

down the process, to all of a sudden find out that their doctor or nurse is not going to do it for some reason.

I think the Hon. Ms Franks has made a valid point and there should be a requirement. If the minister was to either move a regulation to that effect, should this bill pass—I do not know if an amendment would be required; I suspect there would be regulation—then it would have my support.

The Hon. J.S.L. DAWKINS: I think it has been constructive for us to have this discussion before we consider our position overnight, and I take on board what the Hon. Mr Hood said about regulations in relation to the register. I also go back to the minister's assurance to me that the regulations will be pursued by the Department of the Premier and Cabinet.

I am not sure whether the Hon. Mr Hood had a chance to listen to or read my second reading speech, but the reality is that these amendments that have been proposed in the other place are trying to amend aspects of the act that do not exist, because the Attorney-General has not developed the amendments to make the register exist. When you refer to regulations being developed to further that work, if the Department of the Premier and Cabinet take that on, hopefully they will be much quicker at it than the Attorney-General, who has taken 17 months without doing anything.

The Hon. S.G. WADE: Will the minister reflect on, or even take on notice, clarification of whether clause 5 of this bill relates to surrogacy arrangements? I think he advised that it does not, but my understanding of the Assisted Reproductive Treatment Act 1988 is that surrogacy arrangements do come under the definition of an assisted reproductive treatment.

The Hon. I.K. HUNTER: My advice in response to the Hon. Mr Wade's question is that this part of the act is referring to the reproductive treatment act. Surrogacy comes later in the bill, but my advice is that the effect of the amendment moved by the Hon. Mr Hood is to apply to assisted reproductive treatment.

The Hon. R.I. Lucas: But surrogacy would require ART, wouldn't it?

The Hon. I.K. HUNTER: It certainly will, but it is not dealt with under this part of the act that we are talking about right now.

The Hon. R.I. LUCAS: I accept that but, ultimately, they are interrelated. I am not the expert here but, if you are going to go through a surrogacy arrangement or treatment, you will use ART. So, if you are refusing to provide ART services, you are potentially refusing to assist a couple looking for a surrogacy agreement.

The Hon. P. MALINAUSKAS: That is an important point that goes to the question I asked earlier. I simply want to understand this: if the Hon. Mr Hood's amendments were to fail, does that leave it open for medical practitioners in this field who might have a moral objection, for whatever reason, to providing these services to a particular cohort of people to be compelled by law to facilitate those procedures? Maybe I could put it in the inverse, for clarity. If the Hon. Mr Hood's amendments fail, will medical practitioners in this field have the liberty to decide not to provide services of this nature to people who are non-heterosexual couples?

The Hon. I.K. HUNTER: This part of the bill is essentially putting ART services into the realms of the Equal Opportunity Act. The Equal Opportunity Act currently exempts it and this removes that exemption, but do not forget the discussion we had earlier. Are we going to put people in a position where state legislation says they may do one thing while federal legislation—the commonwealth Sex Discrimination Act, I think—currently says another thing?

Is that what we want to do in this place: create legislation, ignoring the commonwealth legislation, not making ourselves compliant with that, and putting individual practitioners, who probably will not be lawyers, into the invidious position of deciding, 'Do I obey the state act and take advantage of that exemption, or do I obey the federal act and do what the commonwealth Sex Discrimination Act requires me to do?' I think this is something we need to weigh up pretty heavily, because creating legislation in this place, knowing what the federal legislation is and knowing we need to become compliant with it, is poor practice.

The Hon. S.G. WADE: One of the issues that I was hoping to unpack in the triangular discussion with the Hon. Rob Lucas is the fact that the religious objection might have nothing to do

with the customer, for want of a better word. Someone may have a religious objection to the technique. My understanding is that there are significant religious traditions in this nation that have concerns with the technique. Even before this bill came before us, the inconsistency with the federal sex discrimination legislation raised issues for people who have problems with the technique. Again, I think we need to think about that overnight. I think the minister has already given an undertaking to the Hon. Robert Lucas that we might have some understanding of what the commonwealth is requiring of us.

The Hon. I.K. HUNTER: I am certainly seeking that understanding about the commonwealth and the Sex Discrimination Act. In relation to the Hon. Mr Wade's thinking that some people may in fact not discriminate against a homosexual couple but they might discriminate against the technique used, it is possible, I suppose, but I would imagine nobody working in the field of reproductive medicine would have any opposition to a technique that is basic to reproductive medicine. I would have thought they would not go into that field if they had objections to reproductive technology.

The Hon. T.A. FRANKS: This may be along the same lines as the other members' questions. The amendment states:

> If the person notifies the Minister that the person has a moral or religious objection to the provision of assisted reproductive treatment to another on the basis of the other's sexual orientation or gender identity, marital status, or religious beliefs…

That 'to another', that person, I assume is a female who will be carrying the baby. If that person is a straight, white, Christian, married woman, carrying a baby for her gay brother and his partner, will the conscientious objection be able to stand?

The Hon. D.G.E. HOOD: That is an interesting question. I thank the honourable member for her question.

The Hon. T.A. Franks interjecting:

The Hon. D.G.E. HOOD: I am sure it is. The best answer I can give is I think it is probably a matter for the courts. That is a very unlikely scenario, I would imagine, but it is possible—

The Hon. T.A. Franks: It's common.

The Hon. D.G.E. HOOD: Okay; there you go. Presumably that is a matter for the courts. I think I have made clear enough to everyone now that the basic premise of my amendment is that the individual can object based on those criteria outlined. If my amendment does not pass, then they are not able to object lawfully, and they are subject to all the consequences that I have been through. I am sure that is not a very good answer to the member's question, but I think it is probably the best answer I can give.

The Hon. P. MALINAUSKAS: My question is to the government in respect to this bill. I am simply trying to understand. I acknowledge minister Hunter's articulation of a potential issue that might be created in terms of conflict with federal law. He is right to foreshadow that as a potential issue and ask that members take that into account when formulating a view regarding the Hon. Mr Hood's amendments, but it is entirely foreseeable, is it not, that someone in South Australia who is currently practising reproductive medicine is enjoying, in effect, the full protection of the law in respect to not providing those services to same-sex couples, because to do so would be illegal. Once that is changed, I am trying to understand to what extent they have the ability to continue to practise the law in the way that is currently the case in South Australia.

The Hon. I.K. HUNTER: My advice is that the exemption that was provided to all jurisdictions for legislation that is not compliant with the commonwealth Sex Discrimination Act no longer exists. My advice is it expired in July 2016, but we will check that as we get the information back. There is no protection or exemption at a federal level for any practitioners in any jurisdictions, vis-a-vis the commonwealth legislation currently.

The Hon. P. MALINAUSKAS: I am simply looking for a position from the government in regard to this. I am not trying to be cute or unreasonably persistent; I am trying to understand. Is it possible that there is someone currently in the state of South Australia who is practising reproductive medicine and is not currently providing those services to a homosexual couple because now they are not allowed to, but this bill, if it succeeds, would allow them to do that, and in the absence of

Mr Hood's amendment succeeding, that person would not have the ability to choose not to provide those services on any basis to a homosexual couple?

The Hon. I.K. HUNTER: As I said previously, when we canvassed this legislation with all providers in the state, no objections were raised by any of them, as far as I am aware. Of course, the answer is yes. If you look at the beginning of the bill, what it does is it takes away the exemption that is currently in the Equal Opportunity Act and requires that ART services be provided as other services would be provided, i.e. in a non-discriminatory way.

The Hon. T.A. FRANKS: Can the minister clarify whether or not these services are currently available to same-sex couples where one of them is infertile?

The Hon. I.K. HUNTER: I do not have specific health advice with me right now, but my understanding is that if a same-sex lesbian couple, for example, is medically infertile, then they can get access as single women, notionally—which is not the ideal outcome; they would like to be treated as a couple—to exactly the same treatment. That is my advice from a previous life when I was on the Social Development Committee. I reiterate that I do not have health advice with me right now.

The Hon. K.L. VINCENT: I want to ask a follow-up question from an earlier question from Ms Franks about the situation where, for example, a woman of no particular religious belief might be undergoing ART but might be doing so on behalf of a relative or a friend who is unable to have children of their own because of the gender of their partner or another issue.

Given that an ART service provider can register an objection to providing services that may result in same-sex couples having a baby, for example, would this amendment effectively force people to disclose the reason that they are seeking ART? For example, in the situation where a woman, who might happen to be heterosexual, is undergoing treatment to help a homosexual couple to become a family, is she more or less forced to disclose that so that the conscientious objector does not take part in providing services that result in a situation that they do not agree with, morally or religiously or whatever it might be?

If a person does object to providing such services, in a situation where they might later find out that they have provided services to someone who might be heterosexual but is doing it on behalf of someone else, is that conscientious objector entitled to any compensation—compensation is the only word that comes to mind—because they have unwittingly done something to which they would usually object? Does that make sense?

The Hon. D.G.E. HOOD: Yes, it does. I thank the honourable member for her questions. The short answers are no and no; that is, there is nothing in my amendments that compels anyone seeking treatment to disclose their personal circumstances in any specific way. It is certainly not my intention for that to be the case either, and it is certainly not in the amendments. With respect to the second part—sorry, I have forgotten.

The Hon. K.L. VINCENT: What will happen to a person who will be eligible for compensation if they have unwittingly undertaken a service that they would not agree to but later finds out that they have?

The Hon. D.G.E. HOOD: I thank the honourable member for the clarification. No, it is not my intention and, frankly, I am not sure that would be appropriate. I do not think it would be.

The Hon. I.K. HUNTER: That might be an opportune place for us to leave the discussion. What the Hon. Kelly Vincent was teasing out was that the amendments of the Hon. Mr Hood could unintentionally create a loophole which encouraged people to lie about what their services were ultimately aimed at so that they could get access to those services. With that, sir, I think we have plenty to be getting on with for tomorrow, so I move that we report progress.

Progress reported; committee to sit again.

BIOLOGICAL CONTROL (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 29 November 2016.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:26): I rise to speak on behalf of the opposition on the Biological Control (Miscellaneous) Amendment Bill 2016. The bill specifically amends the definition of a living organism to include viruses and subviral agents. This amends South Australia's Biological Control Act 1986 and is a part of mirroring legislation to be implemented by all states based on the commonwealth's Biological Control Act 1984.

The legislation was passed by the states and Northern Territory parliaments to establish a uniform and equitable system applicable throughout Australia, ensuring that biological control programs which have been identified as being in the public interest could proceed without the interruption of litigation. This is in relation to two significant viruses that are currently being assessed for national release, that is, the next rabbit haemorrhagic disease virus (RHDVI) and the koi herpesvirus to control European carp. The amendments are required before applications are made to the minister for the release to proceed.

The opposition has been advised that this bill must be passed by December 2016—that is why I am very happy to be dealing with it this afternoon—to enable the proposed biological control agents for rabbits and carp to be considered. The bill addresses the issue that has arisen about the classification of viruses and subviral agents that are deemed as living organisms and the possible legal implications that surround agent or target organism declarations made under the biological control acts.

The amendments maintain consistency with the mirroring legislation in other jurisdictions and the commonwealth to address a sovereign risk. From our understanding, they do not affect the original intent or scope of the act. These amendments clarify biological control programs which use viruses and subviral agents covered by the South Australian Biological Control Act 1986. In the past, legal challenges have been present concerning biocontrol viruses. In 1985, it was estimated that Salvation Jane, a dominant pasture weed, was present in over 30 million hectares in Australia. This weed had cost the wool and meat industries $125 million each year by 2002.

Like rabbits and European carp, Salvation Jane is an introduced species which requires biological control. However, during the 1980s, legal challenges arose around some of the viruses used to control Salvation Jane, stalling the CSIRO's work for eight years. A suite of agents was eventually introduced to control the weed in South Australia in 1999, and it certainly has been noticed in recent times that Salvation Jane is nowhere near as prevalent as it once was. I can recall as a young boy coming to Adelaide some very purple hills in the Adelaide Hills and in some other parts of the state where you would see quite significant infestation of Salvation Jane and, of course, now it is not there.

In the 1950s, the first myxomatosis virus was released to control rabbits in Australia. The virus reduced an estimated population from 600 million to 100 million in just two years. However, as is evolution, rabbits have developed an immunity against myxomatosis which, in turn, unfortunately continues to devastate Australia's agricultural industry, creating an estimated damage of some $206 million a year.

When I think about rabbits, it is interesting that in the 1930s, when my father was at Norwood High School and staying with friends of the family, he used to trap rabbits in the Parklands to help feed that family. It is hard to imagine that rabbits were living in the Adelaide Parklands and plentiful enough that a young boy from the country could trap them to help feed the family that he was staying with, so rabbits were very widespread. After World War II, my father took up the farm he had bought from his grandfather's estate, and rabbits had infested that property tremendously. I recall conversations he had with me around the benefit of myxomatosis and how it gave him the opportunity to run a profitable farming business.

Partial genetic immunity to the virus now means that only 50 per cent of infected rabbits die from myxomatosis. As I said, I recall as a young boy seeing rabbits infected with myxomatosis. I was born in 1960, so in the mid to late 1960s there were still quite a lot of rabbits affected by what we called 'myxy', but now only about 50 per cent of rabbits die. This has resulted in the need for alternative strains. The rabbit calicivirus, also known as haemorrhagic disease, is a viral disease that

affects only European rabbits. Since 1995, the calicivirus has spread across the vast majority of Australia.

RHD, as it is known, (the haemorrhagic disease) can be released only at certain times of the year, as it does not affect kittens and younger rabbits. Initial results also demonstrated that its effects were lower in wetter areas. Additionally, unlike myxomatosis, people can have their pet rabbits vaccinated against RHD by their local vet. RHDV-K5, a new Korean strain of the calicivirus, is present in many locations within Australia. However, this strain has not yet been formally introduced as a biological control method.

RHDV-K5 has the benefit of being effective in cool, wet and other regions of Australia where the original calicivirus was not present. The new strain of the calicivirus is also considered one of the most humane methods of pest control, with an official release anticipated for 2017. I note that in the comments I just made, it says that people can have their pet rabbits vaccinated against RHD by their local vet.

Mr David Speirs, the member for Bright, was contacted by some of his constituents concerned about the availability of vaccines for pet rabbits, so I want to warn the minister that I will ask a question in relation to pet rabbits. I am probably not someone who would keep a rabbit as a pet, but I know they are quite widely kept as pets, so I want to make sure that we are not releasing a virus that is going to wipe out the family pet and that, if it can be vaccinated, the vaccine is widely available so that vets can use it.

Another great beneficiary of this legislation is the River Murray, one of the primary sources of South Australia's drinking water. Unfortunately, this source is infested with introduced carp, which currently make up some 80 to 90 per cent of the Murray-Darling Basin's fish biomass, which would be a particularly large volume of fish. Not only do they pollute the water in plague proportions but they have also devastated native fish numbers. Like Salvation Jane and rabbits, carp have also had an overwhelming negative economic impact, estimated to be up to $500 million per year.

The introduction of the koi—I hope I am pronouncing it properly—herpes is estimated to significantly reduce European carp numbers by some 70 to 80 per cent. The carp virus only affects carp and is a naturally occurring strain. Thirty-three countries have released the virus, and it has been present since the late 1990s. These notes that I am reading from have been provided to me. I am assuming that it has been present in those other 33 countries since the late 1990s, or at least some of those 33 countries.

The federal government has allocated some $15 million over 2½ years for the National Carp Control Plan. I think it has been talked about and described in the media at times as 'carpageddon'. For the first release of the carp herpesvirus to be effective, action plans will need to be in place to deal with the expected mass of dead carp. Irrigators, pipelines and other outlets need to be considered, and fail-safe practices will need to be in place to prevent the accumulation of dead and rotting carp. It is hoped that this biologically managed virus can be released in the latter part of 2018.

These amendments will ensure that our primary producers have a pristine environment and that vital waterways are supported and protected from further introduced species damage, financially and physically. These amendments are necessary in order for decisive discussion, research and investigations to take place. Implementing strategic plans that outline when and where human intervention needs to be is vitally important to getting this biological management right. I believe, and the opposition believes, that the introduction of this new calicivirus for rabbits and the herpesvirus for the European carp will bring a positive change to our South Australian environment, if done right.

I have a couple of questions in relation to the carp. It is not the little goldfish we have in a bowl. There are fish that are often kept in domestic situations, bright orange ones, about six to eight or 10 inches long, that we see in household ponds rather than in an aquarium or a fish bowl in the house. I have always thought that they were a member of the carp family, so I am just wondering if the minister is able to give me any information.

I assume there is not just one species of carp. This is the European carp. Does it only affect European carp, or is it the fact that it will affect all carp? They are in the River Murray and we want to take them out of there; they are non-native and I accept that, but is there any risk of this virus, if it

happened to be brought into a domestic situation, killing off my aunt's golden carp in her garden pond? Not that I have any aunts still alive; I just use that as an example. I am not sure; I am interested to know whether there is any likelihood of that escaping. With those few words, the opposition commends the bill to the chamber.

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) (17:37): I thank the honourable member for his contribution and his second reading speech. I think I can answer the questions that were raised, and I appreciate that he foreshadowed some of the issues that he was going to raise so that we can get answers and make sure we have an efficient resolution to this important bill.

In relation to the virus for rabbits, I am advised that the Korean strain, the K5 strain, has a vaccine that is reasonably readily available in Australia for vets to use. In relation to the question about the carp, I am informed that it is a different strain, so it will not affect anyone's auntie's goldfish.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. D.W. RIDGWAY: I have a couple of questions now we have the minister's adviser here. The first one is: do they know the actual cost of getting your rabbit vaccinated at the vet? They are available. We have a new dog in our family, and vets are not cheap places to visit anymore, so I just wonder whether there is any indication of what it costs to get your rabbit vaccinated.

The Hon. K.J. MAHER: We do not know the exact cost offhand, but my advice is that it will be very similar to the existing cost. I agree that vets are expensive and I am grateful that the majority of my pets are chooks, which are very low maintenance animals and have low veterinary costs.

The Hon. D.W. RIDGWAY: You probably administer the first aid to the chooks yourself, too, I would think, minister. I have a quick question around carp control. I know there is a plan in place but is the minister, or perhaps his adviser, able to update the chamber? I know it is in the early stages but are we still looking at releasing the carp virus in 2018? Is that still the intended release date? If the carp are not eliminated but significantly reduced in the Murray that is something that will happen in my lifetime, where they have gone from being introduced or escaping into the river and doing damage, and to see that river returned to somewhere where it was by getting rid of them will be a significant achievement for this nation.

So, from a personal interest point of view, I am interested to know if we are still on schedule for somewhere around 2018. Is the minister or his adviser able to give us any idea of the likely program to be put in place and how quickly it can be done? If the estimation is 80 per cent to 90 per cent fish biomass in the river, is it one million tonnes, five million tonnes? I ask this from a personal interest point of view because we have the opportunity to ask those few questions.

The Hon. K.J. MAHER: I am advised that the plan still needs to develop and take into full consideration the risks and it needs to go through approval processes, so 2018 is still what is intended but in all likelihood, if it is 2018, it will be towards the end of that year. In terms of how quickly this will take effect and how much change we will see in the Murray River it will depend on exactly how the plan looks and how it is implemented. As that goes through the stages, I am happy to make sure that the honourable member is given an update as to how the plan will look and what the expected time line is.

The Hon. D.W. RIDGWAY: There is one question the minister may have missed. My notes state that about 80 per cent to 90 per cent of the fish biomass in the Murray-Darling is carp. Do you have any guesstimation of what volume 80 per cent to 90 per cent of the fish biomass is? Is it one million tonnes or 10 million tonnes? I am just interested.

The Hon. K.J. MAHER: Again, I do not have advice on hand for this but I am happy to take it away and see if we can find an answer reasonably quickly as to how many thousands of B-doubles

it would be in terms—I assume when you say the volume that is the sort of thing you are talking about?

The Hon. D.W. RIDGWAY: Yes. I do not want to prolong things but given that the minister is going to get some more information for me I would like to know if, assuming that they die and float to the surface, we are going to remove them from the river because they will be pretty unpleasant and it would be a biological disaster. What is their likely use: are they going to landfill, be turned into fertiliser or cat food or whatever? I do not expect you to answer now but it would be interesting to know what the thinking is. I suspect minister Bignell is more responsible for this. I see his adviser in the gallery so perhaps I should get a briefing from his agency rather than ask you these questions.

The Hon. K.J. MAHER: It is good that the questions are on *Hansard* because it makes it a lot easier to understand what questions the honourable member wants answered, particularly what happens once the virus has had the desired effect. I am advised that we will be part of that pretty involved planning process but I will make sure that the questions you have now put on *Hansard* are looked at and that when there is an answer a briefing is provided as soon as possible.

Clause passed.

Remaining clauses (2 to 12) and title passed.

Bill reported without 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) (17:45): I move:

That this bill be now read a third time.

Bill read a third time and passed.

Personal Explanation

STATUTES AMENDMENT (COURTS AND JUSTICE MEASURES) BILL

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) (17:45): I seek leave to make a personal explanation.

Leave granted.

The Hon. K.J. MAHER: Further to questions asked on Thursday 1 December 2016 in this chamber during the committee stage of the Statutes Amendment (Courts and Justice Measures) Bill, for completeness I have some further information in addition to the information that advisers were able to provide on the day. The Attorney-General has provided the following statement:

It recently became apparent that further amendments to the Act might be required in order to appropriately cover investigations involving the heads of jurisdiction. This was first raised in emails to my office dated 24 and 26 October 2016 from the Judicial Conduct Commissioner, who was then acting solely as the Independent Commissioner Against Corruption.

The relevant information from those emails was provided by me in an annexure to the heads of each relevant jurisdiction for comment by letters dated 3 November 2016. The letters outlined that the Commissioner had contacted me about potential amendments to the Act. One of those suggested amendments related to Heads of Jurisdiction.

I am informed that on Tuesday 29 November 2016, the Commissioner spoke at a CPD seminar—

a continuing professional development seminar, I understand it to be—

about the role of the Judicial Conduct Commissioner. The Commissioner outlined at that event, that in his view, amendments to the Act were required. Shortly thereafter, my office was informed of the Commissioner's statements.

I spoke to the Commissioner on Thursday 1 December 2016 about the matter. Following that conversation, I formed the view that amendments to the Act were necessary and significant enough to warrant inserting them into the Statutes Amendment (Courts and Justice Measures) Bill 2016. The Bill was not listed for debate that afternoon,

but following a conversation between myself and the Deputy Leader of the Opposition, an amendment was agreed upon. The Bill, with that amendment, was passed by the Legislative Council later that day.

That concludes the Attorney-General's statement on that matter.

Bills

STATUTES AMENDMENT (PLANNING, DEVELOPMENT AND INFRASTRUCTURE) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 December 2016.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (17:47): I rise to support the Statutes Amendment (Planning, Development and Infrastructure) Bill 2016. I make my contribution, which will talk to a number of issues, but I indicate at this stage that the opposition is likely to support it. We supported the bill in the House of Assembly and we are likely to support it here. My colleague in the other place the member for Goyder consulted the Local Government Association, the Urban Development Institute Australia, the Master Builders Association, the Housing Industry Association and the Property Council.

I note at the outset both the Minister for Planning and my colleague in the other place the member for Goyder point out that this bill is of a procedural nature. I spoke to a number of those stakeholders and they were very keen. In fact, one of the comments they made to me was that they are very keen to see this legislation pass before Christmas because we needed it in place to be able to advertise for the planning commissioner. I see we have already started advertising for the planning commissioner, so maybe we just needed it in place to be able to appoint the planning commissioner, not actually start the advertising for that position.

The bill enables the commencement of a three to five-year implementation program for the new planning system under the Planning, Development and Infrastructure Act 2016 which this parliament passed earlier this year. It assists in the transition from the old planning act to the new planning act. Of course, members will recall that at this time last year we started the journey on the planning and infrastructure bill. I think it lasted some 13 or 14 consecutive days in this place which was a record for any one particular piece of legislation. It became apparent that there would be subsequent bills, amendments and legislation. This is one of the first, and I expect we will see more.

My colleague the member for Goyder flagged a number of issues at the committee stage with respect to this bill and I am advised that they have largely been dealt with by the government's subsequent amendments. The opposition has consulted: as I said, Steven Griffiths consulted the UDIA and the LGA with respect to the bill and the subsequent amendments that had been filed by the government. I note that both associations are supportive of the bill and the amendments which I believe arose from their suggestions.

I will just make some comments on the significant amendments. There is a change of emphasis from commissioner to minister, and the Hon. Mark Parnell I think is probably not going to support some of these clauses. I am intrigued—we will support the government because they have the benefit of the agency to advise them on how it will work in practice, but one of the things I always thought was important, and I know minister Rau in the early days talked about having it at arm's length from the minister, was that you had an independent commissioner and the minister should not be involved in decisions.

Clause 4 through to clause 8 is a significant amendment to this bill, to give the minister more autonomy with respect to the state planning policies, which does fly in the face of all the commentary from minister Rau and minister Maher, who I think had carriage of the bill in the early part of this year. I am not sure whether he had carriage of the bill late last year or whether that was minister Gago. I do not recall; there has been a little bit of a change. But the flavour of the comments back then was that we needed an independent planning commissioner who was independent of government and independent of ministerial interference. It was my understanding—this was in the original bill and it was amended in this chamber through that debate—that we were keen to see that in place.

I understand that my colleague the member for Goyder has flagged this with the minister in the other place during the committee stage of this bill and is satisfied with the minister's rationale. I will want to explore that in questions to the minister tomorrow. Minister Maher or maybe minister Malinauskas has the carriage of this bill. There are only seven or eight minutes until 6 o'clock, so we will not be doing the committee stage tonight, but I would certainly be interested to tease out the thought processes of the—

The Hon. K.J. Maher: We can go to 6.30.

The Hon. D.W. RIDGWAY: We will not be doing the committee stage tonight. You will not get anywhere near to finishing it by 6.30.

The Hon. M.C. Parnell: There are 17 amendments.

The Hon. K.J. Maher: Okay, we will do the committee stage tomorrow.

The Hon. D.W. RIDGWAY: Minister, you explained to me one hour ago that we were getting up at 6pm. I think everybody on this side of the chamber has assumed we are getting up at 6pm. The Hon. Mark Parnell thinks we are getting up at 6pm, and I think the other crossbenchers all think we are getting up at 6pm, as they were the instructions that were put to the catering staff and everybody else.

The Hon. K.J. Maher: No, getting up at dinner time.

The Hon. D.W. RIDGWAY: Well, that is 6 o'clock.

The Hon. K.J. Maher: Dinner is 6 o'clock for you all the time on the dot. I understand your right to work means you don't work a minute past that time—

Members interjecting:

The PRESIDENT: Order! If we want to finish by 6pm, we have to move on with this.

The Hon. D.W. RIDGWAY: Well, we are not, and I have a whole range of questions I want to ask. I will carry on, but I may have to seek leave to conclude in a minute because I need to gather my thoughts before I can conclude tomorrow. The minister explained that these amendments will give the minister of the day responsibility for a range of matters, including state planning policies, which in his words are the 'high-level executive government determinations'. If the minister is to be ultimately accountable for these decisions, it is fitting that the minister of the day be responsible for making those decisions.

As I said earlier, I think the Hon. Mark Parnell will be opposing these clauses. I also understand his rationale, but I indicate the opposition will be supporting these clauses. I do want to tease out why the government has changed their position, because it was my understanding that minister Rau wanted an independent planning commission and he wanted things independent from government. That was certainly the basis on which we were happy to proceed down that path last year and earlier this year, because it gave us some comfort that you would not have some of the decisions we have seen made in the last few years by this current government. Buckland Park and Mount Barker are just two that come to mind.

Minister Rau says we will never have another one on his watch. Well, his watch is nearly over; moreover, it appears to be coming quicker than we think, with his announcement. It was not quite a self-proclaimed announcement, but he certainly nominated himself for that position of Senior Counsel. Who knows what the future holds with minister Rau? Nonetheless, I think it was Gary Pratley from the Western Australian Planning Commission who said to me, when I visited him on a number of occasions, that he had worked in six or seven jurisdictions for 25 or 26 ministers and the best system he had worked under was the Western Australian one. That is why the opposition was very keen to mirror that.

I was pleased when Brian Hayes QC and his team came up with a recommendation that stated, 'Let's mirror, as close as possible, the Western Australian system.' So, I am very keen—with the minister's adviser, during the committee stage of this bill—to find out why they have changed their position and why they want these amendments. We will be supporting them—we have indicated

as a party that we will—but I would like to know, for my own personal understanding, why they have made those changes.

There are some transitional provisions. Clause 10 of this bill inserts a schedule 8 for transitional provisions. This clause forms the bulk of the bill, some 46 sections, which all ultimately provide for the transition period between the old planning legislation and the new act, passed earlier this year. Many of these are common-sense provisions. Given that my colleague the member for Goyder has covered these in some detail during the committee stage, I will just flag a few key provisions.

Clause 2, saving of operation, is an important provision as it in part provides that, under the new act, a party will not be disadvantaged for having commenced proceedings under the process established by the previous planning legislation; that is, the matter will continue through the process as if the party had been compliant and the new scheme had been in place. I think that is important. When you transition from one piece of legislation to another—and this is a significant change—you do not want people disadvantaged by having the rules changed halfway through a development or when they have lodged a development application, so I am pleased that that will be happening.

As to clause 5(2), commencement prior to 1 April 2017: the bill provides that the Governor may, by proclamation made before 1 April 2017, fix a different day for the commencement of the establishment of the commission. As I understand it, this will enable the commission to commence either side of this date. Although the minister flagged 1 April as the proposed commencement date, this provision provides a safety valve of sorts in the event the commission is delayed for some unforeseen reason. I would think that to have something begin on April Fools' Day was a bad day to have that starting. I would hope that it either happens in March or happens after 1 April, so that we do not see it happening on April Fools' Day.

Clause 7 provides that a regional plan under section 64 need not be prepared and adopted until the expiration of 24 months. The minister has explained that this 24-month period is to account for regional plans that involve multiple councils with varying degrees of competencies and resources; that is, larger councils with greater resources may be able to prepare and adopt regional plans a lot quicker and more effectively than smaller councils. That is certainly a point where I wonder—and maybe the minister or the advisers can consider this tomorrow when we deal with the committee stage of the bill—what resources will be made available to councils, especially smaller ones, to help them prepare these regional plans and comply effectively?

I think we all support the concept of regional plans. You do not want two councils in a regional area at odds with each other. They need to be sympathetic to each other and, if you like, enhance each other's plans. Clearly, some are much bigger: they have a regional centre (and I always look at Mount Gambier and the District Council of Grant, although the District Council of Grant is quite a large council) and a regional city council, with a metropolitan area around it.

I am interested to know whether the minister or the minister's advisers will be able to provide some information about support for the smaller regional councils, or the ones on the fringe of the Outback Areas Community Development Trust. They are obviously sparsely populated, with not a lot of ratepayers and not a lot of revenue.

Clause 10, which has been highlighted, relates to local heritage. There will be a separate heritage bill brought before this parliament, as canvassed by both sides when this bill was debated in the other place. However, I understand that this provision is somewhat of an enabling provision, so I would be interested to know exactly what that heritage provision does. I note, from the outset, that the opposition will be supporting the government amendments, but we have sought feedback from the relevant associations in relation to that heritage provision.

Amendment No. 1 from the government simply includes what constitutes an 'earlier act', and we are happy with that. Other amendments include a provision that the clause refers to an earlier act, as outlined in previous amendments. I have been advised that amendments Nos 3 and 4 are aimed at addressing concerns raised by the UDIA. Therefore, clause 4 would enable a period of cessation of a land use to extend to a period that started before the designated day; that is, imparting a degree of retrospectivity to the application of the concept, which is broader than the current concept of discontinuance under the Development Act.

Amendment No. 5 deletes subclause (d), which would have enabled the minister to amend a development plan:

> because it is otherwise (in the opinion of the Minister) appropriate to act under this clause in view of the transition from Development Plans under the repealed Act to the Planning and Design Code under the scheme established by this Act,

That is quite complicated, but I think it is really just a transitional provision. Amendment No. 8 simply includes, and Amendment No. 7 excludes, corresponding approval under the Building Act 1971. With those few words, I indicate that the opposition will be supporting this bill and the government's amendments, but I do wish to ask a number of questions around some aspects of the bill in the committee stage which, I assume, will be tomorrow.

Debate adjourned on motion of Hon. J.M. Gazzola.

STATUTES AMENDMENT AND REPEAL (SIMPLIFY) 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) (18:02): 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 *Statutes Amendment and Repeal (Simplify) Bill 2016* is the centerpiece in today's Simplify Day announcement – part of the Government's program to reduce red tape and simplify regulation for businesses and consumers.

The South Australian Government is committed to making South Australia the best place to do business. We are committed to creating an environment in which our business can operate competitively in the global economy.

Over the course of this term and in our most recent Budget, the Government has delivered significant reforms in the areas of State taxation, the Return to Work Scheme, employment arrangements, planning, the delivery of public services and simplifying regulation. Today's focus is on reducing the regulatory red tape burden imposed on business.

For business and non-government organisations, time and resources are critical. The time and resources devoted to unnecessary compliance and government processes are time and money lost that could otherwise have been focused on growing the business, investing and expanding the skills in their workforce.

The Government's red tape reduction strategy is based on making our regulatory environment stable and predictable, facilitating investment and growth whilst upholding community safety and environmental standards. Just as importantly, we want to make clear what is expected of business and individuals to comply with regulation, providing certainty for everyday transactions as well as business ventures.

The Government is also committed to regulation being customer focused and to minimising costs to individuals, businesses and non-government organisations. Reducing paperwork and moving more Government services online are key elements of the announcements today, as is the relationship between business and government in the supply of public goods and services.

The reforms introduced today are a significant step in our ongoing simplification work – building upon work already underway in areas including our planning system, liquor licensing, Return to Work legislation and transport regulations.

This is part of the transformation of government to a modern, innovative sector able to respond quickly to the demands of the community and to promote commerce and innovation in the business sector.

In our first tranche of Simplify Day changes, we have four elements – legislative, regulatory, policy and future reforms that have been announced.

The *Statutes Amendment and Repeal (Simplify) Bill 2016* makes a number of changes, including to the *Electronic Transactions Act 2000*, the *Motor Vehicles Act 1959*, the *Survey Act 1992*, the *Authorised Betting Operations Act 2000* and the *Second-hand Vehicles Dealer Act 1995*.

The Bill contains some important reforms which I will now detail.

The *Electronic Transactions Act 2000* and *Motor Vehicles Act 1959* will be amended to allow the Government to issue documents by means of electronic communication. These amendments also enable the introduction, at a

future time, of secure access to the provision of digital licences, permits, exemptions or other authorisations or documents such as land agents' licences. This follows a successful pilot that commenced in July 2016 which trialled a limited number of digital licences with selected customers. Further consultation is underway with businesses, associations and the public.

The requirement to affix a registration label to a heavy vehicle will be abolished. This initiative has been called for by the industry and will reduce an administrative task on business in registering heavy vehicles. It will also reduce cost to Government to print labels and the simplifying of regulation as offences associated with affixing labels to heavy vehicles will be repealed.

Body corporate conveyancers will no longer need to obtain Consumer and Business Services (CBS) approval to carry on a business in partnership, this is unnecessary red tape as partnership details are required to be listed on the public register under separate regulations of the *Conveyancers Act 1994*.

The need for a bookmaker to have a separate permit approved by the Liquor and Gambling Commissioner under the *Authorised Betting Operations Act 2000* will be removed, this addresses the current duplicated process as proprietors also authorise the operation of bookmakers at specific venues. This is another example of removing outdated and unnecessary regulation.

Sections of the *Second-Hand Vehicle Dealers Act 1995* will be amended and repealed to remove outdated laws that require a dealer to register and seek approval for their permanent business premises or temporary premises at events such as car shows. Further amendments to this Act will be made to save time and cost for individuals and the court by allowing the Commissioner for Consumer Affairs to determine applications for compensation from the Second-Hand Vehicles Compensation Fund rather than the Magistrates Court.

We will remove the need for approximately 4,000 non-active business partners to require a contractor's licence for building works and associated trades, for instances such as where the active partner is licensed to be a builder or electrician and the non-active partner does not perform the regulated work or actively manage the business. This will provide a considerable annual cost saving for those businesses.

Existing penalties for late lodgement of occupational licensing renewals will be removed and replaced with the issuance of a final notice.

The *Survey Act 1992* will be amended to abolish the Survey Advisory Committee and transfer its functions under the Act to the Institution of Surveyors, South Australia Division providing for more efficient administration and removing duplication between the two bodies. This measure is a welcomed change by the Institution of Surveyors and fulfils the recommendation made in the 2014 *Final Report: Boards and Committees* by the Government of South Australia to abolish the Committee.

Various amendments to the *Crown Land Management Act* 2009 will also be made to enable efficiencies and avoid duplication in Crown land management arrangements, and to clarify the operation of certain parts of that Act.

In addition, on this day the Governor has made regulations to further support Simplify Day and this Bill. The measures of note I will briefly describe to the House.

Regulation 13(a) of the *Motor Vehicles Regulations 2010* will be repealed, eliminating the requirement for inspections and reporting on brand new vehicles by a police officer or other authorised person. This change removes the duplicate collection and recording of key data and simplifies the registration process for new vehicle dealers.

The *Fisheries Management (Miscellaneous Broodstock and Seedstock Fishery) Regulations 2013* will be amended to allow the collection of mussel spat by a holder of an aquaculture licence. The amendment will reduce red tape by removing need for a permit to farm mussel spat naturally occurring on aquaculture licenced sites. This will positively affect up to 36 Aquaculture Licensees authorised to farm mussels. The *Fisheries Management (Prawn Fisheries) Regulations 2006* will be amended to increase clarification around the fishing season period and management arrangements for the Spencer Gulf and West Coast Prawn fisheries.

This *Statutes Amendment and Repeal (Simplify) Bill 2016* proposes the repeal of eleven spent and redundant Acts, some of which have remained on the State's statute books despite fulfilling their purpose or being superseded, decades ago.

The redundant *Financial Institution Duties Act 1983* and the *Debits Tax Act 1994* will be repealed along with select redundant stamp duty provisions, to reflect the abolition of certain stamp duties including measures announced by the Treasurer in the 2015-2016 Budget.

Repealing the *Industries Development Act 1941* will abolish the Industry Development Committee that has not met since 2005 as the role has been managed by the Parliamentary Economic Finance Committee.

The *Wilpena Station Tourist Facility Act 1990* was enacted to support a developer to establish a tourist facility in the Flinders Ranges National Park. No provisions of this Act have been implemented and there is no intention to do so in the future. This national park is now subject to an Indigenous Land Use agreement which provides the necessary tourist facilities within the park.

Further, the *South Australian Meat Corporation (Sale of Assets) Act 1996* and the *South Australian Meat Corporation Act 1936* will both be repealed as the sale of the assets has been finalised and the Government is not likely to involve itself in the line of business of abattoirs for the foreseeable future.

The amendments, repeals and announcements of today's Simplify Day are the result of concerted and extensive engagement and collaboration with the business sector and community at large to deliver real, tangible reforms that provide an ongoing and meaningful benefit to the competitiveness of the state.

This engagement was done through the Government's YourSAy platform, through face-to-face meetings with peak industry groups and as well as encouraging written submissions from small business owners and individuals.

Over 60 responses from the public and business helped shape the reforms tabled or announced today.

Today is the first step on delivering on that process. Many other ideas and reforms will be the subject of ongoing work and partnership between business and government to continue to reach a resolution on the unnecessary regulations and burdens on business in South Australia. Today is not the end of the process, work will continue in earnest and we continue to seek more ideas for change in our discussions with business and the community.

Further, I can announce that Simplify Day will become an annual event to ensure we listen, pursue and deliver the desired regulatory and public sector reforms of the community to ensure growth in jobs and investment in South Australia.

To that end I can advise the house that the Government has already identified many issues to continue to work on and is committed to making a real difference in 2017 by the following reforms.

Changes to the work health and safety regulations will simplify and clarify the operation of existing arrangements. These changes include removing the duplication in approving a demolition where explosives are used (as this is already approved under other legislation), clarifying the circumstances in which certain air monitoring licences are required for asbestos removal and training requirements for health and safety representatives. In addition record keeping requirements in the regulations will be reviewed to make the regulations clearer and remove duplication or over burdensome requirements.

The Surveyors Board of South Australia Code of Practice for Lodgement of Boundary Identification Surveys will be adopted, recognising the industry accepted requirements of surveyors, and enhancing the community's confidence in the land title system. Adopting the Code in regulation formally recognises industry standards and supports evidentiary practice so future surveyors are aware of the outcomes of earlier surveys not registered with the Registrar-General when carrying out boundary surveys. This approach is also expected to reduce boundary disputes.

The dangerous substance and explosive laws are being reviewed to ensure that it delivers the greatest level of safety standards as well as efficiencies through reduced red tape and regulatory and administrative burden on business.

The Incorporated Association Laws will be reviewed with a view to removing unnecessary, burdensome and onerous administrative practices that do not add value in the running and control of an association. There are around 20,000 registered incorporated associations covered by the Act that include religious and educational institutions, community services and sporting groups. This review is expected to balance the removal of red tape whilst retaining appropriate protections.

It is proposed to consider removing the requirement for certain commercial property owners from needing a real estate licence. Large commercial property owners tend to rely on their experience and access to legal and other advisory services in conducting their property transactions. The removal of the requirement for such property owners to be registered as land agents would reduce costs and regulatory burden for these businesses.

Under current laws only public transport buses are able to drive or stop in a bus lane or stop at a bus stop. It is proposed to allow other buses (such as certain types of private or charter buses) to be able to use bus lanes and bus stops. This will support tourism and city vibrancy through increased and better transport network access, making it easier for people to get closer to places of interest, particularly in the metropolitan area and the CBD.

In consultation with industry it is proposed to simplify building work contractors licensing arrangements to have only two types of licence: trade or general. Under current arrangements building contractors are granted a licence having regard to their trade qualification and/or their qualifications or experience in business and management applicable to the building industry. The proposal is expected to simplify regulations for up to 27,000 builders and building trades people.

The need for building indemnity insurance in some circumstances will also be considered, in particular for non-habitable structures such as garages (not attached to a house), tennis courts, gazebos and pontoons. This would reduce costs for consumers having these structures built. To further support the building industry a draft code for the adaptive reuse of existing buildings will be available for public and industry consultation, the release of this code will enable certainty for developers and investors.

The distraint laws will also be looked into to modernise their application, clear up existing uncertainties and harmonise with other jurisdictions in light of the regulations in place relating to personal properties securities. Under certain circumstances these laws enable a landlord to remove a tenant's belongings if they are behind in rent.

A review of the Training and Development Act 2008 is underway, initial consultation has been completed with a focus on employment of apprentices and trainees and simplifying commensurate regulations and procedures. The review will aim to ensuring consistency across jurisdictions by greater national harmonisation.

We will conduct a review across relevant state legislation and regulations to streamline and update state and local government notification and gazettal requirements, including exploring the benefits of using digital sources and modern media.

Various changes are being developed as part of a package of broader transport reforms supporting service efficiencies and modernising licensing and transport network access. The types of issues being proposed include:

- Allowing access to segways and other innovative mobility devices
- Allowing towing of field bins used in primary production by light vehicles
- Simplifying the conditional registration scheme for historic, left-hand drive and street rod vehicles
- Simplify the process for allowing access to public roads for low risk events
- Introducing an optional direct postal delivery for number plates and 6 monthly registration for light trailers and caravans
- Improve the current process for driver instructors to become authorised to conduct heavy vehicle licence assessments
- Removing duplication in the medical fitness to drive assessment processes for a drivers licence and passenger transport driver accreditation
- Removing the need for inspection of a new light vehicle before registration as a passenger transport operator.

I am pleased to advise the house that the Government has committed ongoing resources to simplifying regulation and reducing red tape and the Simpler Regulation Unit within the Department of Treasury and Finance will continue to working closely with business and industry to get results. This unit will be further consulting with business and the community about further good ideas for reform.

The *Statutes Amendment and Repeal (Simplify) Bill 2016* is a first significant step in removing unnecessary red tape. It is removing the regulatory and administrative burden on business and the community and improving the State's competitiveness.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clause are formal.

Part 2—Amendment of *Aquaculture Act 2001*

4—Amendment of section 3—Interpretation

This clause amends the definition of *variation of licence condition* to include a regulation making power enabling the regulations to clarify that certain matters do not constitute variations of licence conditions. In particular, it is intended to gazette regulations declaring that divisions or amalgamations of licence areas do not constitute variations of licence conditions. This will create certainty for persons administering the Act.

5—Amendment of section 12—Procedure for making policies

This clause enables the Minister to publish the advertisement relating to a draft policy and related report (in addition to publication in the Gazette) in media that the Minister considers appropriate in the circumstances, namely in a newspaper or on the Minister's website or both. This will allow for greater flexibility and a more tailored approach to the publication of such advertisements.

6—Amendment of section 25A—Variation of lease or lease conditions by or with consent of lessee

This amendment is consequential.

7—Amendment of section 52—Variation of lease or lease conditions by or with consent of lessee

This amendment is consequential.

8—Amendment of section 59—Reference of matters to EPA

This clause removes from the ambit of the category of matters that need to be referred to the EPA, licence conditions or variations of conditions of a licence that the Minister is satisfied are administrative in nature or are of a class approved by the EPA. This is intended to create efficiencies in the approval process for licences.

9—Transitional provision

This clause provides that the Act as in force before the commencement of the clause will apply to applications for licences that are part-way through the approval process on that commencement.

Part 3—Amendment of *Authorised Betting Operations Act 2000*

10—Substitution of sections 54 to 59

This clause deletes the current provisions relating to bookmakers' permits and replaces them with a new provision allowing bookmakers to take bets at racecourses on race days, at licensed betting shops and at places of a class declared by the Commissioner by notice in the Gazette.

11—Amendment of section 61—Prohibition of certain information as to racing or betting

12—Amendment of section 77—Review of Commissioner's decision

13—Amendment of section 89—Evidence

These clauses make consequential amendments to delete references to permits.

Part 4—Amendment of *Building Work Contractors Act 1995*

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

This clause amends section 6 to provide that the Commissioner may, on application, exempt a person from compliance with the section subject to such conditions as the Commissioner thinks fit and that the Commissioner may vary or revoke such an exemption as the Commissioner thinks fit.

15—Amendment of section 11—Duration of licence and periodic fee and return etc

This clause amends section 11 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

16—Amendment of section 18—Duration of registration and periodic fee and return etc

This clause amends section 18 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

17—Amendment of section 45—Exemptions

This clause amends section 45 to give the Minister the power to grant exemptions in cases where the Commissioner has a power of exemption specifically conferred by the Act. Currently the Minister may not grant exemptions in such cases.

Part 5—Amendment of *Conveyancers Act 1994*

18—Amendment of section 8—Duration of registration and annual fee and return

This clause amends section 8 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

19—Repeal of section 12

This clause repeals section 12 which prevents a company that is a registered conveyancer from carrying on business as a conveyancer in partnership with another person without the prior approval of the Commissioner.

20—Amendment of section 24—Audit of trust accounts

This clause amends section 24 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default and also consequentially repeals subsection (7).

Part 6—Amendment of *Crown Land Management Act 2009*

21—Amendment of section 14—Minister's power to dispose of surplus lands of a Crown agency

This clause amends section 14 to clarify that land declared surplus by an agency does not need to be also declared surplus by the Minister under the *Crown Land Management Act 2009*.

22—Amendment of section 18—Dedicated land

This clause amends section 18 to make it clear that the purposes for which land may be dedicated include the management of land in accordance with a specified management plan.

23—Amendment of section 19—Revocation of dedication

This clause provides that if a Minister who is the custodian of dedicated land grants a lease in relation to the land, the Crown Lands Minister must not revoke the dedication during the term of the lease without obtaining the consent, in writing, of the Minster who is the custodian.

24—Substitution of section 21

Proposed new section 21 provides that instruments under the Division take effect on the day specified in the instrument.

25—Amendment of section 22—Lease of dedicated land

This clause makes provision in relation to the steps required for the grant of a lease of dedicated land.

26—Insertion of section 22A

This clause inserts a new section relating to the grant of a licence in respect of dedicated land.

27—Amendment of section 24—Minister may dispose of Crown land to which Division applies

Where land is being disposed of in fulfilment of a condition on surrender of a perpetual lease of the land, this clause will allow the land to be disposed of without being declared surplus.

28—Amendment of section 25—Disposal by transfer or grant of fee simple

This clause allows for certain categories of land to be disposed of without an open competitive process and for land to be disposed of for less than market value where it is disposed of in fulfilment of a condition on surrender of a perpetual lease of the land.

29—Insertion of section 37A

Proposed new section 37A sets out a process for Ministerial consent in relation to conversion of a perpetual lease to freehold.

30—Amendment of section 51—Cancellation of licences

This clause makes provision in relation to cancellation of a licence at the request of the licensee.

31—Amendment of section 52—Renewal of licence without application or on late application

This clause allows for renewal of a licence without application by the licensee.

32—Amendment of heading to Part 4 Division 2

This clause is consequential.

33—Insertion of section 56A

Proposed new section 56A makes it clear that the Minister has the power to consent to activities occurring on Crown land (not being activities that should be the subject of a lease or licence).

34—Amendment of section 59—Waterfront land cannot be leased or disposed of without public consultation

This clause replaces a requirement to publish a notice under section 59(1) in a newspaper with a requirement to publish the notice on a website and also disapplies section 59 where waterfront land is divided and the lease or disposal is only of a portion of the land that does not itself constitute waterfront land.

35—Amendment of Schedule 1—Related amendments, repeals and transitional provisions

This clause deals with the situation where land is, under the transitional arrangements, taken to be subject to a Crown condition agreement and to be dedicated land.

Part 7—Repeal of *Debits Tax Act 1994*

36—Repeal of Debits Tax Act 1994

This clause repeals the *Debits Tax Act 1994*.

Part 8—Amendment of *Electronic Transactions Act 2000*

37—Amendment of long title

38—Amendment of section 1—Short title

39—Amendment of section 3—Object

These clauses reflect the proposed broadening of the Act to deal not just with transactions but other forms of communications as well.

40—Amendment of section 4—Simplified outline

This clause makes amendments to ensure that the simplified outline reflects the proposed new content of the Act.

41—Amendment of section 5—Interpretation

This clause defines terms used in the proposed provisions.

42—Amendment of section 6A—Exemptions

This clause amends the exemption power to extend it to government documents specified, or of classes specified, in the regulations.

43—Amendment of heading to Part 2 Division 1

This clause reflects the proposed broadening of the Act to deal not just with transactions but other forms of communications as well.

44—Amendment of section 7—Validity of electronic transactions and government documents

This clause sets out the general rule that a government document is not invalid because it was issued by means of 1 or more electronic communications.

45—Amendment of section 8—Writing

A person who is required to be given a government document under an Act or law is taken to have consented to the document being given in electronic form if the person has provided an email address to the relevant government agency for that purpose. The general provisions in the section do not affect more specific provisions (in usage rules under Part 3 or in another law) applying to particular technologies.

46—Amendment of section 9—Signatures

A person who is required to be given a signed government document under any Act or law will be taken to have consented to the signature requirement being met by way of the use of the method mentioned in subsection (1)(a) of the section. The general provisions in the section do not affect more specific provisions (in usage rules under Part 3 or in another law) applying to particular technologies.

47—Amendment of section 10—Production of document

A person to whom a government document is required to be produced for inspection will be taken to have consented to the document being produced by means of an electronic communication. The general provisions in the section do not affect more specific provisions (in usage rules under Part 3 or in another law) applying to particular technologies.

48—Substitution of Part 3

This clause substitutes new Parts 3 and 4 into the Act as follows:

Part 3—Issue of government documents by approved information system.

This Part allows for the use of approved information systems to issue government documents. Any government document may be issued via an approved information system, however, if an Act or law only allows for the issue of a government document in a physical form (either expressly or by implication) then the only way in which the document may be issued electronically is via such a system. The Minister responsible for the administration of the Electronic Transactions Act 2000 approves the approved information system and the usage rules applying to such system. A government document may be issued via an approved information system if—

(a) the Minister responsible for the administration of the Act under which the government document is issued approves of its issue in such a way and

(b) the person to whom the document is issued has requested or consented to the document being issued by such means.

A government document that is issued by means of an approved information system may be displayed, carried, produced, surrendered, updated and otherwise dealt with in accordance with the usage rules applying to that approved information system at the time the document is displayed, carried, produced, surrendered, updated and otherwise dealt with. Regulations under the Electronic Transactions Act 2000 may provide, in relation to a government document issued under an Act, that the provisions of that Act apply with prescribed modifications in a case where the document is or is to be, issued by means of an approved information system.

Part 4—Miscellaneous

This Part allows the Minister to delegate powers or functions under the Act and provides a power to make regulations for the purposes of the Act.

Part 9—Amendment of *Environment Protection Act 1993*

49—Amendment of section 3—Interpretation

This clause inserts a definition of *waste transport business* and is consequential.

50—Amendment of section 39—Notice and submissions in respect of applications for environmental authorisations

This clause makes minor tidy-ups to section 39.

51—Amendment of section 46—Notice and submissions in respect of proposed variations of conditions

This clause makes a minor tidy-up to section 46.

52—Amendment of section 57—Criteria for decisions of Authority in relation to development authorisations

This clause removes paragraph (a) which is no longer needed and makes a minor change to paragraph (c) reflecting a more streamlined process in relation to development applications referred to the EPA.

Part 10—Amendment of *Evidence Act 1929*

53—Insertion of section 25A

It is proposed to insert a new section 25A into Part 2 of the principal Act that will abolish the ancient common law rule known as the oath belief rule that allows a witness in a trial to be questioned and express an opinion about whether the evidence given on oath by another witness in court is credible.

Part 11—Repeal of *Financial Institutions Duty Act 1983*

54—Repeal of Financial Institutions Duty Act 1983

This clause repeals the *Financial Institutions Duty Act 1983*.

Part 12—Amendment of *Fisheries Management Act 2007*

55—Amendment of section 21—Continuation of Fund

This clause amends section 21 so that the Fisheries Research and Development Fund can include voluntary payments made by the fishing industry and money in the Fund can be applied for projects relating to the management of aquatic resources and research and development relating to the fishing industry.

56—Amendment of section 44—Procedure for preparing management plans

This clause amends section 44 so that the Minister can give the public notice of a proposed management plan and invite submissions on it in a manner determined by the Minister.

57—Amendment of section 56—Duration of authority and periodic fee and return etc

This clause amends section 56 to empower the Minister to cancel a licence, permit or registration if it has been suspended for more than 6 months for non-payment of an annual licence, permit or registration fee.

58—Amendment of section 72—Sale, purchase or possession of aquatic resources without authority prohibited

This clause amends section 72 so that the Minister may issue a permit authorising the possession of an aquatic resource of a protected species if the Minister is of the opinion that it is in the public interest to do so.

59—Amendment of section 74—Unauthorised trafficking in fish of priority species prohibited

This clause amends section 74 by inserting an evidentiary presumption for the purposes of proceedings for an offence against that section.

60—Amendment of section 78—Unauthorised activities relating to exotic organisms or noxious species prohibited

This clause amends section 78 to empower the Minister to issue a permit authorising the taking of an aquatic resource of a noxious species.

61—Insertion of Part 7 Division 4

Division 4—Miscellaneous

79A—Permits

Proposed section 79A provides that a permit issued by the Minister for the purposes of Part 7 of the Act is not transferable and is subject to such conditions as the Minister thinks fit. It also provides that the Minister may revoke or vary conditions or impose further conditions and makes it an offence for the holder of a permit to contravene a condition. The maximum penalty for the offence is $250,000 in the case of a body corporate and $120,000 in the case of a natural person.

62—Amendment of section 124—Confidentiality

This clause amends section 124 to permit a person currently or formerly engaged in the administration of the Act (or the repealed Act) to disclose information obtained in the course of official duties to a law enforcement, prosecution or administrative authority of any Australian jurisdiction (Commonwealth, State or Territory) where the information is required for the proper administration or enforcement of an Act or law of such a jurisdiction.

Part 13—Repeal of *Gift Duty Act 1968*

63—Repeal of Gift Duty Act 1968

This clause repeals the *Gift Duty Act 1968*.

Part 14—Amendment of *Heritage Places Act 1993*

64—Amendment of section 7—Proceedings of Council

This clause provides for procedural matters relating to meetings of the Council. New subsection (5a) allows for resolutions relating to prescribed urgent matters (defined as the provisional entry of a place in the Register under section 17(2)(b) or the making of an order under section 30(1)) to be valid decisions of the Council if (amongst other things), instead of being voted on at a meeting, they are agreed to in writing.

Part 15—Repeal of *Industries Development Act 1941*

65—Repeal of Industries Development Act 1941

This clause repeals the *Industries Development Act 1941*.

Part 16—Amendment of *Land Agents Act 1994*

66—Amendment of section 9—Duration of registration and annual fee and return

This clause amends section 9 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

67—Amendment of section 22—Audit of trust accounts

This clause amends section 22 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default and also consequentially repeals subsection (7).

Part 17—Amendment of *Local Nuisance and Litter Control Act 2016*

68—Amendment of section 50—Evidentiary provisions

This clause will enable authorised officers to determine the presence of local nuisance based on their senses, in relation to all of the matters specified in section 17 rather than just those under section 17(1)(a).

69—Amendment of section 51—Regulations

This clause relocates a couple of paragraphs in section 51 and adds a minor regulation making power to enable the regulations to provide for evidentiary matters for breaches of the Act or the regulations.

Part 18—Amendment of *Major Events Act 2013*

70—Amendment of section 4—Interpretation

Currently, a major event must be declared by regulation under the principal Act. The proposed amendments will provide for an option to have a major event declared by a Ministerial notice published in the Gazette. The proposed amendments to the various definitions in section 4 reflect this proposed change. In particular, a *declaration* of a major event is defined to mean a declaration under Part 2 of the principal Act that is made by the Minister by notice in the Gazette under proposed section 6B or made by the Governor by regulation under section 7.

71—Substitution of section 5

The proposed new section 5 is consequential on the proposal to enable the declaration of a major event to be by regulation or by Ministerial notice.

72—Substitution of heading to Part 2

This amendment is consequential.

73—Insertion of sections 6A and 6B

It is proposed to insert 2 new sections at the beginning of Part 2 of the principal Act.

6A—Declaration of major events

New section 6A makes it clear that a declaration of a major event for the purposes of the principal Act may be made—

- by the Minister by notice in the Gazette under section 6B; or
- by the Governor by regulation under section 7.

6B—Declaration of major event by Minister

New section 6B provides that the Minister may, by notice in the Gazette—

- declare an event to be a major event for the purposes of the principal Act; and
- specify the major event period for the event; and
- declare a major event venue for the purposes of the event; and
- designate a person as the event organiser for the event; and
- declare that specified roads will be closed to traffic for a specified period—
  - (i) for the purposes of the event; and
  - (ii) for the purposes of maintaining good order, or preventing interference with events or activities conducted, at the major event venue; and
- declare that Part 3, or a provision of Part 3, of the principal Act applies to any (or all) of the following:
  - (i) the event;
  - (ii) the major event venue for the event;
  - (iii) a specified controlled area for the event; and
- declare an area described, or shown on a map, in the notice to be a *controlled area* for the event; and
- declare an article of a prescribed class to be a *prescribed article* in relation to the event; and
- declare a prescribed period to be a *sales control period* in relation to the event; and
- declare airspace that is within unaided sight of a major event venue for the event to be *advertising controlled airspace* for the period specified in the notice for the purposes of this paragraph; and
- make any other declaration in relation to the event as is contemplated by, or necessary or expedient for the purposes of, the principal Act.

The section also sets out other matters pertaining to such a declaration.

74—Amendment of section 7—Declaration of major event by regulation

The majority of the proposed amendments to section 7 are consequential on or relate to the proposal relating to declaration of major events by Ministerial notice. In addition, it is proposed to enable the *controlled area* for a major event to be declared either by describing the area or by showing the area on a map to be included in the relevant regulations.

75—Insertion of section 28

As a result of the changes proposed by this Part of the measure, a general regulation making power is now needed to be included in the principal Act. New section 28 will make such provision.

Part 19—Amendment of *Motor Vehicles Act 1959*

76—Amendment of section 5—Interpretation

This clause amends section 5 to remove the definition of *voluntary alcohol interlock scheme conditions* which is redundant. It also amends the section to enable a licence, permit, exemption or other authorisation or document issued under the Act to be issued either in physical or electronic form or in both forms, and applies the provisions of Part 3 of the *Electronic Transactions Act 2000* to the issue of such authorisations and documents in electronic form.

77—Amendment of section 9—Duty to register

Section 9 makes it an offence to drive an unregistered motor vehicle on a road or cause an unregistered motor vehicle to stand on a road. Where the registration of a heavy vehicle was suspended and the defendant was not the registered owner or operator of the vehicle, it is a defence for the defendant to prove that a registration label was affixed to the vehicle indicating that the vehicle was registered and the defendant did not know, and could not reasonably be expected to have known, that the registration of the vehicle was suspended. This clause removes this defence. This amendment is consequential on the repeal of Part 2 Division 9 of the Act.

78—Amendment of section 16—Permits to drive vehicles without registration

This clause amends section 16 to remove references to registration labels.

79—Repeal of Part 2 Division 9

This clause repeals Division 9 of Part 2 which deals with registration labels and includes the provisions which require the Registrar to issue registration labels for heavy vehicles.

80—Amendment of heading

This clause amends the heading to Division 12 of Part 2 to remove a reference to registration labels.

81—Amendment of section 71A—Property in plates and documents

This clause amends section 71A to remove a reference to registration labels.

82—Amendment of section 71B—Replacement of plates and documents

This clause amends section 71B to remove references to registration labels.

83—Amendment of section 75AA—Only 1 licence to be held at any time

This clause amends section 75AA so that the requirement to surrender a licence or learner's permit applies only if the licence or permit is held in a physical form. It also ensures that the Registrar can issue a licence or learner's permit in electronic form to a person who holds a licence or permit in a physical form and vice versa and that a person can hold a licence or permit in both forms.

84—Amendment of section 102—Duty to insure against third party risks

Section 102 makes it an offence to drive an uninsured motor vehicle on a road or cause an uninsured motor vehicle to stand on a road. The amendments made by this clause are consequential on the repeal of Part 2 Division 9 of the Act. They ensure that the defences that currently apply only in relation to light motor vehicles will apply also in the case where heavy vehicles are involved.

85—Amendment of section 138B—Effect of dishonoured cheques etc on transactions under the Act

This clause amends section 138B to remove references to registration labels.

86—Amendment of section 141—Evidence by certificate etc

This clause amends section 141 to remove references to registration labels.

87—Amendment of section 142—Facilitation of proof

This clause amends section 142 to remove references to registration labels.

88—Amendment of section 145—Regulations

This clause amends section 145 to remove a reference to registration labels

89—Repeal of Schedule 6

This clause repeals Schedule 6. The voluntary alcohol interlock scheme is no longer in operation.

90—Transitional provisions

This clause provides that a registration label issued under the Act in relation to a heavy vehicle is not, after the repeal of Part 2 Division 9 of the Act, taken to be a registration label for the purposes of the Act.

Part 20—Repeal of *Mount Gambier Hospital Hydrotherapy Pool Fund Act 2009*

91—Repeal of Mount Gambier Hospital Hydrotherapy Pool Fund Act 2009

This clause repeals the *Mount Gambier Hospital Hydrotherapy Pool Fund Act 2009*.

Part 21—Repeal of *Naracoorte Town Square Act 2005*

92—Repeal of Naracoorte Town Square Act 2005

This clause repeals the *Naracoorte Town Square Act 2005*.

Part 22—Amendment of *National Parks and Wildlife Act 1972*

93—Amendment of section 34A—Constitution of regional reserves by proclamation

This clause deletes the requirement for a report on each regional reserve to be prepared under section 34A(5).

Part 23—Amendment of *Natural Gas Authority Act 1967*

94—Repeal of section 22

This is consequential to the repeal of the *Industries Development Act 1941*.

Part 24—Amendment of *Plant Health Act 2009*

95—Amendment of section 21—Periodic fees and returns

96—Amendment of section 29—Periodic fees and returns

The proposed amendments to sections 21 and 29 of the principal Act will mean that, instead of relying on the regulations to prescribe the date before which a relevant person must pay a fee and lodge a return under the Act, the relevant date for paying a fee and lodging a return in each year will be on or before the first day of the month following the anniversary of the date on which the person was granted accreditation or registration.

Part 25—Amendment of *Plumbers, Gas Fitters and Electricians Act 1995*

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

This clause amends section 6 to provide that the Commissioner may, on application, exempt a person from compliance with the section subject to such conditions as the Commissioner thinks fit and that the Commissioner may vary or revoke such an exemption as the Commissioner thinks fit.

98—Amendment of section 11—Duration of licence and periodic fee and return etc

This clause amends section 11 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

99—Amendment of section 18—Duration of registration and periodic fee and return etc

This clause amends section 18 to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

Part 26—Amendment of *Public Corporations Act 1993*

100—Amendment of section 38B—Exclusion of operation of Commonwealth industrial relations legislation in specified cases

This proposed amendment updates an obsolete reference.

Part 27—Amendment of *Rail Commissioner Act 2009*

101—Insertion of section 16A

It is proposed to insert new section 16A in the Miscellaneous provisions of the principal Act.

16A—Standing approvals etc

New section 16A provides that if a provision of the principal Act confers a power on the Commissioner the exercise of which requires the approval or consent of the Minister, the Minister may, if the Minister thinks fit, give a standing approval or consent, subject to such conditions (if any) as the Minister thinks fit to impose, to cover the exercise of that power from time to time.

Part 28—Amendment of *Road Traffic Act 1961*

102—Repeal of section 83A

This clause repeals the current restriction in the Act on the sale of goods on roads.

Part 29—Amendment of *Rural Advances Guarantee Act 1963*

103—Amendment of section 2—Interpretation

104—Amendment of section 3—Treasurer may guarantee repayment of loan

105—Repeal of section 5

106—Amendment of section 7—Treasurer may agree to deferment of interest or principal

These clauses are consequential to the repeal of the *Industries Development Act 1941*.

Part 30—Amendment of *Second-hand Vehicle Dealers Act 1995*

107—Amendment of section 3—Interpretation

This clause amends section 3 to insert a definition of *notified premises* and remove the definition of *registered premises*.

108—Amendment of section 11—Duration of licence and annual fee and return

This clause amends section 11 so that the Commissioner cannot require a dealer in default in payment of an annual fee to pay an additional amount as a penalty for default.

109—Substitution of Part 2 Division 2

This clause substitutes Division 2 of Part 2 which currently contains provisions requiring the registration of premises used for the business of a second-hand vehicle dealer.

Division 2—Notification of dealer's business premises

14—Notification of business premises

This section requires a licensed dealer to give the Commissioner notice before commencing to carry on business as a dealer at any premises. A dealer must also, within 14 days of ceasing to carry on business as a dealer at premises notified to the Commissioner, give the Commissioner notice of that fact. The maximum penalty for failing to comply with the notification requirements is $5,000 and the expiation fee is $315. However, a dealer is not required to give notice in relation to business carried on at a motor show or other event at which motor vehicles are exhibited for not more than 7 days, provided the dealer carries on business at other premises in relation to which the dealer has given notice to the Commissioner.

110—Amendment of section 17—Form of contract

111—Amendment of section 24—Enforcement of duty to repair

112—Amendment of section 27—Cause for disciplinary action

113—Amendment of section 31—Disciplinary action

114—Amendment of section 39—Register of dealers

115—Amendment of section 50—Evidence

The amendments made to sections 17, 24, 27, 31, 39 and 50 are consequential on the removal of the requirement to register premises used to carry on business as a dealer. These amendments remove references and provisions relating to registered premises.

116—Amendment of Schedule 3—Second-hand Vehicles Compensation Fund

This clause amends Schedule 3 so that claims for compensation from the Second-hand Vehicles Compensation Fund are made to the Commissioner rather than to the Magistrates Court. The amendments delete clauses 2 and 2A of Schedule 3 and substitute a new clause 2 which omits redundant transitional provisions and simplifies the process for the making of claims.

117—Transitional provision

This clause is a transitional provision that ensures that dealers whose premises are registered under the Act immediately before the amendments to the Act made by this measure come into operation are not required to give the Commissioner notice of those premises.

Part 31—Amendment of *Security and Investigation Industry Act 1995*

118—Amendment of section 7C—Annual fee and return

This clause amends section 7C to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

119—Amendment of section 11A—Power of Commissioner to require photograph and information

This clause amends section 11A to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

120—Amendment of section 23AAA—Entitlement to provide security industry training

This clause amends section 23AAA to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

121—Amendment of section 23S—Security agents, security industry trainers or directors may be required to provide fingerprints

This clause amends section 23S to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

122—Amendment of section 23T—Security agent authorised to control crowds may be required to take part in psychological assessment or to undertake training

This clause amends section 23T to remove the additional requirement under the section to pay to the Commissioner the amount fixed by regulation as a penalty for default.

Part 32—Repeal of *Software Centre Inquiry (Powers and Immunities) Act 2001*

123—Repeal of Software Centre Inquiry (Powers and Immunities) Act 2001

This clause repeals the *Software Centre Inquiry (Powers and Immunities) Act 2001*.

Part 33—Repeal of *South Australian Meat Corporation (Sale of Assets) Act 1996*

124—Repeal of South Australian Meat Corporation (Sale of Assets) Act 1996

This clause repeals the *South Australian Meat Corporation (Sale of Assets) Act 1996*.

Part 34—Repeal of *South Australian Meat Corporation Act 1936*

125—Repeal of South Australian Meat Corporation Act 1936

This clause repeals the *South Australian Meat Corporation Act 1936*.

Part 35—Amendment of *Stamp Duties Act 1923*

126—Amendment of section 2—Interpretation

This clause removes an obsolete definition and updates an outdated reference.

127—Repeal of section 3C

Section 3C is no longer required and is removed by this clause.

128—Amendment of section 31—Certain contracts to be chargeable as conveyances on sale

This clause removes redundant references to financial products.

129—Repeal of Part 3 Division 2

Division 2 of Part 3, which deals with duty in relation to rental business, is repealed by this clause as rental business has not been liable to duty since 2009.

130—Amendment of section 67—Computation of duty where instruments are interrelated

This clause removes redundant references to conveyances of certain chattels and conveyances of financial products.

131—Amendment of section 71—Instruments chargeable as conveyances

This clause removes redundant references to financial products.

132—Repeal of section 71C

Section 71C is repealed. The section, which provided for concessional rates of duty in relation to certain conveyances, has not applied for a number of years.

133—Repeal of Part 3 Division 7

Provisions of the Act providing for the payment of gaming machine surcharge are repealed by this clause as the surcharge was abolished in 2015.

134—Repeal of Part 3 Division 10

Division 10 of Part 3, which deals with duty in relation to mortgages, is repealed by this clause as mortgage duty has been abolished.

135—Repeal of Part 3A

Part 3A includes special provisions relating to financial products. The Part is repealed by this clause because duty is no longer payable in relation to financial products.

136—Repeal of Part 4A Divisions 1 and 2

Divisions 1 and 2 of Part 4A abolish duty on rental business and mortgages. These Divisions are no longer required because relevant provisions of the Act imposing duty in relation to rental business and mortgages are to be repealed. These Divisions are therefore also to be repealed.

137—Amendment of section 104B—Application of Division

This clause removes a redundant reference to financial products.

138—Repeal of Part 4A Divisions 4 and 5

Divisions 4 and 5 of Part 4A abolish gaming machine surcharge and duty relating to financial products. These Divisions are no longer required because relevant provisions of the Act imposing the surcharge and providing for duty in relation to financial products are to be repealed. These Divisions are therefore also to be repealed.

139—Amendment of Schedule 2—Stamp duties and exemptions

This clause makes a number of amendments to Schedule 2, which specifies the rates of duty payable in respect of various instruments and sets out a number of exemptions. References to mortgages and conveyances of financial products are removed as these are no longer dutiable items.

140—Transitional provisions

This provision makes it clear that the amendments made to the *Stamp Duties Act 1923* do not affect liability to duty that existed under the Act immediately before the amendments commence.

Part 36—Amendment of *Survey Act 1992*

141—Amendment of section 4—Interpretation

This clause deletes the definition of the Survey Advisory Committee.

142—Repeal of Part 2 Division 2

This clause deletes the provisions relating to the Survey Advisory Committee.

143—Amendment of section 10—Functions of Institution of Surveyors under Act

This clause transfers functions formerly exercised by the Survey Advisory Committee to the Institution of Surveyors.

144—Amendment of section 43—Survey instructions

This clause is consequential.

Part 37—Repeal of *Wilpena Station Tourist Facility Act 1990*

145—Repeal of Wilpena Station Tourist Facility Act 1990

This clause repeals the *Wilpena Station Tourist Facility Act 1990*.

Part 38—Repeal of *Year 2000 Information Disclosure Act 1999*

146—Repeal of Year 2000 Information Disclosure Act 1999

This clause repeals the *Year 2000 Information Disclosure Act 1999*.

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

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Second Reading

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (18:02): 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 Electoral (Miscellaneous) Amendment Bill 2016 ('Bill') proposes various amendments to the *Electoral Act 1985* ('Electoral Act').

The Bill comprises amendments to the Electoral Act that:

- respond to recommendations made by the former Electoral Commissioner in her report on the 2014 State election; and
- seek to curb the increase in pre-poll voting.

In addition, there are a number of other miscellaneous amendments to the Electoral Act. Each of these categories of amendments are discussed in turn.

Amendments that respond to recommendations made by the former Electoral Commissioner

There are a number of measures contained in this Bill that respond to recommendations made by the former Electoral Commissioner in her report on the 2014 State election.

The Bill make amendments to section 12 of the Electoral Act, and the definition of 'officer' in section 4 of the Electoral Act, to clarify that:

- the Electoral Commissioner can employ staff to assist her with her responsibilities under various pieces of legislation, and not just under the Electoral Act;
- temporary staff can be employed in relation to the administration of the Electoral Act and any other Act.

This acknowledges the fact that the Electoral Commissioner has responsibilities not just under the Electoral Act, but also under a range of other legislation including, for example, the *Local Government (Elections) Act 1999*.

Section 11 of the Electoral Act is repealed. It is not required as matters of staffing are adequately dealt with in section 12 of the Electoral Act.

The Bill amends section 26 of the Electoral Act to place some conditions on the inspection of the electoral roll. A person seeking to inspect the electoral roll will be required to provide his or her name to the Electoral Commissioner and provide suitable identification on request. There is also scope for the further conditions to be applied by way of regulation. These amendments strike a balance between maintaining an open and transparent electoral roll, and providing a level of protection to the voters whose names appear on that roll.

The Bill amends sections 43A and 45 of the Electoral Act to clarify that deregistration of a registered political party by the Electoral Commissioner under section 43A(5) as a result of failure to comply with the annual return requirements can only occur after written notice has been provided by the Electoral Commissioner to the registered political party.

The Bill amends the Electoral Act to make clear that nominations of candidates endorsed by a political party under section 53 of the Electoral Act can include the nomination of a single candidate. This could be expected to occur, for example, in the context of a by-election. Section 53 is currently headed 'Multiple nominations of candidates endorsed by political party'. This heading is changed to 'Nominations of candidates endorsed by political party'.

The Bill make amendments to the Electoral Act so that the prescribed amounts that must accompany a nomination can be paid in a manner prescribed by regulation. Currently, those amounts must be paid by cash or banker's cheque. Given that the amounts are quite high ($3000 per candidate), the former Electoral Commissioner was concerned that payment by cash is no longer appropriate.

The Bill amends section 54 of the Electoral Act to remove the requirement for the address of a candidate to be read out at the declaration of nominations where the candidate's place of residence is suppressed from publication on the electoral roll under section 21 of the Electoral Act. Section 21 allows for an elector's name to be suppressed from the roll where to do otherwise would place at risk the personal safety of the elector, a member of the elector's family or any other person.

The Electoral Act has provisions which apply specifically to 'declared institutions', which can include hospitals, nursing homes, aged care homes, as well as prisons. The Bill removes references in sections 71 and 83 of the Electoral Act to 'inmates' of declared institutions, and instead refers to 'residents' of declared institution.

The Bill makes a number of amendments that are intended to make it easier for people with a disability to cast a vote.

There are several amendments that will ensure that people who are unable to sign are still able to cast a declaration vote where they are eligible to do so. The Bill makes amendments to sections 74 and 82 to allow a person who applies for registration as a declaration voter, or applies for the issue of declaration voting papers, to provide with their application a medical certificate which indicates that they are unable to sign. They would then be exempt from the requirement to sign the declaration on the ballot paper envelope.

Section 80 of the Electoral Act provides for a voter who requires assistance to be accompanied by an assistant while in the polling booth. Section 80 currently allows the assistant to assist the voter to mark the ballot paper, or to mark it for them at the voter's direction. The Bill makes amendments so that, where the voter is making a declaration vote and is required to sign the declaration certificate, the assistant can sign the declaration on their behalf.

Section 80A of the Electoral Act allows a voter to vote *near* a polling booth in certain circumstances. These might include where, because of physical disability or illness, the voter is not able to go inside a polling booth. The Bill proposes amendments to section 80A to cater for the scenario where a person voting near a polling booth is doing so by way of declaration vote.

The Bill reworks section 81 of the Electoral Act. Current sub-section 81(1) requires a person voting at a polling booth who has previously been sent declaration papers to either present those declaration papers to the presiding officer or sign a declaration that the papers were not received. That sub-section is being deleted. There is no need to require a voter to bring their declaration voting papers to the polling booth, or otherwise to sign a declaration. Where a voter to whom declaration voting papers have been sent votes on polling day, the polling day vote will count. Any completed declaration voting papers received from the voter would be held out of the count.

The Bill amends section 84 of the Electoral Act to clarify that the secure facilities containing declaration ballot papers must be opened and forwarded as soon as practicable (rather than at the close of poll) to the appropriate returning officers or deputy returning officers.

The Bill inserts new Part 9 Division 5A into the Electoral Act. This new Division allows for regulations to be made that will provide for electronically assisted voting for sight-impaired electors to be implemented in South Australia. Part 9 Division 5A is modelled on similar provisions in the *Commonwealth Electoral Act 1918* (Cth). By inserting these new provisions, the Bill removes the current legislative roadblock that exists to the implementation of electronically assisted voting for people with vision impairment. It will enable regulations to be made which provide for a method of electronically assisted voting for use by sight-impaired voters.

The Bill amends section 91 of the Electoral Act, which deals with preliminary scrutiny. These amendments will enable the scrutiny process to be carried out in a manner which reflects the fact that the declaration certificate is now on a 'tear off extension' to the declaration envelope and can be separated from the declaration envelope. Currently, the process is that, once a deputy returning officer has checked the declaration certificate and is satisfied that the declaration vote should be admitted for further scrutiny, they take the ballot paper from the envelope and place it in a ballot box without inspecting or unfolding it. The new process will ensure voter secrecy by requiring the deputy returning officer to:

- remove the declaration certificate from the declaration envelope;
- rearrange the envelopes that no longer bear their tear off extensions so that the anonymity of the vote is maintained; and
- withdraw the ballot paper from its envelope and place it into the ballot box or facility.

Amendments directed toward pre-poll voting

There are a number of amendments contained in the Bill that are directed toward curbing the increase in pre-poll voting. The total number of votes issued at pre-poll centres in 2010 was 37,464. In 2014, it was 82,020. This represented at 118.9% increase. It is considered likely that this reflects a tendency of people to vote prior to polling day for reasons of convenience, which is not one of the permitted grounds of pre-poll voting under the Electoral Act.

This Bill proposes to put in place measures which encourage voters to vote on polling day, and discourage pre-poll voting for convenience.

The primary rationale for adopting this approach is that the outcome of an election is supposed to reflect the views of an electorate on polling day.

Further, facilitating the casting of votes prior to polling day does not sit well with the new funding, expenditure and disclosure scheme. That scheme requires candidates, political parties and others to report their political expenditure and donations and requires more intensive reporting in the election period. The scheme provides for improved transparency and scrutiny of political parties and candidates. Given that steps have been taken to provide the public with increased access to information about the donations and political expenditure of political parties and candidates prior to polling day, it makes sense that voting should, where possible, occur on polling day. This allows voters to cast their vote with all of the information that we are now making available to them.

The funding, expenditure and disclosure scheme also provides for public funding to be payable to political parties and candidates, which essentially goes part of the way to reimbursing political parties and candidates for the cost of their election campaigns. It is inconsistent to allow tax payer money to be used to fund campaigns, and at the same time to facilitate large numbers of voters casting their votes before the end of the campaign.

The Bill makes changes to section 8 of the Act, which sets out the powers and functions of the Electoral Commissioner. The Bill inserts new section 8(1a), which provides that the Electoral Commissioner must, where relevant in the carrying out of the Electoral Commissioner's functions under the Electoral Act, promote and encourage the casting of votes at a polling booth on polling day. This makes clear that, in South Australia, the focus of elections should be polling day and that, where possible, people should vote on polling day. Declaration voting should be the exception rather than the rule.

The Bill makes amendments to section 73 of the Electoral Act to provide that pre-poll voting centres in South Australia will only be allowed to open in the 5 days leading up to polling day.

The Bill also prohibits exhibiting a sign or notice relating to the election within 100 metres of a pre-poll centre in South Australia. It is considered likely that, in some instances, the large amount of political party material and signage around pre-poll centres attracts attention to them, and may contribute to the increase in pre-poll voters for reasons of convenience.

Finally, the Bill introduces a prohibition on publicly advocating that an elector may exercise their vote in a manner inconsistent with the provisions of the Act. This is intended to ensure that parties and candidates do not encourage voters to cast pre-poll votes where the voters are not eligible to do so.

Other amendments

The Bill makes a number of other miscellaneous amendments to the Electoral Act, including:

- The Bill proposes to amend section 62 of the Electoral Act to remove the scope for Independent candidates to print descriptive information on their ballot papers. The *Electoral (Legislative Council Voting) Amendment Act 2013* changed the amount of descriptive information permitted next to the word 'Independent' from five words to three. This Bill proposes to remove the scope for descriptive information entirely. The Bill makes amendments to section 74A of the Electoral Act to make it an offence for anyone other than the Electoral Commissioner to distribute an application form for the issue of declaration voting papers.
- The Bill makes amendments to section 92 of the Electoral Act to reflect the fact that there are no longer voting ticket squares for candidates. Limiting eligibility for voting ticket squares to political parties and group is a change that was made by way of the *Electoral (Legislative Council Voting) Amendment Act 2013*, but the consequential amendments to section 92 were not made at that time.
- The Bill increases the penalty provisions in section 113 of the Electoral Act to $50,000. This increase is intended to act as a deterrent to those involved in political processes who may authorise, cause or permit the publication of an electoral advertisement contrary to section 113.

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 *Electoral Act 1985*

4—Amendment of section 4—Interpretation

Subclause (1) inserts a definition of medical practitioner for the purposes of the amendment in clause 17 of the measure. Subclause (2) amends the definition of *officer* to include a person appointed to assist the Electoral Commissioner in the administration of other Acts.

5—Amendment of section 8—Powers and functions of the Electoral Commissioner

The clause amends section 8 to insert a new subsection (1a) which provides that the Electoral Commissioner must, where relevant in the carrying out of the Electoral Commissioner's functions under the Act, promote and encourage the casting of votes at a polling booth on polling day.

6—Repeal of section 11

This clause repeals an obsolete section.

7—Amendment of section 12—Staff

This clause amends section 12(1)(b) to provide that persons may be employed by the Electoral Commissioner as required for the administration of the Act or any other Act.

8—Amendment of section 26—Inspection and purchase of rolls

This clause inserts a new subsection (1a) which provides that a person may only inspect a copy of the electoral roll if the person:

- provides the person's name and address to the Electoral Commissioner; and
- if requested to do so by the Electoral Commissioner, produces evidence of the correctness of the name or address as provided in a form determined by the Commissioner; and
- complies with conditions (if any) prescribed by the regulations.

9—Amendment of section 43A—Annual returns and other inquiries

This amendment is consequential on the amendment in clause 10.

10—Amendment of section 45—De-registration of political party

This amendment provides that the Electoral Commissioner may de-register a party if the registered officer of a registered political party fails to comply with a requirement under section 43A. This provision was formerly located in section 43A(5) and is to be relocated to section 45, in order for section 45(2) to apply to such a deregistration.

11—Amendment of section 53—Nominations of candidates endorsed by political party

The amendment in subclause (1) provides that a single candidate, or multiple candidates can be nominated on a nomination paper for election as a member of the House of Assembly or the Legislative Council.

The amendment in subclause (2) deletes the reference for a payment to be in cash or a bankers cheque and inserts a requirement for payments to be paid in the manner prescribed by the regulations.

12—Amendment of section 53A—Nomination of candidate by a person

This amendment deletes the reference for a payment to be in cash or a bankers cheque and inserts a requirement for payments to be paid in the manner prescribed by the regulations.

13—Amendment of section 54—Declaration of nominations

This clause amends section 54(1) to provide that the address of a nominated candidate must not be declared at nomination if a candidate's address is suppressed from the roll under section 21. Instead, the returning officer must declare, in the case of a candidate nominated for election to the House of Assembly, the House of Assembly district in which the candidate resides, and in the case of a candidate nominated for election to the Legislative Council, must not declare the address of that candidate.

14—Amendment of section 62—Printing of descriptive information on ballot papers

This clause makes amendments to remove the possibility of an application to have a description consisting of the word 'Independent' followed by not more than 3 additional words printed adjacent to the candidate's name on ballot papers to be used in the election.

15—Amendment of section 71—Manner of voting

This amendment deletes reference to an inmate of a declared institution and substitutes a reference to a resident of a declared institution.

16—Amendment of section 73—Issue of voting papers

The clause substitutes section 73(2). In addition to the existing provisions in relation to the issue of declaration voting papers to an elector (now provided for in proposed section 73(2)(a)), proposed 73(2)(b) provides that declaration voting papers must only be issued to an elector who appears personally before an officer in South Australia other than at a polling booth on polling day at times determined by the Electoral Commissioner that fall within the 5 days before polling day.

Proposed section 73(2)(c) provides that the additional provisions in proposed 73(2)(b) do not apply to an elector who is a resident of a declared institution.

17—Amendment of section 74—Issue of declaration voting papers by post or other means

This clause inserts a new subsection (3a) to provide that an application under section 74 for the issue of declaration voting papers to an elector, or for registration of an elector as a declaration voter, may be made by a person other than the elector if the application is accompanied by a certificate from a medical practitioner, in a form approved by the Electoral Commissioner, certifying that the elector is, because of physical disability, unable to sign the elector's own name.

18—Amendment of section 74A—Offence to distribute application form for issue of declaration voting papers

This clause deletes certain requirements from the offence of distributing a declaration voting application form.

19—Amendment of section 80—Voter may be accompanied by an assistant in certain circumstances

The clause inserts section 80(3)(e) to allow for a person to assist a declaration voter in the following ways:

- by assisting the voter to complete the appropriate declaration on the envelope;
- if the voter is unable to do so, by completing and signing the declaration on the voter's behalf in the presence of an officer (who must sign the envelope as witness);
- by folding and placing the ballot paper in the appropriate envelope and sealing the envelope.

20—Amendment of section 80A—Voting near polling booth in certain circumstances

The clause amends the section to provide for the procedure for a voter casting a declaration vote if the voter is unable to enter a polling booth.

21—Substitution of section 81

This clause deletes and substitutes section 81 as follows:

81—Voting by elector to whom declaration voting papers have been issued

The proposed section provides that an elector to whom declaration voting papers have been issued (otherwise than at a polling booth) is entitled to an ordinary vote at a polling booth, but a declaration ballot paper purporting to be a ballot paper of that elector must not be admitted to the scrutiny.

22—Amendment of section 82—Declaration vote, how made

The amendment in subclause (1) is consequential on the amendments in clauses 17, 20 and 25.

The amendment in subclause (2) permits a person to assist a voter to complete and sign a declaration on the voter's behalf if the voter is unable to do so.

23—Amendment of section 83—Taking of declaration votes by electoral visitors

These amendments delete references to an inmate of a declared institution and substitute references to a resident of a declared institution.

24—Amendment of section 84—Security of facilities

The amendment in this clause widens the security protections in the existing section to include all ballot boxes whether opened at the close of poll or at some other time.

25—Insertion of Part 9 Division 5A

This clause inserts a new Division as follows:

Division 5A—Electronically assisted voting for sight-impaired electors

84A—Electronically assisted voting for sight-impaired electors

The proposed section allows the regulations to make provision in relation to voting in an election by sight-impaired electors by means of an electronically assisted voting method. A sight-impaired elector is defined as an elector whose sight is impaired such that the elector is unable to vote without assistance.

84B—Applying provisions of Act to elector using electronic assisted voting

The proposed section provides for certain provisions and prohibitions in the Act to apply to a voter using the electronically assisted voting method.

84C—Electoral Commissioner may determine that electronically assisted voting is not to be used

The proposed section allows the Electoral Commissioner, by notice in the Gazette, to determine that the electronically assisted voting method is not to be used either generally or at 1 or more specified places, in respect of an election.

26—Amendment of section 91—Preliminary scrutiny

The clause amends the scrutiny process of declaration votes by inserting references to the tear-off extensions on declaration voting envelopes, and makes amendments consequential on the amendments in clause 17.

27—Amendment of section 92—Interpretation of ballot papers in Legislative Council elections

This clause makes a technical amendment.

28—Amendment of section 113—Misleading advertising

This amendment increases the maximum penalty for the offence of misleading advertising to $50,000.

29—Amendment of section 125—Prohibition of canvassing near polling booths

The clause inserts proposed subsection (4) which provides that if a place is open for the issue of voting papers in an election other than on polling day, a person must not exhibit a notice or sign (other than an official notice) relating to the election at an entrance of, or within, that place, or in any public or private place within 100 metres, or such lesser distance as may by fixed in a particular case by the presiding officer, of an entrance to that place, with a maximum penalty of $750.

Proposed subsection (5) provides that an officer may, if directed by the presiding officer or Electoral Commissioner, remove a notice that the Electoral Commissioner or presiding officer believes on reasonable grounds to be exhibited in contravention of section 125. Proposed section (6) makes it an offence with a penalty of $2,500 or imprisonment for 6 months for a person to obstruct an officer in the exercise or attempted exercise of a function under proposed subsection (5).

30—Amendment of section 126—Prohibition of advocacy of forms of voting inconsistent with Act

Subclause (1) makes a technical amendment to include a reference to a how-to-vote card permitted to be distributed under section 112A. Subclause (2) inserts new subsections (3) and (4). Proposed subsection (3) provides for an offence if a person advocates that an elector may exercise their vote in a manner inconsistent with the provisions

of the Act relating to the manner in which an elector may exercise a vote, with a maximum penalty of $2,500. Proposed subsection (4) provides that it is a defence to a charge of an offence against proposed subsection (3) to prove that acts alleged to constitute the offence arose from an honest and reasonable misunderstanding or mistake on the part of the defendant.

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

ELECTORAL (LEGISLATIVE COUNCIL VOTING) (VOTER CHOICE) AMENDMENT BILL

Second Reading

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (18:03): 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.

This *Electoral (Legislative Council Voting) (Voter Choice) Amendment Bill 2016* ('Bill') proposes to change the voting system used for Legislative Council elections and implement what is to be known as the 'Voter Choice' system of voting.

Voter Choice is a variant on the current system of voting used for Legislative Council elections. Voter Choice would work as follows:

- There would no longer be voting tickets in Legislative Council elections.
- As is currently the case, voters would be able to vote '1' above the line for the party or group of their choice. This would be known as a 'group vote'.
- Unlike the current system, where a vote above the line is interpreted in accordance with a voting ticket lodged by the particular party or group, a 'group vote' would be a vote for each of the candidates in that party or group in the order nominated by the party or group.
- Below the line voting or an 'individual vote' would be largely unchanged. Although, there is a provision relating to the interpretation of ballot papers so that, where a person just votes '1' for the 'lead candidate' of a party or group below the line, that would be interpreted as a vote for the party or group above the line.

In other respects, the voting system for Legislative Council elections would remain largely unchanged. The methods of calculating the quota and transferring surplus votes remain the same.

The Voter Choice method of voting would limit the potential for parties to secure Legislative Council seats through 'preference harvesting'.

The proposal is also intended to make it easier for people to understand the implications of their vote, and to have control over their vote and preferences. Voters who cast a 'group vote' above the line will be casting a vote for the members of that group or party (and not for all candidates in the election in the order of the group's voting ticket, as is currently the case). Voters who cast an 'individual vote' below the line will continue to be required to indicate a preference for all candidates.

Turning now to the details of the Bill, the Bill makes amendments to the interpretation section of the *Electoral Act 1985* ('Electoral Act'). These include amendments to remove the definition of 'voting ticket square', amend the definition of 'voting ticket' so that it only applies to House of Assembly elections, and introduce the term 'group voting square'. The definition of 'group' is also moved from Part 13A of the Electoral Act into section 4(1) of the Electoral Act.

The Bill amends section 58 of the Electoral Act so that when Legislative Council candidates apply to be grouped together on the ballot paper, they may also request that a group voting square be printed on the ballot paper in respect of their group. Where such a request is made, a group voting square must be printed on the ballot paper. The Bill also amends section 59 to require that the names of candidates within a group must be printed on the ballot paper in the same order as they appear in the section 58 application.

In practice, the appearance of ballot papers will be largely unchanged. Group voting squares will replace the current voting ticket squares for what is commonly referred to as above the line voting. Candidates' names will be listed on the ballot paper below the line, and in the order in which they appear in the section 58 application (if any).

Currently, section 63 of the Electoral Act deals with voting tickets in both Legislative Council and House of Assembly elections. The Bill repeals section 63 and inserts new section 60A, which is in similar terms to section 63 but applies only in relation to House of Assembly elections. Consequential amendments are made to a number of sections in the Electoral Act to change references from section 63 to section 60A.

The Bill also amends section 66 of the Electoral Act to reflect the fact that there will no longer be voting tickets in Legislative Council elections.

Changes are made to the method of voting in section 76 to allow a voter to vote by marking a '1' in the group voting square that relates to the group that the voter prefers. That vote will be interpreted so that it is a vote for each of the candidates in that group, in the order nominated by the group under section 58. So, if there are 6 candidates in a group, a vote for the group will be a vote from 1 to 6 for each member of that group in the order nominated by the group.

The Bill makes amendments to the formality provisions in sections 92 and 94 to reflect the proposed new system of voting. In particular, section 92 provides that where a person just votes '1' below the line for the first candidate included in a group, that would be interpreted as an above the line vote for that candidate's group.

The Bill also contains changes to the scrutiny provisions to accommodate for the fact that above the line voting only provides a vote to a single party or group.

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 *Electoral Act 1985*

4—Amendment of section 4—Interpretation

This clause makes consequential changes to definitions and inserts a definition of *group voting square*.

5—Amendment of section 53—Multiple nominations of candidates endorsed by political party

This clause makes an amendment to section 53 to reflect the fact that, under the measure, voting tickets would only be lodged in relation to House of Assembly elections.

6—Amendment of section 58—Grouping of candidates in Legislative Council election

This clause allows an application for the grouping of names on a Legislative Council election ballot paper to also request a group voting square for the group.

7—Amendment of section 59—Printing of Legislative Council ballot papers

This clause requires that a Legislative Council election ballot paper be printed such that the order of names of candidates within a group will be the order specified in the group's application under section 58.

8—Insertion of section 60A

This clause is consequential. Section 63 of the Act is repealed by clause 9 of the measure and relocated in the subdivision dealing with House of Assembly elections (because voting tickets would no longer be relevant in relation to Legislative Council elections under the measure). The wording of the provision has been altered to reflect the fact that it now applies only to House of Assembly elections.

9—Repeal of section 63

This clause repeals section 63 (see clause 8).

10—Amendment of section 66—Preparation of certain electoral material

This clause makes consequential amendments to reflect the fact that voting tickets would no longer be relevant in relation to Legislative Council elections under the measure.

11—Amendment of section 76—Method of voting at elections

This amendment replaces the reference to voting ticket squares on a Legislative Council ballot paper with a reference to group voting squares.

12—Amendment of section 92—Interpretation of ballot papers in Legislative Council elections

This clause amends section 92 to set out the manner in which Legislative Council ballot papers may be interpreted. Generally a voter would be required to mark a Legislative Council ballot paper by either placing a 1 in a group voting square (which is then interpreted as a vote for the members of that group in the order in which they appear on the ballot paper) or by numbering all the squares for individual candidates below the line. The provision,

however, provides rules for interpreting ballot papers that have been marked in a manner that does not comply with these general requirements.

13—Amendment of section 94—Informal ballot papers

This clause makes consequential amendments in relation to informal ballot papers.

14—Amendment of section 95—Scrutiny of votes in Legislative Council election

This clause amends section 95 to reflect the change from voting ticket squares to group voting squares and make other consequential amendments to the scrutiny provisions.

15—Amendment of section 130A—Interpretation

A definition of *group* is deleted as this definition is now to be located in section 4 of the Act.

Debate adjourned on motion of Hon. J.S. Lee.

At 18:04 the council adjourned until Wednesday 7 December 2016 at 11:00.