LEGISLATIVE COUNCIL

Wednesday 10 November 2010

The PRESIDENT (Hon. R.K. Sneath) took the chair at 11:03 and read prayers.

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (11:04): I move:

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

Motion carried.

AUDITOR-GENERAL'S REPORT

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (11:05): I move:

That standing orders be so far suspended as to enable the report of the Auditor-General for 2009-10 to be referred to a committee of the whole and for ministers to be examined on matters contained in the report for a period of one hour.

Motion carried.

In committee.

The Hon. D.W. RIDGWAY: I indicate that the opposition has a series of questions. To make things work easier this morning, we will flow as we normally do for question time. I know that the Hon. Mr Parnell has a couple of questions, and I think the Hon. Mr Hood also has a question. The Hon. Kelly Vincent has made my office aware that she has a question, as does the Hon. Tammy Franks. We hope we can let everyone get a question in. My first question is to the Minister for Urban Development and Planning, but it can possibly be answered by the Minister for State/Local Government Relations, given that the two ministers report to the one department.

Page 901 of the Auditor-General's Report shows a statement of cash flows. Were payments made from the Office of Local Government to the Local Government Association to fund projects that would have been administered by the association? If so, when were these payments made, how much were those payments, and what were the projects for? Of the cash outflows, where any refunds made to the department by the Local Government Association for any projects, if any, that did not come to fruition?

The Hon. P. HOLLOWAY: I have Mr Andrew McKeegan with me, the chief financial officer for the Department of Planning and Local Government, to provide advice. Regarding page 901, the honourable member asked about all payments to local government more generally, or—

The Hon. D.W. Ridgway: In particular to the Local Government Association.

The Hon. P. HOLLOWAY: The joint Office for State/Local Government Relations and the Local Government Association application to the commonwealth government for funding under the Local Government Reform Fund included, under the Asset and Financial Management Technical Support Project, a cash contribution by the Office for State/Local Government Relations of $80,000. Minister Albanese has announced that South Australia has been successful in obtaining commonwealth funding of $1.65 million towards the project. The commonwealth funding is being provided under the national partnership agreement to support local government and regional development.

The LGA has established, within its accounting system, a mechanism to record and report all financial transactions associated with funding received for those projects and associated expenditure incurred. This will facilitate performance reporting to the commonwealth under an implementation plan established in accordance with the national partnership agreement.

As part of the collaborative arrangements agreed between the Office for State/Local Government Relations and the LGA, the $80,000 contribution by the office is intended to cover

salary and related costs of John Wright's involvement in the Asset and Financial Management Technical Support Project. Amongst other things, that project builds on and extends the work that Mr Wright has been undertaking in driving significant improvements in local government financial management under the financial sustainability program. So, I gather I have really answered for my colleague.

The Hon. D.W. RIDGWAY: A supplementary question, if I may. Are they the only payments that have been made to the Local Government Association from the Office for State/Local Government Relations in the past 12 months?

The Hon. G.E. GAGO: I have been advised, yes. I think the member also asked a question in relation to refunds, and I have been advised that, no, there were no refunds.

The Hon. J.M.A. LENSINK: I have some questions to be referred to the Premier and one question to be referred to minister Caica. I refer to Volume 3, page 979, relating to the Premier's Climate Change Council. Part of the government's strategy is to establish industry sector agreements, one of which is with SA Water, which is dated December 2009. The agreement was jointly signed by the SA Water Chairman and the Premier on 16 February 2009, and it states that SA Water uses as much energy as the rest of government combined.

Page 5 of that document states that SA Water is 'working towards implementing major water resource programs in a carbon-neutral way' and 'investigating opportunities to reduce greenhouse gas emissions as part of developing future desalination plants in South Australia'. Can the Premier elaborate and verify exactly how this is to be achieved?

I refer to the same page reference and same document. Page 6 of the agreement is a table showing SA Water's historic and projected greenhouse emissions. It indicates that since 2007-08 SA Water has been failing to achieve its reductions, with emissions set to spike to over 1 million tonnes in 2011-12, presumably accounting for the desalination plant coming on line. How is this compatible with the Premier's claims that the desalination plant will be carbon neutral?

I refer to Volume 3, page 966, relating to Activity 1: Cabinet Office. The Premier wrote in January 2008 to all of his parliamentary colleagues, myself included, advising that South Australia had the first carbon-neutral cabinet. At the time, the minister wrote that the Premier and ministers would need to offset 3,000 tonnes of CO^2 at a cost of $60,000. Can the Premier advise how much this program is now costing and who was the successful tenderer for the program?

I direct the following question to the Minister for Environment and Conservation. I refer to Volume 2, page 418, relating to EPA Waste Levy. The audit notes that the EPA's waste levy audit reports summarising audit findings for 2008-09 were incomplete. As a result, there is an increased risk the EPA had not received all waste levies revenue it was entitled to under the regulations. Audit also reviewed progress to date with 2009-10 waste levy audit activities. For several waste depots assessed as extreme or high risk, there was no available documentary evidence at the time of audit that site inspections, weighbridge audits or surveillance activities had been performed. My question is: how will this be addressed, particularly in light of increases to the solid waste levy?

The Hon. P. HOLLOWAY: We will refer those questions to the Premier and the Minister for Environment and Conservation, who is obviously the relevant minister in relation to the EPA, and we will endeavour to bring back a response.

The Hon. J.M.A. LENSINK: I have some direct questions for the Minister for Consumer Affairs. I refer to Volume 1 of Part B of audit, page 99: 'Review of the Residential Tenancies Fund and Retail Shop Leases Fund bank reconciliations and supporting documentation prepared by OCBA throughout the year'. Audit states that there was no evidence to show that bank reconciliation procedures were regularly reviewed, and so forth. What is OCBA doing to remedy the Auditor-General's findings?

The Hon. G.E. GAGO: The Chief Executive has advised that OCBA has reviewed and updated the bank reconciliation procedures and completed outstanding bank reconciliations for the period ending 30 June 2010 and had them independently checked. The reconciliations have been updated on a monthly basis since then and a resource has been dedicated to ensure that further bank reconciliations will be completed on a timely basis. In order to further strengthen controls in this area, the finance officer responsible for reconciliations has now been relocated to work more closely with the management accountant so that, if any issues arise, they can be dealt with in a more timely manner.

The Hon. J.M.A. LENSINK: On the same page reference, the Auditor-General sought that all births, deaths and marriages fees are checked by an independent officer for accuracy, as part of an annual fee update review and evidenced to indicate performance of this review. On what basis were fee increases made on 1 July 2010 and in previous years, and does the government intend to further increase fees in the next couple of budgets?

The Hon. G.E. GAGO: I thank the member for her questions. Responsibility for Births, Deaths and Marriages in fact comes under the Attorney-General. It is very complicated and convoluted, so I will refer those matters to him. In relation to fees, that is really a matter for Treasury and the A-G, but I will refer those questions to the Attorney-General.

The Hon. J.M.A. LENSINK: Referring to the same page, I think this probably falls into the same category that the minister has just referred to in occupational licensing. The Auditor-General sought that outstanding licensing systems penalties are followed up immediately to ensure valid penalties on a timely basis. What is the government's plan to deal with this particular matter?

The Hon. G.E. GAGO: This one is mine. I have been advised that OCBA has advised that it would continue to review and minimise the number of outstanding penalties as appropriate, so it has taken measures in relation to that. Before issuing penalty notices, an officer must check that annual returns received have been receipted and that any that are part-processed (for example, when the return has been received but some changes still have to be entered onto the occupational licensing system) are not sent a penalty notice.

Accordingly, some licensees listed on the penalties due report should not be issued a penalty. As there is work involved in checking and producing penalty notices, it is also not always possible to issue them on the first day upon which they are able to be issued. This work must be scheduled along with other tasks and can be delayed for short periods in the event of other priorities or things like staff absences, etc.

A check of the penalties due report as at 2 August 2010 shows that there are 160 on that report for checking. This is considered a reasonable level, considering that the Business and Occupational Services Branch administers over 65,000 licences. Notwithstanding the above, OCBA will continue to review and minimise the number of outstanding penalties appearing on the report as soon as is practical.

The Hon. M. PARNELL: I have a number of referred questions and, as the ministers are swapping seats, I will direct my first one to the Minister for Mineral Resources Development, representing the Minister for Infrastructure, in relation to the Land Management Corporation. I refer to page 687 in Volume 2 concerning the Port Adelaide waterfront development. The Auditor-General notes that the Land Management Corporation's obligations under the development agreement amount to $44 million in 2004 dollar terms over the life of the agreement. My questions of the minister are as follows.

Firstly, could he outline in more detail the Land Management Corporation's obligations under the development agreement? Secondly, what is the anticipated net return to the LMC resulting from the development agreement? Thirdly, are contracts for the sale of land between LMC and the Newport Quays developers subject to development approval being granted and, if so, what will be the financial impact on LMC of the delay or possible refusal of development approval for the Dock One redevelopment?

Fourthly, are any payments to the Land Management Corporation tied to the value of property sales in the Newport Quays development? Fifthly, are there any performance bonuses payable or paid to LMC executives or board members and, if so, what is the nature and amount of those bonuses?

The Hon. P. HOLLOWAY: I will refer those questions to the minister in another place and bring back a response. I think that, in relation to the latter question, though, there are broad government guidelines that obviously apply in relation to such policies. Again, I will refer that on, although I do note that many of the honourable member's questions go to commercial details involving the LMC's relations with private contractors. So, as to the availability of that information, whether it is subject to commercial confidentiality provisions, I am not sure. I will refer those questions on to the minister in another place.

The Hon. M. PARNELL: I have another series of referred questions, this time addressed to the Minister for State/Local Government Relations, representing the Minister for Water, in relation to the Adelaide desalination plant. I refer pages 30 to 32 of Part A of the Auditor-General's

Report, and note that on page 31 the Auditor-General states that the Department of the Premier and Cabinet has advised that, 'a mutually agreed position has been reached on the issue of reduced reliance on the Murray River'. He goes on to say that these negotiations have been led by the Minister for Water.

My questions of the minister are: firstly, what is the position that has been agreed? Secondly, will there be a net reduction in the amount of water that is taken by SA Water per year for Adelaide's water needs, as a direct result of the mutually agreed position?

Thirdly, is the position that has been negotiated with the commonwealth consistent with the government's previously announced policy in the Water for Good plan? I also point to figure 24 on page 52 of the Water for Good plan which indicates that reliance on the River Murray will remain constant at over 100 gigalitres per year through to the year 2050.

Fourthly, when will the funding agreement with the commonwealth be finalised? I note that the Auditor-General, in his concluding comments, stated that, 'confirmation on a significant funding condition has not yet been obtained'.

The Hon. G.E. GAGO: I am pleased to refer those questions to the Minister for Water in another place and bring back a response. I must say that I think these questions generally relate to broad policy matters and are really not particularly relevant to the Auditor-General's Report before us. Given that, I will refer those questions.

The Hon. T.A. FRANKS: My question is to the Minister for Mineral Resources Development, representing the Treasurer, on the issue of public-private partnership funding for the new Royal Adelaide Hospital. I refer to pages 589 and 590, Part B: Agency Audit Reports, Volume 2.

My questions are: how does a government-funded financial model compare under the public sector comparator with the government's preferred PPP model? Under what conditions would the government abandon the PPP model? Will the government involve the Auditor-General in any analysis of the two competing financial models—a government-funded financial model versus a PPP—or will it be done on the basis of Treasury advice alone? What are the indicative yearly costs arising from the preferred PPP company having to provide insurance against project blowouts, funding collapses or construction failures?

Has the state government sought a co-financing partnership with the federal government for the RAH, as an alternative to a PPP? If the government decided to abandon the PPP process, how much would the government expect to pay in compensation to the two bidding parties?

The Hon. P. HOLLOWAY: The honourable member would well know that there are currently consideration of tenders in relation to the new Royal Adelaide Hospital, so I am not sure that the government will be in any position to provide too much detail until that process has been completed. I will see if the Treasurer is able to provide some broad policy advice in relation to the direction that the government may or may not take in relation to those issues of the type of funding. Given that we, as I understand it, are still in the process of tender, then clearly what information the government can provide at this time is obviously going to be restricted.

The Hon. D.G.E. HOOD: I have a question as well which I suspect will be referred. I refer to Volume 2, page 446. There is a reference there to cabinet grants made to a number of NGOs to fund the purchase of disability equipment. The report notes that the Julia Farr Association was granted some $2.92 million in June 2007 and $2.15 million in June 2008 to purchase disability equipment. The report is quite critical of the fact that this money was 'stashed' (to use the term in the report) in an NGO that had no involvement in providing the equipment—a middle provider, if you like. Rather than labouring on the financial rights and wrongs of this action, I note the reference to the fact that:

> The cabinet-approved funding for disability equipment was received too late in each of the financial years to provide the manageable opportunity for the orderly purchase of disability equipment...

My question is about this failure to provide funds on time. Firstly, is that the government's view? Would it have resulted in some clients with a disability not adequately being resourced? Indeed, is this partly to blame for a widely reported backlog of requests for disability equipment in this and other areas?

The Hon. G.E. GAGO: These are matters that relate to the responsibilities of the Minister for Disability, and I will refer those questions to that minister in another place and bring back a response.

The Hon. R.I. LUCAS: My question is to the Leader of the Government. On page 1868 of the Auditor-General's Report, under WorkCover Corporation, there is a list of the remuneration bands for employees of WorkCover. The Auditor-General's Report notes that, of the highest two employees in the previous financial year of 2008-09, the highest one was in the remuneration band $400,000 to $410,000, and the second highest was in the remuneration band $370,000 to $380,000.

The Auditor-General's Report on that same page notes that in the following year, the most recent year, the highest band employee within WorkCover has increased to $520,000 to $530,000. I repeat that, in the previous year, it was $400,000 to $410,000—so an increase of $110,000. The second highest banded employee for WorkCover was in the band $410,000 to $420,000.

Can the minister indicate, as the new minister, whether he has been briefed on the remuneration package of the new chief executive officer of the WorkCover Corporation? If he has, does the employee in the band $520,000 to $530,000 refer to the remuneration package of the CEO of WorkCover Corporation?

The Hon. P. HOLLOWAY: Of course, we are talking here about the Auditor-General's Report for 2009-10, so clearly it cannot refer to the new chief executive's remuneration. That will be in next year's. I am not quite sure what his starting date was but it was certainly around about the middle of the year. It was in early June, so it would not be there.

What I think needs to be pointed out is that when you look at the Auditor-General's tables for employee benefit expenses, it is misleading to relate those directly to a salary paid to individuals. In fact, I am advised that the highest band of $520,000 to $529,000 was someone who had departed but had substantial accumulated long service leave and other benefits which are incorporated in that figure. When we look at the employee benefit expenses, often the figures on the higher tables will not reflect the actual salary paid to those people. In many cases, it is actually the final salary in relation to people who have been paid out with TVSPs and accumulated leave. My advice is that this particular band of $520,000 to $529,999 referred to an employee who had left with significant accumulated long service leave and other benefits.

The Hon. R.I. LUCAS: Just to pursue that issue, other aspects of the Auditor-General's Report for departments for similar tables note with an asterisk those employees in an employment band where the issue that the minister has just raised (that is, the possible payment of a termination payment) might give a higher figure. Given that there is no such asterisk in the WorkCover Corporation section, I seek a confirmation from the minister that he has had specific advice in relation to that.

I do not have all the volumes of the Auditor-General's Report with me but, from my previous reading, I know that some of the departments—when you look at the remuneration bands of their employees—make it quite clear that an employee in a particular band has an asterisk next to it, which points out the fact that a termination payment has been included in that. I seek specifically: is the minister saying to the committee that he has received specific advice in relation to this particular band that that person was someone who received a termination payment?

The Hon. P. HOLLOWAY: Yes, I have that advice, but I do refer to the note that is under that particular table. Note 9 covering the report states:

> The table includes all employees who receive remuneration of $100,000 or more during the year. Remuneration of employees reflects all costs of employment, including salaries and wages, superannuation contributions, FBT and other salary sacrifice benefits, and payments of accumulated annual leave, long service leave and superannuation in respect of certain employees whose employment terminated in the financial year. The total remuneration received by these employees for the year was $9.1 million.

I take the point the honourable member has made. It was a recommendation of the Economic and Finance Committee back in the early 1990s (when I was a member of another place) that we include these bands, but the $100,000 threshold that we used then is the same threshold 20 years later. Clearly, what is happening in a large number of departments (if one looks at these figures) is that, whereas the $100,000 figure then chosen did reflect the salaries that most or many executives would be paid above that figure, clearly, now a number of other people can come within that.

I mean, someone could be on a quite modest salary in a modest level of employment but, if they get a TVSP or a payout, they could appear in one of these bands because they have not been indexed in the 20 years that these have been covering. I agree with the point that I think the Hon. Mr Lucas is making, that it would be clearer if we could, perhaps, have some indication in relation to these figures as to what the component was.

Perhaps it would make more sense if we had tables of what were executive positions and the salary components of those rather than just have the remuneration bands. As I said, this was the recommendation of the Economic and Finance Committee 20 years ago. As I say, it is a useful comparator, but anyone who uses these figures needs to bear in mind that those figures do reflect payouts and accumulated leave, which can often distort the figures.

As I say, it is by no means now executive level employment. A number of employees with overtime benefits and the like (police officers, for example) can easily appear then in those bands, and that has a distorting effect on the statistics. If one is using employment comparators with previous years one does need to take into account the composition of the remuneration and the fact that it may be, as in this particular case, that the top level does not represent the CE's salary but, in fact, that it was a former executive who had significant accumulated benefits.

The Hon. R.I. LUCAS: What is the total remuneration package of the new chief executive officer?

The Hon. P. HOLLOWAY: We will take that on notice.

The Hon. R.I. LUCAS: On that, if one can make the assumption that the person who received $520,000 to $530,000 is most likely to be the former CEO, Ms Julia Davison—

The Hon. P. Holloway: It wasn't.

The Hon. R.I. LUCAS: It wasn't? I have two questions then: first, what was the level of any termination payment made to the former WorkCover chief executive Julia Davison and, if she is not the employee in the $520,000 to $530,000 bracket for the last financial year, in which bracket was Ms Davison?

The Hon. P. HOLLOWAY: My advice is that the former CEO of WorkCover, Julia Davison, resigned. She received the normal payout, which was her salary and accumulated leave, and she would be the second one from the bottom of that list.

The Hon. R.I. LUCAS: The second one being $410,000 to $420,000?

The Hon. P. HOLLOWAY: That would have included accumulated leave and the like.

The Hon. R.I. LUCAS: The minister has confirmed, for the benefit of *Hansard*, that Ms Davison was in the $410,000 to $420,000 bracket when one took into account termination payments. Will the minister take on notice what was the level of termination payments for Ms Davison? Who was the executive who, together with termination payments, was paid a total of $520,000 to $530,000 in 2009-10, and what was the level of termination payment and other payments in addition to salary and annual payments that were paid to that particular person?

The Hon. P. HOLLOWAY: My advice is that the person was a former general manager, Mr Stan Coulter, but I believe he was retained on contract in relation to the introduction of the new computer system for WorkCover—the new Curam system—which was introduced in the first half of this calendar year, the last half of the financial year. Apparently he was retained on contract in relation to that new computer system.

The Hon. R.I. LUCAS: I ask the minister to take the question on notice. I understand the minister has told the committee that Mr Coulter received a total of $520,000 to $530,000 in the last financial year. He has now indicated that that includes salary for part of the year, termination payments and, I understand from what the minister just said, having been terminated he has been re-employed on a contract as a consultant to WorkCover for the second half of the financial year, for which he has received further payments.

I seek from the minister the detail of the salary package for Mr Coulter, the termination payments for Mr Coulter and the terms upon which someone who has received a termination package from WorkCover has been re-employed as a consultant or contractor within WorkCover during the financial year. Subsequently, for the 2010-11 financial year is Mr Coulter still being employed as a consultant or contractor by WorkCover Corporation?

The Hon. P. HOLLOWAY: Given that it is not really fair to the individuals concerned, we should get all of the details on this matter, so I will take the questions in relation to that on notice. I just do not think it is a fair way of dealing with individuals. I am not quite sure that the assumptions that the Hon. Mr Lucas is making in his situation—

The Hon. R.I. Lucas: No; that's what you told me.

The Hon. P. HOLLOWAY: Well, you are putting words. I think it is best that we take it on notice. In fairness to the individual, I think it is best that we take the question on notice and explain the breakdown. As I said, I have given the honourable member and the council an indication of who the person is in the broad parameters. In fairness to the person concerned and all other employees of government, I think it is wise to take that on notice. We will be happy to provide that information.

The Hon. K.L. VINCENT: My question on the Auditor-General's Report for the year ending 2010 refers to page 446, which notes that the Department for Families and Communities paid two one-off grants of $2.92 million and $2.15 million respectively in 2007 and 2008 to the Julia Farr Association as equipment grants. However, the department sought to recoup both those payments during 2007 and 2008 and 2009 and 2010. In view of the fact that the Julia Farr Association had no role in managing, prescribing or providing equipment during 2007 or 2008, my questions to the minister representing the Minister for Families and Communities are:

1. Why did the government make equipment grants to the Julia Farr Association when it is not a supplier of equipment?

2. Why did the government make equipment grants to the Julia Farr Association for two years in a row?

I am also concerned as to whether the provision of these funds to the Julia Farr Association has led to further delays in the provision of equipment for people with disabilities; however, I note that that question has already been asked.

The Hon. G.E. GAGO: I will refer those questions to the Minister for Families and Communities in another place and bring back a response.

The Hon. R.P. WORTLEY: I have a question for the Minister for Industrial Relations. What are the benefits for WorkCover in recently—

The Hon. R.I. Lucas interjecting:

The CHAIR: Order! The Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: Is there a page reference to the Auditor-General's Report, given that this is an examination of the Auditor-General's Report?

Members interjecting:

The CHAIR: Order!

The Hon. D.W. RIDGWAY: Can the member please provide a page reference?

Members interjecting:

The CHAIR: Order! The Hon. Mr Wortley's question relates to the Auditor-General's Report.

The Hon. D.W. RIDGWAY: Well, what page number?

The CHAIR: The Hon. Mr Wortley.

The Hon. R.P. WORTLEY: What benefits are there for WorkCover in recently implementing a new ITC system?

Honourable members: Where?

The CHAIR: In the Auditor-General's Report.

The Hon. J.M.A. Lensink: Which volume?

The Hon. R.P. WORTLEY: The minister will know, obviously.

Members interjecting:

The CHAIR: Order! The opposition has had a fair sling at this.

Members interjecting:

The CHAIR: As long as it is relevant to the Auditor-General's Report. The honourable minister.

The Hon. P. HOLLOWAY: Just briefly, there are significant advantages in—

Members interjecting:

The CHAIR: Order!

The Hon. P. HOLLOWAY: —introducing the—

Members interjecting:

The CHAIR: Order!

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, it is not a precedent, actually. I mean—

Members interjecting:

The CHAIR: Order! It is nice to get a question that is not attacking an individual.

The Hon. P. HOLLOWAY: In fact, it is not a convention: it is—

The Hon. R.I. Lucas: It's a convention.

The Hon. P. HOLLOWAY: It isn't. Go back and look. Mr Chair, I will be happy—

Members interjecting:

The CHAIR: Order!

The Hon. P. HOLLOWAY: —to come back at question time today and produce copies of the previous—

The Hon. R.I. Lucas: I negotiated it with the Labor Party opposition. You weren't even there.

The CHAIR: The honourable minister will complete his answer once the chamber comes to order. If the opposition wants to waste a bit of its time, that is fine.

The Hon. P. HOLLOWAY: It is an important question, because there has been a significant change to WorkCover's computer system during the previous 12 months. The new Curam software, which is a commercial software product specifically designed for social enterprise management organisations, has been introduced. It is used by a number of organisations in the social services area, including: WorkSafe British Columbia, Ontario, the United Kingdom Department of Work and Pensions, the New Zealand Ministry of Social Development, the Department of Veterans' Affairs and Disability Services in Queensland, so it is broadly used.

As a result of that, a key benefit of Curam is that it can support a much more sophisticated approach to case management which can be tailored to the needs of individual workers. The main benefit for employers is that Curam allows them to register and update their details and provide remuneration terms efficiently online. Curam also has the capacity to capture and store more information so that WorkCover can be better informed and respond to employers, workers and providers. It is an important change that has been made. As I said, introducing any new system is fraught with risk, but I compliment WorkCover on the way it has managed the introduction of that new system.

The Hon. D.W. RIDGWAY: I have some questions for the Minister for Planning and Local Government in relation to employee remuneration. Similar to the question that my colleague the Hon. Mr Lucas asked, I note on page 910 of the report that in 2009 there were 23 employees who received in excess of $100,000, and in 2010 there are 33 employees. I note that the minister quoted the footnote that it 'reflects all costs of employment including salaries and wages, superannuation contributions, FBT and any other salary sacrifice benefits', but my question is: is the increase of 10 in those 12 months purely because of salary increases and bracket creep (which, I guess, is the best way to describe it) or have an additional 10 people been employed in those bands within the department? It is interesting to note that the highest band in 2009 was $260,000 to $269,999 and there are now five positions in excess of that, with the top band being $420,000 to $429,999.

The Hon. P. HOLLOWAY: My advice is that seven employees moved over the $100,000 bracket due to enterprise bargaining and indexation growth or due to changes of role within the department. These seven were all existing employees of the department during 2008-09.

The Hon. D.W. RIDGWAY: Can the minister provide some details on the other three?

The Hon. P. HOLLOWAY: The table in note 6 shows an increase of 10 staff from 2009 to 2010 due to the following reasons. There were four directors appointed during 2008-09, that is, in May 2009. They did not appear in the 2009 table. They were the Director of Strategic Policy, the Director of Legislation and Governance, the Director of Strategic Communications, and the Director of Major Projects. Of course, during that period the department was being formed, and there was a merger with the Office for State/Local Government Relations. As I said, there were new directors appointed in May 2009, but they did not appear in the 2008-09 report, because they were appointed towards the end of the year.

The Hon. D.W. RIDGWAY: On page 911 of the report, under point 7, Supplies and Services, the bottom paragraph reads, 'The number and dollar amount of consultants paid/payable (included in supplies and services expense) that fell within the following bands', and there were three consultants below $10,000, between $10,000 and $50,000 there were three, and above $50,000 there were four consultants. Can the minister provide details of what those consultancies were for?

The Hon. P. HOLLOWAY: I am not sure whether the honourable member wants all of them. The consultancies above $50,000 were Connor Holmes, to provide the expert planning advice and independent reviews of the development plan amendment process and planning policy development priorities, including the planning policy library, and GHD for the national project to provide a draft set of common performance measures that will be used to assess the health of the development assessment system for all Australian states and territories—and, if I recall correctly, that was one of South Australia's projects under the COAG agreement.

I chaired a subcommittee of planning ministers, which was looking at various projects under the COAG scheme, which also had some commonwealth funding provided. South Australia had one particular task, as did Queensland, and Victoria and New South Wales were looking at various aspects. I think that relates to that particular project.

The consultancy for Hassell Limited was for the preparation of a draft structure plans for the north-west corridor that will be used as an exemplar of how structure plans can be delivered for other key corridors. The consultancy for KPMG was for the completion of the contract to deliver the 30-Year Plan for Greater Adelaide, including design, plan and advise on the implementation. They are the four consultancies that are above $50,000.

The Hon. D.W. RIDGWAY: Do you have any details on the $10,000 to $50,000 range?

The Hon. P. HOLLOWAY: Yes. Botten Levinson was paid a consultancy to identify options for establishing a body for the registration and audit of private certifiers and other building-related practitioners. Connor Holmes provided advice on density and urban growth areas and conducted training sections and provided examples of best practice site value analysis. The Ernst & Young consultancy was to develop an activity-based costing model to enable the department to better analyse the resource effort and costs associated with the provision of certain services, and the consultancy for Graham Winter Consulting was to conduct leadership development workshops, including profiling of team styles, and coaching for executives and senior managers.

The Hon. D.W. RIDGWAY: I refer to the same page and the same heading 'Supply and Services'. Under 'Staff development and safety', it states that in 2009, it was $132,000 and in 2010 it is $303,000 for staff development and safety. Can the minister provide some details of how that figure was arrived at?

The Hon. P. HOLLOWAY: Can I say, as Minister for Industrial Relations, I am very pleased that departments are taking seriously their expenditure on safety. We have been leading the nation in terms of reducing our workplace injuries. We had a target of reducing workplace injuries by 40 per cent. It is absolutely important. We have had questions about WorkCover, but one of the best ways of reducing the cost of WorkCover is to stop workers being injured in the first place, and that applies to public servants as much as anyone else.

The point that needs to be made is that the Department of Planning and Local Government is a new department formed from the old Planning SA, which had been shifted around, in

combination with a whole lot of other departments. Planning SA merged with the Office for State/Local Government Relations to become the new Department of Planning and Local Government. So, the context in which that trading and development took place in areas such as performance management, leadership, values, induction, mechanics of government, business writing, managers' foundations and safety training were really the formation of the new department.

As the minister, I am very proud with how far the department has come in a couple of years to have a key role, which it needs to have, in terms of the future direction of the state through planning, and I am sure that my colleague the Minister for State/Local Government Relations is likewise pleased with the performance of the department.

The Hon. B.V. FINNIGAN: One of the initiatives of the government of which I am aware was allowing the Auditor-General to play a role in WorkCover's finances. My question to the Leader of the Government and Minister for Industrial Relations is in relation to Part B, Volume 5 of the Auditor-General's Report, page 1839 and following. What is WorkCover's financial position, and can the minister report on positive developments in WorkCover's finances?

The Hon. P. HOLLOWAY: WorkCover's results for the financial year reflect a profit of $77 million and a reduction in its unfunded liability to $982 million, which is, of course, a funding level of 61.5 per cent, which is much too low but, clearly, the changes the government has introduced are working to address that. The 2009-10 financial year is the first time that WorkCover has recorded an annual profit for 10 years, since the year ended 30 June 2000. This positive result continues a recent trend of real improvements in WorkCover's claims liability. For the fifth half-year in a row, WorkCover has recorded a claims result better than projected by its actuary which is a considerable improvement on the previous year when the corresponding figures were a loss of $75 million and unfunded liability of $1.059 billion for a 56.7 funded level.

The result for the 2009-10 financial year is particularly pleasing as the final result was adversely affected by over $100 million in movements in long-term interest rates which are outside WorkCover's control. Without these movements in financial markets, WorkCover's results would have been better. Following the changes to legislation that were made to WorkCover, there are still a number of matters that are of course before the courts and obviously the decisions taken there will be important in determining the long-term viability of the scheme.

The Hon. D.W. RIDGWAY: This question is for the Minister for State/Local Government Relations, but I suspect that the same officer will be required. I refer to pages 787-8 of the Auditor-General's Report and the heading 'Audit findings and comments'. The report contains an extract from the 2009-10 Independent Auditor's Report which details the qualification to the authority's financial statements as follows:

> Basis for qualified auditor's opinion
>
> In 2009-10 the Local Government Finance Authority of South Australia (the Authority) recognised a grant payment of $1 500 000 ($250 000 in 2008-09) as a distribution from Retained Profits in the Statement of Changes in Equity.
>
> Section 5 of the Local Government Finance Authority Act 1983 specifies that Councils are members of the Authority. The payment was made to an external entity which was not a Council.
>
> In my opinion, the payment was not a distribution to owners in accordance with [Australian Accounting Standard Board principle] 101 Presentation of Financial Statements but a grant expense that should be recognised in the Statement of Comprehensive Income.
>
> As a result, the following items are misstated in the Statement of Comprehensive Income:
>
> - Expenses understated by $1,500,000...
> - Profit before Income Tax Equivalents overstated by $1,500,000...
> - Income Tax Equivalent Expense overstated by $450,000...
> - Profit after Income Tax Equivalents overstated by $1,050,000...
> - Total Comprehensive Result overstated by $1,050,000...

The question is: what is the reason for the accounting error in relation to the grant that should have been recognised in the statement of comprehensive income?

The Hon. G.E. GAGO: I have been advised that the Local Government Finance Authority has received a qualified audit opinion for the 2009-10 financial year and that the LGFA is not part of the Crown nor is it an agency or instrumentality of the Crown. It operates under the terms of the LGFA Act, and the board of the LGFA is not under the direction and control of the minister.

In relation to the audit finding that the honourable member refers to related to the treatment of a grant to the LGA being recorded as a distribution from retained profits of the LGFA and not a grant expense, the qualification relates to the accounting treatment of this grant payment that the LGFA made during the 2009-10 financial year of $1.5 million.

Section 22(2) of the Local Government Finance Authority Act 1983 empowers the LGFA to apply surplus funds for the benefit of local government. The Auditor-General considers, though, that the grant should have been reflected as an expense item in the statement of comprehensive income and not as a distribution from retained profits in the statement of changes in equity.

As a result of the Auditor-General's opinion, some items are misstated in the statement of comprehensive income. These are expenses understated by $1.5 million, which is $250,000 understated in 2009: profit before income tax equivalents overstated by $1.5 million, which is $250,000 overstated in 2009; income tax equivalent expenses overstated by $450,000, which is $75,000 overstated in 2009; and profit after income tax equivalents overstated by $1.05 million, which is $175,000 overstated in 2009. The total comprehensive result is overstated by $1.05 million, which is $175,000 overstated in 2009.

I have met with the LGFA in relation to the difference of opinion. The Treasurer's view reflected that of the Auditor-General's. I met with the LGFA, and their financial advisers, and they insist that their advice is that their treatment is an accurate and legitimate one. So, there is clearly a very different point of view. I understand that this is not the first year that this treatment has occurred where the Auditor-General's view has been different to that of the LGFA's. I am in the process of communicating with the Treasurer in terms of whether there are any other steps that he would wish me to take in relation to this difference of opinions.

The Hon. R.I. LUCAS: My question is to the Leader of the Government. The leader referred, in response to a Dorothy Dix question earlier, to the introduction of a new IT system, in particular Curam. Can the minister indicate what the original budget was for Curam and what was the final cost of Curam?

The Hon. P. HOLLOWAY: The final cost is enclosed in the accounts, and we will endeavour to find the reference for that. It is under note 16, intangible assets, page 1870. The figure is $43.88 million.

The Hon. R.I. Lucas: The original budget.

The Hon. P. HOLLOWAY: Under Note 16, Intangible Assets, it has got IT development and software. It has got the cost balance at July, then goes through the balance at 1 July 2009 and the balance at 30 June 2010 is $43.88 million. If there is anything more specific the honourable member wants—

The Hon. R.I. Lucas: The original budget.

The Hon. P. HOLLOWAY: We will take that part on notice.

The Hon. R.I. Lucas: On page 1863 of the Auditor-General's report, there is a reference to the funds under management by WorkCover. It particularly refers to the fact that WorkCover, this last financial year, employed 18 separate external specialist fund managers to assist them in managing their funds under management, which was a reduction of two from 20. Can the minister take on notice—I wouldn't expect him to have the answer—the names of the 18 external specialist fund managers in 2009-10 and the names of the 20 external specialist fund managers in 2008-09, and the payments made by WorkCover to each of the external specialist fund managers in 2009-10, as referred to by the Auditor-General on page 1863 of the audit report?

The Hon. P. HOLLOWAY: We will take that on notice. As I said, whether there is any confidential clause or not, I cannot say, but we will take the question on notice and see what information we can provide.

The Hon. R.I. LUCAS: Given this is funds under management, it is employer funds that are going into WorkCover, there is clearly a public interest in how much is being paid and to whom by WorkCover for specialist fund managers. That is the reason for the questions.

Given the strongly differing views within government broadly about whether or not WorkCover Corporation should continue to manage its funds, the minister will be aware that Treasury has had a strongly held view for some time that Funds SA should take over management. Is the minister comfortable with the way WorkCover is managing it, and does he support their continued control over the funds under management as opposed to Funds SA?

The Hon. P. HOLLOWAY: I am comfortable with the decision as it is at the moment. Indeed, the government has made a decision in that regard. I guess, like all these decisions, one should continually have them under review.

The CHAIR: I conclude the examination of the Auditor-General's Report.

ROAD TRAFFIC (OWNER OFFENCES) AMENDMENT BILL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:08): Obtained leave and introduced a bill for an act to amend the Road Traffic Act 1961. Read a first time.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:10): I move:

That this bill be now read a second time.

Members would be aware that I made a matters of interest contribution some months ago in relation to a matter that involved Mr Vili Militsis, the owner of Vili's pies. Mr Militsis and his wife trade as a partnership rather than a company or any other business structure, and I mentioned that he had some 50 motor vehicles registered in his name operating across a number of states in Australia.

As members would be aware, when a company or corporation receives an expiation notice for an employee driving a vehicle over the speed limit or disobeying the road traffic laws in any state, and if you are unable to prove who was driving, you can elect to pay a corporate fee, I think of $300, to expiate that fine.

Mr Militsis and his wife trade as a partnership and have chosen to do so for, I think, pretty much all their working life. As we know, they have a very successful business. Vili's cakes and pies are world famous, and are especially nationally famous. However, because they trade as a partnership, the law does not recognise them in that corporate sense.

If, as has occurred on a number of occasions, Mr Militsis receives fines in different states on the same day, he still has to pay the expiation fee himself, and potentially he could lose his licence, yet he cannot be in two or three different states on the same day.

He has made a significant number of representations to the police who, of course, are operating within the law, and there is no opportunity for them to give him an alternative way of explaining that he was not driving the vehicle and that he was not in two or three different states within a day or two of each other, or, indeed, on the same day. I listened to his story, and that is why I brought it to the attention of the council in my matters of interest contribution some months ago.

It seemed to me that the logical way to resolve this would be to bring forward a small amendment to the Road Traffic Act 1961 to afford people who operate as partnerships (as Mr Militsis and his wife operate) the same opportunity as Australians who choose to run their business in a company. The effect of this very small amendment is to allow someone who trades as a partnership, basically, to be given the same opportunities to sign a statutory declaration to say, 'No, I was not driving. It was in actual fact an employee, but we are not able to identify that employee.'

Mr Militsis says that they do have a pretty good information management system within the company to determine which drivers are driving on which particular days, but he said that, certainly at royal show time and at other times, it is quite a hectic business for them making deliveries, and occasionally someone jumps into a vehicle who maybe is not rostered on or does it to fill a quick gap or to make an urgent delivery.

It is the same for big events. I think that during the Olympics in Sydney it was the same: they had a particularly frenetic time making deliveries and it was not always easy to identify exactly who was driving the vehicle at the time. This small amendment will allow people such as Mr Militsis and his wife the opportunity to deal with the expiation notices in the same way as any other corporate body or corporate entity, namely, to sign a statutory declaration to say that they are unable to identify the driver and therefore not incur the expiation themselves; or, of course, to identify the driver to make sure that the person who has breached the Road Traffic Act certainly attracts the same penalties because he or she was the person who was driving.

I will not prolong this explanation much longer. It is a simple bill. I thank parliamentary counsel. As of yesterday, with the amendments moved by the Hon. Mr Darley that went through on the budget bill 2010 in relation to registration stickers, parliamentary counsel always has their finger

on the pulse and realised that this amendment bill needed a slight amendment, which they made overnight, and I thank them for that.

I look forward to members supporting this bill. We only have one Wednesday sitting left, so it will be in the new year, but in supporting this bill members will recognise the great contribution Mr Militsis and his wife and other families have made, having chosen to operate as partnerships. The parliament recognises the contribution they have made to our economy, and I ask that members support this bill.

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

LOCAL GOVERNMENT (MISCELLANEOUS) AMENDMENT BILL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:16): obtained leave and introduced a bill for an act to amend the Local Government Act 1999. Read a first time.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:17): I move:

That this bill be now read a second time.

This bill is one that I introduced in the previous parliament before the last election, and it relates to an amendment to the Local Government Act that would afford local councils the power to make by-laws prohibiting smoking in specified public places and, in turn, the power to enforce such laws. The reason I reintroduce this bill is that we have a review happening and quite an undertaking in relation to Rundle Mall to reinvigorate it, with a master planning process being done to do so. As it is one of our premier shopping districts, a couple of years ago I strolled down the mall and looked in my line of sight at about 10am, before much trade had started and people were really only walking through the mall to work.

I calculated that it contained thousands of cigarette butts after doing a multiplication across the mall based on what I could see in a two metre wide strip. It occurred to me that it is the smoking and associated littering that can be a problem, particularly in Rundle Mall as one of our premier shopping precincts. Most other shopping precincts and shopping centres are smoke free. I know that Westfield centres and some others, while an enclosed space in many instances, are big and airy but they are smoke free. That was the catalyst for my wanting to introduce a bill that would give local councils the opportunity to ban smoking in specified areas. As members in this place would know, I am not a wowser and am happy for people to do what they like where they like, other than where it affects others.

As I have walked down the mall occasionally, I have taken particular note of clouds of smoke. One of the things that enrages me the most is seeing people sitting on a bench near a bin, smoking a cigarette, then putting it out and flicking the butt on the ground. Clearly, they have a blatant disregard for the rest of the community.

That is the reason I started to float this idea, and then it became apparent that there were a number of other areas under council control that would benefit—as would the community—such as children's playgrounds. I note that some councils in other states have banned smoking in children's playgrounds and, of course, on the beach. I know that there are councils in New South Wales and Victoria—and I think Queensland now—that have banned smoking, and I know for certain that smoking is banned on the beach at Bondi. It is a council by-law which the council enforces.

I note that Gary Johanson, Mayor of Port Adelaide Enfield, will be re-elected unopposed so, clearly, the community likes some of the things that the mayor promotes. As a child, he actually received quite a nasty burn from a cigarette butt on the beach. The Port Adelaide Enfield council has been lobbying the Local Government Association to have some power to be able to ban smoking on the beach in its council area.

I think smoking should be banned on all our state's beaches, especially during the summer holiday period. I suspect that councils may choose to ban smoking on beaches only during the summer months rather than in the middle of winter, when the impact would not be as great due to the colder temperatures and screaming gales. However, this would be an opportunity for councils to have smoke-free areas when beaches, or any public spaces, are crowded.

I was disappointed in the last parliament. I had written to Lance Armstrong's foundation, LIVESTRONG, and had some correspondence from Mr Armstrong and his organisation strongly supporting any initiatives that would bring about healthy outcomes in our community and, in particular, reduce smoking in our community. I was disappointed that the government did not see an opportunity to support this before the last election, when the Tour Down Under could have been

declared a smoke-free event, making it the world's first smoke-free pro tour. The government chose not to do that; I suspect that it was because it was not their idea.

I was encouraged by the response from the LIVESTRONG foundation; it does a lot of good work. I certainly saw this as an opportunity for some bipartisan support of a great initiative that would have made that event smoke-free during the time it travelled through the community.

We have the Christmas Pageant this weekend. On a fine day, up to 400,000 people can attend. The Hon. Russell Wortley says that he will be at the front—maybe in a clown's uniform, maybe just dressed normally; it would be hard to tell the difference. Nonetheless, on a fine day—and, sadly, I think this Saturday is going to be a bit cold and wet—up to 400,000 people, mostly young children and families, attend. Again, it would be a great initiative to be able to declare the route of the Christmas Pageant smoke-free.

The reason I am putting this back on the table for debate is that we have World No Tobacco Day in early May each year, and I am looking to complete the debate on this bill and get it through both houses of parliament at roughly the same time. I would also like it to be lined up with some announcement, perhaps, from the people doing the master planning and revitalisation of the Rundle Mall. Support of this legislation would give the city council the power to declare Rundle Mall smoke-free.

I am sure that, for those in our community who are smokers—employees and members of the public who need a cigarette—there will be a range of smoking areas just off the mall. There will be plenty of opportunities for them to be able to smoke out of the main flow of the general public. This certainly does not impact on public areas designated under the Liquor Licensing Act as being part of a hotel. So the outdoor part of hotels which are deemed to be areas in which alcohol can be served are exempt, because they are part of another act. Certainly, areas such as *The Advertiser* building, for example, which has an area on top of the building which is a bit of open space for people to eat their lunch and also for those who want a cigarette, would not be affected by this either. Any privately-owned space for either employees or patrons, whether or not it is at hotels where it has been provided for people to smoke, is exempt from this bill.

I hope we will have strong support; the measure did pass the Legislative Council last time, and I hope I will have that support again. I note the comments made by the government in its second reading contribution; it said that the last time it was not prepared to support it at that stage, but I hope we have now reached a stage where the government sees it as an opportunity to bring about a good outcome for the community, and that it will be seen as a positive step forward. With those few words, I urge members to support the bill.

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

DISABILITY EQUIPMENT AND SERVICES

The Hon. J.M.A. LENSINK (12:26): I move:

1. That a select committee of the Legislative Council be appointed to inquire into and report upon:
   - (a) Disability equipment payments made to non-government organisations raised in the 2009-10 Auditor-General's Report;
   - (b) The appropriateness of one-off funding commitments for disability services in comparison to increased recurrent expenditure; and
   - (c) Any other related matter.
2. That standing order No. 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.
3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.
4. That standing order No. 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

This proposal—for which, obviously, I would appreciate the support of my honourable colleagues—is for a committee to look into a matter that the member for Bragg has termed 'stashed cash No. 2'.

Many members would be familiar with the issue that was raised in relation to Kate Lennon, the former chief executive of the justice department, who was accused of diverting unspent funds into the Crown Solicitor's Trust Account at the end of the financial year. Ms Lennon was alleged to

have transferred the funds into that account to avoid scrutiny by Treasury under the Treasurer's carry-over policy. There was extensive investigation into the transfers, and it has been a very high profile media matter. There was an investigation by the Auditor-General, who concluded that money should not have been deposited into the Crown Solicitor's Trust Account. In reference to that issue, the Treasurer made the following statements in parliament concerning the conduct of that act. He said:

> It is a message to any CEO under this government's administration that, if they want to fiddle the books, if they want to falsify [documents], if they want to shift money around, they will be dismissed.

The history of that matter has been well documented, and I refer members who are interested to examine that for themselves. We have recently received the 2009-10 Auditor-General's Report and, in relation to the Department for Families and Communities, which has responsibility for disability funding, I quote from Part B, Volume 2, of Agency Audit Reports, pages 446-7, as follows:

> In June 2007 and May 2008 Cabinet approved grants to a number of NGOs to facilitate the purchase of disability equipment for the benefit of the community. The Cabinet submissions were specific as to the recipient of the grants and the amounts to be paid. The equipment grant monies were approved as additional one-off expenditure initiatives around budget time in those years. The monies were to be expended prior to 30 June in each year. One-off grants were subsequently paid to NGOs prior to the end of the relevant financial years. As part of these grants, the department paid JFA—

which is the Julia Farr Association—

> $2.92 million in June 2007 and $2.15 million in June 2008. JFA had no role in managing, prescribing or providing disability equipment.

I must say that I find these circumstances quite bizarre. The report continues:

> During 2007-08 to 2009-10, JFA was invoiced to recoup the grant monies and recover the cost of disability equipment the department ordered and purchased. Of crucial importance, it is acknowledged that the grant funds allocated to the department were used to facilitate the purchase of disability equipment, as was approved by cabinet.
>
> The cabinet approved funding for disability equipment was received too late in each of the financial years to provide the manageable opportunity for the orderly purchase of disability equipment before the end of the year. It is understood that this factor, together with the risks either of not receiving the funds or not retaining the funds through an approved carryover process, were the motivating factors for the practice of one-off grants to JFA and their subsequent recovery. The payments to JFA achieved expenditure and outflow of cash to the non-government sector prior to the end of the particular financial years to meet budgetary and financial reporting outcomes....
>
> While these matters more fully explained the motivating factors for the use of the funding/reimbursement practice for JFA, the practice nonetheless did not meet the principles and responsibilities expected of public sector agencies in relation to financial administration and accountability process. There can be circumstances sometimes where those responsible for decision-making may consider that the benefits of certain actions outweigh the adherence to generally accepted processes for good management and accountability. In this case, the department was able to secure additional funding available to achieve reductions in the adult disability equipment waiting list by making grant payments to JFA. However, the maintenance of adequate and appropriate financial accounting standards must prevail. The grant payments, initially by the department to JFA in 2007 and in 2008 and subsequence recovery from JFA to the department, did not meet these standards.

I find those words fairly condemning and would suggest that the motivation behind avoiding Treasurer's Instruction 8, which is quite clear, was to avoid having to return those funds.

The minister who was responsible for disabilities during budget estimates confirmed that all grant payments that are over $1.1 million must be authorised by the responsible minister. The point to make is that, given the stashed cash first round, the government at the time must have known that using funds in this way was in breach of the rules. As we know, a departmental CEO lost her job and her career as a result of undertaking a comparable action.

The problem, if I can paraphrase what audit says, is that, once you transfer money out of the government with particular procedures and controls, you lose control of that money. If the minister did have appropriate controls in place, that raises even more questions as it means that the government documented the use of a non-government organisation which is not a bank as a holding account.

The money was intended to be spent in the 12 months after it was granted, but Julia Farr accounts show that this did not occur. In July 2008, there was $4.18 million sitting in the accounts of Julia Farr Association, and that shows that only $930,000 of the $2.92 million deposited in the account in June 2007 was spent within the space of a year. Further, the Julia Farr annual report reveals that $1.8 million of the $5.1 million transferred out of government control was still in that account as of July 2009.

One of the policy matters I think the committee ought to closely examine is this issue of the government's continual reference to one-off funding. I think that one of the things within the greater community that is not well understood is the difference between one-off funds and recurrent funds, and it is easy to make one-off funds sound like a big hit that is going to provide great benefit to people with disabilities who are waiting for equipment. I quote from a media release from the Premier dated 22 May 2008 entitled 'Waiting Lists for Equipment to be Cleared.'

The media release refers to a figure $5 million in state government funding for equipment for children and adults with disabilities. I think the government has rather cynically used that particular amount of funding to imply that equipment problems had been solved. I will be interested to hear the contribution of the Hon. Kelly Vincent as to whether it has been the case that, as of May 2008, suddenly there are no problems for people waiting for disability equipment.

I think we do need reform in this area because it is a dishonest way for the government to continually drip-feed every time the matter of disability funding arises. We would prefer to see that funding made recurrent so I think it is an opportunity for us to reform the system. I also think that the issue of one-off funding slows down the funding as we have seen quite grossly in this particular case. The way in which the money was transferred into the Julia Farr account and then transferred back has actually led to delays for people receiving their equipment. I note that there were two questions from Dignity for Disability and also Family First on this very issue.

It is a concern in the community. It provides us with an opportunity to look more closely at this issue and make some reforms that may be of great benefit in alleviating the way funding may currently be getting stuck in the system, certainly as it has under this government in those financial periods that I referred to. I would urge all honourable members to support the reference to a select committee.

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

LEGISLATIVE REVIEW COMMITTEE: VICTIM IMPACT STATEMENTS

The Hon. R.P. WORTLEY (12:36): I move:

That the report of the committee, on Victim Impact Statements, be noted.

In May 2009, the Legislative Review Committee resolved to adopt the inquiry moved in this council by the Hon. John Darley on the effect of victim impact statements. The inquiry was in response to a concern that victims of summary offences—often heard in the Magistrates Court—did not have a statutory right to deliver a victim impact statement (VIS) in court. This is despite the fact that the offence may have resulted in serious harm or even death to a person.

Over the last four years, a number of attempts were made by both the government and private members to amend the law surrounding victim impact statements to extend the right to deliver a statement to victims of summary offences in certain circumstances. The inquiry sought to examine in detail the consequences of providing such rights to victims as well as looking at the experiences of victims in the criminal justice system and how they might be better assisted.

The inquiry's first term of reference addressed the potential effect on the courts of extending victims' rights to deliver a victim impact statement to summary offences resulting in the death or serious harm of a person. The second term of reference sought to explore the current experience of victims delivering a VIS in court. The third term of reference inquired as to the types of services and facilities that should be made available to victims to assist them in the criminal justice system.

The committee heard evidence and received submissions from the Chief Magistrate, South Australia Police, SafeWork SA, the Commissioner for Victims' Rights and the Victim Support Service. It also heard evidence from two victims of crime, Mrs Julie McIntyre and Mrs Diana Gilcrist-Humphrey.

There was a concern that broadening the category of offences for which a victim has a right to deliver a VIS would cause delays in the courts, especially the Magistrates Court. Evidence to the committee indicated that such delays were unlikely to occur. SafeWork SA submitted that it is already a practice in the Industrial Court, which hears summary offences, to give a victim the opportunity to deliver a victim impact statement.

Submissions from the South Australian police and the Chief Magistrate indicated that extending this right will not cause undue delays or require significant extra resources. In September 2010, changes to the law came into effect extending the rights of victims to deliver a VIS to

prescribed summary offences causing death, total incapacity or serious harm, as defined in the act. The offence of assault is specifically excluded from this provision to alleviate concerns about potential delays in the Magistrates Court. The committee endorsed this amendment to the law.

Submissions of victims highlighted how important it was for them to read out their victim impact statement in court. It gave them the opportunity to have a voice in the criminal justice system. The inquiry revealed that the benefits of delivering a VIS are not limited to victims. The committee considered the results of a recent survey of members of the judiciary who found this information contained in a VIS useful during sentencing.

The evidence also revealed a range of difficulties experienced by victims in delivering their victim impact statements. These included court editing of statements, having to seek the leave of the court even to have the right to deliver a statement, and the defendant not being required to be present to hear statements read out in the case of summary offences. There were also concerns expressed about the lack of information available to victims, especially about what to expect at court and the support available to them.

The committee has recommended that there be better communication between the courts and victims, and that a designated person be appointed to advise victims of their rights, and guide them through the process of delivering their victim impact statement, as well was inform them of what to expect in court.

The committee noted that a number of pilot programs have been run in South Australia where victims and offenders are able to address one another in a more informal conference setting outside the court. These included a conference pilot run through the Port Lincoln Magistrates Court for Aboriginal offenders held in 2008, the adult restorative justice conferencing pilot run in the Adelaide Magistrates Court in 2005, and the family conferences run in the Youth Court. The conferences allowed the offender and the victim to speak freely about the offence and its effects. The outcomes are then reported to the court during sentencing.

These pilot programs were, however, more focused on outcomes for the defendant than for the victim. The committee has recommended the establishment of a victim impact conference where victims can speak about the effects of the crime on them, without the constraints of court. Such a conference would be available at the recommendation or request of the judge, magistrate or victim. Information and support would be provided to victims before, during and after the conference which would be facilitated by an independent officer.

The committee also recommended that a review be undertaken of all the services provided to victims in the justice system. Part of this review should include a survey of all participants in the criminal justice system, including victims, to ascertain their views and experiences with a view to achieving further law reform.

On behalf of the committee, I would like to thank all those who made a submission to the inquiry, and in particular those victims who gave evidence of their personal and sometimes very difficult experiences within the criminal justice system. I would like to acknowledge the contribution of former members of the committee who heard the evidence to this inquiry, as well as all the members of the current committee who considered the report. I would also like to thank the committee staff, the secretary, Ms Leslie Guy, and the research officer, Ms Carren Walker.

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

LEGISLATIVE REVIEW COMMITTEE: SUBORDINATE LEGISLATION ACT

The Hon. R.P. WORTLEY (12:43): I move:

That the report of the committee, into the Postponement of Regulations from Expiry under the Subordinate Legislation Act 1978, be noted.

The Subordinate Legislation Act provides for all regulations to expire 10 years after they are enacted. This is to ensure that the regulations are reviewed at least every 10 years to update their content and maintain their relevance. Government agencies are responsible for the review of regulations. Section 16A of the act allows the 10-year expiry date to be postponed for a period not exceeding two years at the time and not exceeding four years in aggregate.

Postponement from inquiry was introduced to allow for extra time for the review of regulations. It was only intended to apply to those few cases where there were delays in completing a review. The act does not require an agency to justify or provide reasons if they

require a postponement. Regulations that are postponed from expiry under the act are referred to the Legislative Review Committee every year.

Over the past eight years, the number of regulations being postponed from expiry has increased dramatically. In 2002, a total of 48 regulations were postponed. In 2009, this had increased to 100 postponements, with 88 regulations postponed in 2010. Allowing regulations to be repeatedly postponed from expiry is not in keeping with the spirit of the legislation. Postponement was only intended to be used in exceptional circumstances, but it is now used as a matter of course.

The Legislative Review Committee expressed its concern at how many regulations were being postponed from expiry and therefore not reviewed after their 10-year life. Agencies seemed to be postponing expiry as a matter of convenience. The committee, therefore, resolved to inquire into the volume of regulations being postponed. The committee received and heard evidence from the Attorney-General's Office and the Department of the Premier and Cabinet in relation to the role of departments and agencies in reviewing and postponing regulations.

Given that regulations now contain much more detail regarding the functions, powers and rights conferred by legislation, it is even more important that they are reviewed regularly. The committee is of the view that, if they are to be postponed, there needs to be a legitimate reason and they should not be postponed just for the sake of convenience.

The problem of postponing regulations is not restricted to South Australia. Both Victoria and New South Wales have experienced similar difficulties. However, South Australia's legislation has a far more flexible approach to the postponement of regulations when compared to Victoria and New South Wales. Their legislation contains much stricter limits on postponement requirements, and therefore the number of regulations being postponed from expiry is much lower.

The committee found that the number of regulations postponed each year in South Australia is too high. A 10-year life for regulations is a significant amount of time, and it is unsatisfactory that regulations are postponed for up to four years without justification. Agencies' contention that they need more time to administer a review, in the committee's view, is not justifiable. Many of the regulations that are reviewed are significantly rewritten, consolidated and updated to cut red tape and make administration easier. It is in the public interest that regulations are regularly renewed.

In light of the evidence, the committee made three recommendations: firstly, that the regulations be reviewed in a timely manner every 10 years as intended by the act; secondly, that the Subordinate Legislation Act be amended to grant extensions for postponement only in exceptional circumstances, that these exceptional circumstances need to be certified by the relevant minister and certificates of exceptional circumstances need to be provided to the Legislative Review Committee at least one month before the regulation is due to expire; and, thirdly, that guidelines be developed which clearly outline the circumstances in which postponements will be granted and which support the original intention of the act.

These guidelines should make it clear that extensions for postponement should be sought only in exceptional circumstances and not just for administrative convenience. On behalf of the committee, I thank the Department of the Premier and Cabinet, the former attorney-general and staff for briefing the committee on this matter. I acknowledge the contributions of committee members, particularly the committee of the previous parliament that instigated and heard evidence for the inquiry. I also acknowledge the work of the committee's secretary, Ms Leslie Guy, and the committee's research officer, Ms Carren Walker.

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

CORRECTIONAL SERVICES DEPARTMENT

The Hon. T.J. STEPHENS (12:49): I move:

1. That a select committee of the Legislative Council be appointed to inquire into the Department for Correctional Services and report upon—

   (a) whether sufficient resources exist for the safe, effective and efficient operation of South Australia's prison system;

   (b) claims of bullying and harassment within the department;

   (c) claims that correct departmental practices and procedures are regularly ignored by management;

(d) claims of drug use and sales within the prison system;

(e) claims of poor occupational health and safety management in prisons; and

(f) any other relevant matter.

2. That standing order No. 389 be so far suspended as to enable the chairperson of the committee to have a deliberative vote only.

3. That this council permits the select committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the committee prior to such evidence being presented to the council.

4. That standing order No. 396 be suspended to enable strangers to be admitted when the select committee is examining witnesses unless the committee otherwise resolves, but they shall be excluded when the committee is deliberating.

In my role as the shadow minister for correctional services, I often receive correspondence from a wide range of people, and the stream of complaints and concerns from correctional services officers about a range of matters have certainly set alarm bells ringing with me.

Some members and/or members' staff of the Legislative Council were briefed by a number of correctional services officers recently. These people, and I would say quite courageous people, raised concerns because I know that certainly they fear further intimidation and bullying as a result, perhaps, of this meeting and, perhaps, further evidence that is given before a committee if I should be successful in encouraging this council to support this committee.

Incredibly concerning was the feeling of despair amongst these people and the fact that they were locked in a system whereby they had no avenue to pursue their concerns with regard to their employment conditions. They were constantly running into brick walls, and any form of complaint or concern they raised usually met with higher levels of intimidation and bullying. A number of the people who have spoken to me have, in fact, mentioned the 'suicide' word.

As a member of parliament, when people start talking to you about the depths of despair they reach in some of these things, it really does make you feel quite concerned; and, then, of course, as a member of parliament, where is your level of responsibility? I certainly found that it is much better to make these matters open and transparent to try to give these people the ability to raise their concerns in a non-threatening environment so that some natural justice can take place. I am sure that, in fact, most colleagues in this place would feel exactly the same.

I know that, with respect to this briefing that we had from these correctional services people, the members of parliament who were there—and certainly their staff representatives—all left feeling extremely concerned and really quite deflated about the depths of bullying, harassment and intimidation that could take place within the South Australian government system. If you did not listen to these officers you would just say that it could not happen in a place such as Australia, and that it certainly could not happen in a place such as South Australia.

Along with this, there were also reports of drugs in our prison institutions being rife, and we have been told over the years about zero tolerance with prisoners and drugs. I heard stories of corrupt drug testing and different sets of rules for different people. These things were extremely concerning. These prison officers raised with me the fact that, if even any questions were asked about practices and procedures, then, of course, the attention was firmly turned on them and their lives were made even more miserable. A number of complaints about the department and its handling of occupational health and safety means we would like to investigate some of the practices these allegations made with regard to prison officers' safety and welfare not being considered at all.

Once all avenues had been explored by these people, there was a feeling of nowhere to go and usually the problem was escalating, and some very dark thoughts were mentioned to us. Part of the motion relates to whether sufficient resources exist for the safe, effective and efficient operation of South Australia's prison system. Certainly, that would involve the reports made to me about the effective rehabilitation of prisoners. We have heard many statements about what a wonderful job we do of improving literacy and numeracy.

There is still an incredibly high rate of repeat offenders and, if we can get the support of the council, I would like the select committee to look at whether rehabilitation is effective. At some stage these prisoners will be released from gaol and could well become our neighbours. Rehabilitation is difficult to achieve. A former colleague of mine, the Hon. Angus Redford, had a

favourite quote that rehabilitation is tough. His analogy was that it is like giving up smoking. You rehabilitate yourself to give up smoking; it is tough, it is hard, but it is worth it in the end.

I am concerned about what we have heard publicly in terms of what happens in the prison system when prisoners are transferred part way through courses and do not have a say about the institution to which they are transferred so there is no continuity. I am really concerned about whether there is any effective rehabilitation of prisoners. With those few words, I look forward to other members' contributions.

I suspect the government will rain down upon us and say that it is another select committee we do not need. However, I can go to bed with a clear conscience knowing that I have listened to people's genuine concerns about their safety and well-being. It is my job as a member of the Legislative Council and a member of parliament in this state to ensure the welfare of all South Australians. I look forward to other members' contributions and support for my motion.

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

[Sitting suspended from 12:59 to 14:18]

PAPERS

The following papers were laid on the table:

By the President—

City of West Torrens—Report, 2009-10
Ombudsman SA—Report, 2009-10

By the Minister for State/Local Government Relations (Hon. G.E. Gago)—

Reports, 2009-10—
Native Vegetation Council
Pastoral Board of South Australia
Social Development Committee Inquiry into Dental Services for Older South Australians
Response by the Minister for Health

LEGISLATIVE REVIEW COMMITTEE

The Hon. R.P. WORTLEY (14:20): I bring up the 13th report of the committee.

Report received.

The Hon. R.P. WORTLEY: I bring up the 14th report of the committee.

Report received and read.

Members interjecting:

The PRESIDENT: Order!

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:21): I bring up the reports of the committee on Natural Resources Management Board Levy Proposals 2010-11 for Adelaide and Mount Lofty Ranges, Eyre Peninsula, Kangaroo Island, Northern and Yorke, South Australian Arid Lands, South Australian Murray-Darling Basin, and South-East.

Reports received.

REPATRIATION GENERAL HOSPITAL

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:22): I table a copy of a ministerial statement relating to the Repatriation General Hospital incident made earlier today in another place by my colleague the Minister for Health.

QUESTION TIME

DESALINATION PLANT

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23) I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the major project which is the Port Stanvac desalination plant.

Leave granted.

The Hon. D.W. RIDGWAY: Adelaide's desalination plant, which was declared a major project, is just three kilometres from the Christies Beach sewage outfall. Sydney's desalination plant has an inlet pipe 2.5 kilometres from a sewage outfall, and today we learned that the ocean current off Sydney's plant has sewage flowing directly past—and presumably into—its intake about one-third of the time. The study used to justify Sydney's plant assumed that, because the prevailing current ran south, there would be little danger of E.coli from sewage being sucked into its inflow to the north; however, CSIRO scientists who monitor the current say that it sweeps to the north about one-third of the time. Some days the E.coli in the intake water is more than double the guidelines even for safe swimming.

We now learn that the National Health and Medical Research Council, Australia's water quality watchdog, has ditched its zero tolerance plan to prevent faecal contamination of the nation's drinking supplies. This comes after strong lobbying from industry. My questions are:

1. As the minister responsible for major projects, has the minister seen or requested any data relating to possible contamination of E.coli at Port Stanvac?

2. Did the state government or its agencies, the Minister for Urban Development and Planning or the desalination consortium make any representations to Water Quality Research Australia, or in any way lobby the National Health and Medical Research Council, to water down its plan for zero tolerance of faecal contamination?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:25): I think it is a bit fanciful to suggest that the government might be advocating for people to water down standards. In relation to what was considered, I will have to go back and have a look. It is some years now since that decision was made. Obviously, as the planning authority, the government is reliant upon its experts in the various departments—the EPA, the Department of Health and SA Water—to provide advice. It is interesting that, at the last state election, the opposition supported a plan to drink recycled stormwater—

An honourable member interjecting:

The Hon. P. HOLLOWAY: —exactly—which contains faecal matter, and so on, which I would suggest is much more likely to have contamination in it. I think it is rather interesting that, apparently, for members opposite it is not dangerous if we drink stormwater that contains dog faeces and other petrochemical components—

The Hon. G.E. Gago: Heavy metals.

The Hon. P. HOLLOWAY: —and heavy metals that are washed off, but it is dangerous if is out in the sea—the dispersal of seawater is much more likely to mitigate that risk. My colleague the Minister for Water announced recently that we are looking at ways in which we can use stormwater. The government has always said that technology will improve.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, you were the people who were saying that it was fine. Now they are raising the issue where there is a far lower risk level in relation to this matter. As I indicated yesterday, the answer to the question is that, if any new information comes to light, this government will always look at it. So, in a sense, my answer stands as it did yesterday, and that is that the Minister for Water, as the responsible minister for the operation of the plant, will consider any information. I do not know whether it is the case that there is anything that has not been considered, but I will refer that question to him and make sure that, if there is any new information, it will be considered. However, I do find it a bit extraordinary that the opposition appears to have done this great backflip about the benefits of using water that has been through a treatment facility.

The PRESIDENT: The Hon. Ms Bressington has a supplementary question, deriving from the answer, of course.

DESALINATION PLANT

The Hon. A. BRESSINGTON (14:28): Well, yes, from the answer. Given his comments about drinking stormwater, will the minister provide to the house a data analysis of the water from the Salisbury wetlands and also a data analysis of the tap water this state government and SA Water provide for drinking and make note of the differences between the contents in that water?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:29): If the honourable member wants information about the data analysis from Salisbury, she should talk to Colin Pitman and the people at Salisbury council.

The Hon. A. Bressington interjecting:

The Hon. P. HOLLOWAY: But it's their water; they are the water authority, and they are responsible for that. They do not provide it, and they have never claimed to provide it, as drinking water. If the honourable member wants an analysis, she should talk to them; they are not a state government department.

The Hon. A. Bressington interjecting:

The Hon. P. HOLLOWAY: Well, there will be trials and I guess information will come as a result of those trials, and I am sure that information will be made available. However, if the honourable member wants information now about water from a non-state government department, it is up to her to contact the people concerned. I am sure that Colin Pitman would be pleased to provide her with any information she might request.

VICTORIA SQUARE

The Hon. J.M.A. LENSINK (14:29): I seek leave to make a brief explanation before asking the Minister for the City of Adelaide a question about the Victoria Square master plan.

Leave granted.

The Hon. J.M.A. LENSINK: In May this year, during question time, the minister replied to a question of mine that the state government had to date contributed $2 million for a final engineering and design study to be completed by the end of this year so that construction of the Victoria Square master plan can begin in 2011. The minister also stated that, after consultation, the Adelaide City Council would bring back the results of that, no doubt a proposal for the state government to further consider, and I relish the opportunity to consider that further proposal.

The minutes of the Adelaide City Council's City Design and Character Committee and of the council itself show that in July they received a consultation report and endorsed the draft master plan for detailed design. My questions are:

1. Has the final engineering and design study commissioned by the government been finalised?

2. Has the minister received a copy of the Adelaide City Council consultation into the master plan?

3. Does the minister believe that stage 1 of the master plan will begin in 2011?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:31): I thank the honourable member for her question. Indeed, I have been advised that on 15 June 2010 the Adelaide City Council approved its 2010-11 budget and, as part of that budget, $6.75 million has been allocated for developing a detailed design for the first stage of the project. The state government has also committed $2 million for a final engineering and design study, and that is due to be completed at the end of this year, I have been advised. The Adelaide City Council's consultation period closed, I think, on 7 June 2010.

I am advised that the council received just under 200 public submissions during that consultation period, overwhelmingly in support of the master plan, and these were presented to the

council on 12 July 2010, I understand, in a 642-page report. At the Adelaide City Council meeting of 26 July 2010, the council endorsed the draft Victoria Square regeneration master plan report, and I understand that that report is now being used to inform the final design and engineering work and includes comments from individuals, business groups and also community organisations. The Adelaide City Council informs me that the detailed design of that Victoria Square redevelopment plan is progressing very well with a design review panel workshop held on 13 October 2010 to review a number of elements. That is the progress of this very important project thus far.

BURNSIDE COUNCIL

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

Leave granted.

The Hon. S.G. WADE: In the other place, on 28 October and yesterday, 9 November, the member for Croydon made speeches in the grievance debates complaining about disruption of local government meetings. In relation to disruption of Burnside council meetings by councillor Jacobsen, Mr Atkinson said that the Office for State/Local Government Relations 'cannot or will not do anything'.

Mr Atkinson then went on to highlight that Mr John Hanlon of the Office for State/Local Government Relations was a former chief executive of the Burnside council, and he posed a series of questions. One of the questions posed by Mr Atkinson relates to the contents of the MacPherson report. As this report is subject to court proceedings, I will not pose it. I ask the other questions posed by Mr Atkinson:

1. What role did Mr John Hanlon have in formulating the terms of reference of Mr Ken MacPherson's report into the Burnside council?

2. What communication did Mr Hanlon have with Mr MacPherson and his staff during the inquiry?

On my own behalf, I ask: does the minister agree with the assertion of the former attorney-general that the Office for State/Local Government Relations has decided it cannot, or will not, do anything to resolve the Burnside turmoil?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:34): As I have stated in this place previously, this matter is currently before the court, and I have been advised that it would be most improper of me to make any comment on any matter that might relate to those matters before the court. In terms of Mr John Hanlon's role in contributing to the terms of reference, I think it would be prudent of me to put on record that I am advised that he had no role in constructing the terms of reference and has had no part in the investigation conducted by Ken MacPherson into certain matters relating to the Burnside council.

KENT TOWN DEVELOPMENT

The Hon. B.V. FINNIGAN (14:36): My question is to the Leader of the Government, Minister for Urban Development and Planning. Having worked in Kent Town for nearly 11 years, I would be very interested if the minister could provide details of the recent major project declaration of a proposed six-star hotel, convention and retail complex at Kent Town.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:36): I recently declared a proposed $120 million six-star hotel, retail and convention complex at Kent Town as a major project under the relevant provisions of the Development Act. The development proposed by the Urban Construct group is located within the business zone of The City of Norwood, Payneham and St Peters on the north-eastern corner of the intersection of Dequetteville Terrace and Rundle Street at Kent Town.

The proposed development comprises a 15-storey landmark building focusing on green energy design and carbon reduction initiatives. If approved, this project is expected to create 200 new jobs during the construction phase and 350 permanent jobs within Adelaide's eastern suburbs. The site is near major transport corridors, close to the Parklands and within walking distance of the central business district, which really makes it an ideal candidate for infill

development as part of the 30-year plan's objective of allowing our city to grow up rather than just grow out.

The proposed hotel development also seeks to preserve and improve the heritage listed Marshall House as a focal point of its design. The preservation of heritage listed buildings in Adelaide is an issue that is regularly raised with me in connection with development in the CBD and elsewhere. As members would be aware, there are a number of costs associated with the preservation of our heritage listed buildings, not just with ongoing maintenance. It is often the case that many of our heritage listed buildings require significant, ongoing and high cost renovations which act as a disincentive to ensuring the continued upkeep of our built heritage. These costs may relate to compliance with modern building codes such as disability access, fire safety, etc.

The challenge we face is to enlist developers who are willing to retain heritage listed buildings, including the integration of heritage listed buildings as part of proposed developments using complementary and good design. The proposed Kent Town development aims to complement and incorporate the Marshall House state heritage listed building on the site, which is located opposite to the Malthouse state heritage listed building and the Malthouse apartment tower. Careful design will be required to ensure that the proposal is a landmark building while respecting the heritage value of Marshall House.

The external design of the proposal seeks to integrate the state heritage listed Marshall House into the podium, utilising it as the entrance and front of house for the hotel complex whilst retaining the heritage qualities of the building. This site has previously attracted interest, but various projects have been constrained by height restrictions in the local development plan and the existing state heritage listed Marshall House building.

As I mentioned, the proposed hotel development is next to the Malthouse apartment complex which also incorporates and preserves historic elements of this site; thus the proposed development could preserve a heritage-listed building but also complement the Malthouse apartment complex opposite.

This proposal raises a number of important issues in terms of planning policies that will require the further detailed assessment afforded by the major project provisions in the Development Act. These include the interface with Marshall House, the impact on adjoining residences and businesses, ecological sustainable design elements, parking and traffic issues, and the capacity to deliver a unique gateway to the Kent Town and Norwood precinct.

I understand this proposed development will face its detractors, but the major project provisions allow the highest level of scrutiny taking in the views of the community, local councils and various agencies. The major project provisions allow for the concept to evolve in response to this consultation process and also include scope to impose conditions on any approval so as to ensure that issues raised during the assessment process are adequately addressed.

Similarly, the process carries the risk of an early no, with no appeal provisions, if the proposal is found to be unacceptable. Unlike those who find an excuse to oppose any development, I believe the best course of action is to embrace a process that allows us to weigh up the pros and cons and make a final assessment on the merits.

As many members would be aware, a major development declaration is not a fast track, and it most definitely does not signal the government's support or otherwise for a project. What it does is trigger the most rigorous assessment process available under South Australia's development laws. It also provides much greater scope for input from the community and government agencies than afforded by the council development assessment panel process.

For a proposal to be declared a major development, it must be considered of major economic, social or environmental importance and, secondly, it must be considered appropriate or necessary to use this section for the proper assessment of the proposal. Declaring this project a major development will ensure that every aspect of the proposal is rigorously assessed. Through my declaration that this project is a major development, the next step in the process is for the proponent to lodge a detailed application with the independent Development Assessment Commission. The commission then determines the issues the proponent is required to further investigate by providing clear guidelines, as well as setting the level of assessment.

In this regard, the commission can require the preparation by the proponent of a development report, a public environment report or an environmental impact statement. The next

step would then be for the proponent to undertake the necessary investigations and preparation of the required documentation before submitting it to me for public release.

All submissions regarding the project, including any of the issues raised by local councils, will require a response before a final assessment by the minister. I look forward to progress on this assessment; allowing Adelaide to grow up rather than allowing it to keep growing out is a key objective of the 30-year plan. That is the proposition we took to the state election and, in the absence of an alternative planning policy presented to the people of South Australia, we can best assume that the opposition also supports the strategy.

CHILD ABUSE AND NEGLECT

The Hon. D.G.E. HOOD (14:43): I seek leave to make a brief explanation before asking the minister representing the Minister for Families and Communities a question regarding child neglect.

Leave granted.

The Hon. D.G.E. HOOD: A couple of weeks ago the Supreme Court found three adults guilty in a case that received extensive media coverage of the neglect of five children who were left malnourished, emaciated and suffering from scabies and injuries. The maltreatment of these children was only uncovered when one child was admitted to hospital with hypothermia and a head injury. I note it was revealed in the Supreme Court and not previously during the hearing that the address where this occurred was occupied by more than 20 people, many of whom were recipients of welfare. My question to the minister is simply: does the department cross-reference information with federal departments concerning child welfare issues, and why wasn't the fact that 20 people were living at the same address detected and acted upon for the safety of these children?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:44): I thank the honourable member for his important question. I will refer it to the Minister for Families and Communities in another place and bring back a response.

SERVICE SA, TRANMERE

The Hon. CARMEL ZOLLO (14:44): I seek leave to make a brief explanation before asking the Minister for Government Enterprises a question about the Tranmere Service SA customer service centre.

Leave granted.

The Hon. CARMEL ZOLLO: The Tranmere Service SA customer service centre will be closing due to the redevelopment of the building. Service SA provides a multitude of services and must have a very diverse client base. What is the communication strategy to ensure that users of the centre are aware that it will be closing and informing them of alternative ways to conduct their business?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:45): I thank the honourable member for her question. The honourable member is correct that the Tranmere customer service centre will be closing on a temporary basis in the coming months. The centre does indeed have a very diverse customer base. The Tranmere centre is an important part of Service SA's customer service centres. During the 2009-10 financial year the Tranmere centre processed approximately 124,000 payments and 111,000 non-payment transactions.

The current centre will be open until the close of business on 24 December 2010. The redevelopment of the Tranmere Village (where the centre is housed) is scheduled to commence in early 2011 and will reopen in the second half of the year. During the redevelopment phase, Service SA's existing customers will have a range of options to continue accessing the many services offered by Service SA. Those options include the online channel, such as using EZYReg for transactions including the renewal of your driver's licence, motor vehicle or boat registration or things such as changing your address.

Other options include registration renewals by phone (and that is on the 1300 361 021 number), or visiting an alternative Service SA customer service centre. Those centres that are probably the closest or the most accessible to that area are located at North

Terrace, Modbury and Prospect. Just to remind members, any Australia Post outlet also provides a number of Service SA-type services. I am advised that staff currently working at the Tranmere customer service centre will be temporarily relocated to other centres to ensure that any increase in demand at those centres will be accommodated.

It may also mean that regular customers at Tranmere may still see the same familiar faces they are used to dealing with at these other sites nearby. Service SA has implemented a range of communication methods to ensure that the community is kept informed regarding the centre's closure date and also alternative services that are available from January. These communication methods include:

- the distribution of a letter to 54,000 households and businesses within the Tranmere catchment, which commenced on 8 November 2010;
- a flyer will be handed out at the centre to the 20,000 customers who use the centre during November and December;
- given the culturally and linguistically diverse nature of the catchment area, a Tranmere redevelopment fact sheet, translated into 10 languages other than English (Chinese, simplified and traditional; Croatian; French; Greek; Italian; Japanese; Korean; Serbian and Spanish), will also be available; and
- information will also be displayed on the 'active waiting' LCD screen in the existing centre, and further information is always available online.

When completed, the new customer service centre will obviously offer an improved, larger, more modern and fit-for-purpose facility, which will allow Service SA to cater for customers quickly and efficiently.

FAST FOOD LABELLING

The Hon. T.A. FRANKS (14:49): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about labelling of fast food.

Leave granted.

The Hon. T.A. FRANKS: It is estimated that, on average, Australians eat out four times every week and that, according to at least one report, 44 per cent of that food eaten outside the home is so-called 'fast food' and bought from one of Australia's clearly very popular 17,000-plus fast-food outlets. The Obesity Policy Coalition has recently pointed to a rise in the marketing of fast food, which could be seen to be misleading or deceptive to those looking for healthier purchase options.

For example, menu items such as 'garden goodness' and 'green tea venti', while technically low fat items, are actually quite high in kilojoules. As a further example, there is actually less than 100 kilojoules difference between the McDonald's crispy chicken caesar salad and that transnational's iconic Big Mac product. Lower kilojoule meals themselves may also be high in sodium.

The associated health concerns have led the New South Wales government to show leadership in this area, moving for fast food chains with 50 or more outlets in that state to display kilojoule counts on their in-store menus. My questions to the minister are:

1. Is the minister concerned that consumers are being misled by the marketing of so-called healthy options?

2. Is she or her department pursuing any actions on this matter that will result in South Australian consumers being able to enjoy informative and truthful labelling of menu items, for example, for levels of sodium, numbers of kilojoules and other health-related matters such as trans fats?

3. Specifically, would the minister countenance taking the lead from New South Wales and ensuring that fast food chains in this state display this information at point of sale so that a consumer who really wants to can actually make a healthy choice?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (14:51): I thank the honourable member for her most important questions. It is with the growing obesity rates here in Australia and in some parts of the world that

the issue of striving to develop strategies to reduce weight, particularly in our children, is a very challenging one. Food labelling and the matters the honourable member has posed here today largely come under the responsibilities of the Minister for Health, and I am happy to refer those questions to him and bring back a response.

I know that food labelling is a very challenging and complex issue. I know that the Council of Australian Governments has agreed that the Australia and New Zealand Food Regulation Ministerial Council undertake a comprehensive review of food labelling laws and policy. One of the areas it is looking at is the duplication of country of origin labelling. It has highlighted that to be looked at in the review, and a number of other matters related to food labelling will also be looked at in that review. We certainly look forward to the result of that inquiry.

WORKCOVER CORPORATION

The Hon. R.I. LUCAS (14:53): My question is to the Leader of the Government. I refer to the WorkCover annual report, page 51. How much were Business SA and SA Unions paid for the consultancies referred to, and why were not Harrison Market Research and Beatwave Pty Ltd listed as consultants? How much was spent on those two consultants in 2009-10 and under what particular budget line was the expenditure allocated?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:53): I do not have that information with me, but I am happy to take it on notice and bring back a response.

SAFE WORK AWARDS

The Hon. R.P. WORTLEY (14:54): I seek leave to make a long explanation before asking the Minister for Industrial Relations a question about Safe Work Awards.

Leave granted.

The Hon. R.P. WORTLEY: Recently I had the pleasure of attending the Safe Work Awards with a number of my colleagues in this house, including you, Mr President, and the Hons Mr Gazzola, Mr Finnigan and Mr Darley, and the Hon. Mr Lucas was sitting there by himself. It was a real pleasure to catch up with many of our comrades from the trade union movement—

Members interjecting:

The Hon. R.P. WORTLEY: It was the last thing on their mind—not even on their mind. We also caught up with many employers we had worked with over many years on various committees. It was a great pleasure to watch the awards and see how employers and employees work together to make their workplaces safe. I recall the very enthusiastic applause for the honourable minister as he went up to the stage to hand out these awards. What I would like the minister to do is share with this chamber the details of the annual Safe Work Awards that were presented there.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:55): Yes, there were a number of members there. I think the Hon. Mr Darley was there, if I recall, as well as yourself and Mr Lucas. Through the efforts of SafeWork SA, the government remains strongly committed to ensuring that South Australian workers come home safely from work.

That is why it is important to highlight and reward the efforts of those employers and individuals who lead by example in demonstrating their commitment to workplace safety. Indeed, I think it is important to have an event such as the Safe Work Awards, which was held on Friday 29 October, to publicly recognise those employers and individuals who have done just that. As members would be aware, our state's major occupational health and safety event, Safe Work Week 2010, concluded with the annual South Australian Safe Work Awards, which also corresponded with the national Safe Work Week.

The Safe Work Awards highlight examples of commitment and innovation to workplace safety and honour those who have made the most significant contribution to improving occupational health and safety in the state. A panel of judges, comprised of senior representatives from SafeWork SA, Business SA, WorkCover SA and SA Unions, worked together to assess all the entries. There were some outstanding entries this year; however, it was the Health Safety and Environment (HSE) Australia's ambient asbestos fibres testing system that won the Best Solution to an Identified Workplace Health and Safety Issue Award.

The high standard of entries also made it difficult for this year's judges, resulting in a tie between automotive interior manufacturer, Futuris, and OneSteel contractor, Harsco Metals, for the Private Sector Employer of the Year Award. While both employers operate in two different industries, both were recognised for their proactive efforts towards educating and protecting their workers.

This government is also leading by example on workplace safety with two of our agencies—the Courts Administration Authority and Events South Australia—picking up three awards in total. Events South Australia won the award for Best Public Events Safety for the 2010 Santos Tour Down Under. The Courts Administration Authority won two awards—one award for the redesign of the magistrates' and clerks' work area and another for its health and safety management system.

Three Augusta Zadow scholarships totalling $20,000 were also awarded to encourage and support initiatives made by, or for the benefit of, women to improve occupational health and safety outcomes. The winners of four categories will automatically become finalists in the National Safe Work Australia Awards ceremony, which will be held in April 2011. If I can remind the council that South Australia has a proud history of achievement at the national level, having won three out of six awards in Canberra this year.

So, on behalf of the members who attended, I wish all the finalists every success at the national awards next year. There is a full list of winners of the 2010 Safe Work Awards on the SafeWork SA website. I would like to take this opportunity to congratulate all the 2010 Safe Work Awards winners and entrants for their outstanding contribution to workplace safety. Their efforts and motivation are an example to the entire South Australian community, and we are well on our way to creating a culture of safety.

SAFEWORK SA

The Hon. R.I. LUCAS (14:59): I have a supplementary question arising out of the answer. Did SafeWork SA spend any money on international visitors attending the dinner? If so, what was the total cost of any expenditure and, in particular, how much was spent on any travel or accommodation costs?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (14:59): The Hon. Mr Lucas was there. In fact, the Hon. Mr Lucas was sitting at the table with the head of the Singapore delegation that was visiting South Australia. I am not aware of the financial arrangements in relation to that trip; they were, to my knowledge, the only visitors at that dinner, but I will take the question on notice.

CHILDREN WITH DISABILITIES

The Hon. K.L. VINCENT (14:59): I seek leave to make a brief explanation before asking the minister representing the Minister for Disability a question regarding child protection measures for children with disabilities.

Leave granted.

The Hon. K.L. VINCENT: On Monday I hosted a workshop run by world-renowned child abuse expert Professor Freda Briggs, which aimed to give families tools to protect their sons, daughters and loved ones with disabilities from sexual abuse in particular. The workshop was attended by approximately 100 people including parents of children with disabilities (some whose children had been directly affected by abuse), workers from the disability sector, educators and people with disabilities.

During the workshop Professor Briggs told us about research from New South Wales which indicated that children with disabilities are 800 per cent more likely to be the target of sexual abuse. However, Professor Briggs also noted that the risk of abuse for people with disabilities reduces significantly where there are explicit child protection and sexuality education programs in place that involve parents, carers and institutions.

In the lead-up to this workshop my office was contacted by Jayne Lehman and Fim Jucha, two advocates who contributed to the development of a 2005 Families and Communities booklet, entitled *Protecting Children and Young People with Disabilities: a booklet for parents and carers*. The booklet proved to be a valuable resource, and provided practical information for parents and

carers of people with disabilities; however, it is now out of print and is yet to be updated and replaced. My questions are:

1. Which, if any, state government educational programs centre around the prevention of sexual abuse of people with disabilities, and how many people take part in such programs?

2. Why has the minister not updated the above-mentioned Families and Communities brochure, and when will the department provide an alternative?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (15:02): I thank the honourable member for her important questions, and will refer those to the Minister for Disability in another place and bring back a response.

LOCAL GOVERNMENT ELECTIONS

The Hon. J.S. LEE (15:02): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about local government elections for 2010.

Leave granted.

The Hon. J.S. LEE: In a media release dated 8 November, the Minister for State/Local Government Relations mentioned that she was confident we would see long-term improvements in voter turnout following the independent review of local government elections. However, as reported on Monday 1 November, enrolment figures obtained by *The Advertiser* reveal that almost 200,000 businesses and landlords have been struck off the voter roll. Business and landlords who are eligible to vote in most metropolitan councils have been slashed by more than 90 per cent.

The report also pointed out that the reductions follow state government changes to electoral laws forcing businesses and landlords to re-enrol before every local government election. Lobby groups said that this change was poorly advertised, leading to low enrolment, and has disenfranchised businesses and landlords in an attempt to artificially inflate voter turnout to meet the government's participation targets. My questions are:

1. How would the minister address the concerns of lobby groups which have labelled the state government changes as 'undemocratic'?

2. What further changes to local government electoral laws will the government consider?

3. What forms of campaign will the government use to ensure there is a better awareness for voters to exercise their rights?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (15:04): I thank the honourable member for her important questions. Indeed, a review was commenced by the former minister for state/local government relations to look at ways of improving participation in elections. That review resulted in a number of recommendations for change, which included the change to voting for nonresidents, that is, that they did not automatically stay on the roll and would be required to enrol for each election if they wished to vote.

It is some time ago now, but if I recall correctly, I believe that South Australia was the only jurisdiction, if not one of the only jurisdictions, that allowed that automatic entitlement of nonresidents in council elections. Basically, the change we put in place brought us in line with other jurisdictions. So, it is not something that is radically new or different; it is, in fact, in keeping with what happens in most other states and territories in relation to nonresidents voting.

To say that it is undemocratic is, quite simply, misleading. Nonresidents are able to vote by simply enrolling. One of the reasons changes were made in relation to nonresidents was that, historically, nonresidents have an extremely low rate of participation in council elections, yet the maintenance of a nonresident roll was extremely time consuming for councils and administratively quite expensive.

A trial was done in one council area (it might have been at Onkaparinga; I just cannot remember now) looking at the number of hours and the costs associated with keeping a

nonresident roll, and the results of that trial were quite extraordinary. It is something that, in effect, costs all ratepayers a great deal. It is a practice that is in keeping with national standards and practices, and it is something that came out of a review that involved very extensive consultation throughout council areas. If I recall correctly, it was very well supported at the time, although no-one seems to be putting up their hand at the moment.

In relation to the notification of nonresidents, a great deal of work has been done to ensure that people are aware of the arrangements. There has been significant liaison between the LGA, the Electoral Commission and councils in determining a promotional strategy for the elections and the sort of information that might be disseminated, which included developing an advertising plan, which was funded by councils.

I understand that a brochure and draft letters were developed by the Electoral Commission, along with the statutory enrolment forms. The Electoral Commissioner wrote to every council CEO, urging them to write to all businesses on the roll to advise them of the changes and the need to enrol. The LGA followed this up with emails encouraging councils to do that. I am advised that all metropolitan councils did so, along with a significant number of country councils as well. There are also a website, banners and posters and there was a media launch—a wide number of initiatives I could go into, which involved general awareness and also communicating with businesses.

In terms of informing businesses, the responsibility largely rests with individual councils. I have said that we would be very interested in compiling feedback post this election. This is the first election that has been conducted using the new provisions, and we will be very keen to hear from major stakeholders at the end of this process in order to stocktake and look at what worked and where improvements might be indicated. I have indicated already on the public record that we are prepared to make changes where there is an indicated need to do so.

The election is not over yet. It has been complicated by the issues around there being three elections within an eight-month period. There is a fair degree of election fatigue out there which I think is potentially masking the beneficial effects that the new changes may have generated. I think we are unlikely to see those benefits this time around but, after we have conducted a bit of a stocktake at the end of this election and go forward in time, and people's knowledge and awareness improve, I am confident, as I have put on the record before, that these changes will result in increased participation in local council elections.

SA LOTTERIES

The Hon. I.K. HUNTER (15:10): I seek leave to make a brief explanation before asking the Minister for Government Enterprises a question about SA Lotteries' agent reference group.

Leave granted.

The Hon. I.K. HUNTER: SA Lotteries is one of the state's great success stories, providing nearly $97 million last financial year in profits to support our hospitals. I know that SA Lotteries relies on its networks of agencies to be its arms and legs to provide service to South Australians. My question is: as a key stakeholder in state lotteries, how does SA Lotteries engage and consult with its network of agents; and does the minister have any advice for the chamber on the good works that SA Lotteries does for the hospital sector?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (15:11): I thank the member for his important questions. The 550 lottery agencies throughout South Australia are a key customer interface for SA Lotteries' games so obviously SA Lotteries values highly the experience and feedback from its agents and also their staff.

In January 1996, SA Lotteries established the agent reference group to strengthen its relationships with the agency network and to provide a forum for the presentation of new ideas or concepts that may affect or be impacting on agents. This group is a valuable source of advice and a mine of experience on how SA Lotteries' products are received by customers. As the business partners of SA Lotteries, agents received more than $29.2 million in commission in the 2009-10 financial year.

The agent reference group comprises 10 people who represent the various distribution channels such as retail traders, like newsagencies or licensed premises, and their particular interests. Each year five positions in this group are vacated after a two-year term. Nominations for new members to fill the five positions are sought from the agency network. Selection criteria are

based on the distribution channel and region. This selection process involves a broad cross-section of the agency network to ensure that it continues to be represented while the rotation of positions ensures that continuity of advice is maintained.

During 2009-10, the agent reference group continued to provide valuable input into SA Lotteries' marketing and promotional strategies and elements of the replacement on-line lottery system. Metropolitan and regional information and training sessions are held in support of major game launches and significant organisational projects such as the replacement on-line lottery system. During 2009-10, 16 sessions were conducted in support of this project. SA Lotteries also has seven sales representatives regularly communicating with and visiting agencies such as the 180 newsagencies, 160 hotels and 30 clubs that sell SA Lotteries' products. These representatives also provide their feedback to management to ensure that any issues are addressed.

The relationship between the big business of SA Lotteries and its varied small business partners is a very productive one which benefits our state as a whole. Using its agent reference group, SA Lotteries keeps its finger on the pulse of the concerns of its agents. I certainly congratulate SA Lotteries for maintaining that ongoing dialogue to the benefit of us all and also acknowledge the important role of our agents.

WATER SUPPLY

The Hon. J.A. DARLEY (15:15): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Water, a question in relation to water.

Leave granted.

The Hon. J.A. DARLEY: In the mid-1960s, the engineering and water supply department, now SA Water, had acquired land for the construction of a new Clarendon reservoir. This proposal did not go ahead, and I understand that the government still owns the land. My questions are:

1. What was the estimated capacity of this proposed reservoir?

2. Can the minister give an estimate of how much water was wasted to the sea in the last two years as a result of not proceeding with the project?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (15:15): I thank the honourable member for his question and I will refer the questions around the Clarendon reservoir to the Minister for Water in another place and bring back a response.

APY EXECUTIVE

The Hon. T.J. STEPHENS (15:16): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Aboriginal Affairs, questions about the APY executive.

Leave granted.

The Hon. T.J. STEPHENS: On 7 July, the APY executive was advised to approve a variation to the access by-law, previously passed by the executive, as negotiated with the then minister by Ron Merkel QC, a recently retired Federal Court judge. The variation removed the executive's right to pass a code of conduct to prevent a recurrence of past abuses of access to the lands and to respond to future abuses, as well as removing the right to charge for most permits on the basis that the government would pay for this. My questions for the minister are:

1. Is there a funding agreement in place for the permit and notification system for the lands?

2. If not, how does the government propose to make good on its commitment to fund the permit and notification systems?

3. Is the minister aware of any obstruction or interference with the legal services to the executive on 5 May 2010?

4. Has the minister approved the conditions of appointment of the current general manager of APY, and when did his appointment commence?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (15:17): I thank the honourable member for his questions relating to the APY executive and the issue of permits. I will refer those questions to the Minister for Aboriginal Affairs and bring back a response.

ABORIGINAL WOMEN'S GATHERING

The Hon. J.M. GAZZOLA (15:17): I seek leave to ask the Minister for the Status of Women a question about the State Aboriginal Women's Gathering.

Leave granted.

The Hon. J.M. GAZZOLA: Recently, the minister informed the chamber of the upcoming South Australian Aboriginal Women's Gathering. Will the minister advise the council on this important event?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (15:17): I thank the honourable member for this important question and his ongoing interest in these very important policy matters. The annual State Aboriginal Women's Gathering was held last week at West Beach, as I recently mentioned in this place. I was very pleased to speak to delegates on the initiative arising from last year's event. This important initiative has resulted in 10 Aboriginal women being awarded TAFE qualifications.

The initiative has meant that women have become qualified through the Recognition of Prior Learning program. I am pleased to advise that this program is funded through the commonwealth government's Productivity Places Program, which is administered by DFEEST in SA. Coming out of last year's gathering, the Office for Women supported 10 women at TAFE SA Regional, and I was very pleased to inform gathering delegates that all 10 have now successfully completed the requirements for management qualifications, receiving either diplomas of Community Services Coordination or advanced diplomas of Community Sector Management.

I am sure members will agree that this is a very practical and useful outcome, because it has allowed more Aboriginal women to draw on high-quality managerial skills and knowledge to help build their lives and, indeed, skills to help build their communities. I have asked the Office for Women to look into further opportunities for Aboriginal women to gain qualifications in 2011.

As members may recall, the theme of this year's gathering was Governance. In keeping with this, delegates heard about the establishment of two new national bodies that will provide important opportunities for Aboriginal women's voices to be heard beyond their own local communities.

The Gillard government's National Congress of Australia's First Peoples and the National Aboriginal and Torres Strait Islander Women's Alliance are developed now. There has been much discussion about these new structures, including a workshop presented by Kerry Arabena, co-chair of the national congress, and also Klynton Wanganeen, executive member of the national congress.

I am told that delegates appreciated the chance to have open discussions with people directly involved in developing the national structures. Dr Kerry Arabena's energy and passion for the national congress, her openness to discuss its development and her hopes for its future flowed on to the women and resulted in many completing their membership forms and handing them to her there and then.

While acknowledging that the National Aboriginal and Torres Strait Islander Women's Alliance is still very much in its formative stage, delegates supported the importance of a women's specific national body and resolved to develop formal linkages between it and the Gathering. That was one of the other important challenges for the Gathering this year, to look at ways that they might provide formal connections and/or links with this new body.

I was pleased to hear from a number of delegates about how useful they had found the information provided to them. I felt that there was a real sense of optimism for the future, as the women considered how they would ensure their viewpoints were fed to the Gillard government.

ARKAROOLA WILDERNESS SANCTUARY

The Hon. M. PARNELL (15:22): My question is to the Minister for Mineral Resources Development. Now that the mining bill has passed all of its remaining stages, when will the minister announce the future of the Arkaroola Wilderness Sanctuary, and in particular exploration and mining in that area? Does the minister still stand by his earlier statements that the future of mining in that area is bleak without the support of the proprietors of the Arkaroola Wilderness Sanctuary?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (15:23): At present, the government is still finalising its position in relation to that. As I indicated the other day, the Mining Act and issues of licences are really just one part of it. It is the government's response to 'Seeking a Balance' which the government is still seeking. Just today I was expecting to get some further legal advice in relation to various issues, but that matter will ultimately be decided by cabinet with input from my colleague the Minister for Environment and Conservation and me.

As to the latter part of the honourable member's question, obviously the attitude of the Sprigg family towards any activities that happen at Arkaroola is going to be important to what happens at that location. We do need to make a decision on it but, whereas the passage of the amendments to the Mining Act improve the position that the government is now in regarding controlling illegal mining or activities, we have a range of penalties and so on.

Once that is proclaimed, it will certainly enable the government to better monitor the mining industry in this state, but the future of Arkaroola really rests more on the consideration of a number of other submissions, in particular those we have received in relation to 'Seeking a Balance'. I am working through those very earnestly with my colleague the Minister for Environment and Conservation.

MATTERS OF INTEREST

LIU, MR X.

The Hon. I.K. HUNTER (15:24): In early October the Nobel Peace Prize for 2010 was awarded to Liu Xiaobo. Mr Liu was awarded this honour in recognition of his longstanding and non-violent struggle for human rights in China. He is currently serving his fourth term in prison, gaoled for 11 years for alleged subversion. Because of stringent government censorship within China, the majority of Chinese citizens remain unaware of Mr Liu's pro-democracy campaign. In fact, when news of the announcement filtered across Beijing by word of mouth, one of the most common questions overheard was: who is Liu Xiaobo?

Liu Xiaobo is a professor specialising in modern Chinese literature. He toured Norway and the United States in the late 1980s before returning to China to assist with the pro-democracy campaign. In 1989 Mr Liu served as an adviser to the student protesters in Tiananmen Square, and subsequently spent 21 months in prison for his role in the protest. He was again arrested in 1996 for advocating the release of Tiananmen Square student organisers still imprisoned, and spent another three years in a hard labour camp.

In December 2008, Mr Liu led 303 Chinese activists, lawyers, intellectuals, fellow academics, retired government officials, workers and peasants in drafting a manifesto titled Charter 08. Published to mark the 60th anniversary of the Universal Declaration of Human Rights, Charter 08 articulated an alternative future for China. Despite the Chinese government's best efforts, Charter 08 was accessed online by thousands of Chinese citizens who worked out ways to get around China's notorious 'great firewall'.

For those who found ways to access Charter 08, they were able to glimpse a plan for a very different China—a China free from widespread corruption; a China that honoured the International Declaration of Human Rights; a China that protected workers and the environment; and a China that embraced multiparty democracy.

Eventually, Charter 08 gained more than 10,000 Chinese signatories, and the manifesto united the pro-democracy movement in China like never before. It encouraged younger Chinese to become politically active, and it served as an important reminder to the world that, despite the sanitised China on display during the 2008 Beijing Olympics, the Chinese people remain politically and socially repressed. When asked about the choice for this year's Nobel Peace Prize, the

Norwegian Nobel Committee Chairman, Thorbjoern Jagland, said, 'We have to speak when others cannot speak.'

The Nobel committee's announcement has placed a spotlight on China's human rights violations. The award serves as a reminder that, while China has achieved significant economic advances in recent times, there is still so much to be done in terms of advancement of human rights. The Norwegian Nobel committee believed that with China's new global power must come increased scrutiny and responsibility. China continues to breach several international agreements to which it is a signatory, as well as its own constitution. Article 35 of China's constitution states:

> Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

Yet how does this section of China's constitution reconcile with the arrests of Mr Liu and other pro-democracy campaigners? I am pleased that last week Australia's new foreign minister, Kevin Rudd (a man very much respected by his global peers for his extensive knowledge of China), announced that the Chinese government had agreed to resume formal human rights talks with Australia.

Minister Rudd confirmed that he raised Australia's ongoing concerns about human rights violations with the Chinese deputy foreign minister, Cui Tiankai, during his visit to China last week. While China had previously cancelled human rights talks due to take place in September this year, minister Cui Tiankai has now agreed to restart the dialogue next month.

So, I take some encouragement from this and hope that perhaps our new foreign minister, with a unique insight into China, will be the right person to take dialogue with China further than ever before; because Australia must continue to hold China accountable, and we must push for the immediate release of Mr Liu and all other pro-democracy campaigners.

PASSING THE BATON

The Hon. J.M.A. LENSINK (15:29): I rise to speak to the matter of the celebration of the 35th anniversary of the passing of the first sex discrimination legislation in Australia, which was referred to also by my colleague the Minister for the Status of Women (Hon. Gail Gago) yesterday in question time. At an event staged by the Don Dunstan Foundation, hundreds of women attended Bonython Hall at Adelaide University, at which a number of speeches were made. It was a great reunion of many older women activists, and it was entitled Passing the Baton.

I turn my remarks to the initiator of the legislation, Dr David Tonkin, the former member for Bragg and former premier, who promoted sexual equality because he was so profoundly influenced by his family's experience when he lost his father and his mother became a widow when David was aged just five. It is well known that David's mother felt unable to participate in the workforce due to the strictures of the age, which drove him to introduce the first bill on 29 August 1973.

He gave a speech which would be very appropriate in today's times, speaking of the progress of women, particularly in the 20th century and stating that the time for treating women as second-class citizens based on assumptions that go back to prehistoric times should end. He spoke of the historical exclusion from education, which effectively hindered women's development, and that the central role of reproduction and family responsibilities had for a long time defined women's identity and therefore their status in society.

However, he thought that that time had passed, and therefore his bill would have prohibited discrimination on the grounds of sex in employment, membership of unions and professional associations, education and training for employment and the supply of goods and services, with specific clauses relating to banks, insurance and financial products. Tonkin's bill was referred to a committee, which he feared was a mechanism to knock it off, but the committee found in favour of the need to introduce a bill, which was introduced under the auspices of the Dunstan government and passed in an amended form.

The committee's findings are an interesting read and included that there was discrimination in education and training, however, that those gender distinctions were disappearing. We now know that women comprise 55 per cent of university graduates. The committee noted discrimination in employment and thought that that would continue to be a resistant area to change because there were so few women who possessed the necessary qualifications and experience in that area. We know from the current research that that continues to be an issue. The committee also found about discrimination in financial matters that many women were denied credit by financial institutions because they needed to have a male guarantor.

The Equal Opportunity Act has taken over the sex discrimination act, and extension has been made to many grounds of unlawful discrimination to erase physical impairment, age and intellectual impairment. We have had reforms of same-sex laws more recently, and a number of other areas were passed through legislation in July last year in this place. There are number of women firsts we have been celebrating in recent years including, within our own parliament, the first female Leader of the Opposition, Isobel Redmond, and our first female Speaker, Lyn Breuer, and obviously our first female Prime Minister and Governor-General. I note that our three recent additions to the Legislative Council are all outstanding women.

A lot of data is being tracked that is useful. Unfortunately, board positions continue to be absolutely appalling, with female representation on the ASX 200 still at 8.4 per cent, which has not changed much in the last eight years, but I am pleased to note that the ASX is changing its reporting requirements so that companies must disclose diversity policies and explain what they are doing to advance the cause. Employment continues to be a great frontier, with lack of pay equity, lower workforce participation and issues continuing with career advancement and sexual harassment. There are a number of areas we still need to address, but it is important to recognise how far we have come.

MARY MACKILLOP

The Hon. R.L. BROKENSHIRE (15:34): Yesterday afternoon I sought a pair from the house because I was invited to attend what was a very special and important occasion to do with the celebrations of the canonisation of St Mary of the Cross, particularly for Willunga and the Fleurieu Peninsula region, where my family and I live. It was interesting to listen to His Grace Archbishop Philip Wilson and other speakers talking about the magnificent work that the now canonised St Mary of the Cross did when she was a sister and her work with respect to the Sisters of St Joseph with the South Australian province.

Whilst we hear a lot about Penola and some other areas, many would not realise the fantastic pioneering work that she did in Yankalilla. In fact, back in 1867, she had 40 students in a very small, old stone building in the main street of Willunga. She gave those students the opportunity to, first, learn about important values, secondly, to read and write and, thirdly, to be able to have some compassion for people who were doing it tough.

After the unveiling of a plaque at the front of that particular cottage—and we commend the residents for agreeing to allow that now that it is privately owned—we moved on to a church service at St Peter's Catholic Church at Normanville to hear more of the history of the Sisters of St Joseph and particularly the great work of St Mary of the Cross MacKillop. In fact, when living at Yankalilla, she did all her worshipping at the Normanville Catholic Church.

Importantly, when we look at the way she was driven to this work, we see that she started off with a large family. In fact, due to an unfortunate situation with her own father, who was unable to find employment, she was, at times, the only person able to bring any income in to the family. However, during that time, she realised just how much a lot of young people, in particular, and families, were doing it tough, and I am talking back in 1867.

Some of her letters were read out at a function at the Normanville Hotel dining room, which was packed out with people eager to learn more about her. In listening to some of the letters that she wrote, it was interesting to hear how concerned she was about the lack of education, health issues, homelessness and the lack of a tight-knit community back in those days. One thinks about 1867 to 2010 and, in some areas, not a lot of things have changed. We are still arguing about rights for women, and we see the way she led her charge so successfully.

We are also still arguing about homelessness and education. We are arguing about and debating issues regarding affordable housing, and one would have to ask, particularly in the last several decades when, clearly, the economy in this state and nation has been so much better than it was in the mid-1800s, whether we have achieved as much as we should have in addressing many of these issues.

In completing my remarks on this matter, I want to particularly acknowledge the great work that Archbishop Philip Wilson is doing for our South Australian community. I know that many of my colleagues would also attend functions where we see leaders of our churches and other community leaders. Archbishop Philip Wilson certainly does a fantastic job with all that he has on his plate, not only in this state and nationally but also internationally. He tends to be at many of the functions that I attend, and he is doing a great job in leading.

I would also like to congratulate all of the local parishioners and the community of Normanville, Yankalilla and district. The local heritage and museum organisation was there supporting this as well. I hope that not only will this be a significant, strong memory of the efforts of Mary MacKillop but also that it assists with tourism and other development of the Fleurieu Peninsula in the future.

YOUNGCARE

The Hon. K.L. VINCENT (15:39): Today, I wish to make my MOI speech on Youngcare, an organisation based in Queensland, which is dedicated to helping the 6,500 young people with disabilities in Australia who currently reside in aged-care homes due to a lack of more appropriate accommodation. Youngcare believes, as I am sure we all do, that every young person deserves a young life, and aims to make this possible through raising awareness, fundraising, lobbying for political change, undertaking research and providing accommodation. Youngcare shares many of the same values as d4d in believing:

1. That young people with high care needs have the right to choice;

2. That aged care, as the only choice, is not appropriate;

3. That there should be more housing choice for people with high care needs;

4. That there should be relevant and appropriate care models;

5. That the federal and state governments must address the issue through policy changes;

6. That there is need for investigation of a national disability insurance scheme (NDIS);

7. That young Australians with 24/7 care needs should have access to relevant information.

According to Youngcare's website (www.youngcare.com.au) of the 6,500 young people currently living in aged care facilities 44 per cent will receive a visit from friends less than once a year, 34 per cent will almost never participate in community-based activities such as shopping, and 21 per cent will go outside the home less than once a month. This is something I would not wish on the elderly members of our community, let alone young people who thrive on social interaction for their entertainment, fulfilment and growth as citizens.

The organisation also offers in-home grants to help pay for the support that a young person with a disability requires to live in their own home in the manner of their choosing—a blessing many take for granted. There is also Youngcare Connect, a telephone hotline offering friendly support and advice to young people with full-time care needs and their carers.

The initiative and passion that Youngcare shows in its work is commendable. In fact, I really have only one problem with this organisation: there is no South Australian branch to help the 500 or so young people living in nursing homes here in South Australia. I am not about to deliver a homily on why we should have an organisation such as Youngcare here in South Australia, as I believe the figures I have just referenced truly speak for themselves, but I will say that I believe the issue of young people residing in aged care is one of national, if not international, importance.

I acknowledge that I perhaps approach this issue with some bias, as I am a young person with a disability, but I will say this. When I was 10 years old I saw a TV ad which showed a young man of about 25 in a wheelchair talking about his experience of living in a nursing home. I immediately turned to my mother and asked her if that was the fate that awaited me, too. Of course, she told me that that would never happen, but I must say that that moment will forever remain in my memory as the moment that I truly realised my disability could mean that I may not have autonomy over my own life.

No young person should have to reside in an aged care facility, nor should our young people with disabilities have to live with an inherent, potentially paralysing fear that it could happen. For these reasons I commend Youngcare on its work, and encourage members of this chamber, and the public, to support it in whatever way possible to help ensure the right of our youth to a young life.

ABORIGINAL LAND RIGHTS

The Hon. S.G. WADE (15:42): I rise today to speak about an important issue in Aboriginal reconciliation. The Letters Patent of this state, issued by King William IV, used the enabling provisions of the South Australia Act to establish the state, and established the authority of the government. It has been contended that the Letters Patent and the Order-in-Council conflict with the act in terms of lack of recognition for existing Aboriginal land rights. While the act treats the area proclaimed as South Australia as unoccupied wastelands, the Letters Patent read:

> Provided always that nothing in those our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal natives of the said province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such natives.

The Order-in-Council similarly acknowledged the rights of Aboriginal natives. I must admit that I am yet to be convinced as to the prospect of any current legal proceedings asserting these rights, but a significant number of people within the Aboriginal community believe that these rights should be pursued at law. I am aware of a leader in the Aboriginal community who has made public comment that they do not think that such a case is a priority, given the many challenges facing the Aboriginal community; however, I do respect the right of any South Australian to pursue their legal rights as they understand them. Whether or not they receive funding to pursue such proceedings is another matter.

There is a group of Aboriginal South Australians who are intent on pursuing the Letters Patent as a matter of Aboriginal rights. On 15 May 2010 the Congress of Native Title Groups passed a resolution to authorise a Ngarrindjeri delegation to meet with the Premier of South Australia and ask him to sit down with Aboriginal people and discuss the implications of the Letters Patent and the founding documents.

The response of the government is interesting. On Friday 18 June 2010, the Premier, the Attorney and the Minster for Aboriginal Affairs and Reconciliation met with a delegation of the Ngarrindjeri people and their legal representative, Shaun Berg, to discuss the issue of the Letters Patent. I would have thought that the Aboriginal people had every right to assume that such a high-level delegation was an indication that the government was taking this concern within the Aboriginal community very seriously. The Ngarrindjeri people certainly showed their goodwill by presenting a ceremonial boomerang.

The Attorney-General was quick to promote the government's alleged concern for Aboriginal South Australians in a ministerial statement tabled in this place on 29 June. However, as so often happens with this government, its interest seems to pass when the media cameras go away. In June, the Attorney-General wrote to Mr Shaun Berg, the legal representative of the Ngarrindjeri people, seeking a written formulation from the Ngarrindjeri people providing particulars of, first, the precise legal nature of their assertions regarding the Letters Patent 1836 and particulars of any or all consequences they believe may flow therefrom.

While the Ngarrindjeri were asking the government to engage the broader Aboriginal community in a process of consultation, the government, within a month, had shifted to a legal exchange of letters mode. This government is allergic to consultation and is offering no tangible response to the Aboriginal people's request for consultation. After all, the government did open consultation by meeting with the Ngarrindjeri delegation, but it was not willing to follow through; it has shifted to the legal process. On page of 8 of *The Australian* of 9 November (yesterday), it states:

> Aborigines in South Australia are demanding the return of a ceremonial boomerang presented to Premier Rann. The indigenous leaders say his government has reneged on a promise to consult on the state's 1836 Letters Patent and other foundation documents.

Later in the article, it goes on to state:

> Now they want the boomerang back, saying that they have been 'insulted' by the approach of Attorney-General John Rau, who has refused to hold discussions until Indigenous leaders outline their legal position.

I believe that the response from the Attorney-General is extremely disrespectful, because it insists that the Ngarrindjeri people put down their case.

Time expired.

COUNTRY FIRE SERVICE

The Hon. R.P. WORTLEY (15:48): I would like to speak on the subject of bushfires. As another bushfire season rapidly approaches, I pay tribute and offer a vote of thanks to the men and women of the South Australian Country Fire Service. We all know that the CFS is a fire and emergency service, whose mission is the protection of life, property and our environment in outer metropolitan, rural and regional areas of South Australia. But how many of us know that the CFS comprises some 15,000 volunteers and more than 100 staff, that its services extend to several hundred communities right across South Australia and that its brigades attend around 7,000 incidents each year, including bushfires, structural and motor vehicle fires, road accidents, searches and rescues, storm damage management and HAZMAT situations?

How many know that the CFS carried out 12,682 responses to calls of enormous variety in 2008-09; that it carries out education programs in fire prevent and fire safety; that it is of vital assistance to the Metropolitan Fire Service, police ambulance, the SES, ForestrySA, National Parks and Wildlife and the Volunteer Marine Rescue Service, among other organisations; and that, depending on the nature of the incident, it liaises with ETSA, SA Water, transport and road authorities, local councils, St John Ambulance, the Salvation Army, the EPA and the RSPCA?

How many also know that the CFS participates in regular cross-service training sessions, which enable each organisation to better appreciate what needs to be done when working as a group to build up and enhance lines of communication and to jointly practise, for example, evacuation techniques or disaster management; that it responds to calls from interstate and overseas; or that its volunteer members do all these things without financial reward?

How many of us would consider putting up our hand for such duties, many of which carry with them a risk of immediate or longer term personal danger? Not many, I imagine, and that makes these volunteers pretty special. We in South Australia understand only too well the terror of bushfires. The memories of those lost in the Ash Wednesday fires and of the damage caused will never be erased from our memory. More than 25 years later, we still remember and we still grieve and we empathise deeply with those now rebuilding after the Black Saturday fires in Victoria.

Less than two years ago, Black Saturday—Australia's worst natural disaster since Federation—saw 173 people killed by fire and more than 2,000 homes destroyed. We have all heard the stories of those who, given the speed of the conflagration, had little hope of escape and survival, and even that small hope was extinguished by the flames. Others sustained the loss of cherished belongings, their dwellings and their land, of companion animals and stock, and many were homeless. All were profoundly shocked and all were heartbroken. Such hurt does not heal quickly or perhaps ever.

Today I am thinking of the firefighters and related personnel who come so speedily and so selflessly to their dangerous task and of their families who, despite their own fears, send them on their way. Those people include South Australian CFS volunteers, among many others from related state services and non-government organisations. To them, we owe a debt of gratitude so great that it is difficult to articulate.

The Victorian Bushfires Royal Commission was established on 16 February 2009 to investigate the causes of and responses to the bushfires that I have discussed. The commission delivered its final report just a few months ago. Meanwhile, our bushfire task force was established in March 2009. Its mission is to examine key themes and issues arising from the Victorian Bushfires Royal Commission and to consider how bushfire management practices in South Australia can be improved in the immediate, medium and long term.

Recommendations arising from the royal commission and South Australia's bushfire task force have been considered and, learning from the Victorian experience, the government has adopted a national framework for advice and warnings to the community. In addition, it has announced the implementation of initiatives, among which are a new system operating over multiple media including telephone and text messaging based on the property owner's billing address for the season which will employ three levels of messaging to alert people to severe fire threats and, ancillary to this, an 'opt in' service where friends or relatives of people living in bushfire-prone areas can have access to the service.

Indeed, since the establishment of the task force, the government has committed over $47 million in additional funding to ensure that South Australians are more prepared than ever before to face the threat of bushfires. As part of these initiatives, South Australia is participating in the adoption of the new national strategy entitled Prepare. Act. Survive. and has just undertaken its

first bushfire awareness week with considerable success. The CFS is more than ever intent on highlighting the need for bushfire preparedness in South Australia. We are all responsible for being Bushfire Ready.

RETAIL WORKERS

The Hon. T.A. FRANKS (15:52): I rise to speak about the exploitation of retail workers in South Australia and particularly the exploitation of young retail workers. Many young retail workers in South Australia who are being exploited are actually unaware of or too scared to exercise their rights. Some of the points that I wish to make today may illustrate gaps in existing legislation that should be protecting workers.

Many shop assistants are signing contracts that require them to pay an exorbitant amount of money from their salary for the clothing that is described as their uniform. This uniform for a retail worker often consists of the current seasonal stock which is always evolving and always changing. In one case, a staff member who was hired as a Christmas casual at Sportsgirl was told that she could no longer wear the skirt she had bought as a uniform after only one wear because it had already moved to the sale rack and she should be wearing full-priced stock only.

Many shoe stores similarly prescribe that staff wear that store's current season shoes. While seemingly generous staff discounts between 10 and 50 per cent do apply to these items, many staff are spending most or a considerable portion of their relatively low wages to fulfil their contractual obligations. They are earning about $20 an hour for an adult rate—let's not even get into the youth rate—and yet they are being expected to pay most of that on the so-called uniform of the current season stock. Additionally, many are not told either verbally or within their contract that they can often claim some of these shoes and clothing as a tax deduction.

In numerous retail stores, staff are also not being paid for the hours that they work outside of shopping hours. Many staff fulfil duties including cleaning the store, preparing it for opening or banking at the end of the day outside opening hours and these duties can actually be quite lengthy, especially during busy periods such as the Christmas season or on weekends.

Now, some stores do the right thing, but many do not pay staff for those hours spent folding clothes, cleaning the store and counting the money. Concerns have also been raised with my office about the level of security provided for these workers when counting the money at the end of their shifts, especially given the majority of these workers are, in fact, young females.

Another complaint that I have received regarding exploitation in the retail sector relates to trial shifts, that many, many staff are actually asked to do before they gain a position in the store. One woman complained that she worked an eight-hour shift at Witchery, without pay, and was never notified about why she had not got the position, despite a phone call follow-up. Heaven forbid that stores are actually giving people trial shifts instead of employing people for vast amounts of their work. The Greens are concerned that this is not an isolated incident.

Startlingly, some shop assistants have also complained that store managers asked female employees to wear high heels in their shifts, often on hard, wooden, tiled or concrete floors for periods of eight hours or more. Three in 20 young people are employed in the retail sector in this state. More needs to be done to ensure that retail workers are protected and treated more fairly by the companies that employ them.

One particular case study I will give is of a 25-year-old worker who worked in retail up until a few weeks ago. She was expected to wear the clothing of that particular store and she says:

> We were given between 15 and 30 per cent off the items and at this particular store if you bought a cropped cardigan it would cost you around $80. Working as a casual, it was [quite] hard. [They] had a lot of clothes coming in all the time. You'd buy it one week and the next week it wouldn't be in the shop anymore.
>
> We were...expected [however] to come in early for our shifts. I was even pulled aside a couple of times (by the manager) and told that I needed to get there 15-20 minutes before my shift [started] and I was expected to clean up before the store opened.

When it closed, at 5pm 'we weren't allowed to start closing off the system until that time'.

So, she would usually be working at least half an hour over the time she was actually getting paid for. She also had a friend who worked in Supre, and they had a similar policy where the staff had to wear the clothing. Fortunately for that friend, the clothing is a bit cheaper there. However, the seasons in Supre changed very, very quickly and they would, in fact, be given

specific items that they were told they had to buy as their uniform when the store was doing a particular promotion.

I will be launching on Facebook a campaign to explore this issue. I look forward to working with other members in this chamber to provide better treatment for our young people. As I say, three in 20 young South Australians work in this sector, and far too many are being exploited. I look forward to working with you all to address these issues.

CRIMINAL CASES REVIEW COMMISSION BILL

The Hon. A. BRESSINGTON (15:59): Obtained leave and introduced a bill for an act to provide for the establishment of a Criminal Cases Review Commission and for the reference of matters by that commission to appellate courts; to make related amendments to the Bail Act 1985 and the Criminal Law Consolidation Act 1935; and for other purposes. Read a first time.

The Hon. A. BRESSINGTON (16:00): I move:

That this bill be now read a second time.

'It is better 100 guilty Persons should escape than that one innocent Person should suffer.' This often used quote of Benjamin Franklin speaks of civil society's ideal of justice. Society believes that the justice system grants every individual the presumption of innocence and every accused person the right to a fair trial so that society can have confidence in the verdict; that is, the conviction of the innocent is exceptionally rare and promptly corrected.

However, as interstate cases of miscarriages of justice are publicly exposed and local cases fail to progress that have been publicly advocated for, leaving serious questions unanswered, the public's confidence in the courts' ability to distinguish the innocent from the guilty wanes. This can be seen in the rise of criticisms levelled at the courts and the increasing distrust in which they are held. This can also be seen in the rise of miscarriages of justice as a distinct area of jurisprudence. Notably, Flinders University School of Law next year will offer its students one of the first Australian courses focusing on miscarriage of justice to be headed by Ms Bibi Sangha.

Ms Sangha, along with Professor Kent Roach from the University of Toronto in Canada and Dr Bob Moles, who many in this chamber will be familiar with, have also just released a legal textbook entitled *Forensic investigations and miscarriages of justice: the rhetoric meets the reality* in which they compare and analyse the responses to miscarriages of justice in the United Kingdom, Canada and Australia. They ultimately recommend significant reform, including the establishment of a criminal cases review commission.

I state at the outset that I owe much of this work to the truly admirable Dr Bob Moles, and I owe him a great deal for the assistance provided in helping me draft this bill that I introduce here today. To restore public confidence and to provide justice to those the justice system has failed, I propose we establish a criminal cases review commission, an independent body with powers to actively investigate claims of wrongful convictions and refer substantiated cases to the Full Court for appeal.

As many commentators have noted, the Criminal Cases Review Commission in the United Kingdom, which is what this bill is modelled on, has served to restore public confidence in the English justice system following a period when it was at its lowest after a succession of miscarriages of justice, including the cases of the Birmingham Six and the Guildford Four who were wrongly convicted of bombings carried out by the IRA.

In prosecuting the case for a criminal cases review commission, I will of course be referring to the case of Henry Keogh. As has been reported by the ABC, I am of the opinion that there is sufficient doubt that would have Mr Keogh's case referred to the Full Court for appeal. However, I make it clear that I pass no judgment as to Mr Keogh's guilt or innocence, for it is not my job, nor should it be.

The Canadian case of R v Boucher adopted in substance in the UK and Australia makes it clear that no legal practitioner or other person in authority should express a personal view about the innocence or guilt of any person. For a legal practitioner to do so could constitute unprofessional conduct. It is my contention that such judgements are only to be made by a jury following a fair trial and should not be the job of any politician, regardless of the title they don, to pass judgement and hence seal the fate of any constituent. This is, however, the system which presently exists and which this bill seeks to reform.

I do not intend to lay out the full facts of Mr Keogh's case here. Members not familiar will find much written on the prosecution's case and subsequent questioning of the forensic evidence relied upon by the prosecution. On the former, I encourage members to read Dr Robert Moles' book, *Losing Their Grip—The Case Of Henry Keogh*, the title, of course, being a reference to the serious questions surrounding the forensic evidence given in Mr Keogh's trial relating to the supposed bruising of Anna-Jane Cheney's leg. This book and other relevant material can be accessed on Dr Bob Moles' website, netk.net.au.

Instead, I propose to use this case and others to demonstrate to members the structural impediments in our criminal justice system to the correction of wrongful convictions as experienced by those who claim they are victims of a miscarriage of justice. Any reasonable person will conclude that, in a human system, errors will result. In the words of former justice Michael Kirby (a recently retired justice of the High Court of Australia), 'Human error will never be eliminated entirely. That is a pipe dream.'

The recognition that mistakes are made lies at the heart of our existing appellate court structure in which a defendant is able to appeal errors made at trial. However, as I will demonstrate, this system fails to adequately deal with the wrongful convictions that the appellate courts miss, leaving many victims of miscarriages of justice to languish in prison. As is common knowledge, a criminal appeal following trial must be initiated within 30 days. This restrictive period allows defence teams little time to discover new evidence, which in many of the well-known cases of a miscarriage of justice took years to uncover.

An appellant claiming to be wrongly convicted at appeal will also encounter the high standard required to set aside a conviction—that being that the conviction is unreasonable or cannot be supported by the evidence, that there has been a wrong decision on a question of law, or on any ground that there has been a miscarriage of justice. In deciding this, the court must satisfy itself that it was not open to the jury to be satisfied beyond reasonable doubt that the accused was guilty. Without new evidence of their innocence, appellants rarely meet the standard required.

The next structural impediment to miscarriages of justice is the inability of the Full Court to reopen an appeal once an appellant's initial appeal has been finalised. The appeal provisions, which are uniform across all the states, have been interpreted to allow the intermediate appellate courts to hear one appeal only. This is so even if the court has finalised the appeal on an incorrect factual basis.

It was recently demonstrated in the New South Wales case, Burrell v The Queen, in which the Court of Appeal assumed that a document on the prosecution file represented facts accepted by the prosecution but which in fact was a submission by the defence. The Court of Appeal, realising its error, recalled its decision and reissued the judgement. However, on appeal in the High Court, it was found that the Court of Appeal should not have done so as once it has entered judgement it has no jurisdiction to reconsider the matter. As former justice Kirby stated:

> I regard it as unfortunate that the inherent power of the appellate court does not extend to varying its own order when the interests of justice require it.

If—as can and does happen—victims of a miscarriage of justice fail to have their conviction overturned at a Full Court appeal as a result of this rule, the only legal right left available to them is to seek leave to appeal to the High Court of Australia. Given that the High Court hears cases only involving broad principles of public importance, few applications for leave to appeal in criminal cases are granted, although the number has been steadily increasing over time.

If an appellant is able to secure leave, they will encounter another structural impediment to the correction of wrongful convictions in that any new evidence that has come to light since their appeal in the intermediary appellate court—regardless of its relevance or weight—is inadmissible in the High Court. This stems from the High Court's narrow interpretation of its appellate jurisdiction under section 73 of the Commonwealth Constitution.

So, even if a person wrongly convicted is in possession of new and compelling evidence that would lead to their exoneration, if this evidence was not discovered prior to and admitted in their Full Court appeal, they are unable to have that evidence heard and considered by the High Court. While many have argued against this limitation, including Justice Kirby, who described justice as truly blind, as a result this impediment remains. The only way to get this evidence back before a court is for the wrongly convicted to petition the Governor for an appeal. It is this process with which I take particular issue, and which the bill before the council seeks to reform.

As I have said, once a person wrongly convicted has exercised their appeal rights, the only option available to them to have their case reviewed is to prepare and submit a petition on the merits of their claim to the Governor for the exercise of Her Majesty's mercy. This is then referred to the Attorney-General who, under section 369 of the Criminal Law Consolidation Act 1935, may:

> if he thinks fit at any time, either:
>
> (a) refer the whole case to the Full Court and the case shall then be heard and determined by that court as in the case of an appeal by a person convicted; or
>
> (b) if he desires the assistance of the judges of the Supreme Court on any point arising in the case with a view to the determination of the petition, refer that point to those judges for their opinion and those judges, or any three of them, shall consider the point so referred and furnish the Attorney-General with their opinion accordingly.

This wording is consistent across the Australian states and is similar to that which existed in Britain prior to the establishment of the Criminal Cases Review Commission. The power to refer cases to the court of appeal is claimed to be entirely at the discretion of the Attorney-General, meaning that it is not subject to judicial review. It is for this reason that a petition to the Governor is not considered a legal right per se.

The Attorney-General is the chief law officer of the state and, when acting to determine an application by way of a petition, he is acting in a quasi judicial capacity. As such he must act in accordance with the relevant legal principles, and only in accordance with the relevant legal principles. This is clearly the intention of the petition process. However, given that the multiple petitions made by Henry Keogh have not been referred to the Full Court, I contend that this intention has been forgotten.

It is clearly established at law that, if evidence going to the credibility of a prosecution witness has not been disclosed at trial, that trial was unfair and must be set aside. In Mr Keogh's case the Coroner inquiring into the baby deaths cases concluded, shortly before Mr Keogh's trial, that the forensic pathologist, Dr Manock, had completed autopsy reports, which achieved the opposite of their intended purpose; that is, they closed off lines of inquiry instead of opening them up. Additionally, the Coroner said that the pathologist had apparently seen things which could not have been seen, such as bronchopneumonia, because it did not exist. He even said that some of the answers given by the pathologist on oath were spurious, that is, not truthful.

The Coroner then held back his official report on the baby deaths until after the conclusion of the Keogh trial. Additionally both pathology witnesses for the crown admitted on oath before the Medical Board and in submissions to the Supreme Court that they did not disclose at Mr Keogh's trial or to his defence an important exculpatory scientific test result, namely, that one of the slides, said to have been from the thumb mark of the grip, showed no evidence of bruising. Again, it is clear from the principles laid down by the High Court that that alone would justify the setting aside of the verdict at trial. In a recent ABC radio program *Beyond Reasonable Doubt*, former High Court Justice Michael Kirby explained the reasoning of this principle by stating:

> Because you don't know how the jury reasons, if one way of reasoning to a conclusion is kicked away by the evidence, then because that is a possibility of the way the jury might have reasoned, you have to consider whether a miscarriage of justice has occurred.

In evidence before the Medical Board the chief pathologist said that it was always his opinion that the bruises to the left leg of the deceased had been caused by the left hand. His evidence at the trial was that they were caused by a right hand. Again, that conflict alone would justify the setting aside of the verdict at trial. In evidence before the Medical Tribunal the chief pathologist said that he now accepts that his evidence at trial of determining unconsciousness by damage to the outer surface of the brain was wrong. This again, on the principles laid down by the High Court, would justify the setting aside of the verdict at trial.

It is clear that, if the Attorney-General was assessing Mr Keogh's petitions solely in accordance with the law, he would have referred them to the Full Court for appeal. However, as I said, because the power to refer cases to the Court of Appeal is claimed to be entirely at the discretion of the Attorney-General, he or she can literally dismiss these points of law with the wave of a hand—as I believe has occurred in the case of Henry Keogh—without the petitioner having any recall or right to a review. Although the Attorney-General when deciding upon a petition should do so on the legal merits of the case, one of the many criticisms levelled at the current petition process is that it is inherently political.

As I have explained, a person wrongly convicted is left to pin their hopes on a petition to the Attorney-General, a politician, who undoubtedly has at the fore of his mind political considerations. A petitioner is effectively asking a state politician to validate their criticisms of a prosecution conducted by state officials. In this era of law and order, where it is fashionable to be tough on crime and the Attorney-General is often the government's representative of this agenda, is it any wonder that, in this term of government, not a single petition to the Attorney-General has been referred to the Full Court? Are we so delusional to believe that not a single person has suffered a miscarriage of justice in this time, or do we recognise that this process fails to meet the needs of the wrongfully convicted?

As a comparison, in the last 12 years in the United Kingdom, some 300 convictions have been overturned following references by the Criminal Cases Review Commission. Of those, 50 were murder convictions, and four involved those who had been hanged after they were convicted. In that same period of time, not a single case has been referred back to the courts under the petition process here in South Australia. Because a petition process is so politicised, the wrongfully convicted and their supporters are effectively required to run a political campaign to improve the prospects of their petition being referred to the Full Court.

Every recent miscarriage of justice case I have researched has demonstrated this point. As an example, Andrew Mallard in Western Australia, who was wrongfully convicted of murder on the weight of false confessions and evidence withheld by the prosecution, had to enlist the support of Colleen Egan, a journalist with the *Sunday Times,* and then the Labor MP, John Quigley, who was instrumental in lobbying the then Western Australian attorney-general. A South Australian example is the case of Edward Splatt, who had to recruit the support of *The Advertiser* journalist Stewart Cockburn before his claims of innocence were given credence.

Stewart Cockburn ran a campaign in the paper for two years before the incoming government agreed to a royal commission. That commission, which discredited all of the forensic evidence relied on at trial, ultimately found in favour of Ted Splatt and, in 1984, brought to an end seven long years of wrongful imprisonment. It is worth noting that his trial took 11 days; the commission hearings took over 190 hearing days. While I have been unable to confirm this, and I will happily be corrected if I am wrong, it is my understanding that this was the last South Australian case in which the Attorney-General exercised his discretion under section 369 of the Criminal Law Consolidation Act.

While such examples exist, no-one could argue that these cases demonstrate that the petition process delivers justice. This would be to ignore the fact that these cases were the exception, not the rule. It is not justice if it is not equal. Whether it be due to the nature of their crime, the perceived weight of evidence against them prior to offending, or something as basic as illiteracy, not all persons wrongfully convicted are so fortunate as to be able to recruit journalists who are able to apply media pressure on members of government able to get the ear of the Attorney-General.

As the case of Henry Keogh demonstrates, even when your supporters include prominent media identities, law professors and forensic scientists from around Australia and overseas, and a public campaign has been run, including numerous exposes on the popular current affairs television program, *Today Tonight,* this is no guarantee that a tough on crime attorney-general will not hold out against public pressure and even go so far as to actively campaign against you.

Demonstrating the politicised nature of the current petition, the former attorney-general–and I stress the former attorney-general—on numerous occasions reaffirmed the prosecution's version of how Miss Cheney came to pass, dismissed all evidence to the contrary, and denounced Mr Keogh as the murderer. Having so publicly nailed his colours to the mast, it is my understanding that the former attorney-general was forced to agree to delegate consideration of any future petitions by Mr Keogh to a bureaucrat in the Attorney-General's Department because of perceived possible prejudice.

Indeed, many members in this place, and others, have not shied from stating their beliefs and opinions on Mr Keogh's conviction. The current Leader of the Opposition, no less, interjected in the other place that she believed Mr Keogh was guilty. Apparently, she also stated as much to Mr Keogh's family. I repeat: how dare any politician pass judgement on the guilt or innocence of someone claiming to be wrongfully convicted? It is not our role, and nor should it be.

While having a family member incarcerated for committing a crime must be difficult, having a family member incarcerated when you truly believe in their innocence, and your belief and the

evidence underpinning that belief is belittled by the authorities, must be devastating. Alexis Keogh, the youngest daughter of Henry Keogh, was just nine when her father was arrested for murder. She has prepared a statement, which I would like to read out for the benefit of members in this place. She said:

My name is Alexis, I am 25 years old and the very first thing I want on public record and for all you to hear is that I am proud to be Henry Keogh's daughter. I am sure a good many of you here heard the name Henry Keogh, and have intuitively tuned out, as after 16 years of hearing about his case you are probably sick of it. I wonder if you can please pause for a moment, put your preconceptions aside and listen to a voice you haven't yet heard.

Seeing my dad arrested at the age of nine is an event I won't forget. Being teased and threatened in primary school with cruel and cutting words has not been easy to outgrow. Watching my dad give a eulogy in handcuffs at my grandmother's funeral is a picture I can't erase from my mind. Seeing my sister walk down the aisle alone at her wedding broke my heart. Knowing my dad is innocent and the pain of the last 16 years is indescribable…

When someone is wrongfully imprisoned there are many hidden victims and you need to know, and remember, that the collateral damage is very real and is just as, if not more, devastating. Once you're caught up in the criminal justice system the price paid to prove your innocence is almost beyond belief and over the years we have been ignored, ridiculed and those fighting for the truth even personally scrutinised in parliament by the previous AG. And that is my experience of how our 'justice' system operates. It crushes and consumes you by trying to outlast you. Once the system swallows you up, time is on their side. You have no voice, no power and no value. You're invisible.

The evidence to prove the death my dad was convicted for was not a murder at all is overwhelmingly obvious. You may think it, but you have never heard it all. Long before my dad was even convicted he was vilified by the media because of the distortions, half-truths and outright lies that were fed to them. Seeking justice in a state that would rather just forget the name Keogh has been painfully impossible. When the very person whose duty it is to refer my dad's case back to the courts publicly criticises anyone who challenges the evidence used to convict him, what hope do we have of getting justice? When the same man stands in parliament and makes apologies and commitments to the Cheney family, can he honestly be considered to be impartial and without bias?

We are foolish if we give anyone in that position the right to act merely by their will or personal feelings, especially in matters connected with duty, trust and justice. I long for the day we have a justice system that seeks truth and not just someone to blame. It merely produces more victims.

In our society it seems it is only by luck that a wrongful conviction gets overturned. Usually a journalist takes on the story out of interest and the deeper they look, they see the terrible miscarriage of justice and feel compelled to do all they can. Graham Archer and the team at *Today Tonight* have had the courage to do this in regard to my dad's case and have been vilified and criticised for doing so.

What other avenue does someone have when they are innocent and no-one wants to know? In my dad's case, such journalists have continued in our fight for justice for over 10 years when no-one else has cared and that should be applauded, not condemned. The indescribable frustration, confusion and despair I feel right now is outweighed only by the hunger for justice and truth and my love for my dad.

I began a cause online a few weeks ago to support the bill for a Criminal Cases Review Commission. I emailed everyone I could think of with my story. Since then, almost 600 people have joined the group, and I have been flooded with emails of support and encouragement. Given more time, I know hundreds more will join...those who haven't joined simply haven't had the opportunity yet. They still assume that our system gets it wrong and mistakenly believe that, if it makes a mistake, the people in power to correct it have the compassion and integrity to do so.

Thankfully, there could be a way. But that decision is in your hands. We need a Criminal Cases Review Commission. Other countries have one, why don't we? My message is that there is nothing to fear or to lose in the recognition of error or the need for change. There is everything to gain.

As I asked earlier, are we so arrogant to believe that not a single person has suffered a miscarriage of justice here is South Australia, or do we accept, as has the United Kingdom, Scotland and Norway and, to a lesser degree, Canada, that the traditional petition process fails to correct wrongful convictions? It is for this reason that I propose we establish a criminal cases review commission.

Modelled on the commission established in the United Kingdom in 1997, a South Australian criminal cases review commission would be independent of government and the judiciary and be empowered to impartially review and investigate claims of wrongful conviction and refer substantiated cases back to the Full Court. A criminal cases review commission would do nothing to advance the case of those who are guilty of crimes for which they were convicted following a fair trial. However, it will provide a non-politicised process by which those who allege a miscarriage of justice can have their claims investigated and, if warranted, put back before the courts.

Unlike other proposals for reform in the petition procedure, such as what has occurred in New South Wales and Canada, the value of the criminal cases review commission, other than its

impartiality, lies in its powers to actively investigate claims of innocence, rather than simply making a determination on the material presented to it by an applicant, as is the case presently. While many cases will be dealt with by the expertise of the commissioners, of whom there will be five, or the commissioner's staff, if technical expertise is required, the criminal cases review commission will be empowered to engage suitably qualified professionals, including police officers, to examine the evidence and report on it; this includes forensic examination of the evidence.

If evidence relating to the case is held by a public body, the criminal cases review commission will be empowered to instruct that body to keep the material safe and to allow the investigating officer access to it; this includes access to police files. On the latter, it was evidence derived from police files that was improperly withheld from the defence at trial which led to Mr Mallard's exoneration in Western Australia. Prior to the establishment of the Criminal Cases Review Commission in the United Kingdom, the wrongfully convicted were required to petition the Home Secretary, as an executive body, for their case to be reviewed; not dissimilar to here, few cases were referred to the courts.

Since the establishment of the Criminal Cases Review Commission, that number has increased dramatically, with a 2005 study finding a three-fold increase in the number of cases referred. As of 31 October this year, the Court of Appeal had heard 428 cases referred by the CCRC, resulting in 304 quashed convictions. Four of these were historical cases, in which the wrongly convicted had tragically been hanged for another's crime. While I cannot predict how many applications will be made to the CCRC if this bill passes, based on the experience of the United Kingdom and Norway, I am confident that, provided it is adequately resourced (a guarantee I am unable to write into this bill), the CCRC established here will be able to deal with each application without significant delay.

While predicted that the United Kingdom Criminal Cases Review Commission would be inundated with applications, this has not been the case. Bearing in mind the population of the United Kingdom, only 13,072 applications have been made to the Criminal Case Review Commission since its inception in 1997. Additionally, not all victims of wrongful convictions will apply to the CCRC. This is particularly true in non-homicide cases where victims of wrongful convictions have served their sentence and simply want to focus on getting their lives back together.

Just as one cannot predict the number of applications the South Australian CCRC will receive, it is simply impossible to know the number of miscarriages of justice that currently go uncorrected, although researchers have attempted to estimate the percentage of the United States cases with figures ranging from less than 1 per cent to as high as 5 per cent of all criminal convictions. While there are of course significant differences between the United States' justice system and ours, there is no reason to believe that miscarriages of justice do not occur in the same range here.

I know Dr Bob Moles has detailed numerous unresolved South Australian cases in his book *A State of Injustice* and on his website that raise serious questions about the evidence put to trial. One such case is that of Derek Bromley, who was convicted of murdering Stephen Docoza in 1984. Mr Bromley has consistently protested his innocence, pointing to the unreliability of the two supposed eyewitnesses, one of whom was a schizophrenic who was hospitalised soon after the incident with acute exacerbation of his symptoms.

Mr Bromley's supporters have also called into question forensic evidence put a trial by Dr Colin Manock with the eminent pathologist Professor Plueckhahn disputing the cause of death, stating that there is no scientific basis in the post-mortem findings for an unequivocal diagnosis of death from drowning as was sworn by Dr Manock. Mr Bromley submitted a petition to the Attorney-General in 2006. However, this was rejected.

Although he completed his prison sentence in 2008, Mr Bromley remains in prison, because he maintains that he is innocent of the crimes for which he is convicted, meaning that he is unable to complete the mandatory pre-release programs and as such is not eligible for parole. Bearing in mind that a Criminal Case Review Commission will be impartial, I am convinced that, on the weight of the evidence and on the legal principles invoked in Mr Bromley's petition, the CCRC would refer his case for appeal. It is interesting to note that, at the request of the Attorney-General's Department, Mr Bromley is resubmitting his petition this week.

Another example is the case of David Szach, which has previously been raised in this place by the Hon. Dennis Hood. Despite his release on parole for murder over 17 years ago,

Mr Szach continues to protest his innocence and agitate for a review. A former commissioner in the United Kingdom's Criminal Case Review Commission, David Jessel, recently stated that the continual protestation of innocence even when it appears no-one is listening is a hallmark of wrongful conviction. Unsurprisingly, Mr Szach's 2007 petition to the Attorney-General in which the forensic evidence of Dr Manock is again called into question by a prominent pathologist was also rejected. Again Mr Szach plans to resubmit his petition.

While current cases could of course take priority, the CCRC would also be able to undertake a review of the evidence and report to the Attorney-General on the case of Elizabeth Woolcock, a petition for pardon for whom is currently before the Attorney-General. As some members may be aware, Ms Woolcock was the first and only woman to be hanged in South Australia. In 1873 Ms Woolcock was tried and found guilty of murdering her husband by poisoning him with the mercury solution that she had purchased to treat the family's head lice and ringworm on the family dog.

However it is now contended that mercury poisoning was never established as the cause of death and that her husband's symptoms were consistent with tuberculosis, dysentery and typhoid. However, only typhoid was ruled out in the autopsy. Two recently discovered letters sent by Sir Samuel Way to relatives in England shortly before he was appointed chief justice of South Australia provide insights into the concerns held at the time that a miscarriage of justice may have occurred.

Commenting on the reports commissioned by the government of the day, and headed by his brother, Dr Edward Way, Sir Samuel Way wrote that his brother concurred with the analytical chemist that the evidence on administration of the poison was unreliable, and the medical evidence mistaken, the obvious implication being that Mrs Woolcock did not poison her husband and that evidence put at her was wrong.

In 2004, a mock retrial was held as part of Law Week in the Old Adelaide Gaol. The *Police Journal*, which covered the well attended event, reported that the jury empanelled from the audience took no time at all to find Mrs Woolcock not guilty on the weight of evidence. As I said, a posthumous petition for pardon has been lodged with the Attorney-General by police historian Allan Peters, which could be referred to the criminal cases review commission for determination.

While it is not, of course, the primary role of the CCRC, the commission will also be empowered to conduct post-exoneration examinations and make recommendations to the Attorney-General on reforms that may be undertaken to prevent future wrongful convictions. The criminal cases review commission, under clause 24 of the bill, is able to report to the Attorney-General on any matter, and importantly, can do so of its own volition. Additionally, the Attorney-General, or either house of this parliament, may refer matters, including bills, to the criminal cases review commission for consideration.

Since entering this place, I have witnessed an escalation in the law and order rhetoric and the subsequent encroachments on established civil liberties and rights, many of which were central to a defendant's right to a fair trial. The current trend of reversing the onus of proof is just one example. I can think of numerous bills which we have debated in this place, which I would have liked to have considered by a CCRC.

I have attempted to establish here today that our current justice system fails to adequately deal with wrongful convictions that the appellate courts miss, leaving many victims of miscarriages of justice with nowhere to turn. While the calls for the establishment of a CCRC are yet to be met with the deafening roar of the demands for an independent commission against corruption, I have no doubt that as time progresses and the community becomes aware of the flaws in our current justice system, particularly its inability to correct miscarriages of justice without the intervention of a politician, the calls will grow.

As more high-profile people argue for reform, such as justice Michael Kirby, and more cases of wrongful conviction are exposed, I believe this is inevitable. Fitting both of these criteria again, is Lindy Chamberlain who, as I am sure members are aware, was wrongfully convicted of the murder of her baby daughter Azaria, who was, in fact, tragically taken by a dingo. My office recently contacted Ms Chamberlain, informing her of my plans to introduce this bill, and she responded with the following statement:

It is wonderful to see that South Australia is taking the lead and making the attempt to begin bringing the justice system of our great country into the 21st century at last. There are many well-documented mistakes made in the judicial system we currently have, of which mine was just the most visible. It is a system bound by rules that can

no longer cope in this day and age of highly skilled and technical evidence. Our system needs a complete overhaul, but until that day comes we badly need what this bill proposes.

Without the public and therefore media interest in my case, I would still be in prison with nowhere to turn. The media kept my case in the public attention. The public responded by sending funds for me to keep fighting. It cost over 5½ million dollars for my legal expenses despite cut rates by my lawyers. As an ordinary person, without the public's support I had no hope of finding that kind of finance.

Too many people are also in our criminal system with little heard-of cases pleading for someone to listen and treat them fairly. I receive letters on a regular basis from people like this hoping I may somehow be able to help. I can't, but this proposed commission surely can. We desperately need somewhere unbiased for the innocent to turn, and have a fair go. You cannot appeal to the very people who have put you where you are, and the court system as it stands does not allow you to tell the truth, the whole truth and nothing but the truth. The whole truth is presently gagged.

A commission where all the facts can be reviewed is desperately needed in this country, a place of last resort; properly protected against abuse by the guilty, but available when the system has failed the innocent. We pride ourselves on being a country that gives everyone a fair go. I sincerely hope you all support this bill and 'put your money where your mouth is' as the saying goes.

This is a bill I truly believe in. If like me, you recognise that our judicial system is not infallible, that mistakes can and do happen, and that our present system can fail to correct these mistakes, and if like me, you find repugnant the statement by the late English Lord Denning that 'it is better that some innocent men remain in gaol than the integrity of the English legal system be impugned' then I implore you and others to support the establishment of a CCRC.

In closing, I would like to quote Justice Kirby again, this time from his foreword to the book *Forensic investigations and miscarriages of justice: the rhetoric meets the reality* in which he eloquently summarises the choice this bill requires you to make:

In the end, the choice before society may be as brutal as this: do we care about the cases like Mr Mallard's enough to draw the inference that there may be other such cases that never had a chance of similar repeated scrutiny? Where the prisoner was odd and could not convince anyone to support a protest? Where funds could not be procured to attract sufficient legal interest? Where the over-worked pro bono schemes of the legal profession could not be engaged? Where the talent and/or commitment of the prisoner's supporters waned with the passing of time and a realisation of the difficulty of storming this particular stable citadel? Where the over-worked appeal judges missed factual inconsistencies or mistook the governing law? Where the High Court, emphasising once again that it is not a general court of criminal appeal, declines special leave? Where the Executive could not be persuaded to institute a post-conviction enquiry? Where the government, in the midst of another law and order electoral campaign, declined to create an ad hoc enquiry or Royal Commission?

Do we care enough to create a permanent, expert agency with the patience, determination and skill to review contested convictions? In the United Kingdom, the answer to that question was in the affirmative. The result has not been an intolerable flood exhausting the resources of the new Commissions. It has been the correction of a number of wrongs. The authors make a compelling case for the establishment of such a body in Australia. It would re-affirm the commitment of our society to the highest standards of justice and law in all serious criminal proceedings. If, from the study of individual cases requiring action, systematic improvements of the criminal justice system can be identified and achieved, the result in the end may be an enhancement of justice beyond the sum of the cases like Mr Mallard which our institutions can correct. Affording real protections from serious miscarriages of criminal justice is the true test for the civilization of a society, such as ours. But will we face and meet that test?

I commend this bill to the council.

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

WORKERS REHABILITATION AND COMPENSATION (REINSTATEMENT OF ENTITLEMENTS) AMENDMENT BILL

The Hon. A. BRESSINGTON (16:43): Obtained leave and introduced a bill for an act to amend the Workers Rehabilitation and Compensation Act 1986. Read a first time.

The Hon. A. BRESSINGTON (16:43): I move:

That this bill be now read a second time.

As the name suggests, this bill seeks to reinsert in the Workers Rehabilitation and Compensation Act certain entitlements that injured workers have had taken from them over time. Members will need no reminding that just over two years ago the rights and entitlements of injured workers were slashed in the name of propping up the ailing scheme and to reduce the employer levy. However, this was only one of a number of assaults on injured workers, with various entitlements having been previously lost.

This bill seeks to reinstate what I consider are three fundamental entitlements that this parliament has compromised away or simply taken: the right of an injured worker to sue a negligent

employer for damages; the right of an injured worker to be covered by workers compensation when travelling to and from work; and the right of an injured worker to continue to be paid compensation payments when disputing the compensating authority's decision to discontinue payments. By no means do I suggest that I am the first member to propose the reinstatement of these entitlements, and for that reason my speech today shall be brief.

I do, however, consider it important that pressure continue to be applied and that injured workers are aware that they have not been forgotten. Starting with the most recent entitlement to have been discarded, clause 6 of the bill will re-establish the right of an injured worker to continue to be paid weekly payments when disputing a decision of the compensating authority to discontinue those payments under section 36 of the act. If it is found that, following a determination of the Workers Compensation Tribunal, the decision to terminate was in accordance with the act, the corporation can recover amounts paid in the disputed period as a debt, or set off that amount against other liabilities under the act.

This is identical to what existed prior to the Workers Rehabilitation and Compensation (Scheme Review) Act 2008. Section 36 of the act as it currently stands makes the assumption that workers are often vexatious when they dispute decisions around their entitlement to weekly payments. This is a false assumption. Arbitrary decisions by the compensating authority to cease weekly payments that are not in accordance with the requirements in section 36(1) of the act are not uncommon, and disputes are often resolved in favour of the injured worker. That a worker who has likely been on the scheme for some time and eaten through their savings is forced to go without weekly payments while they fight for their resumption in such circumstances is abhorrent.

I am aware that many in the Labor Party desire the reinstatement of this entitlement, with a motion moved at last year's state conference compelling the government to introduce a bill to this effect being passed. With this sitting year coming to an end, it is clear that the government intends to defy this motion—somewhat surprisingly, I might add. However, by moving this bill, I provide the government the opportunity to support this worthwhile reform. The second entitlement that the bill seeks to reinstate is cover for employees travelling to and from work, that is, journey cover. I introduced this knowing full well that it is not supported by business and that it will increase costs to the scheme and place upward pressure on employer levies.

This is a matter of principle to me. If a worker is travelling to work (as most are required to do as part of their employment) or home from work and is injured, that injury has arisen in the course of employment and as such should be covered by workers compensation. The reinstatement of journey cover has long been advocated for by the unions, and many arguments have been raised in support. These include the ability for the corporation to pursue damages claims under common law against negligent parties and in doing so recoup a considerable amount of the compensation paid to the worker; and that coverage under the Workers Rehabilitation and Compensation Act would place greater emphasis on that worker's return to work, which would ultimately be beneficial to the employer.

I repeat: journey cover is a matter of principle, as is the re-establishment of common law entitlements for injured workers as a result of their employer's negligence. I made clear in my contribution to the Workers Rehabilitation and Compensation (Scheme Review) Bill that I support permanently disabled injured workers being able to pursue their employers for damages. Lengthy debate was had on the merits of common law during the second reading and committee stage of that bill, with the Hon. Mark Parnell moving amendments to reinstate common law access, which I supported.

As is my understanding, access to common law was bargained away in 1992 in return for improved statutory benefits, including increased lump sum payments. However, as we have seen, the balance struck—if it ever was—has since been whittled away by successive attacks on the rights of injured workers. Partial reinstatement of common law access will remedy this imbalance. While not in keeping with the no-fault system, it is my position that where blame exists employers should be held accountable, and not for the benefit of government revenue but for the benefit of the injured workers.

In the words of Mr Anthony Kerin, the South Australian President of the Australian Lawyers Alliance, it is completely inappropriate that workplace penalties are being reaped in by government through fines and yet rarely, and even then on a limited basis, is compensation awarded to the injured worker. Mr Kerin has written to me supporting the reinstatement of common law entitlements.

The model of common law access and the associated insurance regime I propose today are by no means set in stone. I make clear that I am more than open to amendments by members. Under the bill at present an injured worker who has suffered a permanent impairment in accordance with section 43A of the act, equalling 15 per cent or more of their entire person, as a result of the negligence, intentional tort or breach of statutory duty by their employer, will have access to common law. While it was suggested that access be limited by setting the standard required to gross negligence, I have chosen not to do so.

As I have said, these reforms are by no way new, and I do not introduce this bill with the expectation that it will pass. However, if it places just some pressure on this government to rethink its current 'business first, injured workers second' approach to workers compensation, then it will have achieved its goal. I commend the bill to the council.

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

STATUTORY AUTHORITIES REVIEW COMMITTEE: ANNUAL REPORT 2009-10

Adjourned debate on motion of Hon. Carmel Zollo:

That the report of the committee, 2009-10, be noted.

(Continued from 27 October 2010.)

The Hon. R.I. LUCAS (16:52): I rise briefly to speak on the noting of the annual report of the Statutory Authorities Review Committee. The Hon. Mrs Zollo outlined broadly the work of the committee over the last 12 months. I join with her in thanking the other members of the committee and the staff who provided service to the committee during the 12-month period. Clearly the work of the committee is evidenced by the reports it produces, in particular the WorkCover report and its current term of reference in relation to the Teachers Registration Board.

On the WorkCover Corporation reference, the Hon. Mrs Zollo made some comments in relation to the committee's recommendations and the government and WorkCover's response. I will make two brief comments. The Hon. Mrs Zollo referred to the recommendation of the majority of the committee, which argued that the monopoly position of Employers Mutual in relation to claims management services should be changed at the earliest opportunity by the introduction of competition.

It was the view of the majority of the committee that, when there was the next opportunity to go out to tender, the decision should be taken to have two or three claims managers competing to try to improve the level of service provided. I hasten to say that under any system there will continue to be criticism of claims managers. There was criticism when we had four or five some years ago and there is criticism now when there is a monopoly provider. If we are to move to a position of two or three, I am sure there will continue to be criticism.

One of the problems with the current arrangement, as with any monopoly position when it does not need to be there, is that there is not the incentive to benchmark and improve, for WorkCover to be able to compare the performance of one manager against another and for there to be some competitive tension in terms of the provision of services.

I note a slight change in the colour of the water, if I can use a colloquial expression. I cannot remember who the government members were at that particular time, because they have changed. Certainly the Hon. Mr Hunter was one of the members, and it might have been the Hon. Mr Finnigan or the Hon. Mrs Zollo. However, the government members representing the government's position were trenchantly opposed to the notion of moving to a competitive environment for claims management. They were very comfortable with the old view of the world: the monopoly provider was the best way of handling it.

As I said, I have detected a slight change in the colour of the water. It would appear from the statements made by the Hon. Mrs Zollo, and even the statements being made now by the minister, that the government's position for trenchant opposition to the Liberal Party recommendation appears—

The Hon. B.V. Finnigan: I think we favoured honouring a contract entered into in good faith.

The Hon. R.I. LUCAS: Well, no; they have actually extended the contract; it wasn't honouring a contract. The recommendation from Liberal members was not to break the contract: it

was that, when the contract next went out to tender, there be an element of competition introduced. That was the recommendation that government members opposed.

It would now appear that the door is somewhat ajar and that government members are perhaps seeing the good sense in the recommendation that had been made by Liberal members, or the non-government majority on the committee, and at least some consideration is being given to opening this up to competition.

The WorkCover board has extended Employers Mutual's monopoly contract position by a further 18 months. It has extended the contract from the current expiry date of 1 July next year until 31 December 2012. I guess only time will tell during this next two-year period, basically, whether the WorkCover board will contemplate moving to a system where we have greater competition in terms of claims management.

We should note that the total fees paid to Employers Mutual have almost doubled. It was being paid about $25 million a year when it got the contract. The year before last, it actually earned $49 million and, in this most recent year, it has come back to $44 million. This is at a time when the parliament—and we have just heard the speech of the Hon. Ms Bressington—actually has made the task of claims managers, obviously in terms of managing liabilities, much easier because it has changed significantly workers compensation legislation in South Australia.

I note in the Auditor-General's Report that there was an increase in 2008-09 in terms of its total payments to $49 million, and one of the reasons given was its better performance in terms of increasing the number of people who left the scheme through redemptions and reducing the number of people still on income maintenance. Of course, that was significantly assisted by the knowledge that employees (or workers) had, namely, that, come July this year, redemptions were going to be largely removed as an option from the system.

So, the parliament has actually made the task more manageable for the claims manager, but the claims manager, somehow under the existing monopoly contract, seems to be the one who has received the massive increase—as I said, from $25 million to $49 million in the space of two or three years in terms of claims fees. Sadly, this is the sort of financial management that the WorkCover Corporation and the current Rann government approves of. It is certainly one that we have raised concerns about, and continue to raise concerns about.

The final point made by the Hon. Ms Zollo refers to the fact that the government decided not to adopt the recommendation from the committee that WorkCover annually report the level of claims savings in legal costs under its sole provider contract, as extensive information is already provided. That statement by the Hon. Ms Zollo is an absolute joke. The reason the government would not adopt the recommendation is that WorkCover cannot demonstrate the claimed savings from its monopoly legal contract—because, again, it went to a monopoly legal contract with one legal firm in South Australia. It claimed massive millions of dollars a year in savings from that contract but, when it was asked, through the committee, to demonstrate that it had actually made those savings, it could not.

We recommended that in its report it should be required to report what the legal fees and costs are and how much it saves under the monopoly contract it has moved to. Of course, WorkCover did not want to do that and the government does not want to force it to, so the government says, 'Well, we didn't agree with that, because extensive information is already provided.' I do not know what extensive information the government and the Hon. Ms Zollo are talking about, but it certainly has nothing to do with the actual level of savings in legal fees, which was the claim made by the minister and by WorkCover Corporation when it moved to the monopoly legal services contract. With those comments in relation to the WorkCover report of the committee, I support the motion.

The Hon. CARMEL ZOLLO (17:01): As has already been placed on the record by minister Paul Holloway, there has been an extension of the contract with Employers Mutual which will run from the current expiry date of 2011 until 31 December 2012. The minister has placed on record that at the current time the scheme is experiencing significant change in the areas of work capacity reviews, medical panels, the cessation of redemptions and the introduction of new technology. As is on the books, a statutory review of the scheme is due to begin early next year.

It was the board's decision to extend EML's contract to reflect a desire to maintain certainty in service delivery during this period of change. The board will continue, as the minister has already placed on record, to monitor Employers Mutual's performance and will reassess its position in 2012. I place some of those comments on the record because, as I mentioned, the chamber did not

have the opportunity to debate that review into WorkCover. Again, I thank the honourable members who served on the committee, and the committee staff.

Motion carried.

LAND TAX

The Hon. J.A. DARLEY (17:03): I move:

That the regulations under the Retail and Commercial Leases Act 1995 concerning exclusions, made on 26 August 2010, and laid on the table of this council on 14 September 2010, be disallowed.

This is a motion to disallow regulations under the Retail and Commercial Leases Act, as gazetted on 26 August 2010. The changes take effect from April 2011. Section 30(1) of the Retail and Commercial Leases Act provides that a retail shop lease cannot require the lessee to pay land tax or to reimburse the lessor for the payment of land tax. Section 30(2) further provides that the lessor's liability for land tax in respect of the premises may be taken into account in the assessment of rent.

Those sections need to be read in conjunction with section 4 of the act, which provides that the act does not apply to a retail shop lease if the rent payable under the lease exceeds $250,000 per annum or, if a greater amount is prescribed by regulations, that other amount. Therefore, at present the act explicitly prevents lessors from passing on land tax to their tenants, except in instances where the rent payable under the lease exceeds $250,000. So, if the rent payable under a lease exceeds $250,000, the land tax payable for the premises can be passed on to the lessee.

The changes to the regulations will increase the rent threshold from $250,000 to $400,000; that is an increase of $150,000. The effect of that will be that lessors who have previously passed on land tax to their tenants under existing leases, with a rental over $250,000 but under $400,000, potentially could no longer be able to do so, at least not in an open and transparent manner. Instead, this change will result in those landlords passing on land tax as increases in rent at the time of renegotiating leases, normally at three or five-yearly intervals. It will result in a significant shift in who falls under section 30(1) and who falls under section 30(2) of the act.

I should highlight that in most, if not all, instances, lessees are already paying land tax indirectly through rental increases, anyway. Instead of creating a more open and transparent system, the increased threshold will force more landlords to essentially hide land tax liabilities by passing them on as rental increases. These changes are a huge blow not only to tenants but to landlords as well. The reality is that many landlords, including those at the bigger end of town, are struggling to meet their land tax liabilities.

This will be compounded by having to cope with the additional burden of land tax, which they will not be able to recover until such time as a rent review arises. Of course, at the end of the day, all of these costs ultimately will be passed on to consumers, who will have to pay more in order to meet the increased costs of the lessee. This situation will not be resolved unless the government seriously considers further reducing the rate in the dollar in the scale of land tax under the Land Tax Act.

There is also some concern about the lack of any transitional provisions regarding the implementation date of the regulations. It is not clear whether the changes will apply to new leases entered into from 4 April 2011 or whether they will apply to existing leases that were entered into before that date. I imagine that this may be left to the courts to decide. I am strongly of the view that the Retail and Commercial Leases Act is in need of review in order to clear up a lot of this uncertainty and to make things clearer; in effect, to unmuddy the waters for tenants and landlords alike. Tenants ought to have the benefit of knowing what they are paying in rental as opposed to rates and taxes.

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

WORKERS COMPENSATION REGULATIONS

Orders of the Day, Private Business, No. 13: Hon. R.I. Lucas to move:

That the general regulations under the Workers Rehabilitation and Compensation Act 1986 concerning revocation of regulations, made on 24 June 2010 and laid on the table of this council on 29 June 2010, be disallowed.

The Hon. R.I. LUCAS (17:09): I move:

That this order of the day be discharged.

Motion carried; order of the day discharged.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE (END OF LIFE ARRANGEMENTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 29 September 2010.)

The Hon. D.G.E. HOOD (17:10): I rise to indicate my position on this bill that has been proposed by the Greens, and I think members will not be shocked to hear that I am strongly opposing the bill. I am aware of the time so I will get straight to it. There are a number of things I want to address in this bill and the first thing I would like to say for members' information is that next week we will be tabling a petition with 2,000 signatures against this bill and, to be honest, we have not even tried. I think we could easily get 10,000 if we tried so that is something for members to be aware of.

Also there are a few things I would like to clear up that I perceive might be misconceptions about this bill. We often hear with respect to the debate on euthanasia that some 80 per cent of the population favours it. I have even heard people quote figures of 85 per cent. I strongly reject those figures. I think the Hon. Mr Finnigan made some very lucid comments in his contribution to the last euthanasia debate which outlined very succinctly that there is good reason to think that the numbers are substantially less than that. In fact there was an *Advertiser* poll about three or four weeks ago that showed that it was, in that poll anyway, about 51:49. In fact I have never believed a result of 80 per cent, although that is the figure that keeps getting bandied around.

The Hon. M. Parnell: I'll send it to you.

The Hon. D.G.E. HOOD: I look forward to that and to ascertaining the reliability of it. In Oregon we know that 51 per cent of the respondents favoured euthanasia. In Washington it was 46 per cent and in California, 46 per cent. These figures show in Oregon slightly more than a majority but in the other states certainly less. There is an *Advertiser* poll right at the moment, I just noticed as I was walking up to my office, and I note that that is running at about 60:40 in favour. So, I think the figure of 80 per cent should be disputed, and I certainly do not accept it.

We have seen political parties or smaller groups that have tried to stand on euthanasia platforms, and I think of Philip Nitschke himself who stood back in 2002 and who received around 10,000 votes, as I recall. So there is the claim that this is such a pressing issue and then, when the public actually had a chance to vote for somebody who is probably the single most known advocate of euthanasia, in fact he got the grand total of about 10,000 votes. I think that is a clear rejection of the argument that this is such a burning issue in the public's mind.

In fact, we had two groups standing in the last state election advocating euthanasia and those groups each received something around 0.3 per cent of the vote, if I recall correctly—0.2 and 0.5 of 1 per cent. Here was the chance for the public to stand up and make a big charge for euthanasia and, in fact, that is what actually happened. I think that is a more accurate reflection of the extent to which the people of South Australia view this as a priority.

Just for members' information, as I am sure they would be aware, of course the most recent vote in Australia with respect to euthanasia occurred in the Western Australian parliament just a few weeks ago in the upper house and the bill was defeated by a margin of about two to one. I reiterate that Family First opposes this bill, which is an attempt yet again to legalise doctor-assisted suicide and active euthanasia in South Australia.

Over the years in this place there have been various proposals to legalise the practice of voluntary euthanasia and all have failed when subjected to parliamentary scrutiny. This proposal before us today is certainly a very broad bill proposing far-reaching changes to the way medicine is practised in South Australia and going beyond what many of those past bills have proposed. Most particularly the bill proposes that a person does not need to be terminally ill in order to qualify to be put to death under this bill. Indeed this bill will allow doctors to kill people who are not even dying. I find that aspect particularly troubling and indeed absolutely unacceptable.

I begin by acknowledging, as I did during the past debate, that euthanasia is indeed a truly difficult issue for many people. There are sincere proponents on either side of the debate. On the one hand, there are those who say very sincerely that people who are suffering should have the option to have a 'dignified death', which means to them that a doctor should be able to administer a

drug to kill them if certain preconditions are met. On the other hand, proponents of euthanasia should admit that there are those with just as sincere reservations about euthanasia, the message being that in some circumstances the active deliberate killing of a citizen of this state may be permissible should this bill pass.

Proponents of voluntary euthanasia should also admit one other fact: there may very well be strong proponents of euthanasia in this chamber who may nevertheless be profoundly dissatisfied with the model found in this bill. The reality is not voting on euthanasia. This is not a referendum on euthanasia: this is a vote on a particular model of euthanasia. There are certainly some who I have spoken to who may be somewhat in favour of the concept of active euthanasia but who, I think, are predisposed not to support any bill at any cost. If they are to support the concept of euthanasia, these members—certainly, it has been suggested to me—demand better safeguards and consultation.

Let us remember, this particular bill, which seeks to make far-reaching changes to the way medicine operates in this state with respect to palliative care, has not been through a consultation process, as one might expect for such a serious change. Those steps may not be required when we are dealing with comparatively simple bills, but I think that people may legitimately expect that that would happen in cases of literal life and death type decisions. Certainly, the life and death implications associated with this bill are quite profound, as we are dealing with situations where people do not even need to be terminally ill in order to qualify for euthanasia under this bill.

Now, as members are aware, there were some errors, or at least one error, in the previous version of the bill, and I think the honourable member who introduced the bill has admitted that. During the committee stage on the previous bill, it was discovered that there was some wording that actually allowed dentists to perform euthanasia in that bill. Now that wording has been amended in that version and it does not appear in this bill, which is obviously an improvement, but it does make one wonder what mistakes happen when you are drafting a bill about such serious matters.

I believe it is useful to begin by pointing out what this bill is not. This bill is not a bill to legalise the withdrawal of life support from a terminally ill person. That is already legal in most circumstances, and doctors have no duty to prolong life needlessly, and neither would I support that. Nor is there a duty to treat someone who does not want treatment. Doctors are already allowed under law to not treat people who refuse treatment. There is no problem with that under our current law. Jehovah's Witnesses, for example, routinely refuse blood transfusion. Some die as a result, but doctors do not interfere with that wish.

In the same way, many elderly patients make directives that they not be resuscitated in the event, for example, that their heart stops beating. These requests are already routinely respected in our society. There is a clear difference between allowing someone to die and intentional killing. Ethicist Daniel Callahan provides this distinction, and I quote:

> A lethal injection will kill both a healthy person and a sick person. A physician's omitted treatment will have no effect on a healthy person...It will only, in contrast, bring the life of a sick person to an end because of an underlying fatal disease.
>
> ...the doctor who, at the patient's request, omits or terminates unwanted treatment does not kill at all. Her underlying disease, not his action, is the physical cause of the death...

Nor is this bill about giving terminal patients high doses of pain relief, knowing that the administration of pain relief may end their life. Under the so-called doctrine of double effect, if a high dose of pain relief is required by a patient then it is quite permissible for a doctor to administer it, even if the doctor knows, or strongly suspects, that the pain relief may end that patient's life. This already occurs every day in our hospitals, and I offer for the chamber's consideration it as an appropriate and indeed valuable option for doctors and families. Ethicists John and Paul Feinberg explain the principle as follows, and again I quote:

> We are obligated both to preserve life and to relieve pain. Sometimes it may be impossible to do both. If it is impossible to preserve the life of the terminally ill, we are not immoral if we do not. Of course, there is still the obligation to relieve pain and suffering. If we do what we can to relieve pain and in the process hasten death, there is still no moral blame, since we could not preserve life.

I do not believe it when the polls show support for euthanasia at 80 per cent, as I said a moment ago. I believe that many of the people surveyed have those types of passive actions in mind, that is, the withdrawal of treatment or the administration of pain relief with a double effect. None of these things are considered to fall under the category of active euthanasia. Certainly, I feel

convinced that nothing like 80 per cent of the population would support the deliberate intention to kill a patient who may not even be terminally ill, as permitted by this bill.

So, let us be crystal clear on what this bill actually does. This bill extends those doctrines to allow medical practitioners to actively kill patients who may, in fact, not be dying or terminally ill in any way whatsoever. The argument is made that this proposal, and others like it, contain 'numerous safeguards', but I wholly reject that submission. I reject the fact that the regime set up in this bill contains anything like the safeguards that most members of the South Australian public would expect.

For example, this bill sets up a voluntary euthanasia board. Some proponents talk of the board as if it has vast powers to oversee this new euthanasia regime, and yet the bill specifically notes, in inserted section 27:

> It is not a function of the Board to approve or otherwise authorise each request for voluntary euthanasia.

So, if the board is not there to look at each request—that is, approve it or not—what is it constituted for?

The inserted section 41 describes a very small class of people who may apply to the board for a determination (most particularly the doctors involved in the procedure themselves) and then lists a limited set of decisions the board can make. In essence, this is a body constituted to provide doctors with legal immunity in some of the more difficult or, you might say, morally questionable, cases.

It is the sort of body I would want if I were Dr Philip Nitschke or the like. Third parties, parents or children of the patient, family GPs or medical specialists who are not part of the euthanasia process have no standing to bring any application to the board whatsoever so the board is nothing more than the illusion of a safeguard, I submit.

Much is also made of the fact that psychiatrists will pay a key part in determining whether people seeking euthanasia are of sound mind. Again, this is simply bluster and an illusion. The language of the inserted section 35(3)(d) specifies that a referral to a psychiatrist is only required if the practitioners suspect—which, of course, is an entirely subjective element—that the person requesting death is not of sound mind or is under duress; therefore, referral to a psychiatrist is completely discretionary.

Oregon's Death with Dignity Act has a similar discretionary referral clause and, of the 59 people who sought euthanasia in that state in 2009, how many do you think were referred to a psychiatrist? The answer, of course, is not one. One would have thought that a bill with genuine safeguards would contain a mandatory referral to a psychiatrist as an absolute bare minimum, rather than a referral at the discretion of the doctors involved at the very least. I ask members of this chamber how many referrals would Dr Nitschke make if it were entirely at his discretion?

I have already made mention of the fact that this particular model of euthanasia does not even require a patient to be dying. The inserted section 35 certainly allows people who are in the terminal phase of a terminal illness to request euthanasia. This is where many proposals to allow euthanasia draw the line. But the bill takes the concept one huge leap further: the inserted section 35(1)(b) also allows any adult person who is suffering from irreversible illness, injury or medical condition to request euthanasia, provided only that that person subjectively believes that their life has become intolerable.

During debate on the last bill before parliament, which contained similar language, about this time last year, I raised some troubling scenarios that will result from this radical concept. In our mind, we often have pictures of sick and old people requesting euthanasia, but, in fact, the Dignitas Clinic in Switzerland has routinely killed people who are young and comparatively healthy.

Similar to this bill, Dignitas will accept people who are not terminally ill. One *Daily Mail* report from the UK, which I can supply to members if they wish, raised concerns with the active euthanasia of 23-year-old Daniel James, a young rugby player from Worcester in the United Kingdom.

Daniel was paralysed after being crushed in a rugby scrum during training and was confined to a wheelchair. He was not terminally ill; he was not dying. He simply believed that being confined to a wheelchair was intolerable and so he was killed at the Dignitas Clinic. Under the wording of this section, the same 23 year old will be also permitted to request euthanasia and I find that wholly unacceptable.

Others have raised the hypothetical case of a concert pianist who gets arthritis. Their life may now be intolerable to them. Again, remember, this is a totally, completely subjective description and they would therefore be able to request euthanasia. One could also imagine the case of an artist who loses his or her sight, for example. Under the wording of inserted section 35(1)(b), all they would have to say is that they believe their life is intolerable with their new disability and the preconditions for being euthanased would be met. Their life would soon be ended.

The honourable mover may argue that the voluntary euthanasia board can intervene in such cases but, again, I see no actual section in the bill that would enable them to intervene unless the registrar knew of the case or one of the doctors involved in the euthanasia expressed a concern with the board and sought a determination. They simply would not know in most cases. I remind members again of the provisions contained in the inserted section 27:

> It is not a function of the Board to approve or otherwise authorise each request for voluntary euthanasia.

I submit that this bill has a number of serious flaws. The mover of this bill has criticised the need for additional safeguards, calling additional safeguards hurdles put up in the way of people who are suffering. With all due respect to the honourable member, I believe it is appropriate for there to be numerous safeguards and numerous hurdles in the way of deliberately assisted suicide along these lines. It should not be a quick and easy process, and obviously it should not be entered into lightly.

There are other serious concerns which do not relate to the actual provision of euthanasia, but I believe again it demonstrates cause for concern and pause for members in considering their position on this bill. One of those concerns relates to insurance, and it is a very serious matter indeed. The inserted section 55 provides that an insurance company is not entitled to refuse to pay life insurance on the ground that a person's death resulted from voluntary euthanasia. Further, people requesting to buy life insurance are not required to tell the insurance company that they have requested euthanasia. That rule is spelt out in subsection (3).

Potentially, we could have people walking into the euthanasia clinic, buying life insurance over the phone on the way, and then being given a lethal injection. I do not mean to be trivial about this but that is a conceivable scenario, and it is hardly fair on the insurance companies or, for that matter, other purchasers of life insurance as their premiums will inevitably rise. How is that fair? However, that will be allowed and, in fact, will be legal under this bill. In fact, the bill specifically bans insurance companies from blocking such attempts. We will see a dramatic rise in life insurance premiums.

I approached the Financial Services Council, the peak body representing life insurance companies in Australia, regarding this provision in section 55. They replied to me in writing, and I will read that out in a moment, but it indicates their concern regarding the section. I quote from their communication with me in full so as to be fair:

> In providing the following comments on the Bill, we wish to emphasise that the interaction of State legislation concerning life insurance with federal legislation such as the Life Insurance Act 1995, and the Insurance Contracts Act 1984, is potentially a complex matter requiring careful legal analysis—not least because of the provision in the federal Constitution that provides that where there is a conflict between State and federal laws, that federal law will prevail.
>
> As such, we suggest that the insurance provisions be removed until such time as Members of the South Australian Parliament have had an opportunity to consider the complex legal details of the proposals for insurance in this Bill. We make the following brief comments on proposed section 55 of the Bill being considered.

I read them word for word, as follows:

- we raise the jurisdictional application of South Australian legislation in the area of life insurance—we understand that most life insurance contracts are actually issued out of NSW, Qld and Victoria;
- the proposed protection for the consumer under the proposed section 55 contradicts current disclosure obligations under the Insurance Contracts Act 1984 (Cth);
- the proposed section 55 also creates a risk for anti-selection for the insurer—which ultimately results in an adverse cost impact for other policyholders with that insurer (anti-selection within a risk pool will increase the cost of insurance for all those in that pool);
- it is not clear whether section 55 will have a retrospective effect. If it does, this will have a negative and disruptive impact for insurers in terms of the pricing of insurance contracts, reinsurance arrangements, reserving and capital management (noting that capital/prudential standards for insurers in Australia are set and supervised by the Australian Prudential Regulation Authority (APRA). As such, APRA may be interested in the potential impact of these provisions);

- overall, the proposed section 55 creates significant uncertainty as to its intention and scope, for example, in relation to suicide exclusions, and where an existing life insurance policy has exclusions for pre-existing conditions.

I think it is fair to say that the insurance industry has very serious concerns about this matter. These are serious issues, and the wording may in fact encourage and legalise what is in effect insurance fraud.

Further, the bill, in inserted section 54, calls for the corruption of public records. The inserted section states that the death of a person shall be recorded as being due to their underlying illness rather than due to the administration of voluntary euthanasia. In cases where a person is suffering from a terminal illness, the inserted section makes some sense—for instance, if they have cancer. However, we have to remember that under this bill terminal illness is not required.

I have raised the hypothetical scenario of a concert pianist suffering from arthritis being able to request euthanasia because to them their life has become subjectively intolerable. Under the strict wording of this section, the cause of death on that person's death certificate would be listed as arthritis, which, of course, is nonsensical. Certainly, the entire wording of this section is very difficult to understand, when we are dealing with cases where the underlying illness is not life threatening.

Further, in the inserted section 45(2)(b), there is a reference to medical practitioners supplying drugs for self-administration. There is a clear delineation in the medical field in our country between those who can prescribe drugs, that is, doctors, and those who can supply them, that is, pharmacists. This section, which has doctors supplying drugs to patients, puts the onus on doctors to perform the role of a pharmacist.

To be fair to the honourable member, it may be that that was not his intention, but certainly the advice I have had from the people I have had look at the bill suggests that that is the case. So, what you would have is the doctor performing the role of a pharmacist, sourcing the drugs, presumably selling that drug to the patient, as would normally be the function of a pharmacist, and then properly disposing of drugs that are partly used or out of date, and, of course, this is contrary to federal law as it stands.

Further, this bill appears to have conflicting elements. One clear example is the inserted section 37, which requires any medical practitioner to forward an active or advance request to the registrar of the euthanasia board. There is no scope for conscientious objection in that regard; however, in very recent discussions I have been made aware that the honourable member is removing the advance request provisions from this bill, so, to be fair, that will be removed. The fact is that, if a doctor who may object ethically to euthanasia refuses to forward the form to the registrar (there are provisions for ethical objections in the bill, I acknowledge), then that doctor will face imprisonment for 10 years.

This provision is disturbing in that many good doctors who may sincerely oppose the practice of euthanasia will potentially face imprisonment. Whether or not a court would put them there, of course, is another matter but, nonetheless, they will potentially face imprisonment if they refuse to participate to that degree, and yet the inserted section 56 provides that medical practitioners may decline to participate in the administration of voluntary euthanasia and should face no penalty. 'Hear, hear!', I say to that. Mind you, doctors and hospitals that refuse to participate in the practice of euthanasia are required, under this bill, to advertise, or to supply, the name of another doctor or institution that does.

I was at a seminar today, which members would be aware of, that we organised with Mr Tom Kenyon MP from the other place, and there were a number of clinicians there, including Dr Daniel Thomas, who is a cancer specialist at the Royal Adelaide Hospital; he treats cancer every day, and he said quite categorically, 'I would absolutely refuse to do that. I don't care what the law says about it; I just wouldn't do it.' This is going to create very serious problems in practice.

I will read onto the record some comments that I have received regarding this bill. In particular, I sought some comment from some palliative care specialists regarding provisions in this bill. Mrs Marion Seal, writing on behalf of the Respecting Patients' Choices program, notes that the current laws work exceptionally well, compared to other jurisdictions in Australia under the consent act framework, in conjunction with the Guardianship and Administration Act 1993, giving rise to policy which has enabled the provisions under our law for refusal and advance request of medical treatment under statute (section 7 of the consent act) and common law (affirmed section 13 of the consent act) to be brought into effect.

From this perspective, it would be judicious to allow the consent act, that is, the current law, to remain. On the phone she has explained that the wording of this bill would make their advance directive process unworkable. Dr Bethany Russell, who works in palliative medicine through the Royal Australasian College of Physicians and is now based at Daw House Hospice, who have I spoken to at the Repatriation General Hospital in Daw Park, has made the following submission to me that I believe is important for the record. Again, I am quoting in full. To be fair, these are not edited comments: they are the full comments. This is a doctor working in palliative care, and I quote directly from her communication:

It's easy for the media to focus on the suffering of an individual and their right to autonomy. I have personally witnessed many protracted deaths of both my patients and indeed of family and friends. I agree that these situations are distressing and frustrating, particularly where severe pain or gradual loss of neurological function is involved. However a sober review of the implications for society on a broader level may be difficult to present on television, but is the duty of parliament.

She goes on:

Firstly, euthanasia and physician assisted suicide erode trust between doctors and patients. The Netherlands experience has shown frail elderly people become reluctant to seek medical attention—refusing to take pain medications, and refusing hospital and nursing home admission for fear they may be killed by their doctor. Establishing rapport with a person 40 or 50 years my senior with a language barrier or cognitive impairment is difficult enough without the added complexity of them doubting my intentions. Despite poorly controlled symptoms, many patients young and old sadly refuse to see our palliative care team due to the misconception that we will somehow hasten their death, even though it is illegal. Without our absolute rejection of intentional killing, even more patients will be deterred from accessing the help they need.

She goes on:

Secondly, euthanasia and physician assisted suicide sends mixed messages to the community that suicide is acceptable. People with depression—youth in particular, are vulnerable to these influences. We need to be clear that premature death is a tragic and unacceptable response to life's struggles when effective and compassionate services are (or should be) available. Also...this bill outlines that mental illness would need to be excluded before euthanasia can be approved. Unfortunately depression, anxiety and other mental illnesses are extremely common in the setting of chronic or terminal illness, making this judgement fraught with difficulty. Research also shows that patients frequently change their minds about end-of-life decisions as death draws near, so, forward planning regarding this issue is also fraught with difficulty.

She continues:

Thirdly, euthanasia and physician assisted suicide will cause serious psychological trauma to medical and nursing staff. 'First do no harm' is such a fundamental principle by which we guide our ships through daily medical and ethical storms. Giving a treatment with intent to kill is very different from either giving a treatment with intent to alleviate symptoms whilst accepting the side effect of sedation or withholding life-prolonging treatments within the setting of terminal illness. Blurring this distinction will lead to sloppiness for some, guilt and anxiety for others. It is hard to imagine teaching medical students how to resuscitate patients in one class and how to kill them in the next.

She goes on:

And finally, euthanasia and physician assisted suicide will have deep ramifications on the psyche of our society. It stems from a line thought that life is expendable; that when a human is no longer productive/active/happy they should be disposed of in the cheapest and quickest manner. In an increasingly consumerist society it is simpler to press the abort button than to provide appropriate care for a seriously ill patient. Again, the Netherlands experience has proved there is a 'slippery slope' of legislation with children as young as 12 and babies with disabilities (as per the Groningen Protocol) now being euthanased, as well as approximately 500 unconsented people per year. Dutch parliament is currently considering the inclusion of people over 70 years of age who are simply 'tired of life'. These laws are wide open for abuse and do not protect the sacred nature of human life—we must stand against similar changes in Australia.

She concludes with these words:

I direct your attention also to the position statement of the Australian and New Zealand Society of Palliative Medicine, of which I am a member...These experienced physicians are not strangers to suffering and yet firmly oppose the practice of euthanasia and physician assisted suicide. On Thursday 16 September [this year], during a national conference held in Adelaide, 66 of these physicians were moved to protest this new bill on the steps of the South Australian parliament.

It is a long letter, but I think well worth reading onto the record. The truth is that, as a member of the palliative care society of Australia and New Zealand, she has firmly rejected active euthanasia, as has her society. This is not just her personal opinion: the Society of Palliative Care's official position rejects active euthanasia in legislation.

I make just a brief note on the seminar that we held today. I think that it was a success, it is fair to say. At the seminar we had four key speakers. There was Dr Daniel Thomas, a cancer specialist from the Royal Adelaide Hospital. He is a recipient of the Douglas Hardy Research Prize,

the NEMO Prize, the Albert Baikie Memorial Medal, the Pfizer Award and the Haematology and Oncology Targeted Therapies Award. He said to me that, because of the nature of his profession, almost all his patients are dying or facing that situation.

He said publicly that he strongly opposes this measure because—and he said the literature supports this—about 6 per cent of people who are given up as having no hope (that is, they are in fact terminally ill) actually can completely recover. He told a story of how he had a patient just a few weeks ago who completely recovered, although he had actually given up on that person and considered that they would certainly die. He made the point that none of us knows the future and that in about 6 per cent of cases that appear to have no hope, that is to be hopeless, in fact they do go on to live, and live for many years quite a happy and healthy life in many cases.

He also made the point that none of the major medical bodies— none of them—has a position in favour of euthanasia, including the AMA, the Palliative Care Association, the Australian Anaesthetists Association, and on and on it goes. So, he challenged anyone to find a medical body that supported euthanasia.

Another speaker was Ms Elizabeth Keam, who is a registered nurse and a former director of the Mary Potter Hospice Foundation and a current board member of the Palliative Care Council. She concurred with the comments of Dr Daniel Thomas, but she told a very personal story that she was actually offered quiet euthanasia, if you like, three times. She was told three times that she was expected to die, that she would not live and that it was hopeless. And yet there she is today, in relatively good health.

We also had Emeritus Professor Ian Maddox, the Professor of Palliative Care at Flinders University and a palliative care consultant and founder of the Daw House Hospice, who spoke of his objection to this bill. Finally, we had a name that many people here would know well, Dr Gregory Pike, a director of the Southern Cross Bioethics Institute, who gave some very sound reasons to oppose the bill as well.

During the debate on the last euthanasia bill, I read onto the record the formal position of several organisations, including churches, regarding euthanasia. At that stage I did not yet have a response from the Presbyterian Church in South Australia. I am grateful for the submission from their committee for investigating social, moral and ethical issues, which reads:

> The Church and Nation Committee of the Presbyterian Church of South Australia urges all representatives of the people in parliament to have another look at sections 7 and 17 of the Consent to Medical Treatment of Palliative Care Act 1995 and realise that all that needs to be legalised is already in place. The Presbyterian Church of South Australia recognises the good intentions of those promoting the legalisation of voluntary euthanasia, that is to relieve pain or duress of those with medically incurable untreatable diseases by consciously ending that life. However, we respectfully believe that this purpose does not justify the means proposed to be used, namely the deliberate administering of drugs with the aim of death.

I read that onto the record because it has been suggested by some members that the Presbyterian Church in some way supports euthanasia. It is quite clear that they do not. In fact, I have further documentation to support that.

I also now have correspondence from the Catholic Church. It has been suggested by some that the Catholics are ambivalent about this, but that is clearly not the case. I have a very long letter here concerning which, in the interests of time if members are looking to move on, I will not read out every word, but I will give members the gist of this letter, if I may. I think it is quite clear that their position is unequivocal. If you will bear with me for a moment, I will get to the crux of it. The church states:

> Euthanasia puts enormous pressure on the frail aged to do away with themselves in order to lessen the distress they believe they are causing their family. Euthanasia puts enormous stress on medical and nursing staff not to continue their great care for those in high dependency. People come to aged care homes in order to be cared for, not have their lives terminated before time.

It goes on; they unequivocally oppose euthanasia, and I have that letter for members who wish to access it. Lastly, and I think this is one of the most important points that I will make, I also received the following very powerful correspondence from a person who was at one stage profoundly disabled and who would likely have availed himself of a euthanasia option, according to his own admission, if given the chance.

I believe it is important to hear the voice of someone on the other side of the debate, that is someone who may have been euthanased if such a regime existed here. This person has agreed

to their name being used publicly, so I will do that with some reservation. The letter, written to me, says:

Dear member of parliament,

While euthanasia on compassionate grounds seems a good thing on the surface, put yourself in the position of the elderly, disabled or unwanted person. I do not have to put myself in such a place, I am already in such a place. I was born totally blind and in fact was a vegetable for the first couple of years of my life, suffering from cerebral palsy. Through the persistent and loving work of my mother, I learned how to sit up, hold objects, eventually eat without assistance and live a normal life albeit totally blind. The doctors said I'd never live a normal life.

In spite of me overcoming the first hurdle of my life, there have been many times I've been made to feel unwanted, a burden on society and that I should not live. My grandmother and brother consistently made me feel like I really should do everyone a favour and die. There have been times when I've felt such a burden to society that I have considered dying. Of course, at these times, rather than being encouraged to do so, GOOD friends have helped me through and helped me see my value in society. I'm now married with seven children, [have] an excellent job, and helping hundreds of thousands of blind people around the world through the technology I have developed to aid blind people use computers.

Aiding those blind people includes my own mother, who is using the technology this person developed in order for her to learn how to use a computer. The letter continues:

Euthanasia and assisted suicide are both extremely dangerous and outrightly wrong. People who are already vulnerable can be manipulated, as I was, to feel like ending my life. In such circumstances we need to be encouraged to live and given hope, not encouragement to die. My life has turned out far more successful in every possible way than my brother who made me feel I should die, and my grandmother, who consistently made me feel worthless. This is not about the rights of the disabled or elderly to choose to end their life; this is about protecting such people from the ill motives or prejudices of others.

DO NOT allow the legalisation of euthanasia or assisted suicide. Just remember: it may be you who someone convinces to die when you're at your lowest point. Rather, you could be given hope, love and worth, which all humans deserve, regardless of disability or age. It is not up to others to assess the quality or span of another's life.

I will not name that person, but if members are interested I have those details.

In closing, I note that the Netherlands has allowed euthanasia since 1973 and has formally allowed so-called mercy killings by doctors since 2002. The range of conditions has expanded gradually, as it would here, I suspect. This year more than 100,000 Dutch citizens signed petitions calling on parliament to pass laws allowing people who are over 70 years and simply tired of life to be euthanased. Hundreds in the Netherlands every year are euthanased without their specific consent, including babies born with disabilities or terminal conditions.

This is very telling: it is little wonder that Els Borst, who was health minister in the Netherlands at the time euthanasia was legalised, now says that she thinks it was the wrong move and that the country should have focused instead on palliative medicine. That was recently reported in *LifeSite News* in December 2009. There we have the minister responsible for bringing it in now wishing they had not, very publicly and clearly.

In short, there are many serious question marks regarding the drafting of this bill and practical problems such as those outlined by the Insurance Council. I am asking members who are predisposed to supporting the concept of euthanasia not to support any bill for euthanasia and certainly not this bill. It will allow people who are not even terminally ill to be killed, as I have outlined at length. Family First will strongly oppose this bill.

Debate adjourned on motion of Hon. I.K. Hunter.

WATER FLUORIDATION

Adjourned debate on motion of Ms Bressington:

That this council urges the Minister for Health, the Hon. John Hill, MP and the Principal Water Quality Adviser for the Department for Health, Dr David Cunliffe, to attend the public meeting being held in Mount Gambier on 9 October 2010 on the issue of water fluoridation.

(Continued from 29 September 2010.)

The Hon. R.P. WORTLEY (18:01): I move to amend the motion as follows:

Leave out all words after 'That this council' and insert—'notes the public meeting held at Mount Gambier on 9 October 2010 on the issue of water fluoridation and endorses the continuing process of fluoridation across country South Australia.'

The government is fully supportive of water fluoridation. Fluoridation has been practised in Australia since 1953 and in South Australia since 1971. Currently, over 80 per cent of Australians receive fluoridated drinking water. It is estimated that around 300 million people in about 10 countries consume fluoridated water. A further 200 million people in a number of other countries consume fluoridated salt as an alternative.

There is clear evidence that water fluoridation, in combination with other measures such as improved dental hygiene and use of fluoridated toothpaste, has contributed to substantial improvements in dental health. A number of scientific reviews have been undertaken and, other than mild dental fluorosis—which results in small, white opaque areas in tooth enamel, of which the only result is a slight visible impairment—risks to public health in Australia have not been found.

The claims presented by the honourable member about water fluoridation are similar to those presented by the anti-fluoridation lobby. The claims are based on a mixture of selective and often outdated information that ignores the majority of available evidence. There is a tendency for the anti-fluoridation lobby to equate the health effects caused by exposure to high concentrations of fluorides in countries such as China and India as being the same as those with exposure to low concentrations used in drinking water fluoridation in Australia.

These opponents of fluoridation often allege that they alone have examined the scientific evidence and that governments, ministers and agencies that support fluoridation have not reviewed all published information. This cannot be further from the truth. Published evidence on water fluoridation is kept under ongoing review by the South Australian Department of Health, along with peak health agencies such as the National Health and Medical Research Council.

The NHMRC has undertaken four comprehensive reviews, with the most recent being published in 2007. This review catalogued and assessed 5,418 scientific articles published since 1996 dealing with beneficial and potentially harmful effects of water fluoridation, including dental and skeletal fluorosis, cancer and Down syndrome. All publications listed in the review are publicly available and accessible to all.

Contrary to claims by the honourable member, the review did consider all scientific publications available. The review was impartial, evidence-based and undertaken in a fully transparent way, with scrutiny from a range of independent scientists. In particular, doubts raised by the honourable member about the scientific rigour and integrity of the work undertaken by the Australian Research Centre for Population Oral Health at the University of Adelaide are without substance and are rejected.

The only potential harmful effect identified by the NHMRC review as being associated with water fluoridation was dental fluorosis. However, as identified by Food Safety Australia New Zealand in its review of bottled water fluoridation in 2009, dental fluorosis in Australia is almost exclusively either mild to very mild. This fluorosis strengthens tooth enamel and is not visible to the naked eye. Visible forms of fluorosis are rare in Australia and, although the prevalence of water fluoridation is increasing in Australia, dental fluorosis is decreasing. This is due to the education on appropriate use of other sources of fluoride, including toothpaste and supplements.

Based on a 2007 review, NHMRC recommended that drinking water be fluoridated as it remains the most effective and socially equitable means of achieving community-wide exposure to the caries prevention effects of fluoride. Drinking water fluoridation is also endorsed by the Australian Health Ministers' Conference through the National Oral Health Strategy 2004-13 and supported by the state Oral Health Plan 2010-17, which was subject to public consultation.

Other reviews published by the FSANZ in 2009, the European Commission in 2010 and the National Institute of Public Health in Quebec, Canada, in 2010 also found that evidence of negative impacts of water fluoridation is generally limited to fluorosis. Evidence of potential impacts, such as cancer, developmental neurotoxicity and reproductive toxicity could not be substantiated. The Quebec report identifies over 150 international agencies that have indicated support for fluoridation.

I now refer to claims made by the honourable member about severe skeletal fluorosis. Effects occur in countries such as China, India and Kenya, where the natural concentration of fluoride in water can be 30 to 50 milligrams per litre. One simply cannot compare these concentrations to the levels in Australian drinking water, which are set at 0.8 to one milligram per litre. To be clear, this is 30 to 50 times lower than the levels seen in parts of China, India and Kenya.

This pattern of health impacts is not limited to fluoride. Many chemicals, such as selenium and copper, are essential for good health at low concentrations but are harmful at high concentrations. It is incorrect and misleading for the honourable member to suggest that these high concentration effects are associated with lower concentrations. Claims by the honourable member regarding the United States National Research Council Review should also be treated with caution.

This report states that it did not include an examination of the benefits and risks occurring at concentrations used in drinking water fluoridation. Instead, its term of reference was to review the United States Environmental Protection Agency's maximum guideline value of four milligrams per litre and a secondary limit of two milligrams per litre for fluoride in drinking water. The report recommended that a maximum concentration should be reduced from four milligrams per litre, primarily because of concerns about fluorosis. It made no comment on the one milligram per litre used in drinking water.

Claims have been made that fluoride is not recommended for reconstituting infant milk products or for renal dialysis. The first statement is said to be based on the potential risk of dental fluorosis, but Australian research reported by NHMRC concluded that there is no evidence for this, and fluoridated water can be used to reconstitute infant formula. The second statement that is misleading is that no mains water, irrespective of fluoride content, is recommended for renal dialysis without treatment. Treated fluoridated water is used in Australia for renal dialysis.

Claims have been made that products used to fluoridate drinking water supplies are not pure. This is nonsense. All chemicals used by SA Water, including those for fluoridation, are subject to strict quality control. Certificates of analysis are required and constantly monitored. They show that the concentrations of other constituents or impurities are well below that defined by the Australian drinking water guidelines for fluoridation chemicals.

Claims have been made that adding fluoride to drinking water is unreliable and that concentrations will vary. Again, this is wrong. In terms of reliability, SA Water and its contractors operate a number of fluoridation plants. The performance of these plants is continuously monitored and results are routinely reported to the health department. Results from the past 15 years demonstrate consistent performance in providing the required dose of 0.8 to one milligram per litre.

I have addressed the misleading information that has been provided by the honourable member regarding the alleged toxicity of fluoridated drinking water. I now refer to the very positive benefits for dental health. A number of countries fluoridate their water supplies, including the United States, Canada, New Zealand, Singapore, Ireland and the United Kingdom.

Drinking water fluoridation is less common in Europe because, instead, it is added to cooking salt in Germany, Switzerland, France, Austria, Belgium and Spain. Salt is also fortified with fluoride in a number of countries in the Caribbean and Central and South America. Fluoride is also added to milk in a number of countries. Many wide-ranging independent studies, including those already mentioned, have found that water fluoridation does protect teeth against tooth decay without causing any of the side effects that are frequently claimed.

These studies have been published in the *British Medical Journal* and the American Medical Association Journal. The World Health Organisation supports the measure, and the US Centers for Disease Control and Prevention have rated water fluoridation as one of the great 10 public health achievements of the 20th century. The concrete evidence of the benefits and safety of a fluoridated water supply is also readily available closer at hand. The 40-year history of fluoridation in Adelaide stands as a testimony to its safety. The benefits of fluoridation can also be clearly demonstrated in South Australia.

Mount Gambier is the last substantial community supplied by SA Water that does not receive adequate concentrations of fluoride in its drinking water supply. Evidence from the South Australian Dental Service shows that, in the absence of fluoridation, children in Mount Gambier had 78 per cent more decay than children from Adelaide, and 40 per cent more decay than children in the Riverland. This results in an oral health burden for these children that will affect all their lives.

Most recently, there have been increasing rates of dental decay in Mount Gambier despite decreases across the state as a whole. Over the past five years the South Australian Dental Service has successfully adopted several strategies to try to reverse the trend of increased tooth decay experienced throughout the 1990s. This was related to an increase in sugary foods and drinks and increased drinking of rainwater and bottled water that had low fluoride levels. As a result of these strategies, in the past 18 months we have seen an 8 per cent reduction of decay across 12-year-old children in South Australia.

This improvement has been even better in country areas. The only exception has been in the South-East of the state where the amount of dental decay among 12 year olds actually increased by 5 per cent in the past two years. These figures are, of course, dominated by Mount Gambier which, until Thursday 14 October 2010, has been the only major centre whose water supply does not have adequate levels of fluoride. The government is committed to providing the same health benefits to the people of Mount Gambier as those experienced by the people of Adelaide and other major centres.

In February 2009, after much discussion and consultation on the state Oral Health Plan in 2005, the decision was made to fluoridate the Mount Gambier water supply to improve dental health. This was a proper and well-informed, evidence-based decision and we stand by it. The government is in favour of water fluoridation and has not allowed the scaremongering of a few lone voices to delay the implementation of these measures.

[Sitting suspended from 18:03 to 19:49]

The Hon. J.M.A. LENSINK (19:49): I am not going to speak about the merits of fluoridation or otherwise. The Liberal Party supports fluoridation and made this clear prior to the election and our position has been consistent, so I do not propose to address that particular aspect of this motion and, indeed, I note another item on the *Notice Paper* to be moved by the Hon. Ann Bressington on a similar issue. If we do end up proceeding with debating that, then I may speak about the merits or otherwise of fluoridation at that point.

In relation to this motion, it is about a meeting and whether the minister and some of his advisers should have attended. I think it is just another case of this government's arrogance in ignoring matters which are clearly of concern to communities. We have seen that on a raft of issues. We have seen a number of community groups which have had their rights ignored by a government that announces and defends rather than engaging in genuine consultation. I think this is another example of that. I note that the meeting has occurred, and so, unfortunately, I do not see that there is a huge amount of merit in debating this issue this evening.

I will not be supporting the amendment of the Hon. Russell Wortley because it has been dropped on us at the last minute, and therefore I have not been able to obtain advice from our shadow minister for health Dr Duncan McFetridge, the member for Morphett. I am quite ambivalent about whether we will support the motion as it stands, without the amendment, given that it is a meeting that has expired.

The Hon. R.I. Lucas: We haven't had a chance to consult about Russell's amendment yet because the party room hasn't met.

The Hon. J.M.A. LENSINK: Well, that's correct; we haven't had an opportunity—

Members interjecting:

The Hon. J.M.A. LENSINK: Well, it wouldn't be the first time that's happened, would it? With those comments, I indicate the Liberal Party's position and look forward to debates on other issues.

The Hon. A. BRESSINGTON (19:53): As the Hon. Michelle Lensink has pointed out, this debate is not about fluoridation, whether it should or should not occur. It is about—

An honourable member interjecting:

The Hon. A. BRESSINGTON: It was not—it is about whether or not the people of Mount Gambier should have had the opportunity to put questions relating to their concerns about water fluoridation to the health professionals (the health department officials) who were promoting it, basically forcing it on an entire township, and whether the minister had any responsibility at all to explain that position.

The entire content of my speech was made up of quoted scientific research. The only opinion in my entire speech was at the end, where I stated that the people of Mount Gambier, certainly in a democratic society, should have the right to go face to face with the minister and the health officials and ask the questions that needed to be answered.

The point made in my speech was that the research they have been reading and the concerns they have have been absolutely and completely ignored. When we say that there has

been extensive public consultation, everyone in this chamber knows what that means, except the Labor Party. We know what the word 'consult' means, and that is to consider other people's opinions, points of view and concerns—but that is not what has happened with this. To highlight how pathetic that process was, on the day of the public meeting, every resident in Mount Gambier received a letter in their junk mail that said that water fluoridation would continue, after widespread public consultation. That is the level of consultation that was held.

There was a meeting held to discuss the national dental health plan and fluoridation was not even mentioned on the proposal put to the people of Mount Gambier to encourage them to attend that meeting. Fluoride was not even mentioned. So, of course, there was a poor turnout to that, because it actually was not raising the issue that they were concerned about. This motion was not on the benefits or harms of fluoride.

I quoted the research that has been made available that these people have availed themselves of—and so have I—and they have serious concerns about it, with every expectation that they would. When you get public officials who refuse to rebut that research, one can only assume that silence is consent, that they cannot rebut the points that are made in this research and, therefore, they do not front up to their equals.

Dr Andrew Harms, past president of the Australian Dental Association, has done his research on this and is now trying to make up for promoting fluoride in South Australia, based on the research he has done in South Australia. Dr Cunliffe from the health department promised—promised—in January of this year on ABC radio that there would be a public meeting for the people of Mount Gambier to ask their questions before fluoride went online. That was his promise to the people of Mount Gambier. It never happened.

So do not tell me, Mr Wortley, that there has been wide consultation on this issue, because when a public health official makes a promise to an entire town that a public meeting will be held to allay their concerns and answer their questions, and then the entire town is fobbed off, letters are written that are not answered, requests are made to meet Dr Cunliffe if there is not going to be a meeting and that is denied to these people, is that public consultation? No, it is a flyer in their junk mail two weeks before fluoride is due to be turned on. That is not public consultation.

I will respond to some of the comments that the Hon. Russell Wortley made in his address about the NHMRC and its extensive support for fluoride. In a 1991 report, the NHMRC made this recommendation at page 142:

> It is desirable to explore in a rigorous fashion whether the vague constellation of symptoms which are claimed to result from ingestion of fluoridated water can be shown to be reproducibly developed in these 'susceptible' individuals. These claims are being made with sufficient frequency to justify well-designed studies which can properly control for subject and observer bias.

That is the 1991 NHMRC report on fluoride. No studies on the effect of fluoride on tissues, other than teeth, in Australia has been—

The Hon. I.K. Hunter: What did the 2006 report say?

The Hon. A. BRESSINGTON: Excuse me?

The Hon. I.K. Hunter: Tell us what the 2006 report from the NHMRC says.

The Hon. A. BRESSINGTON: This recommendation was never carried through. Why would we ignore a recommendation made in 1991 in relation to whether or not we expand fluoridation? We heard the Hon. Mr Ridgway in his question today say that, after extensive lobbying, the NHMRC have lowered their standards of safety for water with faecal content. So, obviously, they have turned into guns for hire, science for hire. Why would you ignore a recommendation in 1991 to extend fluoridation and not do this? They are calling for the basic scientific studies to be done, because there is sufficient frequency of reports of ill health due to fluoride.

In the rhetoric and the diatribe that the public health department pours out about fluoride, this recommendation is never mentioned, nor is the World Health Organisation recommendation, before fluoride is introduced or rolled out any further. This point is also ignored:

> To determine when it is appropriate to fluoridate is a matter that requires the prior determination of prevailing fluoride intake from all sources including drinking water, food and the general environment.

That recommendation of the World Health Organisation is also ignored in the rhetoric and diatribe that is poured out by the health department about fluoridation. We have never done surveys of the intake of fluoride from other sources in water.

The Hon. Russell Wortley made the point that our limit is 0.8 to 0.1 part per million. If we eat a can of tuna a day and we drink a glass of water a day and we eat vegetables and fruit that are sprayed with phosphate fertilisers, we have no idea of the amount of fluoride that we are actually taking into our body.

There is something else: Dr Hardy Limeback, who is head of preventative medicine in Toronto, was pro-fluoride up until 1991 or 1992, when he was called on to do a research project on fluoride. He had been trained in dentistry and it had been drummed into him about fluoride. He accepted what he had been taught and then, in December 1999, Dr Hardy Limeback made a public apology to the people of Canada and to his students over 15 years. He said:

> Speaking as the head of preventive dentistry, I told [my faculty and students] that I had unintentionally misled my colleagues and my students. For the past 15 years I had refused to study the toxicology information that is readily available to anyone. Poisoning our children was the furthest thing from my mind. The truth...was a bitter pill to swallow, but swallow it I did.

He is among 3,200 healthcare professionals—neurologists, toxicologists, biochemists, paediatricians, nurses and dentists—who have withdrawn their support for water fluoridation because they have studied the toxicology of fluoride at one part per million, not—as the Hon. Russell Wortley or whoever wrote that speech for him did—pick one paragraph out of the NRC report.

The NRC report was the trigger for 3,200 professionals to sign a petition to stop water fluoridation immediately. As we see, there is a selective choice of information that is put on the public record here which, I believe, almost goes to misleading this parliament when the whole content and the whole intention of that NRC report and its findings are not published on the record.

In summing up, I would just like to say that I went on a tour of New South Wales last week. I met two children; one is a 4½-year-old little girl who has six months to live. She has cancer that is directly linked to fluoride ingestion. How do we know this? We know this because there are now about 40 healthcare professionals around this country who have the equipment to check for fluoride toxicity. They are compiling their own studies and they are going to have them peer-reviewed and scientifically published. So far, one healthcare professional has 80 people who are fluoride toxic and suffering from this, and governments all around this country absolutely refuse to read the research.

In the lift, the Hon. Russell Wortley called me a conspiracy theorist. If I am a conspiracy theorist, I am in great company: 14 Nobel laureates oppose water fluoridation and 3,200 healthcare professionals oppose water fluoridation, so I do not mind being a conspiracy theorist in the company of those people. I hope that when we come one day to debate climate change in this place we remember how we demonised Nobel laureates, because Al Gore can be dismissed—one Nobel laureate, a Nobel Prize winner for climate change and we will all bow down and kiss his feet—but we have 14 of them we will ignore because it is convenient.

We should go back and say we made a mistake and review the research that has come to light since 1995—not 40 years ago. It was stated on ABC radio that these are fairy tales from 40 years ago. The fact is, 40 years ago, the science on this was known. The fact is public health officials refuse to publicly debate fluoride toxicity because they cannot disprove it and they have not studied the toxicology of it. They have not done the studies that were asked of them by the World Health Organisation and by the NHMRC back in 1991—those two requirements.

It was a conditional endorsement of water fluoridation by those two organisations that the public health department spouts all of the time. It was conditional on these studies and surveys being done for other sources of fluoride intake, and we have never done them. We have got no idea how much fluoride we take in in our daily diet. It is just too much trouble for governments to start doing these studies. It is too much trouble to train medical professionals to recognise the early signs of fluoride toxicity, and why? You might be embarrassed. Why? Both major parties might actually have to say 'Sorry, we got this wrong.'

There was a study in the United States that was challenged in court. It showed that, in the United States, at one part per million, 50,000 American people die each year from fluoride poisoning. That study was challenged and the two scientists who did that study were taken to court. They had to produce the evidence in court, and guess what? They won. The court and the

judgement ruled in favour of the veracity and accuracy of their studies. The person who took them to court actually had to admit that he had falsified information. This is the sort of research that needs to be looked into.

If we do the toxicology studies and the testing of certain groups and we find that this has all been a fairytale, that this has all just been a conspiracy theory, what have we lost? Absolutely nothing: fluoride people until the cows come home—I do not care. But this is a public health concern, and people may think in this place that this debate went away when this was forced on people in South Australia 40 years ago. Let me tell you it is far from over. There are hundreds and hundreds of people out there who know not to drink this water. When I put out an offer on FIVEaa for a DVD on the history and toxicology of fluoride, we got 300 requests for that DVD in one morning.

So, do not tell me that I am a conspiracy theorist. Do not tell me that the science of this is not worth reviewing and do not tell me that we do not have a duty of care to the people of this state who we are forcing to drink water that is toxic. Apart from the sodium fluoride, on top of all that, this month we have uranium in our bloody water. That is all okay, because you know what? It is only at 0.2 parts per million, or whatever, but then you take 30 different chemicals that are known to be carcinogenic and mutagenic, and you pile them on top of each other, and you force people to drink that water.

One day the Hon. Mr Wortley and the Hon. John Hill just may have to apologise for the words that have been spoken in here because, as I said, when the results of the studies of those 40 health care MDs and dentists come in, we may all be left just a little red faced. With that, Ms Acting President, I would like this notice of motion, order of the day to be discharged because, as the Hon. Michelle Lensink made the point, the meeting is far gone and the point for the vote just would not be valid. I therefore move:

That this order of the day be discharged.

Motion carried; order of the day discharged.

OZHARVEST

Adjourned debate on motion of Hon. T. A. Franks:

1. That this council notes—

   (a) the fine work of OzHarvest, a non-denominational charity that rescues excess food which would otherwise be discarded and distributes this excess food to charities supporting the vulnerable;

   (b) that OzHarvest was founded in Sydney in 2004 and has now expanded to Canberra, Newcastle and, as of today, Adelaide, where this exciting philanthropic initiative boasts Maggie Beer as its ambassador and a partnership with UnitingCare Wesley, Port Adelaide;

   (c) that since its inception, OzHarvest has rescued more than 5.4 million meals and saved hundreds of thousands of tonnes of waste from going to landfill; and

2. That this council calls on the Minister for Families and Communities to take a leadership role in supporting this exciting new venture by advocating across state government agencies that undertake catering activities and/or contracts to commit to participating in OzHarvest as a donor agency.

(Continued from 30 June 2010.)

The Hon. I.K. HUNTER (20:10): I would like to congratulate the Hon. Tammy Franks for her motion and I would also like to congratulate the Minister for Families and Communities, the Hon. Jennifer Rankine, who is already working quietly on the initiatives called for in this motion.

I can advise the chamber that Zero Waste has already been working with OzHarvest and discussions have been held with Zero Waste SA, I have been advised, since late 2009. I also understand that OzHarvest is still seeking funding from the state government through Zero Waste for various components of the program. As I have been advised, it has been proposed that Zero Waste SA could assist with funding for containers to move food.

I am also advised that, through the Department for Families and Communities, the Community Connect branch met with the founding director of OzHarvest in October 2009. I understand that at that meeting, it was explained that DFC could facilitate connections with service delivery agencies, promote information about OzHarvest within DFC and assist with their transition

to South Australia where appropriate, which is, I think, what the honourable member's motion calls for.

Again, I would like to thank the honourable member for her motion, which has provided me an opportunity to shine a spotlight on the significant work already being done with regard to OzHarvest. I congratulate again minister Rankine for her efforts in this area. As always, the minister has just quietly gone about her work without much fanfare. This hard work would have gone unrecognised had this motion not been moved by the Hon. Tammy Franks. I thank her again for the opportunity to put on record the excellent work of minister Rankine across her portfolio responsibilities. Government members are happy to support this motion.

The Hon. T.J. STEPHENS (20:12): I rise on behalf of opposition members to say that we also are very pleased to support the motion.

The Hon. T.A. Franks: Feel the love.

The Hon. T.J. STEPHENS: I feel the love. It is lovely to be in a tripartisan relationship with the Hon. Tammy Franks and the Greens. The OzHarvest began when Ronni Kahn, the founding director, decided that she was not prepared to be part of the waste cycle that is a natural outcome of the hospitality industry. Being a part of this industry for over 20 years, she had seen a lot of food waste so she spent quite a bit of time researching options for dealing with the excess food.

Backed by the Macquarie Group Foundation, which provides funds, and Goodman International, which provided a van and office space, OzHarvest was established and collected its first meal in November 2004.

Ronni was able to persuade a group of socially minded business people to sit on the board of OzHarvest. This voluntary board brings not only sound business disciplines to the management of OzHarvest but also compassion and generosity.

The launch of the Adelaide operation of OzHarvest was held at the Wine Centre on 24 June 2010. I am pleased to report that Liberal members Vickie Chapman, Adrian Pederick, Rachel Sanderson, Peter Treloar and Ivan Venning joined minister Caica on this occasion.

The government introduced, and we support, amendments to the Civil Liability Act to protect donors of food from civil litigation. This action was initiated by the Young Lawyers Association of the Law Society of South Australia and we commend them for this initiative. The opposition strongly supports OzHarvest and the work it carries out. We commend the Hon. Tammy Franks for her motion. The opposition is pleased to support the motion.

The Hon. T.A. FRANKS (20:15): I thank the members who have made a contribution on this motion, in particular the Hons Ian Hunter and Terry Stephens. I am heartened to hear that the minister is quietly and competently going about the business of ensuring that there is not wasted food from government agencies and, in fact, that this state government does give OzHarvest all the support it possibly can to ensure this wonderful venture takes off in Adelaide. I look forward to that charity beginning in our house. I look forward to the wastage that we often see in Parliament House with our catering actually going to hungry mouths and good causes, and I commend the motion to the chamber.

Motion carried.

NON-GOVERNMENT ORGANISATION COMMUNITY SECTOR

Adjourned debate on motion of Hon. T.A. Franks:

1. That this council notes—

   (a) that the South Australian non-government organisation community sector relies heavily on state government funding for delivery of services and payments of wages to workers in the industry and that this emotionally taxing labour which is most often performed by women workers is critical to the fabric of our community and to a broader goal of women's pay equity in Australia;

   (b) that the significant value of this labour is not always reflected in the pay those in the community sector receive and that consequently community sector workers' unions lodged an equal remuneration order with the regulator in March this year and that Fair Work Australia will hold hearings into that pay claim later this year;

   (c) that a similar pay equity case conducted in Queensland in 2008 resulted in pay increases of up to 37 per cent for workers in this same sector; and

(d) that as of 18 June 2010 the Victorian government has agreed to back higher rates of pay for community sector workers in a deal where that government would underwrite salary parity for the community sector.

2. That this council calls on the Treasurer and the Minister for Families and Communities to fund the community services sector sufficiently to address this pay inequity still endured by South Australian community sector employees regardless of the outcome of the Fair Work Australia case so that South Australia can join Queensland and Victoria in fully recognising the valuable work of the non-government organisation community sector.

(Continued from 23 June 2010.)

The Hon. R.I. LUCAS (20:16): I rise to speak to the motion. I am sure all members in this chamber would agree with the principle of fairness and equity in pay decisions. The Hon. Tammy Franks, in her explanation to her motion, pointed to the example in Queensland where a similar pay equity case led to wage increases between 18 and 37 per cent for workers employed under the community services crisis and supported housing state award.

I am sure those employees in Queensland who received pay rises of up to 37 per cent—as with any workers or employees who might get a pay rise of 37 per cent—were delighted at the pay equity case outcome which resulted, as I said, in that particular significant pay increase. The Hon. Tammy Franks pointed out there was currently a pay equity case being heard by Fair Work Australia and this motion calls on the current government to increase funding to address the pay inequity irrespective of the decision of Fair Work Australia.

While at the outset I am sure members would agree with the notion that we support fairness and equity, we actually do have an industrial relations system. We do have an industrial umpire. We do have a situation where that industrial umpire has been asked to make a decision in this particular case and, clearly not being an expert in the area, I do not know what the chances are of the claim being successful or not. Ultimately that will be a decision for Fair Work Australia, as I understand it.

In essence, the dilemma for those of us in this chamber is our being asked to sign off on a blank cheque; that is, we do not know what the decision is and we are being asked that, irrespective of whatever that decision is, the Rann government should be asked to increase funding to address pay inequity. I am never shy about attacking the Rann government, as members would be aware, but in relation to this I think it is difficult to sign up to the blank cheque at this stage not knowing exactly what we are being asked to sign off on. That is, what would be the impact on the state budget? Given the widespread cuts that are being implemented already by this government to fund its current programs—

The Hon. T.A. Franks: That work is going to be picked up by the NGO sector.

The Hon. R.I. LUCAS: The Hon. Tammy Franks says that that work will be picked up by the NGO sector. She argues that is the case, and that might be the case, but I suspect knowing the NGO sector that in some cases that will be impossible. Some of the work might be able to be picked up by the NGO sector, but I think this government is taking the view that it is cutting the services, and some of those services will not be delivered. I do not think we can assume that those current services will continue to be delivered, but that it will seamlessly transition to a harder worked NGO sector.

I think the reality of some of the Rann government cuts is that those services will disappear, they just will not be delivered. Whilst one cannot speak for all NGOs, by and large I am sure that most of us believe that they work enormously hard, they work efficiently, and I think it is impossible to ask them to do much more than they are already doing without increasing funding, or in some cases actually reducing funding to them—and we are going to see reductions in funding to NGOs coming from some government departments and agencies over the coming two years or so because not all of the decisions have been advised to NGOs yet.

I do not think we are going to see a situation where these services will continue to be delivered by NGOs. I think we will see significant cuts in services as a result of the state government's decisions. What we are left with then is the situation of how much it is going to cost and, if it does become a cost to government, what further cuts this government will implement over and above the existing ones to fund this particular case.

In the end, if the industrial umpire says that there is to be a significant wage increase then the government sector and the NGOs will have to meet that. That is the reality; that is our system. If the umpire says that this is pay equity and this is what has to occur, then that is what will have to

occur, and the government of the day and the NGOs will, obviously, have to respond to that, but at this stage it is impossible for us to do.

The Greens obviously have more flexibility than the government or the alternative government because they will not be in government in the foreseeable—

The Hon. M. Parnell: Flexibility or morality?

The Hon. R.I. LUCAS: Well, no, not flexible morality. The Greens do not have to have the challenge in three years of actually having to produce the overall budget. It is an important role that they have, in that they have an important flexibility that the government and the alternative government do not have; that is, they can advocate for all groups across the board and they do not ultimately have to sign off on a budget that, in the end, is balanced in one form or another.

From the opposition's viewpoint, or the alternative government's viewpoint, we, at this stage, cannot support the motion on two bases; one is that we do not know what the implications of the costs would be—that is, exactly how much it would cost—and, secondly, as I said at the outset, we do have an industrial system in Australia, and in South Australia, we do have, supposedly, an independent industrial umpire. The independent industrial umpire is to adjudicate on the case and we will obviously follow it with interest as well.

Debate adjourned on motion of Hon. B.V. Finnigan.

CRIMINAL LAW (SENTENCING) (SENTENCING POWERS OF MAGISTRATES COURT) AMENDMENT BILL

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (20:26): Obtained leave and introduced a bill for an act to amend the Criminal Law (Sentencing) Act 1988. Read a first time.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (20:26): I move:

That this bill be now read a second time.

In 2006, the Rann Labor government introduced legislative reforms that increased the penalty levels for breaches of the Occupational Health, Safety and Welfare Act 1986. These amendments came into force on 1 January 2008. They reflected recommendations of the SafeWork SA Advisory Committee made after a broad review of occupational health, safety and welfare penalties, which involved representatives of employers, workers and the government.

Today I introduce into this house a bill which supplements and is consequential to the 2008 reforms and which ensures the efficient administration of occupational health, safety and welfare matters in the South Australian court system. The key changes proposed in this bill are:

- it allows industrial magistrates to impose penalties of up to $300,000 when hearing criminal offences under the Occupational Health, Safety and Welfare Act; and
- it ensures that industrial magistrates have the capacity to impose up to $300,000 fines for offences committed after the penalty increases in 2008 but before the passing of this bill.

These are important administrative and procedural changes that supplement the 2008 increases to penalty levels in the Occupational Health, Safety and Welfare Act. Under the penalty regime that became effective in 2008, Division 1 corporate offences have a maximum penalty of $600,000, and Division 2 corporate offences have a maximum penalty of $300,000. The vast majority of convictions under the Occupational Health, Safety and Welfare Act are Division 2 corporate offences attracting a maximum penalty of $300,000.

For a number of years, industrial magistrates have heard the majority of occupational health, safety and welfare cases in South Australia. During this time, they have developed the skill and experience required to deal with these matters. The current sentencing limit for industrial magistrates is $150,000.

With the introduction of this bill, industrial magistrates will be able to hear and sentence in relation to all Division 2 offences providing consistency for the court system, as well as for employers and employees. It should be recognised that the penalties apply only when there has

been a criminal conviction where a corporation has failed to provide a safe working environment for employees and other persons engaged at the workplace.

If the sentencing capacity of industrial magistrates is not increased, OHS matters that might attract a penalty fine over $150,000 would need to be conducted in the District Court. The District Court already has a large number of cases to deal with. Prosecuting occupational health, safety and welfare cases in the District Court would be considerably more time consuming for all parties concerned. If any party disputes the decision of an industrial magistrate, the option to initiate an appeal to a higher court remains available.

The bill that I am introducing today will provide consistency and significant case management advantages for the South Australian court system into the future. The proposed amendments to the Criminal Law Sentencing Act 1988 were released for public comment on 24 December 2008, and, in the period up to 13 March 2009, 35 submissions were received from employer organisations, trade union organisations and individuals.

The government recognises the important contribution made by all organisations and individuals who engage in the consultative process. The collaborative approach is testimony to the capacity of all stakeholders and demonstrates that a cooperative approach is the best way to achieve fair and effective changes to occupational health, safety and welfare legislation. This bill plays an important role in ensuring the effective administration of occupational health, safety and welfare legislation. It delivers consistency to the administration of occupational health, safety and welfare offences and provides flexibility for the courts as we move to a national system of work health safety legislation.

I commend the bill to members and seek leave to have the explanation of clauses incorporated into *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 19—Limitations on sentencing powers of Magistrates Court

This clause increases the maximum fine that an industrial magistrate can impose for an offence under the *Occupational Health, Safety and Welfare Act 1986* from $150,000 to $300,000.

Debate adjourned on motion of Hon. J.M.A. Lensink.

OCCUPATIONAL LICENSING NATIONAL LAW (SOUTH AUSTRALIA) BILL

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (20:32): Obtained leave and introduced a bill for an act to make provision for a national law to regulate the licensing of certain occupations; and for other purposes. Read a first time.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for the City of Adelaide) (20:33): I move:

That this bill be now read a second time.

Licensing of occupations is predominantly a state and territory function and is conducted by a range of regulatory bodies in each state and territory. For historical reasons, licensing systems have developed in different ways in each jurisdiction, which means approaches to licensing are not consistent. While the Commonwealth Mutual Recognition Act 1992 was introduced to improve the mobility of licensed individuals between jurisdictions, there are still a number of barriers which make it difficult.

In addition, the Mutual Recognition Act does not apply to business licences. Licensees who want to move between jurisdictions must still apply for a licence, meet different non-skills requirements and pay a separate licence fee in each jurisdiction in which they wish to work. These arrangements are particularly onerous for individuals and businesses operating in multiple jurisdictions and for those working in border areas.

On 3 July 2008 the Council of Australian Governments agreed to the development of a national trade licensing system in the context of its broader agenda for regulatory reform. COAG's objective in agreeing to establish a national licensing system is to remove overlapping and inconsistent regulation between jurisdictions in the way they licence occupational areas. It is anticipated that the reforms will improve business efficiency, reduce red tape, improve labour mobility and enhance productivity. This will enhance consumer confidence and protection without imposing unnecessary costs on consumers and businesses or substantially lessening competition.

A national licensing system will make it easier for businesses and workers to operate across state and territory borders, while continuing to provide the necessary protections for consumers and the community. For the first time, eligible licensees will be able to work across Australia without the need to hold multiple licences or pay multiple fees. The Intergovernmental Agreement for a National Licensing System for Specified Occupations (the IGA) was signed by all states and territories in April 2009 at the COAG meeting. The IGA provides for national licensing to apply initially in the following occupations agreed by COAG, with the scope for expansion to other occupations if agreed at a later stage.

The first wave occupations include air-conditioning and refrigeration mechanics, plumbers and gasfitters, electricians and property agents (other than conveyancers and valuers). Second wave occupations include land transport (passenger vehicle and dangerous goods only), maritime, building, and conveyancers and valuers. It is intended that the first wave of occupations will be transferred to the new system on 1 July 2012, with the remaining occupations to transfer from 1 July 2013. The IGA allows for the possibility of removing land transport and maritime occupations from the scheme in the event that they are included in other national licensing processes.

The IGA provides for the national licensing system to be established by the states and territories through cooperative national legislation. It does not involve a referral of powers to the commonwealth. The introduction of national legislation in state or territory parliaments for adoption by other participating states and territories is a standard approach to implementing national schemes in areas like licensing where constitutional powers rest with states and territories and not the commonwealth.

The IGA states that Victoria will take the lead in passing the national licensing legislation (the national law) and all other states and territories (including South Australia) will pass legislation that makes the Victorian legislation become law in their jurisdictions. The national law was passed by the Victorian parliament on 17 September 2010. The Occupational Licensing National Law (South Australia) Bill 2010 seeks to adopt the national law by applying the Occupational Licensing Law Act 2010 (Victoria) as law in South Australia. Any changes to the national law, once it has been enacted, must also be agreed by the ministerial council responsible for overseeing the reform.

During the implementation phase of the national system this responsibility resides with the Ministerial Council for Federal Financial Relations. The national law has been designed to provide the governance and high level framework for the national scheme. The operational aspects of the scheme and industry specific licensing rules and procedures are to be covered in regulations, which are currently being developed. This will enable informed and detailed analysis on the risks, needs and safety requirements for both the licensees and consumers before each occupational area becomes occupational under the national law. As such, the government will subsequently be introducing consequential amendments to South Australia's existing occupational specific legislation for the first wave of occupations by early 2012 to allow for the industry-specific regulations under the national scheme.

Occupational specific legislation still exists in South Australia to regulate areas that fall outside the national scheme, for example, conduct matters. Interim advisory committees have been established for all of the first wave occupations to provide advice on the development of licensing policy for specific occupational areas, which will lead to national regulations to be made under the national law. Each of the interim advisory committees comprise of members with a balance of expertise relevant to an occupational area, including union, employer, regulator and consumer representatives.

The committees are assisted in their task by working groups of relevant regulators. After the national law is operational, the interim advisory committees will be replaced by the occupational licensing advisory committee, as provided in the national law. The national law establishes the National Occupational Licensing Authority (the Licensing Authority), which will be responsible for developing, on the advice of the committees, national licence policy for each occupational area, including licence categories, scope and eligibility criteria.

The Licensing Authority will have its own governing body, the National Occupational Licensing Board. The functions and operation of the Licensing Authority and board will be overseen by the Ministerial Council for Federal Financial Relations, which has a ministerial representative from the commonwealth and each state and territory. The ministerial council's role will be to provide broad policy direction and improve licence policy for the occupational areas that are included in the system.

While the Occupational Licensing Advisory Committee will be the principal source of advice on licence policy for occupational areas, the Licensing Authority must also consult with stakeholders in relevant occupational areas to ensure the National Occupational Licensing Board is able to provide authoritative advice to the ministerial council.

Under a delegated agency model, the Licensing Authority will delegate the enforcement and administration of the system to existing state and territory regulators. State and territory regulators will enter into service agreements with the national body to ensure that consistent performance and service delivery standards are achieved across jurisdictions. States and territories will also continue to regulate all aspects of conduct.

The national law provides for national consistency in the approach to disciplinary proceedings by providing for the types of disciplinary proceedings that can be instigated: when such proceedings can occur, the disciplinary action that can be taken, and the processes that the licensing authority must follow.

In South Australia, disciplinary proceedings will continue being heard by the courts, as is the current situation. The national law also provides for monitoring and enforcement powers for authorised officers. In addition, the national law provides for the establishment of a national register, which will allow members of the public to access information about licensees and verify that particular individuals or businesses are appropriately licensed.

The bill represents an important step towards improving national licensing regimes by establishing a framework for the national occupational licensing system. However, until the national licensing system's implementation date of 1 July 2012 for the first wave of occupations, current state-based legislation will continue to apply for the licensing of occupational areas.

Reward payments available under the National Partnership Agreement to Deliver a Seamless National Economy are at risk if South Australia does not meet key reform milestones, including enacting this application act by December 2010. Introducing the national occupational licensing system is expected to provide improved safeguards for consumers, reduce red tape and deliver improved administrative efficiency and consistency by moving from the current fragmented jurisdiction licensing systems to one national system.

I commend the bill to members. I seek leave to insert the second reading explanation of clauses in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause sets out the short title for the measure.

2—Commencement

The measure will be brought into operation by proclamation.

3—Definitions

This clause provides for definition of terms used in the Bill. In addition, if a term is used in the measure and in the National Law, the term has the same meaning in this measure as it has in that Law.

Part 2—Adoption of National Law

4—Adoption of Occupational Licensing National Law

The National Law, as in force from time to time, applies as a law of the jurisdiction. The National Law is the Occupational Licensing National Law set out in the Schedule to the *Occupational Licensing National Law Act 2010* of Victoria.

5—Exclusion of legislation of this jurisdiction

This clause provides that a number of Acts that generally apply to South Australian legislation do not apply to the *Occupational Licensing National Law (South Australia)* or instruments (including national regulations) made under that Law. Instead, a number of specific provisions have been included in the National Law to deal with these matters for national consistency.

6—Relevant tribunal or court

This clause provides for the declaration of the District Court and the Magistrates Court as a relevant court for the purposes of section 13 of the National Law and the District Court as the relevant court for the purposes of sections 58, 59, 60, 93 and 94 of the National Law.

7—Corresponding prior Acts

It is necessary to provide for certain matters in connection with the operation of section 21 of the National Law so that relevant disciplinary action taken before this Act applies to a particular occupation can be taken into account when assessing the eligibility of a person to be granted a licence under the National Law.

8—Disciplinary proceedings before court

This clause will apply the scheme under Part 3 Division 5 of the National Law in relation to disciplinary proceedings under the National Law. This scheme provides for disciplinary matters to be taken by means to an application to the District Court in its Administrative and Disciplinary Division. (The alternative, which is not to apply in South Australia, is a 'show cause' scheme where disciplinary action is ultimately taken by the Licensing Authority rather than a tribunal or court.)

Part 3—Miscellaneous

9—Penalty at end of provision

This clause makes it clear that a penalty provision at the foot of a provision indicates that a contravention of the provision constitutes an offence (punishable on conviction by a penalty not exceeding the specified penalty).

10—Parliamentary scrutiny of national regulations

This clause ensures that national regulations will be provided to the Legislative Review Committee for their inquiry and report.

11—Regulations—saving and transitional provisions

This clause provides for the making of regulations in relation to matters of a transitional nature consequent on the operation of this measure (including in the future when additional occupations become subject to the operation of the Act).

Debate adjourned on motion of Mr Ridgway.

DEVELOPMENT (ADVISORY COMMITTEE ADVICE) AMENDMENT BILL

In committee.

Clause 1.

The Hon. D.W. RIDGWAY: Just by way of explanation, on the last sitting Wednesday a fortnight ago, I spoke to the Hon. Mark Parnell's bill and indicated that the opposition had some sympathy for a more transparent process, but we did wish to consult more. I had had some discussions with the former minister for urban development and planning, the Hon. Diana Laidlaw, and I had also written to the minister requesting to meet with the Development Policy Advisory Committee to discuss the Hon. Mark Parnell's amendments.

I did flag that I certainly would be moving an amendment that empowered the locals. In fairness to the Hon. Mark Parnell, I think I need to explain. He feels as though I dropped him in it a little, so to speak. We had a private conversation in the corridor of this building after a Gawler meeting, and I asked why he spoke first. He said, 'Well, I put in a submission, and I guess the chair always gives MPs a chance to speak first.' It was not that I was annoyed with it, but that was just the way it happened.

Having gone to Gawler myself, I actually wanted to hear what the locals had to say. I think I said to the Hon. Mark Parnell at the time—and it was not long before the election—that, if we were fortunate enough, and South Australia was fortunate enough, for the Liberal Party to win the election, I would make some changes that would enable the locals to speak first. A fortnight ago, I

flagged that I would be introducing some amendments that would give the chairman of DPAC the capacity to ensure that locals could speak first.

We have some amendments before us which were tabled only today. I also wrote to the minister requesting a meeting with the chair of the Development Policy Advisory Committee, which I had at 10.30 on Monday morning, to discuss issues, such as whether this sort of amendment would assist them in their deliberations, whether it would enhance the process and whether disclosure of their advice should be before or after the minister made a decision and published it. A whole range of issues were discussed at that meeting, which lasted about an hour.

What came out of that, of course, is an amendment that I have also tabled today, which probably best serves the function of the committee and the process by having more transparency, and having that advice made public after the minister makes his or her decision, not prior. I just make those few comments on clause 1. Having had the meeting on Monday, I instructed parliamentary counsel on Monday afternoon to draft some amendments, which were provided to me late yesterday. I asked for them to be put on file today.

I know that that is short notice, but I did give the Hon. Mark Parnell notice a fortnight ago. I said that we wanted to consult further. As I said, I had spoken to the Hon. Diana Laidlaw, I had spoken to industry groups, and I wanted to speak to DPAC, which we did on Monday. I understand that these amendments have not been on file for any length of time, and I also understand that the government has not had an opportunity to take them to caucus.

I guess it is up to the minister whether he is prepared to continue the debate or take it to caucus. I have tried to do it as quickly as I could. Unfortunately, the DPAC meeting could not happen until 10.30 on Monday morning. I will not make any further comments, other than to say that when I move these amendments I hope the house sees fit to support them.

The Hon. P. HOLLOWAY: In relation to the thrust of the amendments the Hon. Mr Ridgway is moving—or at least the first one—I agree with it in principle. I think it probably is a good idea. DPAC's role is to hear the views of members of the public, and they really do not need to be lectured by members of parliament.

I have been criticised widely for not attending meetings of DPAC. There are two reasons for that: first of all, as the minister, my involvement in the DPAC process, when its whole role under the act is to advise me as the minister on the submissions it receives, would be inappropriate. It could even put the process at risk, and that is why I do not attend those meetings. I am quite happy to attend other meetings, and I regularly do attend meetings about the issues involved in planning policy, but to attend DPAC meetings is probably not a good idea. That is in relation to my role as minister.

For members of parliament, as well, while they should have their views heard, primarily the role of DPAC is to hear views from members of the public. That is why, as I indicated by way of interjection when the Hon. Mr Ridgway first canvassed what he was thinking about, I thought it would be a good idea. However, as the honourable Leader of the Opposition said, we have not had a chance yet to take that to caucus.

I do not think it is something that one need necessarily put in legislation. I think it is better that the chair of DPAC should have the discretion to conduct meetings as he or she thinks fit. In this case it is 'he'—Mario Baroni—who has been the chairman of DPAC for a number of years now going back to before I became a minister. I think he does a very good job.

An honourable member: 1995, I think.

The Hon. P. HOLLOWAY: It has certainly been a long time. He listens to members of the public when they come before him and I think he gives them all a good hearing. My view is that he should have discretion in relation to how he conducts meetings; if someone is going to leave early, for example, and so on, he should have discretion to do that. However, I certainly have some sympathy for the sentiment of the motion moved by the Hon. Mr Ridgway.

As the minister, I am happy to write to the chair of DPAC and suggest—certainly if it reflects the view of the parliament—that, in determining the order of speakers and how he conducts the meeting, he should give consideration to letting members of the public be heard first. I am very happy for that to take place, but I do not think it would be wise for us to move amendments to direct him as to how he conducts a meeting. There is more than enough prescription in relation to how these things happen as it is. I am sure the chair of DPAC would be quite happy to know what the

views of parliament are in relation to those matters, but I think, really, to get to that level or degree of prescription about how he conducts meetings is probably not appropriate.

As the honourable Leader of the Opposition says, we have not had a chance to take this amendment to caucus yet, so on that basis, the government's view is that we would oppose it regardless, although my inclination would be that we would not support it. I would certainly advocate in caucus that we probably should not support it anyway because it is overly prescriptive, even though I do have sympathy for the intent of what the honourable Leader of the Opposition is trying to achieve. As I said, I am quite happy to talk to the chair of DPAC and suggest that, given this matter has been raised, he could take that into consideration in how he conducts future meetings.

I am at least pleased that the Leader of the Opposition, I think, has agreed that it would be unwise to release DPAC advice until the decision has been made. As I indicated last week, there is provision with our freedom of information laws and the like for information to be provided at an appropriate time, but as I strongly argued when we had the debate on this bill, to release that advice prematurely before the government has had the benefit of making a decision and receiving other feedback that might be necessary for making the decision would be an unwise measure. I think, under the Hon. Mr Parnell's bill, the suggestion is that DPAC advice should be released two days after receipt. I think that would be unwise.

While DPAC is just one source of advice to the minister—and I do not have any particular problem with having that advice ultimately being released when the decision has been made—I think to do so prematurely would simply put unnecessary pressure on the committee at a time before decisions are made. It is important that DPAC can give fair and frank advice to the government. Certainly, it is one thing to have that advice ultimately available so the minister can be held accountable for the decision, but I think it is another thing for the DPAC advice to be thrown into the political arena of decision-making when essentially it is not there for that role. DPAC's role is to listen to the concerns of the community as they relate to the development plan before them.

I know that much of the context of this debate from the Hon. Mr Parnell has been in relation to Mount Barker. I have said on a number of occasions that people should take into account that the role of DPAC is to consider the development plan that is put before it in the context of the state planning strategy. The state planning strategy not only in relation to Mount Barker but all development plans before it is the 30-year plan. When that was released in February this year, it became part of the state planning strategy, so it is the objectives of that plan against which DPAC gives advice.

For anyone to suggest that DPAC has a role of reconsidering the 30-year plan is really mistaken and I think they are putting unfair pressure on DPAC to do that. That is not its role. In relation to all the ministerial development plans before it, its role is to consider those development plans in the context of the state planning strategy as expressed (as it is) through the 30-year plan. I think it is important that, if that advice does become available, people should not judge what DPAC has done other than in the context of what its responsibilities are under the act.

With those comments, as I say, it is really up to the committee whether we seek to adjourn this debate and it can officially go to caucus or whether we proceed, but if we do proceed I indicate that the government would oppose it—not that I have so much objection to the sentiment of the bill (I do agree with it), but I think it is putting a level of detail in an act which is inappropriate. We should have faith in the quality people whom we appoint as chairs of our advisory committees and let them run the meeting in the way they best think fit.

The Hon. M. PARNELL: Just some general comments on clause 1. I will have more to say when we get to the Hon. David Ridgway's amendments, the first of which is at clause 3. The first thing in relation to the process that we are following here, one of the things that I think this chamber has been very good at, especially on private members' day, is honouring requests that are made by members of parliament for their private members' business to be taken to a vote at a time of their choosing. That principle is tempered by an expectation of reasonableness. That, provided we are given reasonable notice—and the amount of notice might differ according to the issue before us—then a member has a right, if you like, to have their bill or motion voted upon.

I gave notice, probably a month ago, for this to come to a vote a fortnight ago. As the Hon. Mr Ridgway has pointed out, I accepted his request for an adjournment for another couple of weeks so that he could consult with people and prepare some amendments, and that is what he has done. But I would just like to say now that I am not inclined to have this adjourned any more; I

would like it to be dealt with tonight. I accept the minister's position that, in the absence of a considered debate in caucus or cabinet, the answer is no. I do not disagree with the minister on his assessment in relation to these amendments, and I will speak to them when we get to them.

The second thing I would like to do is thank the Hon. David Ridgway for his clarification about our earlier conversation. I know that he did not intend to imply that I had somehow worked the system in relation to that Gawler meeting. I put on the record that I have been going to DPAC meetings for a very long time. One of the early ones I went to was back in 2003, when the rezoning of the Port Adelaide waterfront development was being discussed. Whilst I was not a member of parliament then, I certainly did not go first.

At the Buckland Park Policy Advisory Committee hearing, I certainly was not first there. In fact, I think I followed the potato farmer, from memory, who did not even own land in the area that was affected. But that is not the point when it comes to DPAC because any interested person can make a submission. When it comes to the Mount Barker marathon 15 or 16-hour DPAC hearing, my recollection is that I was early on the first day, but I certainly was not first, and followed the council and possibly even some others. I just put those things on the record.

By way of background, I also acknowledge the opportunity I had to speak to Mario Barone, the chair of the Development Policy Advisory Committee. I have had many conversations with him on issues such as this over many years, but I did appreciate the opportunity recently to get his views again.

That is enough by way of introduction on clause 1. When we get to the Hon. David Ridgway's amendments, I have a contribution there and a number of questions of the mover of those amendments, but we will get to those in due course.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. D.W. RIDGWAY: I move:

Page 2, after line 9—Insert:

(1) Section 25—After subsection (11) insert:

(11a) When a meeting is held under subsection (11)(b), the person presiding at the meeting must ensure, insofar as is reasonably practicable, that the order of persons making representations reasonably reflects the relative degrees of interest of the persons attending the meeting, with the person or persons with the most significant personal interest in the matter (and most directly affected by the proposal) being given the opportunity to speak first and the person or persons with the least significant personal interest, or with any other interest (whether direct or indirect), speaking last (although a failure to achieve compliance with this subsection will not affect the validity of the meeting).

This is the amendment I asked parliamentary counsel to draft. It was of some debate in our party room when it was discussed whether this was the best possible drafting. In fairness to my Liberal parliamentary colleagues, I went back to parliamentary counsel, and they think this best encapsulates what we are trying to achieve; that is, that the locals be heard first. The Hon. Mark Parnell and I have both commented on the meeting at Gawler, but I have attended a number of meetings—Cheltenham, Mount Barker and Gawler—as the shadow minister. I have gone especially to the ones in Gawler to listen to the locals. Of course, we all know it was in the lead-up to an election campaign, and I wanted to hear what the locals had to say.

They are the people on the ground, the people that are directly affected by it, the people that will have their main street congested, the people with extra pressure on their public transport system and extra pressure on their utilities—their water, electricity and sewerage. They were the people I wanted to hear from first. I would have to say I was a little surprised. The Hon. Mark Parnell has not abused the system at all, and I certainly want to put on the record that he has done nothing wrong, but he was one of the first people to speak. In fact, on that particular night I think it was somewhere around half past nine or quarter to 10 before the locals got to speak, and the meeting, I think, went to about 12.30.

The Hon. R.I. Lucas: How long did he go for?

The Hon. D.W. RIDGWAY: The Hon. Mark Parnell did not speak for the entire time, but there were a number of other people. There were a couple of local government speakers, the developers and a couple of other lobby groups that certainly were not locals, who had put in submissions and were given an opportunity to speak first. I was disappointed that when I left—I do not believe parliament was sitting (I do not recall exactly), but it was quite late and I had to get back to town because I had an early start the next morning—there were still a number of locals sitting there in the audience waiting to speak, yet some of the people (not the Hon. Mark Parnell) who had spoken first had gone. So, they said their bit and then left.

If as the Hon. Mark Parnell says we are about bringing the community to the umpire, then the community should have an opportunity to go first. As I said, I had a chat in the corridor of Parliament House to the Hon. Mark Parnell that, if I was fortunate enough to be the minister after the election, it was something I would look at to make sure that, at DPAC hearings, the local community members—those who are directly affected—actually get an opportunity to put their case first. They are people who are trying to get about their business, their lives, their farms. They are farmers, they are business people; they are not professional public advocates, they are not professional politicians, as we all are.

We should actually give them a chance to say their piece and then get home and get to bed and get on with their lives, rather than be subjected to sitting there; I think the Hon. John Dawkins left at about 12.00 and there were still locals waiting to speak after he left at midnight on that night. I know the minister has indicated that it has not been to caucus and he is likely to not support this. As we indicated yesterday with the mining bill, the two major parties have a little bit of a luxury as we have a team in the House of Assembly. I would urge the minister to support this amendment at this point on the full understanding that we know it has not been to caucus and it may or may not change its view.

However, if he is wanting to write to the chair of DPAC, whoever that may be, male or female, and indicate that it is the will of the parliament that locals be heard first, it would send a much more powerful message if the Legislative Council supported this amendment, notwithstanding what may happen in the ALP caucus. I am quite relaxed; I would be disappointed but understand that the caucus may not support it. I think it would send a much more powerful message to the chair if the Legislative Council supported this amendment, even if it does not ever become part of the legislation and part of the act.

I urge the minister and his team to support this amendment, because it does send a strong message. It is a good message for all of us to send to the community that we actually want to listen to the community first. I know the minister and the government have copped a lot of criticism—I think a lot of it justified—for not communicating and not consulting. The member for Cheltenham, the Hon. Jay Weatherill, has—

The Hon. R.I. Lucas interjecting:

The Hon. D.W. RIDGWAY: Absolutely. As my colleague, the Hon. Rob Lucas, interjects, the Hon. Jay Weatherill is running a leadership campaign on the basis that the government has been deciding and then trying to defend. This would send a very strong message to the community that, actually, it would like to listen to the community first. If the government is not careful, one of the failings with some of the things that the minister would like to achieve with higher-density and transport-oriented developments will be a failure to bring the community with them.

I think this sends a very strong message to the community that the parliament does value the community's contribution, and I think it is important to listen first to those who are directly affected, those who have to live with whatever they see being built on the block across the road or the paddock down the road or in fact the high-rise or the eight or 10-storey development that happens at Bowden or Thebarton or Kent Town.

Having said that, I do not think we should prevent people such as the Hon. Mark Parnell or myself or the local members or anybody else making a contribution. I think that certainly would be undemocratic but we should listen to the locals first because they are the people who will be directly impacted.

The Hon. Mark Parnell commented in his contribution just a few moments ago that he was at Port Adelaide in 2003, but he does not live there. He certainly has a big interest in it and he is passionate about it but he does not live there, so whatever happens at Port Adelaide—and I know that he has been raising a number of questions about air quality and the Incitec Pivot facility—at the end of the day, the Hon. Mark Parnell lives not far from me up in the Mitcham/Belair area.

The Hon. P. Holloway: The eastern suburbs.

The Hon. D.W. RIDGWAY: True; at the end of the day, he is not directly affected. He is passionate about it; he wants to make sure that the people in that part of the state live in a safe and healthy environment, and I think we all do. He has every right to express his point of view and his opinion, but it should not be the one that is heard first. The locals should speak first. I say those few words and urge all members of the Legislative Council to support this amendment that actually gives locals the opportunity to speak first.

The Hon. P. HOLLOWAY: We have debated this earlier and I did indicate that I do have some sympathy with the point that the Leader of the Opposition is making: that these meetings are really to hear members of the public who have a specific interest in it and they should be heard first. I do not disagree with that at all. It is a matter of whether one should actually amend the act to provide for it or not. That is a different question.

As I said, my personal view is that I believe the chair of the meeting is the best person to determine that but if he is aware of the wishes of parliament, which could be done through a resolution, for example, then I am sure he would reflect that. If the honourable member wishes this matter to be reconsidered by the government, then obviously this matter would have to go to caucus and we would have to report progress. Otherwise I think the only option that I would have available to me would be to oppose it.

It is really up to the leader whether he wishes to report progress and we can come back and deal with it later. Otherwise my inclination would be to vote against it. I should indicate that the government is opposed much more strongly to the measures that are in the bill itself moved by the Hon. Mr Parnell in particular the 'two days' line, but we can debate that and the Hon. Mr Ridgway's amendment to that later. In relation to this particular matter, if the Leader of the Opposition wants proper consideration by caucus, then I suggest that he move an adjournment.

The Hon. M. PARNELL: Just for the benefit of members, the Hon. David Ridgway has tabled 10 amendments. Amendments 1 to 5 deal with development plan amendments that are initiated by the local council and amendments 6 to 10 deal with development plan amendments initiated by the minister. So, the first five are replicated in the second five.

The Hon. D.W. Ridgway: They're mostly consequential.

The Hon. M. PARNELL: Well, no, they're not. There are two separate issues here. The minister has already addressed both of them. The first issue is: do we legislate to tell the development policy advisory committee who it should listen to in what order? That is the first issue and I am going to address that one in a minute.

In fact, eight of the 10 amendments are consequential on the second issue, and the second issue is: when does the development policy advice become public? Is it before the minister has made his decision, which is my bill, or is it after the minister has made his decision which is the Hon. David Ridgway's amendment? Let's deal first with this question of legislating to guide the chair of the development policy advisory committee as to the order in which people are to be heard.

The first thing I would say is that, when the Hon. David Ridgway mentioned to me that he had this notion of maybe putting the locals first, my first reaction was, well, it does not matter that much—not such a big deal. But I have to say—no disrespect to parliamentary counsel, I guess they work with the instructions they are given—that is not what this amendment says at all. It does not mention locals and it does not say the locals should be heard first.

What the amendment does is create an absolutely impossible dilemma for the chair of DPAC to try to quantify the level of interest that different people have in order to determine the speaking order. It is an impossible dilemma, but even worse than that, it is fundamentally flawed because at the heart is some suggestion that there should be a weighting to people who speak first rather than people who speak last, in terms of the relevance of their contribution.

One thing that Mario Barone, the current chair of the Development Policy Advisory Committee, has been scrupulous in doing is telling the people who come at 12.30 at night, in the early hours of the morning, 'We are listening to you just as much as we listen to the people who went at 7 o'clock.' There is really no other response that he could make, otherwise it would be shocking, if maybe your name started with Z and you drew the straw to go last. Of course we have to regard all people's submissions equally.

The other flaw, I think, in this amendment is that it misinterprets the purpose of these Development Policy Advisory Committee hearings. Their real purpose is to listen to the submissions and the representations that are made, and then to advise the minister. It is not the purpose of the DPAC meetings to provide entertainment, education or information for anyone else. That is what happens, of course, because those of us who sit through those meetings get to find out a lot about what locals think. We find out a lot at 7.30 when the early submissions are heard, and we find out a lot at 12.30 when the last submissions are being heard. Ultimately, all submissions must be taken equally seriously. Some will have more merit than others and that is the judgement call that the Development Policy Advisory Committee makes.

I will just make one point in relation to the relevance of this amendment No. 1. This amendment does not relate to DPAC at all. It actually seeks to tell the person at the council who is running the local council public hearing, because DPAC does not run all public hearings. DPAC runs the hearings where it is the minister's rezoning, and it gives a report when it is a council rezoning, but it does not run those meetings. So effectively, the honourable member has brought in an entirely new issue, and that is council-run meetings.

The Hon. D.W. Ridgway interjecting:

The Hon. M. PARNELL: Well, what I am saying is it is a new issue. I am happy to consider it because it is replicated in the honourable member's amendment No. 6 which, in fact, does relate to the DPAC hearings.

Let me just tell you why this cannot work in practice, this idea that the chair gets to decide who goes first based on the relative degrees of interest of the persons attending the meeting. Firstly, are all landholders equal? What does the chair do? Do they say, 'Put up your hand if you own a hundred hectares. Put up your hand if you own 50 hectares. Put up your hand if you just own a house and put up your hand if you own a business'? Which of them is more important than the other? It is absolutely impossible to judge.

Let us take members of parliament. Should the local member of parliament, who lives in the affected area, have priority over a member of the Legislative Council who does not live in the area? You might say, 'Yes, they live there.' What if the flip side is the case? What if your local member lives somewhere else, as many local members do, and the member of the Legislative Council happens to live in the area? It is actually quite remarkable to think that this could happen.

The other point is something that might not be known to the honourable member, and I must admit that this debate has had me scouring the Development Act and regulations for the fine detail. We have all been working on an incorrect assumption. I will say here that I told the Hon. David Ridgway as much, but my assumption always was that your right to make a verbal presentation at these meetings was dependent on you having made a written submission, but that is not the case at all. In fact, you can choose not to make a written submission, turn up to the public hearing and you have a right to be heard. It says that in the Development Act. I will read the part from the DPAC hearing:

> The advisory committee has to ensure that at least one meeting is held where members of the public may attend and make representations in relation to the matter.

So, it does not actually have a prerequisite that you have to have made a written submission. Mind you, if no-one makes a written submission, the meeting does not have to be held, but you go even further—

The Hon. R.I. Lucas interjecting:

The Hon. M. PARNELL: I am going to ignore the Hon. Rob Lucas's interjections because they are most out of order. If you go further, and you look at regulation No. 12 under the development regulations, it states:

> Any interested person may appear at the public meeting and make representations on the proposed amendment or any submissions on the amendment.

I am giving this advice freely to the Hon. David Ridgway—that next time he turns up to a meeting and he has not made a submission, he needs to tap the chair on the shoulder and say, 'Under regulation 12, Mr or Madam Chair, I am entitled to have my say.'

Let's put this in perspective. I agree with the minister when he says that this is a level of legislative imposition that is unreasonable. When I asked the chair of the Development Policy

Advisory Committee, 'That time I went early on, how was that?' he said he did not know. He gets a list and whoever wrote the list did it.

If there is to be guidance, then the minister can write and give guidance. I would counsel against that because it is absolutely impossible to expect the chair to make that judgement call. They cannot make the judgement call unless they have read every single written submission and ranked them in order of priority. They certainly cannot make the judgement call for the latecomers, if you like, who turn up on the night and also want to have their say. Are you going to have 20 questions? Where you live? How much land do you own?

Even that is not good enough because what if a person is making a submission in relation to, say, an area of native vegetation? An example is Coffin Bay, the deferred urban zone. The submissions in relation to Coffin Bay, one of the highest areas of biodiversity left on Eyre Peninsula, are less likely to be from locals (although there will be locals who make submissions) than from ornithologists and ecologists and people who do not necessarily live there but have a massive contribution to make as to whether or not it is appropriate to rezone that land.

I know that case particularly well because I did argue a development approval case and, in the end, it was the evidence of out-of-towners in relation to the incredibly diverse bird life, animal life and diversity of plant species. At the end of the day, that evidence prevailed over a local who wanted to clear some of the best bushland left on Lower Eyre Peninsula and turn it into a housing estate. I think it is absolutely fraught for us to be pretending that some pigs are more equal than others. That some advice—

The Hon. D.W. Ridgway interjecting:

The Hon. M. PARNELL: The honourable member knows that I am referring to *Animal Farm*, in terms of some pigs being more equal than others.

We need to treat all submissions equally. I personally will not mind, if I go to one of these things, whether I am first or last, but I do not think it is the subject of legislation. If the honourable member had drafted it differently, we might have had the view that no great harm was done if he mentioned locals, in which case, you have to make sure that people declare their residential address when they are making submissions, rather than a postal address. You might think maybe no harm done.

It seems to me that, when you put all these things together, including the ability of people who have not made a written submission to make a verbal submission, we are making the chair's job absolutely impossible, and I do not think it is worth going down that track. Along with the minister, I have some sympathy for the idea that we do not want an elite system where politicians always go first. I am not arguing for that. I am arguing for the chair of the meeting to have discretion as to who they hear from and in what order.

Whether the meetings need to go for as long as they do is a matter for the chair. At early meetings, you were limited to your two or three minutes and if you had not finished by that time you got sat down. More recently, I know the chair has had more latitude and has let people go on.

In the case of Mount Barker (certainly not me, because I would have taken five or 10, as I do with these things), I recall one member—and the Hon. David Ridgway would remember a member of the clergy—who went for over half an hour, perhaps representing the interests of his flock. I am not at this stage going to say any more on it, but I think that, while we can acknowledge that the Hon. David Ridgway is trying to make sure that we do not have an elite system where politicians always go first, this is not the answer. It does not mention locals and it does not actually achieve what it is I think he wants to achieve.

The Hon. J.S.L. DAWKINS: I was not going to contribute to this, but I would like to add a few words in support of the Leader of the Opposition's amendment. I understand the concerns that the Hon. Mr Parnell might have about the way in which we deal with these matters, but I think the leader has brought some sensible discussion to this place by bringing these amendments to the fore tonight. Anybody who has experienced those meetings will know this, and the one I remember most was the one held for the Gawler East DPA some 17 months ago. The Hon. Mr Parnell talks about the chair's discretion, the amount of time that is given to people and that he took his five or 10 minutes.

I think that we need to look at the way in which those meetings are chaired, because my memory of that Gawler one particularly was that the Hon. Mr Parnell went first. I do not think he was very long in his contribution, but we then had contributions from the two councils involved (the

Town of Gawler and the Barossa Council). We also had presentations from representatives of the developers, and they were longish. I think the chair on that occasion said at the start of the evening that there would be a time limit on everybody's discussions of five or 10 minutes and then proceeded not to take any notice of how long people were speaking.

What happened was that, when there was this large number of people at the end of the evening who still had not been heard as we were approaching midnight, those people got less and less time. I just think that is something. Legislation may not be the way to address it, but I hope the minister takes notice of those concerns, because I have heard those concerns in other meetings. I think it is very bad when you have people who are very sincere in their concerns, who have to go to work the next day and who are sitting there at midnight or afterwards waiting to give their presentation about their particular area.

Some were repetitive but a lot were not. The lady with the concerns about the firefighting capacity at Gawler East had to wait until 10 past midnight to get her spot, and that was a new issue. Even if these amendments are not supported, I hope the minister will take note of the fact that I think we need to make sure those meetings are chaired well. Chairing a meeting like that is not easy but, to have something go on for 5½ hours, and for some locals to have to wait for many hours to get their say and then to be limited in time, is not the way to do it.

The Hon. D.W. RIDGWAY: I would like to make some comments in relation to this amendment and, in particular, to time limits. I did have a meeting with the chair at DPAC and I gave him an undertaking that I would not divulge too much of our conversation, but the Hon. Mark Parnell and I think the minister have mentioned Mr Mario Barone as the chair of DPAC. The time limits, in particular, are an issue that the Hon. John Dawkins has raised. The chair feels a bit constrained, because I think some time ago he had an experience where a person asked to give a presentation first in the evening because they had another meeting to go to, so he then decided that it was fair because this person needed to leave.

They were not local, as I would like to achieve with this amendment. This person wanted to speak first because they had another engagement. They spoke for 45 minutes, much longer than the 10 minutes. I have only been to five or six of these meetings but I am sure that Mario Barone tends to say, 'We will try to allow everybody to speak. If you can confine your comments to roughly 10 minutes, that is a reasonable time.' So, I am sure that he gave that type of instruction.

This person spoke for 45 minutes and the chair could sense that the meeting was getting agitated and that this particular person was taking more than their fair share of time, so he cut them off. They then sat in the audience for the entire length of the meeting. I think, from memory, they may have been an advocate on behalf of a group that was opposed to whatever decision DPAC was dealing with at the time and then used the fact that the chair gagged them at the meeting as part of their legal challenge to the decision.

As this debate unfolds, I am wondering whether—and I do not like to be too prescriptive; I hate too many laws—the chair should not be given some direction within the legislation or within the regulations to say that perhaps people should be given 10 minutes and then at that point, if they wish to speak further, they also go to the end of the meeting, because clearly in that particular example the chair felt as though he could not cut the person off, and now, given that that was part of a legal challenge to DPAC's decision, the chair is reluctant to cut people off as they make their presentations.

The vast majority of people attempt to keep themselves constrained to 10 minutes. In this place, we all know that 10 minutes is about 1,500 words and that sort of fits nicely for all of us, but if you are inexperienced at making a presentation, and either a little nervous or a bit enthusiastic about your presentation, then maybe it takes longer than the 15 minutes.

I am a little concerned that maybe this is another issue; that if this committee is going to act in a way that is fair and impartial then maybe we should be looking at potentially giving some direction, whether it is by way of a resolution of the parliament, or the Legislative Council, as the minister spoke of earlier, or by way of legislation. So, that is the first point I would make: I am a little concerned with that.

I am also interested to listen to the Hon. Mark Parnell talk about, 'Maybe the drafting should have been different.' The drafting we have here does not really achieve what I am trying to achieve. I am also interested in the comments that he made that this directs local councils, as far as consultation, rather than DPAC. I have gone to parliamentary counsel and said, 'This is what I want to achieve. I want to make sure that the locals speak first at DPAC hearings.'

I am not a lawyer; obviously, the Hon. Mark Parnell is. If, in the end, this amendment is not drafted to achieve what I want for DPAC then that is a little bit of a concern to me, and I think it would only be sensible, as much as this will frustrate the Hon. Mark Parnell, that at this point in time I move to report progress so that I can consult with parliamentary counsel to discuss the issues raised by the Hon. Mark Parnell about whether this actually delivers what I want, or whether it does not.

If I report progress and it is successful and supported, then I hope that the Labor Party caucus sees fit to consider this issue before we next sit so that they may be able to support it. So, I move:

That progress be reported.

The Hon. M. PARNELL: Can I speak on the motion to report progress?

The ACTING CHAIR (Hon. Carmel Zollo): I am afraid it has to be immediately put that progress be reported.

The Hon. M. PARNELL: We are going to have divisions, David, if you want to have divisions. We are going to get this through tonight.

The ACTING CHAIR: That is the standing orders; that is what I am told, I am sorry.

The Hon. D.W. RIDGWAY: I am moving that we report progress. You have raised a number of other issues that I need to consider.

The committee divided on the motion:

The ACTING CHAIR: There being only one no, I call it for the ayes.

Motion carried.

Progress reported; committee to sit again.

STATUTES AMENDMENT (BUDGET 2010) BILL

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

NATIONAL ENERGY RETAIL LAW (SOUTH AUSTRALIA) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (21:37): I move:

That this bill be now read a second time.

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

Leave granted.

Introduction

The Government is presenting new legislation that will enhance the national character and efficiency of Australia's energy markets, and provide strong protections for energy consumers in South Australia and on a national basis.

The *National Energy Retail Law (South Australia) Bill 2010* delivers on the Government's commitment to national energy reform and will deliver a national framework for regulating retailers and distributors who sell and supply electricity and gas to customers.

Background

As Honourable Members will be aware, South Australia is the lead legislator for national gas and electricity legislation and it retains this important role under the reforms proposed.

In June 2006 the Council of Australian Governments amended the Australian Energy Market Agreement to provide for (among other things), the national framework for energy access; and the national framework for distribution and retail services.

Implementation of the national framework for distribution and retail services was split into two packages (economic regulation of distribution services and the retail market regulation) due to the scale and complexity of the regulation. The 'economic' package was completed with the commencement of amendments to the *National Electricity Law* and Rules on 1 January 2008 and the new *National Gas Law* and Rules on 1 July 2008.

As part of the ongoing national energy market reforms, the Ministerial Council on Energy has completed the final component of the national framework for distribution and retail regulation set out by the Council of Australian Governments in the Australian Energy Market Agreement. This reform, known as the National Energy Customer Framework (here referred to as the 'Customer Framework'), will be implemented through a package of Laws, Rules and Regulations. The Customer Framework consists of this Bill, which includes as its Schedule the *National Energy Retail Law*, as well as Rules and Regulations to be made under that Law called the *National Energy Retail Rules* and the *National Energy Retail Regulations*. The Customer Framework requires consequential changes to the *National Electricity Law* and the *National Gas Law* which are included in the accompanying *Statutes Amendment (National Energy Retail Law) Bill 2010*. Finally, the Customer Framework also includes key amendments to the *National Electricity Rules* and the *National Gas Rules* on two matters. The first are national rules which enable retail customers and property developers to seek new (or significant modifications to existing) connections to electricity and gas distribution networks. The second are new rules to set out the rights and obligations between distributors and retailers which are necessary to support the retail supply of energy to customers and include a credit support regime.

Other minor consequential amendments are also being made to the *National Electricity Rules* and the *National Gas Rules* to ensure consistency with the new Customer Framework.

The Customer Framework will be applied in all jurisdictions which are part of the National Electricity Market, namely, South Australia, Victoria, New South Wales, the Australian Capital Territory, Tasmania, Queensland and the Commonwealth by application Acts which apply the framework for the purposes of those jurisdictions. The Ministerial Council on Energy has agreed that relevant jurisdictions will introduce the national framework progressively, noting that some transitional legislative arrangements will be required to appropriately manage the transition process.

Key Benefits of this Bill

The *National Energy Retail Law (South Australia) Bill 2010* seeks to achieve a national regulatory regime for retailers and distributors selling and supplying energy to customers. The Customer Framework will be under the jurisdiction of the Australian Energy Regulator as regulator and enforcement body and the Australian Energy Market Commission as rule maker. Its primary aims are to streamline regulatory requirements, increase efficiency through regulatory harmonisation and maintain best practice consumer protection. As a result, the Bill is expected to facilitate an increase in retail competition by reducing regulatory complexity and lowering barriers to entry, as well as by encouraging consumers to participate in this competitive market by providing strong and equitable consumer protections across participating jurisdictions.

Increased efficiency from national regulatory arrangements for energy

The separate regulation of energy retail markets by individual States and Territories is inefficient and imposes costs on retailers operating across State borders. There is duplication of processes and systems, which leads to higher compliance costs.

At the request of the Council of Australian Governments, the Ministerial Council on Energy has driven this current legislative reform with a key aim to achieve a national, harmonised regulatory regime for energy retailing. As a result, this reform removes many of the current inconsistencies for energy retailers and cuts red tape and compliance costs for Australian retailers operating across State borders.

Promoting competition via national authorisation framework

This Bill contains significant measures to facilitate retailers moving beyond individual State borders and to operate nationally. This brings benefits to customers from increased competition. One of these measures is the establishment of a national retailer authorisation, allowing a retailer to obtain one authorisation to operate nationally across all participating jurisdictions, rather than the six separate retail licences that would currently be required.

Consumer benefits

This Bill seeks to provide a comprehensive package of robust energy-specific consumer protections. The Customer Framework is intended to complement other general consumer protection laws such as the Australian Consumer Law and privacy legislation. Small customers will also have an efficient and effective option to deal with complaints and disputes via access to jurisdictional energy ombudsman schemes.

A further key benefit of the Customer Framework to consumers of electricity and gas is greater consistency of consumer rights across all participating jurisdictions. Energy consumers living in different parts of Australia benefit from having the same access to information and level of protection irrespective of which jurisdiction they reside in. Particular benefits flow to vulnerable consumers in financial hardship under national hardship requirements forming part of the framework.

National retailer of last resort scheme

A substantial element of the Bill is the institution of a national Retailer of Last Resort (here referred to as RoLR) framework. This provides for the substitution of a back-up electricity or gas retailer if a customer's current retailer fails. The national RoLR framework replaces existing jurisdictional RoLR schemes for electricity and gas.

RoLR schemes are necessary to support fully contestable retail markets and ensure the continued supply of energy for customers where a retailer exits the market due to solvency issues or for other reasons. RoLR schemes also bring financial security for the wholesale electricity and gas markets if a retailer fails. A national scheme provides the benefits of applying to retailers operating across State borders, which should increase the capacity of the market to manage a wider range of possible RoLR events. It also allows the national coordination of these important regulatory arrangements by a single regulator—the Australian Energy Regulator.

National regulator

The Australian Energy Regulator will be the national regulator operating under the *National Energy Retail Law*, taking a role similar to its role under the *National Electricity Law* and *National Gas Law*. This Bill therefore brings the whole energy supply chain—wholesale markets, transmission networks, distribution networks and retail markets—under national regulation with the Australian Energy Regulator overseeing a robust compliance and enforcement regime across all participating jurisdictions.

Part of a broader energy regulatory framework

The *National Energy Retail Law (South Australia) Bill 2010* forms the final piece of the broader national energy regulation frameworks and will work in a complementary way with established energy regulatory frameworks which apply in the energy sectors at State, Territory and Commonwealth levels.

The Customer Framework in this Bill will work alongside existing national electricity and gas regulatory frameworks covering wholesale markets and network access regulation. The accompanying *Statutes Amendment (National Energy Retail Law) Bill 2010* will make limited consequential amendments to the National Electricity and Gas Laws to ensure the *National Energy Retail Law* operates effectively within the broader energy regulatory environment. These consequential amendments will only have force and effect in a participating jurisdiction from the time that the jurisdiction applies the *National Energy Retail Law* as a law of that jurisdiction.

In addition, minor consequential amendments to the National Electricity and Gas Rules are also included in the Customer Framework that are necessary to align the framework within the existing national energy regimes.

The *National Energy Retail Law (South Australia) Bill 2010* will replace significant parts of existing jurisdictional energy legislation as jurisdictions transition to the Customer Framework. A jurisdiction's application Act may, for transitional or other reasons, modify the application of various provisions of the Customer Framework for the jurisdiction. Further, certain provisions of the Customer Framework rely upon jurisdictional energy legislation for their full effect, for example, the operation of energy ombudsman schemes, guaranteed service level schemes, and social policy initiatives such as community service obligations. Therefore, the Customer Framework is intended to operate in parallel with jurisdictional energy legislation and should in its application to a jurisdiction be read in conjunction with the application Act and other energy legislation of the jurisdiction.

This Bill will establish a regulatory regime that jurisdictions can fully adopt over time as appropriate for the circumstances of each market. That is, the Bill is sufficient to support a fully competitive retail market in the absence of retail price regulation, integrating regulation of retail market activity and consumer protections. That being said, this Bill will be able to be implemented by jurisdictions with continued retail price regulation, although some transitional legislative arrangements may be necessary.

Consultation

The introduction of this Bill follows substantial consultation on two exposure drafts of the Law and Rules, a Regulation Impact Statement and many other formal and informal consultative processes, through which officials have engaged with stakeholders to develop a comprehensive regime.

More than six discrete formal consultation processes have taken place where written submissions have been invited from stakeholders. Public forums have also been held and working groups have met with stakeholders frequently on an informal basis to discuss concerns and provide feedback on policy positions. Consultation commenced with a number of issues papers in 2006 through to June 2007, followed by a comprehensive Standing Committee of Officials Policy Paper and a Regulation Impact Statement in 2008, two public exposure drafts of the Law and Rules in 2009 and targeted consultation on specific matters such as the retailer of last resort regime and the national connections framework.

Stakeholder submissions have been carefully considered throughout the process. Energy Ministers have sought to ensure strong protections for consumers, while also seeking to balance the benefits of such protections against the cost of additional regulatory obligations, which ultimately get passed through to customers, and can act as a barrier to competition and innovation. The Ministerial Council on Energy is confident that the right balance has been achieved. This Bill represents a good outcome after several years of consultation and work to balance the interests of consumers and industry and positions from jurisdictions.

National Energy Retail Law objective

This Bill incorporates an objective which mirrors the objectives in the *National Electricity Law* and the *National Gas Law*. The national energy retail objective guides both the Australian Energy Regulator in carrying out its role under the Customer Framework and the Australian Energy Market Commission when it is carrying out its rule making role.

The national energy retail objective is 'to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.'

The alignment between the objectives of the laws governing the various sectors of the energy markets is an important foundation for the regime. Adopting an equivalent objective for the Customer Framework will ensure that the national energy regimes remain focussed on the long term interests of consumers. This is a fundamental principle agreed between governments in the Australian Energy Market Agreement.

The long term interest of consumers of energy requires the economic welfare of consumers, over the long term, to be maximised. The long term interests of consumers in competitive energy markets are promoted through

the application and development of consumer protections to enable customers to participate in the market with confidence, support effective consumer choice and ensure ongoing access to energy on reasonable terms as an essential service.

When the *National Electricity Law* and the *National Gas Law* were each introduced to this Parliament, the economic efficiency nature of the objective was emphasised in the context of the regulatory frameworks for the wholesale markets and the national access regimes for monopoly infrastructure, to deliver services in the long term interests of consumers. The national energy retail objective in this Bill operates in the context of a Customer Framework which has as its focus a strong regime of consumer protections for small customers, and further protections and assistance programs for customers in hardship, to ensure that those customers are able to confidently participate in the retail market, thereby maximising their economic welfare.

The Bill provides a robust interface between the community and a competitive retail market, and it is important that economic concepts such as the essential service nature of energy, information asymmetry between energy businesses and their customers, and transaction costs for small customers, along with the benefit to the community of ensuring that vulnerable customers are able to maintain their energy supply and pay their bills, are at the forefront of decision making under the Customer Framework.

Consequently and necessarily, the Bill also clarifies that the Australian Energy Regulator and Australian Energy Market Commission, in exercising their respective statutory functions under the Customer Framework, are to do so in a way that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

Which parties does the Bill apply to?

As I have already mentioned, the Customer Framework will govern the sale and supply of energy by retailers and distributors, respectively, to customers. As a result, the Bill applies to the relationships between retailers and customers, distributors and customers, and retailers and distributors.

A fundamental principle underlying the Customer Framework established by this Bill is that energy is an essential service. The framework recognises that small customers (both residential and small business customers) have little bargaining power and can be put at a significant disadvantage by the practices of their energy retailers and distributors if those practices are not regulated to ensure certain minimum standards. The Bill therefore incorporates a suite of consumer protections to ensure fairness to small customers. The Bill also provides additional protection to the most vulnerable customers including a requirement on retailers to develop and maintain a customer hardship policy, the detail of which is discussed later.

Small customers are defined as all residential customers and small business customers who consume energy below an upper consumption threshold as prescribed in the *National Energy Retail Regulations*. The upper consumption thresholds to be prescribed on commencement are 100 megawatt hours of electricity per annum and 1 terajoule of gas per annum. The *National Energy Retail Regulations* recognise that these thresholds may need to be reviewed to take account of developments in the energy markets over time and therefore require the Ministerial Council on Energy to undertake a review of the thresholds after a period of no more than five years following the commencement of the Regulations and then at intervals of no more five years after that.

Few of the consumer protections contained in the Bill extend to large customers, who consume above the upper threshold, as large customers have significant bargaining power with retailers in a competitive market, and additional protections come with an additional cost which impacts the financial interests of large customers.

It is expected that when Parliament is presented with the consequential amendments package to South Australia's legal instruments South Australia will retain its existing electricity consumption threshold of 160 megawatt hours per annum for the time being, rather than moving to the national upper consumption threshold under the Bill. This will assist with South Australia's transition to the national package with the retention of price regulation arrangements. It is noted that the gas threshold in South Australia is consistent with the national upper consumption threshold of 1 terajoule of gas per annum.

I now turn to the detail of the arrangements in the Bill.

Retailer—Small Customer Relationship

The Customer Framework deals with key aspects of the relationship between retailers and small customers. It ensures that small customers continue to benefit from important consumer protections, while delivering efficiency savings to energy retailers through a nationally consistent framework.

Obligation to offer supply

A fundamental consumer protection underpinning this Bill is the imposition of a regulatory obligation on retailers to offer to supply energy to small customers. This obligation recognises that regulatory intervention is needed to ensure that essential services are accessible to all those who require them.

The *National Energy Retail Law* obliges a retailer to offer supply to a small customer if it is the 'designated retailer' for that customer. The designated retailer is the retailer that has financial responsibility for the premises of the customer in the wholesale energy market if there is an existing connection. Where there is no connection, the local area retailer is the designated retailer and will have the obligation to offer supply to newly connecting customers in the retailer's specified local area. The Customer Framework also includes arrangements to assist a customer to identify its designated retailer.

The *National Energy Retail Law* requires the designated retailer to have a standing offer of supply, incorporating the standard retail contract, which will be set out in a schedule to the *National Energy Retail Rules*, and published standing offer tariffs (which may be regulated tariffs where a jurisdiction continues to regulate retail prices). The designated retailer can only make a limited range of permitted alterations to their form of standard retail contract such as the inclusion of the retailer's corporate branding. Retailers will also be subject to limitations about the frequency of variations to the standing offer prices.

The *National Energy Retail Rules* prescribe the regulatory obligations that form the terms and conditions for the sale of energy under the standard retail contract and deal with requirements relating to billing, payment, security deposits, disconnection and reconnection, complaints and disputes, and termination.

This approach of specifying the terms and conditions of standing offer contracts provides regulatory clarity to retailers and eliminates the need to seek approval of the contract by the Australian Energy Regulator. Most importantly, it offers small customers a full set of consumer protections. The standard contract also provides a basis for customers to compare and choose alternative market retail contracts.

Generally, it is this standard contract and a standing offer price that a designated retailer must offer to a small customer.

However, to provide greater flexibility for retailers supplying 'larger' small business customers, the *National Energy Retail Law* allows retailers to fulfil the obligation to supply those business customers consuming 40 megawatt hours or more per annum of electricity or 400 gigajoules or more per annum of gas by offering either a standard retail contract or a market retail contract. As with the upper consumption thresholds, these thresholds are also prescribed in the *National Energy Retail Regulations* and are subject to review by the Ministerial Council on Energy.

There is no obligation to offer supply to large customers in this Bill, as a large customer's energy supply decisions are commercial decisions, based on the availability of energy at a suitable price to sustain a particular business.

Market retail contracts

Small customers may elect to purchase energy under a market retail contract. Market retail contracts give retailers the opportunity to differentiate themselves from their competitors by offering innovative products and services. These innovations foster competition and allow consumers to shop around for the retail product that best suits their needs.

However, the increased flexibility given to retailers is not achieved at the expense of a robust consumer protection regime. The *National Energy Retail Law* ensures that key consumer protections are maintained under a market retail contract by requiring retailers to adopt a set of minimum terms and conditions as prescribed by the *National Energy Retail Rules*.

In jurisdictions that permit the use of prepayment meters, such as South Australia, the *National Energy Retail Rules* also provide additional requirements to the prescribed terms and conditions of the market retail contract, specifically designed to offer comparable protections to small customers wishing to purchase energy through a prepayment meter system.

Deemed supply arrangements

In further recognition of the essential nature of energy, small customers whose market retail contract expires, or who move in to premises which are connected to the network but have not yet arranged a contract with a retailer, will be supplied energy by the designated retailer for that premises under a deemed customer retail arrangement. However, while continuity of supply on reasonable terms is vital, retailers also need to be able to identify their customers with certainty. Accordingly, customers are required to take appropriate steps to enter into a standard or market retail contract as soon as practicable.

National hardship regime

The essential nature of energy means it is critical to ensure the vulnerable members of our communities are supported. The Customer Framework provides this support by establishing a national customer hardship regime.

Under this regime, each retailer is required to develop and maintain a customer hardship policy. The purpose of a customer hardship policy is to identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

The Bill requires that the customer hardship policies satisfy minimum requirements. The minimum requirements ensure that retailers have in place the necessary processes and policies to assist customers identified as requiring assistance. These include processes for identifying customers experiencing payment difficulties due to hardship and providing for the retailer's early response to such customers. Retailers will also be required to offer flexible payment options, including payment plans and the Centrepay payment option, and have in place processes to identify appropriate government concessions.

The protections contained in the Bill are supplemented by additional safeguards in the *National Energy Retail Rules*, in particular limits on the circumstances in which a customer on a payment plan can be disconnected.

Each customer hardship policy must be approved by the Australian Energy Regulator, who may only approve a policy that meets the mandatory minimum requirements set out in the Bill. The Bill also provides statutory guidance to the Australian Energy Regulator as to the matters it must have regard to when considering whether to approve a customer hardship policy, including that retailers must have programs and strategies to avoid disconnection of a hardship customer solely due to inability to pay. The Customer Framework also empowers the

Australian Energy Regulator to monitor retailers' compliance with the obligations of the customer hardship regime, and to develop and report on a range of hardship program indicators.

It is intended that adopting a national approach to customer hardship will enable effective management of the costs to retailers where they participate in more than one jurisdiction.

Informing small customers

This Bill includes rights for small customers to a range of information to be provided by both retailers and distributors. Some of these include information to identify who is their designated retailer, information to be given to customers when entering into a retail contract, historical billing information, tariff variations, and disconnection warning notices.

When a small customer contacts their designated retailer to obtain supply, the Bill requires that retailer to also disclose the availability of its standing offer to ensure that customers are aware of this entitlement.

Energy Marketing

Retailers and marketers must obtain 'explicit informed consent'

The Bill requires retailers (and those marketing on their behalf) to obtain explicit informed consent from a small customer for key transactions such as entry into a market retail contract. This Bill requires full and adequate disclosure of all matters relevant to the consent of the small customer and retailers are required to retain records of customer consent for at least 2 years. Further, a market retail contract is void if the retailer fails to obtain explicit informed consent of the small customer.

Ensuring best practice energy marketing behaviour

This Bill enables rules for energy marketing that complement the requirements set out in the general Australian Consumer Law and in national telephone and e-marketing legislation. The energy marketing rules in the Customer Framework recognise that retailers in the energy market engage in extensive marketing activity to gain and retain customers and that energy marketing is often conducted by third party contractors who are not directly accountable to energy customers. This regime will promote best practice marketing behaviour and provide appropriate redress for small customers if problems occur.

The energy marketing rules are designed to apply where it is considered energy-specific requirements are needed, such as energy marketing to small business customers, provision of energy-specific information to customers before entry into market retail contracts, and the need to allow a cooling-off period even though supply of energy may have commenced.

Together with the Australian Consumer Law and other general consumer protection legislation, the energy marketing regime under this Bill provides protection to energy customers and ensures that conduct of energy marketers is appropriate and not invasive.

Australian Energy Regulator price comparator service

This Bill enables the Australian Energy Regulator to establish, develop and operate a price comparator service. The price comparator is a service to small customers to enable them to compare the standing offer price available to a customer and market offers available in the area in which their premises is located, to find the most suitable offer available. This initiative will also promote competition amongst retailers. The price comparator service will operate on an 'opt-in' basis for jurisdictions that elect to apply the service.

The Bill requires retailers to provide information to the Australian Energy Regulator on their standing offer price and market offer prices that are generally available to small customers. This ensures that the obligation is not too onerous for retailers and does not hamper their ability to develop innovative and competitive retail offers.

The format and content of the price comparator and other price disclosure requirements will be developed by the Australian Energy Regulator through a full consultation process with stakeholders as part of the implementation of this national framework.

Energy Bill Benchmarking

This Bill enables the making of rules in relation to the provision of energy consumption benchmarks to residential customers. Once developed, benchmarks for energy consumption would be included on the energy bills of residential customers to enable them to compare their energy consumption against an appropriate localised benchmark. The objective of providing these benchmarks is to motivate above-average energy users to implement energy efficiency improvements that reduce energy use.

While the Bill provides for rules to be developed with respect to 'energy' consumption benchmarks, the initial rules will only provide for consumption benchmarks relating to electricity. This structure will allow for future development of new rules to extend the benchmark regime to apply to gas consumption, if proven cost effective.

To ensure their relevance and effectiveness, the initial electricity consumption benchmarks will be based on localised zones and contain a household size comparator. Retailers will have the discretion to present the benchmarks in either a graphical or tabular format and may position them in a location of their choosing on their customers' electricity bills. This degree of discretion is intended to help minimise retailers' costs and ensure flexibility in the way that they communicate with their customers.

The initial electricity consumption benchmarks will be developed in consultation with relevant stakeholders. Once developed, initial benchmarks will be prescribed in the *National Energy Retail Regulations*. Responsibility for

the ongoing administration of the electricity consumption benchmarks will be with the Australian Energy Regulator under the *National Energy Retail Rules*. This role will primarily entail updating the benchmarks every three years.

Distributor-Customer Relationship

In establishing a direct contractual relationship between a distributor and a customer, the Bill recognises that distributors are responsible for, and best able to manage, the physical delivery of energy at a customer's premises, even though the energy is purchased from a retailer. The approach is similar to existing contractual models that are operating in electricity in most jurisdictions already, but it does represent a change for many gas distributors. This Bill does not interfere with existing gas access arrangements of distributors and works in tandem with those frameworks.

The Customer Framework retains current practice under which most customers pay both network charges of the distributor and retail charges to their retailer under the customer retail contract.

Obligation to offer connection services

The Bill includes an obligation on a distributor (both electricity and gas) to provide customers services such as new connections, connection alterations and ongoing supply services under a direct contractual relationship. This obligation to offer is an essential obligation on distributors which mirrors and supports the obligation on retailers to have a standing offer to sell energy to small customers. The obligation on distributors to provide customer connection services under the Bill is qualified to the extent that both distributors and customers must satisfy relevant requirements of the energy laws in the provision of those services.

Connection contracts

The Bill provides for three types of customer connection contracts: deemed standard connection contracts, which can apply for all customers; Australian Energy Regulator approved deemed contracts, which relate to classes of large customers; and negotiated connection contracts.

These contracts reflect that energy distributors are monopoly service providers and, in general, customers have limited ability to meaningfully negotiate the terms and conditions of their energy supply. As such, the deemed contracts which apply by force of law are either regulated as a model contract or approved by the Australian Energy Regulator to ensure they are fair and reasonable.

While individual negotiation of connection and supply arrangements is not generally required by most customers, the Bill recognises that negotiated contracts may be required particularly for larger business customers with specific connection needs. Where connection contracts are negotiated, the Customer Framework includes a negotiating framework in the National Electricity and Gas Rules. These additional Rules are enabled by amendments to the *National Electricity Law* and the *National Gas Law* made in the *Statutes Amendment (National Energy Retail Law) Bill 2010)*. The negotiating framework for connection will ensure customers' interests are protected and customers receive adequate time and information to consider any proposed arrangements.

The Customer Framework imposes direct obligations on customers to ensure distributors' connection assets on their property are treated appropriately and access to premises for meter reading is given where necessary. Distributor obligations include requirements prior to disconnection such as giving a warning notice, and notice requirements to customers of planned interruptions that may affect supply to the customers' premises.

Life support

As continued access to energy is a critical issue for customers who use life support equipment, this Bill contains strong protections for customers with life support equipment in their homes or other premises.

Where a customer informs their retailer or distributor that a person residing at premises requires life support, the Customer Framework requires both the retailer and the distributor to keep a register of premises where life support equipment is in use and will stipulate that distributors must not disconnect these registered premises. The Customer Framework also ensures that these customers are afforded every opportunity to guard against the risk of unavoidable supply interruptions, such as during an emergency supply outage.

The National Connections Framework

As I have indicated, the Customer Framework before us today also includes a national connections framework. This framework is provided for in the accompanying *Statutes Amendment (National Energy Retail Law) Bill 2010*.

The connection framework is to be inserted into the *National Electricity Rules* and the *National Gas Rules*, for retail customers seeking new connections or alterations to existing connections to electricity and natural gas distribution networks. Recognising that many new connections are arranged by property developers before retail customers move in, arrangements are also included to enable property developers to apply for one or multiple connections.

Each project for a new connection or modification of an existing connection will not be identical. For example, the distance of premises from existing infrastructure will vary. However, a large number of new connections and modifications will have common features, such as the type of assets needed to connect or modify.

To accommodate these similarities, the framework establishes two broad types of service offerings: basic connections and standard connections. Basic connection services are services that involve no or only minimal augmentation of the network or pipeline and are likely to be sought by a significant number of retail customers within the distributor's service area.

Under the framework, each distributor must have at least one model standing offer for each class of basic connection services it provides. Electricity distributors must also define at least one standing offer for the basic connection services it provides for micro-embedded generators (for example, rooftop solar panels). A model standing offer is a template offer, describing the terms and conditions which will apply to the connection, such as the circumstances in which charges are payable and how they will be calculated and the timeframe in which work will be completed.

Distributors may also provide model standing offers for standard connection services for other categories of connection that, while not likely to be sought by a significant class of customer, are still common to different classes of customers within their area.

To provide for differences across distribution areas, each distributor is responsible for developing its own basic and standard connection service offerings. However, to ensure the proposed model terms and conditions for these offers adhere to the requirements of the framework, model standing offers must be approved by the Australian Energy Regulator before being offered to customers.

The framework sets out an enquiry and application process with prescribed response times to ensure customers enquiring about new or altered connections receive timely information to assist them in making an application. For a straightforward basic or standard connection, an 'expedited' process is available. This allows the customer to state from the outset that they accept the distributor's model standing offer, to enable straightforward connections to be competed as quickly as possible.

The Customer Framework ensures new terms and conditions of new or altered connection offers integrate with the customer connection contracts under the *National Energy Retail Law*. This means customers will have a single contract with their distributor covering both their new or altered connection and ongoing supply.

The national connection regime also contains a negotiating framework for retail customers seeking non-standard connections or connection alterations. While this is expected to apply mainly to larger connection applicants, customers seeking basic or standard connection services may also elect to adopt this negotiation framework. An application and offer process with prescribed response times is also prescribed under the rules.

The national connections regime includes provisions for the process and cost of new connections and connection modifications. Importantly, the connection charging regime also integrates with the existing economic regulation of networks under the *National Electricity Rules* and the *National Gas Rules*. For electricity, to ensure connection charges for retail customers and property developers are broadly consistent across networks and align with distributor determinations, distributors must submit a connection policy as part of each regulatory proposal, for approval by the Australian Energy Regulator.

A distributor's model standing offer for a new or altered connection must be consistent with its distribution determination, including its connection policy.

In turn, the connection policy must be consistent with connection charge principles under the Rules and connection charge guidelines, to be developed by the Australian Energy Regulator. The guidelines will establish principles for fixing a threshold below which retail customers will be exempt from any requirement to pay connection charges for any upstream augmentation necessary to make the connection. In this way, smaller or more typical retail customers will not be paying directly for upstream augmentation in respect of their connection.

In developing the electricity connection charging guidelines, the Australian Energy Regulator must have regard to the inter-jurisdictional differences related to regulatory control mechanisms, classification of services and other relevant matters. The Australian Energy Regulator's consideration of established practices in jurisdictions will provide a useful benchmark in developing these guidelines, and will go a long way in ensuring a relatively smooth transition for all to the new arrangements for new or altered connections.

For gas, there will be connection charges criteria to provide detail on the methodology for calculating connection charges and ensuring that distributors take into account the revenue they will receive over time from supplying gas to the premises and do not seek to recover this upfront when the connection is made.

Finally, the regime ensures that all connection applicants under the Customer Framework have access to dispute resolution, whether to the relevant energy ombudsman (for small customers) or to the Australian Energy Regulator. To facilitate this, recently-made regulations waive the access dispute fees of the Australian Energy Regulator for gas customers consuming less than 1 terajoule of gas per annum, and for electricity customers consuming less than 750 megawatt hours of electricity per annum, which will enhance such customers' ability to use this mechanism.

Small Compensation Claims Regime

The Bill also includes a Small Compensation Claims Regime (the 'small claims regime') which is designed to provide small customers with small claims a low cost and effective way to obtain compensation for (mainly) damage to their property without needing to prove negligence.

The Bill allows the small claims regime to operate in those States and Territories that choose to implement it. This provides flexibility and recognises that not all jurisdictions may be in a position to adopt the regime based on existing practices. Some distributors already operate similar voluntary schemes while other jurisdictions impose a regulatory requirement on distributors to do so. The small claims regime in the Customer Framework has been designed to enable a State or Territory to define in its local instrument what a claimable incident and compensable matter are in that jurisdiction, to accommodate differences.

The small claims regime in this Bill enables a small customer to refer a small claim for compensation to their distributor to be assessed, processed, and if appropriate, compensated. The types of small claims that typically arise involve damage to electrical and electronic goods such as televisions and computers. The small claims regime provides the framework for the resolution of small claims in a way that does not involve a distributor having to admit fault, negligence or bad faith, and which is efficient and simple to understand.

In addition to the consumer protection aspect, the small claims regime provides an incentive for distribution businesses to actively manage their quality of supply rather than pay compensation for potentially avoidable incidents. Further, it assists distribution businesses with their management of liability by reducing the need for small customers to potentially seek legal action for damage and instead offers small customers an uncomplicated tool to claim compensation. Lastly, it reduces the burden of dispute resolution involving property damage through jurisdictional ombudsman schemes as small customers can deal directly with the distribution business and need only involve the energy ombudsman if they are dissatisfied with the outcome of a claim.

Small Customer Complaints and Dispute resolution

This Bill includes robust arrangements for the handling of complaints and disputes from small customers by energy retailers and distributors. It also supports and facilitates the role of jurisdictional energy ombudsman schemes as external dispute resolution bodies.

Retailers and distributors must publish on their websites a set of procedures (their 'standard complaints and dispute resolution procedures'), for responding to small customer complaints. These procedures must be consistent with the applicable Australian Standard on complaint handling.

A retailer or distributor will also be required to handle a customer complaint in accordance with its published procedures, and to advise the customer in a timely way of the outcome of their complaint, including any reasons for its decision.

A customer must also be informed that if the customer is not satisfied with how their retailer or distributor has handled their complaint, they can refer the matter to the energy ombudsman in their State or Territory, and the retailer or distributor must provide the customer with the contact details of the energy ombudsman.

The Bill also includes a requirement for each retailer and distributor to be a member of an energy ombudsman scheme for each jurisdiction in which the retailer or distributor sells or supplies energy to small customers or engages in marketing to small customers, and to comply with the requirements of that scheme.

The Bill seeks to ensure that while the energy ombudsman schemes themselves operate according to their own jurisdictional laws or constitutional arrangements, the schemes are able to receive, investigate and resolve small customer complaints and disputes that may arise under the Customer Framework.

Retailer authorisation

Under this Bill there will be a national energy retailer authorisation regime for the first time. A party will be prohibited from selling energy to customers unless it has obtained a retailer authorisation from the Australian Energy Regulator, or has been exempted by the Australian Energy Regulator from this requirement. The regime works to ensure that only businesses which can demonstrate their capacity and suitability to meet their obligations in selling energy can operate in the energy retail sector. The retailer authorisation regime is one mechanism in the Customer Framework to minimise the risk of non-compliance or failure by a retailer, and the impacts of any such failure on the energy markets and customers.

The Bill gives the Australian Energy Regulator regulatory functions and powers to grant or refuse a retailer authorisation application. The Bill also sets out the entry criteria that an applicant must meet when applying for a retailer authorisation. These entry criteria include demonstrating to the Australian Energy Regulator that the business has the organisational and technical capacity, financial resources and demonstrated suitability to meet the regulatory obligations of a retailer and therefore to hold an authorisation.

The Bill further provides that, in considering the suitability of a retailer for authorisation, the Australian Energy Regulator will take into account any relevant matters, including the previous commercial dealings of the applicant and its associates and the standards of honesty and integrity shown in previous commercial dealings of the applicant and its associates.

This regime differs from jurisdictional licensing regimes, including South Australia's current regime, because the national retailer authorisation does not use conditions on the authorisation to impose ongoing requirements on retailers. Rather, authorised retailers must comply with direct obligations under the various energy laws.

However, as a means to ensure compliance with the Customer Framework, the Australian Energy Regulator will also have the power to revoke a retailer's retail authorisation should the Australian Energy Regulator be satisfied that a retailer is unable to meet its obligations under the Law, Regulations or Rules.

This Bill requires the Australian Energy Regulator to develop guidelines, in consultation with relevant organisations, to provide potential applicants with guidance if they wish to apply for a retailer authorisation and if they wish to transfer, vary or surrender their authorisation.

Exempt Sellers Regime

Not all businesses that sell energy can or should be required to obtain a retailer authorisation and comply with the full range of obligations on retailers contained in the Customer Framework. This Bill provides the Australian Energy Regulator with the power to grant an exemption to a person or class of persons, known as exempt sellers.

Given the costs and obligations that holding a retailer authorisation entails, small entities such as caravan parks, which on-sell incidental amounts of energy may need to be exempted from the requirement. Other unique situations may also require special arrangements.

The Bill therefore provides for 3 types of exemptions. The first is individual exemptions which would be granted on a case-by-case basis, taking into account the particular circumstances of an individual seller. The second type of exemption is a class of registered exemptions which the Australian Energy Regulator determines, and particular sellers who fall within that class of sellers must register with the Australian Energy Regulator to have the benefit of the exemption. The third type of exemption is a deemed exemption. The Australian Energy Regulator will determine and publish classes of sellers who fall within the class. These will be the small operators for whom it is inefficient to identify each individual seller.

Exempt sellers may be subject to conditions imposed by the Australian Energy Regulator which are enforceable as if they were Rules. The Bill gives clear policy guidance to the Australian Energy Regulator when it is determining classes of registrable or deemed exemptions, assessing an individual exemption, or imposing conditions on an exemption. The Australian Energy Regulator must have regard to both overarching policy principles and more targeted exempt seller related factors and customer related factors.

The exemptions framework set out in the Bill has been designed to recognise the wide variety of supply arrangements that exist and ensure the Australian Energy Regulator has flexibility to apply obligations to exempt sellers which protect the interests of the exempt seller's customers and are appropriate to the seller's individual circumstances.

Retailer of Last Resort Scheme

I have already mentioned one of the key elements of the Bill is the institution of a national RoLR framework, which will replace existing jurisdictional RoLR schemes for electricity and gas. The RoLR arrangements have been subject to extensive separate consultation, to ensure that the institutional arrangements are sound.

A RoLR scheme provides security to customers by ensuring the continuity of supply if their retailer happens to fail or exit the market without making arrangements for continued sale and supply of energy to its customers. A RoLR event can be invoked for a range of reasons, including the suspension of a retailer from a wholesale exchange for energy or insolvency of the retailer.

A retailer failure in this situation also has a major flow-on effect as the Australian Energy Market Operator would not be able to settle the wholesale markets for energy consumed. The national RoLR scheme therefore incorporates backup arrangements to ensure the integrity of the relevant market's financial settlements in the event of a retailer failure, and thus protect customers.

The national RoLR scheme provides for the identification of retailers who will become responsible for the customers of a failed retailer and continue to supply electricity and/or gas to those customers. The arrangements establish the practices and procedures to be followed prior to, during and after a RoLR event.

The Australian Energy Regulator is charged with the role of registering and appointing retailers of last resort. Registered RoLRs may, if a RoLR event occurs, be appointed as a retailer of last resort for affected customers. Retailers may volunteer to be registered, or the Australian Energy Regulator may require them to become a RoLR by making them a default RoLR. The Australian Energy Regulator must have regard to the RoLR criteria in registering or appointing a RoLR, which pertain to the operational and financial capacity of the retailer.

The arrangements require the Australian Energy Regulator to notify, or ensure the notification of, all affected parties when a RoLR event occurs, through a RoLR notice. The Australian Energy Regulator is empowered to make plans which will set out how the various parties, such as distributors, retailers and the Australian Energy Market Operator should interact to deal with a RoLR event. These arrangements will include notification to affected customers of what will occur.

The Australian Energy Regulator is empowered to require information from retailers under the RoLR regulatory information provisions, to ensure that it is fully informed and able to ensure the effective transfer of customers to the RoLR if a RoLR event occurs. To deal with the possibility that the failed retailer may be insolvent and unable to provide information, a failed retailer's insolvency official may be requested to provide necessary information to the Australian Energy Regulator.

The regulatory information provisions are modelled on those established under the National Gas Law, with the exception that there is no provision for issuing general Regulatory Information Orders, as this is not appropriate to the RoLR context. Therefore only Regulatory Information Notices are provided for. There are other modifications that reflect the likely urgency of issuing these Regulatory Information Notices in the context of an actual or imminent retailer failure.

The Australian Energy Regulator is further empowered to act to investigate the potential for a RoLR event to occur. This is provided through the Australian Energy Regulator's powers in relation to contingent events. Under these powers the Regulator may inquire into the financial position of retailers, consult with the Australian Energy Market Operator, disclose information to relevant parties and notify the Australian Energy Market Operator and jurisdictional Ministers if it believes that there is a risk of a RoLR event. These powers are necessary to ensure that customer security of supply is preserved and not compromised by the threat of retailer failure.

The Australian Energy Regulator may also inquire with one or more registered RoLRs as to whether they wish to be appointed should a RoLR event occur to streamline the appointment process that will be undertaken following an actual RoLR event. All actions taken by the Regulator under contingent events are subject to

confidentiality protections to ensure the regulator's investigations do not of themselves trigger a RoLR event by causing uncertainty in the market.

Arrangements are also made for the recovery of the costs associated with RoLR events by RoLRs and distributors.

In the case of RoLRs, these will be set out in a cost recovery scheme determined by the Australian Energy Regulator. The cost recovery scheme approved by the Australian Energy Regulator must allow the RoLR to recover the reasonable costs associated with the scheme.

The cost recovery process will occur through the Australian Energy Regulator requiring distributors to make payment to a RoLR in accordance with their liability under the RoLR cost recovery scheme. Distributors will then have the ability to pass costs through to retailers via their distribution price determination or access arrangement, effectively providing for all customers to contribute to the costs of the scheme, recognising that it provides a service to the whole of the market.

In the gas sector, further arrangements are also necessary to ensure that RoLRs are able to access sufficient gas and pipeline capacity to fulfil their required role for the duration of their obligations. To this end, if there is otherwise insufficient capacity or gas available to the RoLR, gas pipelines and shippers are required to provide capacity and gas to the RoLR on terms and conditions which are comparable to those generally available in the market. The Australian Energy Regulator will be empowered to determine these terms and conditions, and to hear disputes with pipeline operators as access disputes under the National Gas Law. RoLRs will be required to enter into negotiations to purchase replacement contracts going forward and, if they are unable to conclude those negotiations, capacity and gas must be auctioned by those that hold it.

The Bill provides arrangements under which affected customers will be supplied after a RoLR event. In the case of small customers, they will be subject to a deemed supply arrangement on standard terms and conditions. Large customers will be supplied on terms and conditions that must be published by registered RoLRs.

As these arrangements are in the nature of emergency powers to deal with a substantial market failure, it is necessary that they be fully enforceable and actionable. Therefore, statutory immunity is provided to the Australian Energy Regulator, Australian Energy Market Operator, RoLRs and distributors as well as their staff in carrying out their roles. Further, the regime provides for the displacement of some provisions of the *Corporations Act 2001* (Commonwealth) to ensure there is no doubt of the primacy of the RoLR scheme.

Recent experience has revealed a number of ways in which customers can be adversely affected by being transferred to a RoLR. Therefore, the Bill includes provisions to ensure that the failed retailer or its insolvency official honours customer payment plans, returns security deposits to customers, returns any prepaid credit to customers, and cancels direct debit and Centrepay arrangements with the failed retailer.

Retailer-Distributor Relationship

This Bill recognises that distributors and retailers have direct obligations to their shared customers under the Customer Framework. To serve their customers, distributors and retailers must freely exchange information and coordinate service delivery. It is also necessary that there are uniform and predictable billing and payment requirements between distributors and retailers. To date, these mutual 'retail support' obligations have been contained in jurisdictional regimes under a variety of instruments.

The new Customer Framework sets these requirements out clearly in rules made under the *National Electricity Law*, the *National Gas Law* and *National Energy Retail Law*. The heads of power for the making of these Rules are contained in the *National Energy Retail Law* and in the accompanying *Statutes Amendment (National Energy Retail Law) Bill 2010*. The rights and obligations on retailers and distributors are direct regulatory obligations that are even handed and fair to both of them.

Credit support

The retailer-distributor arrangements in the Customer Framework include credit support rules which provide for retailers to give guarantees to distributors, known as credit support, to guard against the risk of retailer default on payment of network charges, in turn protecting customers from bearing the cost of a default.

The credit support provisions represent a balanced and proportionate requirement on retailers which takes into account their creditworthiness and the risk posed by a retailer to any given distributor. The proportionate arrangements will lower barriers to entry and expansion by retailers into new distribution areas, and thereby encourage competition between retailers nationally.

The credit support rules will effectively require distributors to act prudently in obtaining appropriate levels of credit support from a retailer under the rules. Distributors will be able to pass through certain unpaid network charges to customers, but customers will not be required to pay to the extent a distributor has not taken reasonable steps to obtain credit support from a retailer where it is entitled to do so under the rules.

Appropriately, the credit support arrangements provide incentives for retailers to improve their credit worthiness, and provide incentives for distributors to efficiently manage their risk exposure.

Ministerial Council on Energy role and functions

As provided for in the Australian Energy Market Agreement, the Ministerial Council on Energy will be the national policy and governance body for the Australian energy market, including the Customer Framework.

The Bill reflects similar functions and powers for the Ministerial Council on Energy as those set out under the *National Electricity Law* and *National Gas Law*. Firstly, the Ministerial Council on Energy may direct the Australian Energy Market Commission to carry out a review and report back to Ministers. Such a review may result in the Australian Energy Market Commission making recommendations to the Ministerial Council on Energy in relation to any relevant changes to the *National Energy Retail Rules* that it considers are required. Secondly, the Ministerial Council on Energy may initiate a Rule change proposal. This may, for example, be the result of a review carried out by the Australian Energy Market Commission as a result of a request by the Ministerial Council on Energy. Thirdly, the Ministerial Council on Energy may publish statements of policy principles in relation to the Australian Energy Market Commission's rule making and review functions under the new Customer Framework.

Australian Energy Market Commission role and functions

The Australian Energy Market Commission is the rule making body for the current *National Electricity Rules* and the *National Gas Rules*. The Commission will have a similar role under this Bill for the *National Energy Retail Rules*. The Australian Energy Market Commission will assess Rule change proposals which have been initiated by the Ministerial Council on Energy, the Australian Energy Market Operator, industry participants and energy users including retail customers, in accordance with its rule making procedures.

In so far as its review function is concerned, the Australian Energy Market Commission must conduct reviews as directed by the Ministerial Council on Energy into matters such as the sale and supply of energy to customers and the operation and effectiveness of the *National Energy Retail Rules*. The Australian Energy Market Commission may itself decide to conduct reviews into the operation and effectiveness of the Rules.

The Australian Energy Market Commission will be required to have regard to the National Energy Retail Objective in performing its functions under the Customer Framework. Further guidance has been set out in this Bill for the Australian Energy Market Commission when making a rule, which I will say more about shortly.

Further, the Australian Energy Market Commission must have regard to any relevant Ministerial Council on Energy statements of policy principles in making a rule change or conducting a review into any matter relating to the *National Energy Retail Rules*.

Australian Energy Regulator role and functions

The Australian Energy Regulator is a Commonwealth statutory body under the *Trade Practices Act 1974* (Commonwealth). The Australian Energy Regulator is the primary regulator under the *National Electricity Law* and the *National Gas Law* in all jurisdictions except Western Australia. Under this Bill, the Australian Energy Regulator will have similar powers to regulate, and ensure compliance by, retailers and distributors under the Customer Framework.

The Bill requires the Australian Energy Regulator to exercise key functions under the Customer Framework in a manner that will contribute to the achievement of the national energy retail objective, and where relevant, in a manner that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers. These key functions include approval of applications for retailer authorisations, administering the national exempt seller's framework, and regulating the Retailer of Last Resort regime.

The Australian Energy Regulator has a number of new approval functions which include approving Customer Hardship Policies of retailers and deemed customer connection contracts for large customers which a distributor may choose to submit. Under the new connections framework, the Australian Energy Regulator will also have an approval role in relation to various connection offerings of distributors.

Enforcement

The enforcement regime in this Bill reflects the current enforcement regimes in the *National Electricity Law* and the *National Gas Law* to create a harmonised enforcement regime across the legislative frameworks. The existing general compliance and enforcement regimes for the energy sector empower the Australian Energy Regulator to do the following—

- generally monitor compliance with the Law, Regulations and Rules and investigate breaches.
- seek a range of remedies in Supreme Courts and the Federal Court to enforce the obligations in the regime (for example injunctions and declarations).
- seek civil penalties where applicable.
- serve an infringement notice which, if paid, would avoid Court proceedings.

This Bill, together with amendments to the *National Electricity Law* and the *National Gas Law* included in the accompanying *Statutes Amendment (National Energy Retail Law) Bill 2010*, establish for the first time a power for the Australian Energy Regulator to accept enforceable undertakings from energy market participants. This type of administrative remedy gives the Regulator an alternative tool in achieving compliance to having to proceed straight to court action. This type of regime for enforceable undertakings is similar to the power which the Australian Competition and Consumer Commission has under the *Trade Practices Act 1974* (Commonwealth).

In addition, the Bill incorporates a conduct provision regime in relation to certain specified obligations owed by retailers to distributors and vice versa. This regime has been included to enable retailers and distributors to take direct action against the other party where appropriate.

Obtaining and using information

This Bill adopts key general information gathering powers currently available to the Australian Energy Regulator under the *National Gas Law* and *National Electricity Law*. The Bill gives the Australian Energy Regulator the ability to obtain information or documents from any person where such information or documents are required by the Australian Energy Regulator for the purpose of performing or exercising any of its functions and powers. The usual protections apply for the various categories of confidential information.

The Customer Framework makes certain that there is no duplication for industry participants in providing information to the Regulator. Similarly, the Australian Energy Regulator will have flexibility in the way in which it may use and report information provided to it. This Bill expressly states that information provided under any of the three national energy regimes can be used for the purposes of any of those regimes. Similarly, the Australian Energy Regulator may combine into single documents reports and guidelines that cover similar subject matters across the three regimes. This will save both costs and red tape for stakeholders.

New compliance regime for the retail sector

This Bill contains a targeted compliance framework which applies to retailers and distributors who are subject to the Customer Framework. Retailers and distributors must have policies, systems and procedures to enable them to efficiently and effectively self-monitor their own compliance.

An effective compliance monitoring and reporting regime must be supported by the free flow of information to the Australian Energy Regulator, and retailers and distributors will be obliged to provide information relating to specific matters relevant to the Customer Framework and listed in Compliance Procedures and Guidelines developed and published by the Australian Energy Regulator.

The Bill has a clear compliance auditing regime which sets out how the Australian Energy Regulator may initiate such audits. Compliance audits can assess compliance by a retailer or a distributor with its obligations under the *National Energy Retail Law*, the Regulations or the Rules.

The Bill mandates an annual compliance report to be prepared and published by the regulator which will include both the monitoring activities of the Australian Energy Regulator during the year and the compliance of retailers and distributors, in particular, in relation to energy marketing.

New performance reporting for the retail sector

The full benefits of a national energy retail market will become evident if there is effective competition in the retail sector, such that customers are able to share in the benefits of an efficiently run energy market.

Consumers, businesses and government require access to quality information on the development and efficacy of the retail market. Therefore, this Bill empowers the Australian Energy Regulator to gather information and publish a Retail Market Performance Report annually.

This annual report will include both a retail market overview and a retail market activities review for the year. The overview will include information on the number of retailers actively selling energy to customers and customer numbers of each retailer. It will also indicate the total number of customers on standard retail contracts and market retail contracts for small customers and by reference to each retailer. The report will cover transfer activities between retailers and energy affordability for small customers.

The annual retail market performance report will also report on retail market activities. This includes information and statistics on customer service and customer complaints as well as the handling of customers experiencing payment difficulties, (distinguishing hardship customers). In addition, the report will detail activities relating to prepayment meters, disconnection and reconnection for non-payment of bills, energy concessions and rebates for customers (where these are administered by retailers) and security deposits held by retailers.

Importantly, this Bill requires the Australian Energy Regulator to develop, in consultation with stakeholders, hardship program indicators which cover entry into and participation in, hardship programs and assistance available to customers under customer hardship policies.

The Bill expressly states that compliance audits may be carried out in relation to a retailer's compliance with the obligation of retailers in relation to hardship customers and the implementation by a retailer of its own customer hardship policy.

The Bill also enables the Australian Energy Regulator to conduct performance audits of energy retailers against these hardship program indicators. This will allow the regulator to assess whether vulnerable customers are being well served by a retailer's customer hardship policy and the retail market generally.

National Energy Retail Rules

This Bill enables the making of the initial *National Energy Retail Rules* on the recommendation of the Ministerial Council on Energy, by a Ministerial notice. However, the introduction of the Customer Framework differs from previous national energy reforms in that the Customer Framework will not commence in any jurisdiction (including South Australia) immediately upon enactment by the South Australian Parliament.

Commencement will occur in each jurisdiction when the jurisdiction applies the package of Laws and Rules. The Australian Energy Market Commission will only assume its responsibilities for rule making when commencement of the Customer Framework first occurs in any jurisdiction. Therefore, during the pre-commencement period (between enactment in South Australia and application in any jurisdiction), the various national Rules made by the South Australian Minister remain the responsibility of the Minister. Should it become evident as part of jurisdictional implementation that any adjustments are needed to the initial Rules made by the Minister prior to jurisdictional commencement, the Laws provide a residual power that would allow the Minister to

make necessary and consequential changes to the initial Rules, but only up until commencement by any one jurisdiction. Any such changes made by the South Australian Minister during this period must first be approved by the Ministerial Council on Energy.

Subject to any transitional arrangements applied during jurisdictional implementation of the Customer Framework, the Australian Energy Market Commission will assume responsibility for these national rules on the date of commencement of the Customer Framework in any one jurisdiction, and the rules will be subject to change in accordance with the Rule change process from that date onwards.

The Bill has the same rule change process for the Australian Energy Market Commission as the *National Electricity Law* and *National Gas Law*. The Australian Energy Market Commission may make a rule after the Rule change procedure has been followed if it is satisfied that the rule will, or is likely to, contribute to the achievement of the national energy retail objective.

The Australian Energy Market Commission rule change process set out in the Bill is transparent and involves the opportunity for significant input by stakeholders. Thorough consultation must be carried out on rule changes, with requirements for fully reasoned draft and final determinations. The 'fast track' amendment procedure (which proceeds straight to a draft determination) is also available where adequate prior consultation has been undertaken.

The Bill contains the rule making test which requires the Australian Energy Market Commission to satisfy itself that the Rule will or is likely to contribute to the achievement of the national energy retail objective and allows the Australian Energy Market Commission to give weight to any aspect of the objective as it considers appropriate in the circumstances. The Commission must, in the context of the Customer Framework, to do so in a way that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

Regulations made under the National Energy Retail Law

National Regulations may be made for the Customer Framework under this Bill. As with previous practice with the Regulations made under the *National Electricity Law* and *National Gas Law*, the Regulations will not be a vehicle to implement matters of substance, but rather matters of a more machinery nature requiring some degree of flexibility but which needs to be within the decision making power of the Ministerial Council on Energy. The Regulations prescribe civil penalty provisions, a list of jurisdictional energy ombudsman schemes; a list of current jurisdictional regulators and the national consumption thresholds for small business customers. The regulations are also likely to be used for transitioning from jurisdictional frameworks to the national customer framework, but these transitional regulations do not form part of this Regulation. An important safeguard is that Regulations can only be made with the unanimous agreement of all relevant Ministerial Council on Energy Ministers.

Application of the Bill in South Australia

From South Australia's perspective, the passage of this Bill will not result in an immediate transition to the national framework. Instead, consequential amendments to the current South Australian energy legislative instruments resulting from the application of this Bill will be prepared and presented to Parliament at a later time. These amendments will include South Australian specific obligations on energy retailers and distributors where it is considered necessary, an example of which will be a requirement on some retailers to comply with the Residential Energy Efficiency Scheme. These South Australian specific obligations will complement the Bill that is being introduced here today to form a sound regulatory framework for energy market participants and energy consumers in South Australia.

It is anticipated that South Australia will commence implementation of the national framework under this Bill if the consequential amendments to existing legislative instruments are passed by Parliament. Most important is the Government's continued commitment to price regulation in South Australia which will be maintained post implementation of this national framework with any necessary transitional arrangements forming part of the consequential amendment package.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause sets out the short title of the measure.

2—Commencement

Clause 2(1) provides for the measure to be brought into operation by proclamation. Clause 2(2) excludes the operation of section 7(5) of the *Acts Interpretation Act 1915* due to the fact that this measure forms part of a co-operative legislative scheme involving other Australian jurisdictions.

3—Interpretation

A key aspect of the definitions under the Act is that there will be a point of distinction between the *National Energy Retail Law*, being a law to be applied in the jurisdiction of the scheme participants, and the *National Energy Retail Law (South Australia)*, being the *National Energy Retail Law* as it applies in this State. The clause also provides that definitions included in the law (as applying because of this measure) also apply for the purposes of the Act.

Part 2—Application of National Energy Retail Law

4—Application of National Energy Retail Law

This clause provides that the *National Energy Retail Law* set out in the Schedule will not apply in this jurisdiction until a day fixed by the Governor by proclamation made under this provision. The reason for drafting this provision in this way is that the Bill has to address the possibility that the Schedule will need to be brought into operation for the purposes of the laws of one or more other jurisdictions before the *National Energy Retail Law* is to be applied to South Australia. From the day fixed for the application of the National Law in this jurisdiction, the National Law will apply and the applied law may be referred to as the *National Energy Retail Law (South Australia)*.

5—Application of regulations under National Energy Retail Law

From the day fixed under clause 4(1), the regulations in force for the time being under the National Law will apply as regulations in force for the purposes of the *National Energy Retail Law (South Australia)*. These regulations are to be referred to as the *National Energy Retail Regulations (South Australia)*.

6—Interpretation of certain expressions

In the *National Energy Retail Law (South Australia)* and the *National Energy Retail Regulations (South Australia)*, references to the National Law or to 'this Law' will be references to the *National Energy Retail Law (South Australia)* and references to 'the jurisdiction' or 'this jurisdiction' will be references to South Australia.

7—Exclusion of legislation of this jurisdiction

In view of the interjurisdictional application of the National Law, it is appropriate to provide for the exclusion of certain Acts.

Part 3—Related matters

8—Conferral of functions and powers on Commonwealth bodies to act in this jurisdiction

This clause provides for the Australian Energy Regulator and the Australian Competition Tribunal to do acts in or in relation to this State in the performance or exercise of a function or power conferred by the national energy retail legislation of another participating jurisdiction.

9—Extension of reading-down provision

This clause provides that a provision of the proposed Act is to be construed so as not to exceed the legislative powers of the Parliament, in particular with respect to a provision that appears to impose a duty on a Commonwealth officer or body.

10—Regulation-making power for purposes of *National Retail Energy Law (South Australia)*

This clause authorises the Governor to make such regulations, including regulations constituting local instruments, as are contemplated by the *National Energy Retail Law (South Australia)* as being made under this measure as the application Act of this jurisdiction.

Part 4—Provisions applying in South Australia as host jurisdiction

11—Interpretation

This clause provides that for the purposes of this Part a reference to the *National Energy Retail Law* is a reference to the law, as amended from time to time, set out in the Schedule.

12—Regulations

This clause authorises the Governor to make the regulations that are to be made under the *National Energy Retail Law*. The Governor will be able to act under this clause even if the *National Energy Retail Law* is yet to apply in this jurisdiction under the scheme set out in clause 4.

13—Minister authorised to exercise powers under the national scheme

This clause authorises the Minister to make rules under the *National Energy Retail Law* or as provided by amendments to the *National Electricity Law* or the *National Gas Law* by the *Statutes Amendment (National Energy Retail Law) Act 2010*. This clause also makes it clear that if the national energy retail legislation of another jurisdiction confers a function or power on the Minister, the Minister may perform that function or exercise that power.

14—Exclusion of legislation of this jurisdiction

In view of the interjurisdictional application of the regulations and rules made under the National Law, it is appropriate to exclude the application of the *Subordinate Legislation Act 1978*.

Schedule 1—*National Energy Retail Law*

Part 1—Preliminary

Division 1—Citation and interpretation

1—Citation

This clause provides that this Law may be cited as the National Energy Retail Law.

2—Interpretation

This clause sets out definitions used in the Law.

3—Application of Law, National Regulations and Rules in this jurisdiction

This clause states that this legislation can only apply in a jurisdiction by an application Act.

4—Meaning of civil penalty provision and conduct provision

This clause outlines the provisions which apply a civil penalty.

5—Meaning of customer and associated terms

This clause defines a customer for the sale of energy to premises or, the customer purchases energy from a retailer. The customer is either a residential or business customer.

6—Provisions relating to consumption thresholds for business customers

This clause states the regulations will specify the consumption thresholds for business customers.

7—Classification and reclassification of customers

This clause permits the Rules to make provision for or with respect to the classification or reclassification of customers.

8—Interpretation generally

This clause applies Schedule 2 to the *National Gas Law* to the Law, the National Regulations and the Rules.

Division 2—Matters relating to participating jurisdictions

9—Participating jurisdictions

This clause identifies the participating jurisdictions for the purposes of the Law.

10—Ministers of participating jurisdictions

This clause identifies the Ministers of the jurisdictions administering the Law.

11—Local area retailers

This clause requires a participating jurisdiction to make regulations nominating a local area retailer or retailers.

12—Nominated distributors

This clause allows a participating jurisdiction to make regulations nominating a local area distributor or distributors.

Division 3—National energy retail objective and policy principles

13—National energy retail objective

This clause states the objective of the Law.

14—MCE statements of policy principles

This clause allows the Ministerial Council on Energy (MCE) to issue statements of policy principles for the Australian Energy Market Commission (AEMC) that are relevant to the performance and exercise of its functions.

Division 4—Operation and effect of *National Energy Retail Rules*

15—Rules to have force of law

This clause provides for the Rules to have the force of law in each of the participating jurisdictions.

Division 5—Application of this Law and the Rules to forms of energy

16—Application of Law and Rules to energy

This clause applies the Law and the Rules to the sale and supply of electricity or gas to customers, to a retailer (to the extent it sells electricity or gas or both) and to a distributor (to the extent its distributes electricity or gas or both).

Division 6—Miscellaneous

17—Extraterritorial operation of Law

This clause provides for the extra territorial operation of the legislation.

18—Law binds the State

This clause provides that the legislation binds the State.

Part 2—Relationship between retailers and small customers

Division 1—Preliminary

19—Application of this Part

This clause specifies how Part 2 of the Law applies to the relationships between retailers and their customers.

Division 2—Customer retail contracts generally

20—Kinds of customer retail contracts

This clause identifies the two kinds of contracts under which a retailer may provide customer retail services to small customers.

Division 3—Standing offers and standard retail contracts for small customers

21—Model terms and conditions

This clause requires the Rules to set out the model terms and conditions for standard retail contracts.

22—Obligation to make offer to small customers

This clause requires a designated retailer to make a standing offer to small customers at its standing offer prices, and under the retailer's form of standard retail contract.

23—Standing offer prices

This clause requires a retailer to publish its standing offer prices on its website and allows for the price to be varied in accordance with certain requirements.

24—Presentation of standing offer prices

This clause requires the standing offer prices to be presented in accordance with the Australian Energy Regulator (AER) Retail Pricing Information Guidelines.

25—Adoption of form of standard retail contract

This clause requires a retailer to adopt a form of standard retail contract and publish it on the retailer's website, and specifies how alterations may be made.

26—Formation of standard retail contract

This clause specifies when a standard retail contract takes effect between a retailers and a small customer.

27—Obligation to comply with standard retail contract

This clause requires a designated retailer to comply with the obligations imposed on it under the terms and conditions of a standard retail contract.

28—Variation of standard retail contract

This clause permits the retailer to make certain variations to the standard retail contract, and requires the retailer to make certain other variations.

29—Standard retail contract to be consistent with model terms and conditions

This clause provides that the terms and conditions of a standard retail contract will have no effect to the extent of any inconsistency with the model terms and conditions, and the model terms and conditions apply instead to the extent of any inconsistency.

30—Duration of standard retail contract

This clause provides that the standard retail contract will remain in force until it is terminated in accordance with the Law, the Rules or the contract.

31—Satisfaction of designated retailer's obligation to make standing offer by making market offer to certain small customers

This clause specifies how a designated retailer can satisfy its obligations to make a standing offer to a small market offer customer.

32—Rules

This clause provides for the Rules to make provision for or with respect to standard retail contracts.

Division 4—Market retail contracts for small customers

33—Formation of market retail contracts

This clause allows a small customer and a retailer to negotiate and enter into a market retail contract for retail services or any other services.

34—Minimum requirements for market retail contracts

This clause provides for the Rules to set out the minimum requirements for market retail contracts.

35—Variation of market retail contract

This clause provides that the process for varying a market retail contract must not be inconsistent with the Rules in relation to the variation of market retail contracts.

36—Market retail contract to be consistent with minimum requirements of the Rules

This clause provides that the terms and conditions of a market retail contract will have no effect to the extent of any inconsistency with any minimum requirements of the Rules, and the minimum requirements apply instead to the extent of any inconsistency.

37—Presentation of market offer prices

This clause requires a retailer to present its market offer prices in accordance with the AER Retail Pricing Information Guidelines and present those prices prominently on its website.

Division 5—Explicit informed consent

38—Requirement for explicit informed consent for certain transactions

This clause requires the retailer to obtain the explicit informed consent of a customer for certain transactions.

39—Nature of explicit informed consent

This clause sets out the requirements for a small customer to give explicit informed consent to a transaction and how the customer must give that consent.

40—Record of explicit informed consent

This clause requires a retailer to keep a record of each explicit informed consent given by a small customer for at least two years and specifies the format and content of the record.

41—No or defective explicit informed consent

This clause provides that any transaction that requires explicit informed consent is void to the extent that explicit informed consent was not obtained or was defective, and provides for the consequences of a void transaction.

42—Rules

This clause permits the Rules to make provision for or with respect to explicit informed consent in relation to small customers.

Division 6—Customer hardship

43—Customer hardship policies

This clause requires a retailer to submit a hardship policy to the AER for approval within three months of being granted a retailer authorisation and sets out the process for varying the policy.

44—Minimum requirements for customer hardship policy

This clause outlines the minimum requirements for a customer hardship policy.

45—Approval of customer hardship policy or variation

This clause requires the AER to approve a customer hardship policy or variation where the policy or variation meets certain requirements, having regard to certain principles, and allows the AER to request or make variations or alterations prior to the policy or variation.

46—Obligation of retailer to communicate customer hardship policy

This clause requires a retailer to advise a residential customer of its hardship policy where it appears the customer is having difficulty meeting payment due to hardship.

47—General principle regarding de-energisation (or disconnection) of premises of hardship customers

This clause requires a retailer to give effect to the principle that de-energising a hardship customer due to inability to pay energy bills should be as a last resort option.

48—Consistency of market retail contract with hardship policy

This clause provides that the terms and conditions of a customer's market retail contract are of no effect to the extent of any inconsistency with the retailer's customer hardship policy if that customer becomes a hardship customer.

49—Rules

This clause permits Rules to be made for or with respect to hardship customers and hardship policies.

Division 7—Payment plans

50—Payment plans

This clause requires a retailer to offer and apply payment plans to hardship customers and residential customers experiencing payment difficulties.

51—Debt recovery

This clause prevents a retailer from commencing debt recovery proceedings if the customer is meeting payment plan obligations, or if the retailer has failed to comply with its hardship policy and the Law and Rules relating to payment plans.

52—Rules

This clause permits Rules to be made for or with respect to payment plans for small customers.

Division 8—Energy marketing

53—Energy Marketing Rules

This clause allows Rules (called Energy Marketing Rules) to be made for the carrying out of energy marketing activities and requires any person carrying out energy marketing activities to comply with the Energy Marketing Rules.

Division 9—Deemed customer retail arrangements

54—Deemed customer retail arrangement for new or continuing customer without customer retail contract

This clause provides that a deemed customer retail arrangement is taken to apply between a financially responsible retailer and a move-in or a carry-over customer, except where the customer consumes energy at the premises by fraudulent or illegal means.

55—Terms and conditions of deemed customer retail arrangements

This clause provides that the terms, conditions and prices of a retailer's deemed customer retail arrangement are the terms, conditions and prices of its standard retail contract.

Division 10—Prepayment meter systems

56—Use of prepayment meter systems only in jurisdictions where permitted

This clause permits the use of prepayment meters only within jurisdictions where their use is permitted by a local instrument.

57—Contractual arrangements for use of prepayment meter systems

This clause requires a retailer to provide customer retail services using a prepayment meter under a market retail contract.

58—Use of prepayment meter systems to comply with energy laws

This clause requires a retailer to comply with the energy laws relating to the use of prepayment meter systems.

59—Persons on life support equipment

This clause provides that a retailer must not enter into a prepayment meter market retail contract with a small customer where the premises require life support equipment. A prepayment meter must be removed from such premises at no charge and replaced with a standard meter.

60—Rules

This clause permits Rules to be made for or with respect to retail services involving the use of prepayment meters.

Division 11—AER Retail Pricing Information Guidelines and price comparator

61—AER Retail Pricing Information Guidelines for presentation of standing and market offer prices

This clause allows the AER to make guidelines for the presentation of standing and market retail offers.

62—Price comparator

This clause requires the AER to develop and make available on its website the price comparator if and to the extent permitted by a local instrument of a jurisdiction.

63—AER information gathering powers for pricing guidelines and comparator

This clause requires a retailer to provide information and data to the AER relating to the retailer's market and standing offer prices and (if relevant) for the purposes of the price comparator.

Division 12—Large customers—responsibility for energy consumed

64—Large customer consuming energy at premises

This clause allows for retailers to charge and recover an appropriate amount from large customers in the event that an appropriate arrangement for the payment of charges relating to energy has not been entered into.

Part 3—Relationship between distributors and customers

Division 1—Preliminary

65—Application of this Part

This Part applies to the relationship between distributors and customers.

Division 2—Obligation to provide customer connection services

66—Obligation to provide customer connection services

A distributor must, subject to and in accordance with the energy laws, provide customer connection services in the circumstances provided for by this clause.

Division 3—Customer connection contracts generally

67—Kinds of customer connection contracts

The 3 kinds of customer connection contracts are set out in this clause.

Division 4—Deemed standard connection contracts

68—Model terms and conditions

The Rules will set out model terms and conditions for deemed standard connection contracts.

69—Adoption of form of deemed standard connection contract

A distributor is required to adopt a form of deemed standard connection contract in accordance with the requirements of this clause and publish it on the distributor's website. This obligation is a civil penalty provision.

70—Formation of deemed standard connection contract

This clause sets out when a contract in the form of a distributor's deemed standard connection contract under section 69 is taken to be entered into by the distributor and a customer.

71—Obligations to comply with deemed standard connection contract and to bill retailer

This clause requires a distributor to comply with the obligations imposed on it by a deemed standard connection contract between the distributor and a customer. Except in relation to a new or altered connection, the distributor must bill the retailer.

72—Variation of deemed standard connection contract

This clause provides for the circumstances in which a distributor may vary the terms and conditions of the distributor's form of deemed standard connection contract.

73—Deemed standard connection contract to be consistent with model terms and conditions

A deemed standard connection contract must be consistent with the model terms and conditions or any required alterations. If there is an inconsistency the model terms and conditions apply.

74—Duration of deemed standard connection contract

This clause provides for the duration of a deemed standard connection contract.

Division 5—Deemed AER approved standard connection contracts

75—Submission and approval of form of standard connection contracts for large customers

This clause provides for the submission by a distributor and approval by the AER of a standard connection contract applicable to one or more classes of large customers.

76—Formation of deemed AER approved standard connection contract

This clause provides for when a deemed AER approved standard connection contract is taken to be entered into by the distributor and a large customer of a class to which the approved form applies.

77—Amendment and replacement of form of deemed AER approved standard connection contract

A deemed AER approved standard connection contract may be amended or replaced by another deemed AER approved standard connection contract.

Division 6—Negotiated connection contracts

78—Negotiated connection contracts

A distributor is obliged to provide information and explanations to a small customer negotiating and entering into a customer connection contract, a negotiated connection contract, in accordance with the relevant requirements of the NER and the NGR.

Part 4—Small customer complaints and dispute resolution

79—Definitions

This clause sets out definitions specific to this Division.

80—Role of energy ombudsman

The energy ombudsman for this jurisdiction is, as authorised by its constitution provisions, conferred with functions and powers under this Part and the Rules.

81—Standard complaints and dispute resolution procedures

Retailers and distributors are obliged to develop, make and publish on their website their standard complaints and dispute resolution procedures.

82—Complaints made to retailer or distributor for internal resolution

This clause provides for the manner in which small customer complaints about relevant matters to a retailer and distributor are to be dealt with by the relevant entity.

83—Complaints made or disputes referred to energy ombudsman

A small customer may make a complaint or refer a dispute to the energy ombudsman about a relevant matter, or any aspect of a relevant matter, concerning the customer and a retailer or distributor.

84—Functions and powers of energy ombudsman

This clause sets out the functions and powers of the energy ombudsman and provides for how those functions and powers are to be performed and exercised.

85—Information and assistance requirements

This clause sets out the information and assistance obligations of a retailer or distributor or AER relating to a small customer complaint or dispute to the energy ombudsman.

86—Retailers and distributors to be members of scheme

This clause provides for the circumstances in which a retailer and a distributor must be a member of, or subject to, an energy ombudsman scheme for a jurisdiction.

87—Rules

The Rules may make provision for or with respect to small customer complaints and disputes.

Part 5—Authorisation of retailers and exempt seller regime

Division 1—Prohibition on unauthorised selling of energy

88—Requirement for authorisation or exemption

This clause sets out the requirements for a person selling energy to hold a current retailer authorisation and be relevantly registered or be an exempt seller. This clause is a civil penalty provision.

Division 2—Application for and issue of retailer authorisation

89—Applications

A person may apply to the AER for a retailer authorisation.

90—Entry criteria

This clause sets out the entry criteria in relation to an application for a retailer authorisation.

91—Public notice and submissions

Before deciding an application, the AER must publish a notice and consider written submissions received within the period for receipt of those submissions.

92—Deciding application

The AER is obliged to decide whether to grant or refuse an application and this clause provides for when the AER must grant the application.

93—Conditions

The AER may impose conditions on the retailer authorisation relating to the satisfaction of the entry criteria. The grant may be conditional on satisfaction of conditions. The conditions may be amended or revoked.

94—Notice of decision to grant application

The AER must give a successful applicant a notice in accordance with the requirements of this clause.

95—Deemed refusal

This clause sets the circumstances in which the AER is deemed to have refused an application for a retailer authorisation.

96—Issue and public notice of retailer authorisation

On the grant of a retailer authorisation the AER must issue a retailer authorisation to the applicant and publish a notice on the AER's website.

97—Notice of refusal

On the refusal of an application for a retailer authorisation the AER must notify the applicant and publish a notice on its website.

98—Duration of retailer authorisation

A retailer authorisation continues in force until it is surrendered or revoked.

99—Variation of retailer authorisation

The AER may amend a retailer authorisation to make any alterations requested by the retailer.

100—Form of energy authorised to be sold

A retailer authorisation may authorise the sale of electricity or gas and cannot be varied to change or add to the form of energy that the applicant is authorised to sell to customers.

Division 3—Transfer of retailer authorisation

101—Transfer only by application

This Division sets out the exclusive circumstances in which a retailer authorisation may be transferred.

102—Applying for transfer

A retailer may apply to the AER to transfer the retailer's authorisation.

103—Deciding transfer application

This clause sets out what the AER must take into account in deciding whether to grant or refuse the transfer application, what it may and is obliged to do on granting an application and the obligations of the transferor or the transferee. The subclause imposing obligations on the transferor and the transferee is a civil penalty provision.

104—Application of application process to transfers

The AER may determine that specified provisions of Division 2 apply in relation to the proposed transferee in the same way as they apply in relation to the applicant for a retailer authorisation, and those provisions apply accordingly with any necessary modifications.

Division 4—Surrender of retailer authorisation

105—Surrender of retailer authorisation

A retailer authorisation is surrendered in accordance with this clause.

106—Transfer of customers following surrender

A person whose retailer authorisation is surrendered must comply with the requirements of conditions imposed for the transfer of the person's former customers to another retailer. This clause is a civil penalty provision.

Division 5—Revocation of retailer authorisation

Note—

This Division does not apply where a RoLR notice is issued under Part 6: see section 142(2).

107—Power to revoke retailer authorisation

The AER may decide to revoke a retailer authorisation in accordance with this Division. The grounds for revocation of a retailer authorisation are set out in this clause.

108—Transfer of customers following revocation

A person whose retailer authorisation has been revoked must comply with the requirements of conditions imposed for the transfer to another retailer of the persons who were its customers immediately before the revocation. This clause is a civil penalty provision.

Division 6—Exemptions

109—Definitions

This clause sets out the definitions specific to this Division.

110—Power to exempt

The AER may decide to exempt persons or classes of persons in accordance with the Rules from the requirement to hold a retailer authorisation. A person is an exempt seller for the purposes of this Part while an exemption is in force in relation to the person.

111—Power to revoke exemption

The AER may revoke an exemption in accordance with this clause.

112—Conditions

The AER may impose conditions on an exempt seller or class of exempt sellers in accordance with the Rules and the AER Exempt Selling Guidelines. An exempt seller must comply with applicable conditions imposed

under this section. This obligation on an exempt seller is a civil penalty provision. The AER may deal with a breach of a condition as if it were a breach of the Rules.

113—Rules

The Rules may make provision for or with respect to the exemption of persons or classes of persons from the requirement to hold a retailer authorisation and the variation or revocation of exemptions.

114—Manner in which AER performs AER exempt selling regulatory functions or powers

This clause provides for the manner in which the AER must perform or exercise an AER exempt selling regulatory function or power including that it may take into account the exempt seller related factors set out in clause 115 or the customer related factors set out in clause 116.

115—Exempt seller related factors

This clause sets out the exempt seller related factors.

116—Customer related factors

This clause sets out the customer related factors.

Division 7—Miscellaneous

117—AER Retailer Authorisation Guidelines

The AER must make and may amend the AER Retailer Authorisation Guidelines in accordance with the retail consultation procedure.

118—AER Exempt Selling Guidelines

The AER must, in accordance with the Rules, develop and maintain (and may amend) AER Exempt Selling Guidelines in accordance with the retail consultation procedure.

119—Public Register of Authorised Retailers and Exempt Sellers

The AER must maintain, and publish on its website, a Public Register of Authorised Retailers and Exempt Sellers.

120—Revocation process—retailer authorisations and exemptions

This clause sets out the revocation process in relation to a retailer authorisation or an exempt seller's exemption.

Part 6—Retailer of last resort scheme

Division 1—Preliminary

121—Purpose of this Part

This clause provides for the purpose of this Part.

122—Definitions

This clause contains definitions for the purposes of the retailer of last resort (RoLR) scheme. Inter alia, the clause defines 'RoLR event' which includes, revocation of a retailer authorisation, the suspension of a retailer's right to acquire electricity or gas in the relevant wholesale markets and insolvency events.

Division 2—Registration of RoLRs

123—RoLR criteria

This clause specifies the RoLR criteria which are used for the purposes of the RoLR scheme.

124—Expressions of interest for registration as a RoLR

This clause provides for the calling for expressions of interest from retailers for registration as a RoLR.

125—Appointment and registration as a default RoLR

This clause provides for the appointment and registration of default RoLRs. Default RoLRs must be appointed for each connection point (in the case of electricity) and each distribution system (in the case of gas) at all times. The clause also enables the AER to terminate the appointment of default RoLRs.

126—Registration of additional RoLRs

This clause provides for the registration of additional RoLRs. Additional RoLRs are in addition to the default RoLR for a connection point or distribution system.

127—Register of RoLRs

This clause provides for the keeping of a register of RoLRs.

128—Termination of registration as a RoLR

This clause provides for the termination of registration of RoLRs other than default RoLRs.

129—New basis for registration as a RoLR

This clause enables AEMO to advise the AER that a RoLR may be registered on a basis other than a connection point (in the case of electricity) or a distribution system (in the case of gas).

Division 3—Contingency events

130—AER's powers

This clause enables the AER, in the event of the contingency of a RoLR event, to exercise certain powers including requesting financial information from the retailer concerned and making inquiries of registered RoLRs as to whether they want to be appointed designated RoLR if a RoLR event eventuates.

131—Confidentiality provisions

This clause contains the confidentiality provisions that apply in the case of contingency events.

Division 4—Appointment of designated RoLRs

132—Designation of registered RoLR for RoLR event

This clause provides for who is to be appointed a designated RoLR in respect of a RoLR event. The default RoLR is appointed by force of the section in respect of a RoLR event unless the AER has before the event appointed another registered RoLR instead.

133—Criteria for RoLR designation

This clause specifies the criteria for being appointed a designated RoLR.

134—Appointment of more than one designated RoLR for RoLR event

This clause enables the AER to appoint more than one designated RoLR for a RoLR event having regard to the size of, or other circumstances of, the event.

135—AER RoLR Guidelines

This clause enables the AER to make and publish guidelines for the purposes of the RoLR scheme. The guidelines must specify certain matters in relation to the AER exercising its powers under section 134. The guidelines may also provide for other matters, including as to the form of and information to be contained in applications or expressions of interest made in accordance with the Part.

Division 5—Declaration of RoLR event

136—Issue of RoLR notice

This clause provides that the AER must issue a RoLR notice as soon as practicable after a RoLR event occurs. The clause provides for the contents of the notice which include who is specified as the designated RoLR or designated RoLRs for the event and specifying the transfer date on which all customers of the failed retailer are transferred to the designated RoLR.

137—RoLR notice—direction for gas

This clause provides for certain directions that the AER may include in a RoLR notice if there is no declared wholesale gas market or short term trading market or, in the AER's opinion there is an insufficiency of capacity or gas available in a short term trading market. The directions are as to making available capacity and gas so that a designated RoLR may perform its functions. The section further makes provision for agreements for long term provision of the capacity or gas including, if agreement is unable to be reached, providing for how a haulage contract or gas sale contract is then to come into existence.

138—Service and publication of RoLR notice

This clause provides for the service and publication of a RoLR notice.

139—Publication requirements for RoLR events

This clause provides for publication of RoLR events including making provision for publication on websites, messages on call centres and advertisements.

140—Transfer of responsibility

This clause, by force of law, terminates the customer relationship between a customer and the failed retailer as at the transfer date specified in the RoLR notice and provides that customer then becomes a customer of the relevant designated RoLR. The section also makes provision for the designated RoLR to assume certain functions, obligations and powers of the failed retailer (including in relation to life support equipment) and further makes provision for how customer transfers to the failed retailer that were underway as at the transfer date are to be dealt with. Special provision is contained in the section for large customers of electricity who may pre-nominate who is their retailer in the case of a RoLR event, in which case that customer is transferred to that retailer rather than the designated RoLR.

141—Termination of customer retail contracts

This clause, by force of law, terminates the contract between the failed retailer and the customer as at the transfer date. The section also provides for how disputes that arose under that contract are to continue to be dealt

with, termination of direct debit (including Centrepay) authorisations, refund of advance payments and security deposits, completion of service orders and continued compliance by the failed retailer and its insolvency official with payment plans.

142—Revocation of retailer authorisation

This clause provides that the AER may, if it has not already done so, revoke a failed retailer's retailer authorisation by endorsement on the RoLR notice.

143—Compliance requirements following service of RoLR notice

This clause provides for who must comply with a RoLR notice and also requires AEMO to comply with the notice as well as the RoLR scheme.

144—RoLR Procedures

This clause provides for the RoLR Procedures that AEMO may include in the procedures that it makes under the National Electricity Law and the National Gas Law. The RoLR Procedures (among other things) may make provision for the operation and implementation of the RoLR scheme.

Division 6—Arrangements for sale of energy to transferred customers

145—Contractual arrangements for sale of energy to transferred small customers

This clause provides that a RoLR deemed small customer retail arrangement arises between the designated RoLR and the small customer with effect on and from the transfer date, the terms and conditions of which are those of the designated RoLR's standard retail contract and the prices of which are (subject to any variation arising from a RoLR cost recovery scheme) that RoLR's standing offer prices.

146—Contractual arrangements for sale of energy to transferred large customers

This clause provides that a RoLR deemed large customer retail arrangement arises between the designated RoLR and the large customer with effect on and from the transfer date, the terms and conditions of which are those published by the designated RoLR and which must be fair and reasonable.

147—Duration of arrangements for small customers

This clause provides for how a RoLR deemed small customer retail arrangement may be terminated and what may replace it and when.

148—Duration of arrangements for large customers

This clause provides for how a RoLR deemed small customer retail arrangement may be terminated.

Division 7—Information requirements

Subdivision 1—Preliminary

149—Operation of this Division

This clause provides that this Division does not limit the information that AEMO may require in relation to a RoLR event. It further provides, to avoid doubt, that AEMO may under RoLR Procedures require a failed retailer and insolvency official to provide information.

Subdivision 2—General obligation to notify AER

150—Information to be provided to AER by AEMO and retailers

This clause provides that both AEMO and a retailer must give notice to the AER (and in the case of a failed retailer, to AEMO) of anything that it has reason to believe might affect the retailer's ability to maintain continuity of sale of energy to its customers or gives rise to a RoLR event.

Subdivision 3—Serving and making of RoLR regulatory information notices

151—Meaning of RoLR regulatory information notice

This clause defines a RoLR regulatory information notice. It also provides that the insolvency official of a failed retailer must provide information when served with the notice.

152—Service of RoLR regulatory information notice

This clause provides for when a RoLR regulatory information notice may be served on a retailer. The notice may be served either when a RoLR event has occurred or in connection with the AER's exercise of its powers under Division 3 (Contingency events).

Subdivision 4—Form and content of RoLR regulatory information notices

153—Form and content of RoLR regulatory information notice

This clause provides for the form and content of a RoLR regulatory information notice.

154—Further provision about the information that may be described in a RoLR regulatory information notice

This clause makes further provision as to the information that may be required by a RoLR regulatory information notice.

155—Further provision about manner in which information must be provided

This clause enables a RoLR regulatory information notice to specify when and how information may be provided and verified.

Subdivision 5—Compliance with RoLR regulatory information notices

156—Compliance with RoLR regulatory information notices

This clause provides that a retailer (or former retailer) and insolvency official must comply with a RoLR regulatory information notice.

157—Provision of information obtained from RoLR regulatory information notice

This clause provides for the sharing of information received pursuant to a RoLR regulatory information notice with AEMO, distributors, designated RoLR's and other persons whom the AER considers it necessary to give the information to.

Subdivision 6—General

158—Providing false or misleading information

This clause establishes a criminal offence for providing false or misleading information in response to a RoLR regulatory information notice.

159—Person cannot rely on duty of confidence to avoid compliance with RoLR regulatory information notice

This clause provides that a person cannot rely on a duty of confidentiality to avoid compliance with RoLR regulatory information notice.

160—Legal professional privilege not affected

This clause provides that section 156 and a RoLR regulatory information notice do not affect legal professional privileges.

161—Protection against self-incrimination

This clause provides, in the case of natural persons to whom section 156 applies, for protection against self incrimination.

Division 8—RoLR plans

162—RoLR plans

This clause provides for the AER to make RoLR plans which are for the procedures to be followed in the case of a RoLR event and for exercises. A RoLR plan must not be inconsistent with the RoLR Procedures.

163—Contents of RoLR plans

This clause provides, without limitation, as to what a RoLR plan must provide for. Among other things, it must provide for communication of the RoLR event to the community, small and large customers, Ministers, distributors and designated RoLR's. In the case of small customers, this must include communication of what will happen to their contracts, this including as to the effect of sections 140 and 141.

Division 9—RoLR cost recovery schemes

164—Operation of this Division, schemes and determinations

This clause provides that this Division and the RoLR cost recovery scheme have effect notwithstanding anything to the contrary in the National Electricity Law, the National Gas Law, the Rules made under those laws, any distribution determination in electricity or any applicable access arrangement in gas.

165—RoLR cost recovery

This clause provides that a registered RoLR may only recover costs incurred in relation to the RoLR scheme in accordance with a RoLR cost recovery scheme determined under this Division.

166—RoLR cost recovery schemes

This clause provides for the AER to make a determination with respect to a RoLR cost recovery scheme under which a default RoLR may recover both its costs of preparing for a RoLR event and the costs of the event as well and a designated RoLR that is not a default RoLR may only recover the costs of the event.

167—RoLR cost recovery scheme distributor payment determination

This clause provides that the AER must, as part of its determination with respect to a RoLR cost recovery scheme, also make a RoLR cost recovery distribution scheme payment determination under which distributors pay the RoLR concerned but those payments are then treated as pass throughs to customers.

168—Amendment of schemes and determinations

This clause provides for when a RoLR cost recovery scheme or a RoLR cost recovery scheme distribution payment determination may be amended by the AER.

Division 10—Miscellaneous

169—Information to be included in customer retail contracts

This clause provides that all customer retail contracts for small customers must include a notice explaining what will happen to the customer's arrangements for purchase of energy if a RoLR event occurs.

170—Application for retailer authorisation by failed retailer or associate

This clause enables the AER, on application for a retailer authorisation by a failed retailer or an associate, to refuse the application or grant it on condition that there be a payment in respect of the costs of the prior RoLR event involving that retailer.

171—Reimbursement of insolvency official

This clause provides for reimbursement of an insolvency official for that official's reasonable costs of complying with the RoLR scheme, a RoLR notice or a RoLR regulatory information notice.

172—AER report on RoLR event

This clause requires the AER to report to the MCE on a RoLR event after the occurrence of the event.

173—Immunity

This clause provides an immunity for protected persons (as defined in the section) in relation to acts or omissions for the purposes of the RoLR scheme.

174—Authorised disclosure of information

This clause authorises disclosure of personal information within the meaning of Privacy legislation of the Commonwealth and participating jurisdictions.

175—Corporations Act displacement

This clause declares this Part to be a Corporations legislation displacement provision in relation to Chapter 5 of the Corporations Act 2001.

Part 7—Small compensation claims regime

Division 1—Preliminary

176—Small compensation claims regime

This Division establishes a small compensation claims regime to enable small customers to make small claims for compensation from distributors who provide customer connection services to their premises.

177—Definitions

This clause sets out the definitions specific to this Division.

178—Claimable incidents—meaning

This clause sets out what is a claimable incident.

179—Compensable matters—meaning

This clause sets out what are and what are not compensable matters.

180—Maximum amount—meaning

This clause sets out what is a maximum amount for which a distributor is liable to pay compensation for a claim.

181—Minimum amount—meaning

This clause sets out what is a minimum amount for which a distributor is liable to pay for a claim.

182—Median amount—meaning

This clause sets out what is a median amount for the purposes of setting the discretionary range and the mandatory range for a claim.

183—Repeat claimant—meaning

This clause sets out the meaning of a repeat claimant.

184—AER determinations of minimum amount, median amount and repeated claims maximum number

This clause sets out the requirements for an AER determination of what is a minimum amount, median amount and repeated claims maximum number. The clause applies to a participating jurisdiction only if and to the extent a local instrument of that jurisdiction declares that this section applies in relation to it.

Division 2—Compensation generally

185—When compensation is payable

This clause provides for when compensation is payable under this Division to a small customer by a distributor under a claim for compensation properly made in respect of a claimable incident.

186—Duty of distributor to provide information and advice

Each distributor is obliged to provide information and advice in accordance with the requirements of this clause.

Division 3—Claims process

187—Making of claims

This clause provides for the process for making claims for compensation in respect of a claimable incident from a distributor who provides customer connection services to premises of the customer.

188—Claims for less than the minimum amount

A distributor may reject a claim for compensation if the amount claimed is less than the minimum amount for the claimable incident.

189—Claims for more than the maximum amount

This clause provides for the circumstances where a claim for compensation is for more than the maximum amount.

190—Confirmation of claims involving property damage

If a distributor is not able to confirm that a claimable incident involving property damage did affect the small customer's premises in the manner claimed this clause provides for a process for progressing the claim.

191—Claims for amounts within the mandatory range

This clause sets out the circumstances in which, if the amount claimed is within the mandatory range, a distributor must pay the customer the amount claimed without reducing or disputing the quantum of the amount claimed.

192—Claims for amounts in the discretionary range

This clause sets out what a distributor is required to pay if the amount claimed is within the discretionary range.

193—Claims by repeat claimants

This clause provides for dealing with claims for compensation by small customers who are repeat claimants.

194—Distributor to reimburse customer for reasonable costs of claim

If a distributor pays compensation to a small customer under this Division, the distributor must pay to the person the amount of any reasonable costs incurred by the person in providing any quotes or evidence to the distributor.

195—Rejection of claims

This clause provides for some circumstances in which a distributor may reject a claim for compensation.

196—Distributor to advise customer of reasons for reducing or rejecting claim and of review rights

A distributor is obliged to advise a customer of the reasons for reducing or rejecting a claim and of their review rights in accordance with the requirements of this clause.

197—Small customer complaint or dispute resolution

A small customer who is dissatisfied with a decision of a distributor under this Division in relation to the customer's claim for compensation may lodge a complaint with the relevant energy ombudsman.

Division 4—Payment of compensation

198—Method of payment

A payment of compensation payable to a small customer under this Division is to be made by the distributor as soon as practicable and in accordance with the other requirements of this clause.

199—Finality of payment of compensation

If a small customer is compensated in respect of a claimable incident that affected particular premises this clause provides for the finality of the payment of compensation.

Division 5—Miscellaneous

200—Other remedies

Apart from section 199, nothing in this Part prevents a small customer from commencing or maintaining proceedings for damages in respect of a claimable incident in a court of competent jurisdiction.

201—Payment of compensation not to be admission of fault, negligence or bad faith

In deciding to make a payment of compensation under this Part, a distributor does not admit fault, negligence or bad faith in respect of the claimable incident concerned.

202—Requirement to keep records on regime activities

A distributor must create and keep and make available relevant records in accordance with the requirements of this clause.

203—Rules

The Rules may make provision for or with respect to the small compensation claims regime.

Part 8—Functions and powers of the Australian Energy Regulator

Division 1—General

204—Functions and powers of AER (including delegations)

This clause sets out the AER's functions and powers, and provides for the effectiveness of a delegation by the AER under section 44AAH of the TPA.

205—Manner in which AER performs AER regulatory functions or powers

This clause makes provision in relation to the manner in which the AER must perform or exercise its regulatory functions or powers.

Division 2—General information gathering powers

206—Power to obtain information and documents

This clause provides that the AER may serve notices requiring information to be furnished or documents produced and creates an offence of failing to comply with such a notice or knowingly providing false or misleading information in purported compliance with such a notice, for which the penalty is a fine of up to $2,000 for a natural person or up to $10,000 for a body corporate.

Division 3—Disclosure of confidential information held by AER

207—Confidentiality

This clause provides that the confidentiality provisions of section 44AAF of the TPA are effective for the purposes of the Law, the National Regulations and the Rules.

208—Authorised disclosure of information given to AER in confidence

This clause allows the AER to disclose information in some circumstances.

209—Disclosure with prior written consent is authorised

This clause allows the AER to disclose information with the consent of the person who provided it.

210—Disclosure for purposes of court and tribunal proceedings and to accord natural justice

This clause allows the AER to disclose information if it is required to for a court or tribunal proceedings.

211—Disclosure of information given to AER with confidential information omitted

This clause allows the AER to omit confidential information before disclosing a document.

212—Disclosure of information given in confidence does not identify anyone

This clause allows the AER to disclose de-identified information.

213—Disclosure of information that has entered the public domain

Allows the AER to disclose information that has entered the public domain.

214—Disclosure of confidential information authorised if detriment does not outweigh public benefit

This clause allows the AER to disclose information if the detriment does not outweigh the public benefit.

Division 4—Miscellaneous matters

215—Consideration by the AER of submissions or comments made to it under this Law or the Rules

This clause requires the AER to consider submissions, made in response to an invitation to provide submissions. when making a decision.

216—Use of information provided under a notice under Division 2

This clause allows the AER to use information provided in response to a notice under section 206 for a purpose connected with its performance or exercise of a power or function under the Law or the Rules, the National Electricity Law or National Electricity Rules, or the National Gas Law or National Gas Rules.

217—AER to inform certain persons of decisions not to investigate breaches, institute proceedings or serve infringement notices

This clause requires the AER to inform a person who provided information about a breach or potential breach of the law or the Rules that they do not intend to investigate the breach or commence proceedings.

218—AER enforcement guidelines

This clause allows the AER to issue guidelines about how it will conduct enforcement actions under the Law.

219—Single documentation

This clause allows the AER, where it is authorised to prepare a document under the Law or the Rules, and under the National Electricity Law or National Electricity Rules, or the National Gas Law or National Gas Rules for a similar, related or corresponding purpose, to prepare a single document to satisfy all requirements.

220—Use of information

This clause allows the AER to use information obtained under the Law or the Rules for a purpose connected with its performance or exercise of a function or power under the National Electricity Law or National Electricity Rules, or the National Gas Law or National Gas Rules.

Part 9—Functions and powers of the Australian Energy Market Commission

Division 1—General

221—Functions and powers of the AEMC

This clause sets out the AEMC's functions and powers.

222—Delegations

This clause provides that a delegation by the AEMC under section 20 of the *Australian Energy Market Commission Establishment Act 2004* is effective for the purposes of the Law, the National Regulations and the Rules.

223—Confidentiality

This clause provides that the confidentiality provisions of section 24 of the *Australian Energy Market Commission Establishment Act 2004* are effective for the purposes of the Law, the National Regulations and the Rules.

224—AEMC must have regard to national energy retail objective

This clause provides that the AEMC must have regard to the national energy retail objective.

225—AEMC must have regard to MCE statements of policy principles in relation to Rule making and reviews

This clause provides that the AEMC must have regard to any relevant MCE statements of policy principles in making a Rule or conducting certain reviews.

Division 2—Rule making functions and powers of the AEMC

226—Rule making powers

This clause states the rule making functions and powers of the AEMC are set out in Part 10 of the Law.

Division 3—Committees, panels and working groups of the AEMC

227—Establishment of committees and panels and working groups

This clause allows the AEMC to establish committees, panels and working groups.

Division 4—MCE directed reviews

228—MCE directions

This clause provides that the MCE may direct the AEMC to conduct reviews. The direction must be published in the South Australian Government Gazette.

229—Terms of reference

This clause provides for the terms of reference of MCE directed reviews.

230—Notice of MCE directed review

This clause requires the AEMC to publish notice of an MCE directed review.

231—Conduct of MCE directed review

This clause provides for the conduct of MCE directed reviews.

Division 5—Other reviews

232—Reviews by AEMC

This clause provides for reviews by the AEMC other than MCE directed reviews.

Division 6—Miscellaneous

233—Fees

This clause provides for the AEMC to charge fees as specified in the Regulations.

234—Confidentiality of information

This clause provides for the treatment of confidential information by the AEMC.

Part 10—National Energy Retail Rules

Division 1—General

Subdivision 1—Interpretation

235—Definitions

This clause sets out definitions for the purposes of this Division.

Subdivision 2—Rule making test

236—Application of national energy retail objective

This clause requires the AEMC to make rules that contribute to the achievement of the national energy retail objective.

Division 2—National Energy Retail Rules generally

237—Subject matters of Rules

This clause provides for the subject matter of the Rules.

Division 3—Initial National Energy Retail Rules

238—South Australian Minister to make initial National Energy Retail Rules

This clause provides for the South Australian Minister to make the initial Rules. A notice of making must be published in the South Australian Government Gazette and the Rules must be made publicly available.

Division 4—Subsequent Rules and rule amendment procedure

239—Subsequent rule making by AEMC

This clause provides for the AEMC to make rules.

240—Rules relating to MCE or Ministers of participating jurisdictions require MCE consent

This clause requires the AEMC to obtain the MCE's consent before making rules relating to the MCE or Ministers of participating jurisdictions.

241—AEMC must not make Rules that create criminal offences or impose civil penalties for breaches

This clause prohibits the AEMC from making rules that create criminal offences or impose civil penalties for breaches.

242—Documents etc applied, adopted and incorporated by Rules to be publicly available

This clause requires documents applied, adopted or incorporated by a Rule to be publicly available.

243—Initiation of making of a Rule

This clause provides for who may request the making of a Rule and provides that the AEMC must not make a Rule on its own initiative except in certain circumstances.

244—AEMC may make more preferable Rule in certain cases

This clause allows the AEMC to make a Rule that is different from a market initiated Rule if the AEMC is satisfied that its proposed rule will or is more likely to better contribute to the achievement of the national energy retail objective.

245—AEMC may make Rules that are consequential to a Rule request

This clause allows the AEMC to make Rules that are consequential to a rule change request.

246—Content of requests for Rules

This clause sets out what a request for the making of a Rule must contain.

247—Waiver of fee for Rule requests

This clause allows the AEMC to waive a fee for a rule request.

248—Consolidation of 2 or more Rule requests

This clause allows the AEMC to consolidate multiple requests for a Rule.

249—Initial consideration of request for Rule

This clause provides for initial consideration by the AEMC of a request for a Rule.

250—AEMC may request further information from Rule proponent in certain cases

This clause allows the AEMC to request additional information from a person who requests the making of a Rule.

251—Notice of proposed Rule

This clause requires the AEMC, if it decides to act on a request for a rule to be made, or forms an intention to make an AEMC initiated rule, to publish notice of the request or intention and a draft of the proposed Rule.

252—Publication of non-controversial or urgent final Rule determination

This clause provides for the publication of non controversial and urgent Rules.

253—'Fast track' Rules where previous public consultation by energy regulatory body or an AEMC review

This clause allows certain requests for Rules to be dealt with expeditiously.

254—Right to make written submissions and comments

This clause provides for the making of written submissions on a proposed Rule.

255—AEMC may hold public hearings before draft Rule determination

This clause provides for the holding of a hearing in relation to a proposed Rule.

256—Draft Rule determinations

This clause requires the AEMC to publish its draft determination, including reasons, in relation to a proposed Rule.

257—Right to make written submissions and comments in relation to draft Rule determination

This clause provides for written submissions on a draft Rule determination.

258—Pre-final Rule determination hearings

This clause provides for a pre-final determination hearing to be held in relation to a draft Rule determination.

259—Final Rule determination

This clause requires the AEMC to publish its final Rule determination, including reasons.

260—Proposal to make more preferable Rule

This clause allows the AEMC to take action to consult, receive submissions and conduct hearings in relation to a more preferable Rule.

261—Making of Rule

This clause requires the AEMC to make a Rule as soon as practicable after publication of its final Rule determination. Notice of the making of a Rule must be published in the South Australian Government Gazette.

262—Operation and commencement of Rule

This clause provides that a Rule comes into operation on the day the notice of making is published or on such later date as is specified in that notice or the Rule.

263—Rule that is made to be published on website and made available to the public

This clause requires the AEMC, without delay after making a Rule, to publish the Rule on its website and make a copy available for inspection at its offices.

264—AEMC must publish and make available up to date versions of Rules

This clause requires the AEMC to maintain an up to date copy of the Rules on its website and to make copies of the Rules available for inspection at its offices.

265—Evidence of the National Energy Retail Rules

This clause is an evidentiary provision relating to the Rules.

Division 5—Miscellaneous provisions relating to Rule making by the AEMC

266—Extensions of periods of time in Rule making procedure

This clause provides a general power for the AEMC to extend periods of time in the Rule making procedure.

267—AEMC may extend period of time for making of final Rule determination for further consultation

This clause allows the AEMC to extend periods of time for consultation as a result of comments received during consultation.

268—AEMC may publish written submissions and comments unless confidential

This clause allows the AEMC to publish submissions unless they are confidential.

269—AEMC must publicly report on Rules not made within 12 months of public notification of requests

This clause requires the AEMC to publicly report if it fails to make a Rule within 12 months of receiving a request.

Part 11—National Energy Retail Regulations

270—General regulation-making power for this Law

This clause enables the Governor to make regulations to give effect to the Law on the unanimous recommendation of the Ministers of the participating jurisdictions. In view of the interstate application of laws scheme that is based on this measure and regulations made under the Act, Parliamentary disallowance of the regulations is excluded.

271—Specific regulation-making power

This clause enables the Governor to make regulations of a transitional nature relating to the transition from the energy laws to this new scheme.

Part 12—Compliance and performance

Division 1—AER compliance regime

272—Obligation of AER to monitor compliance

This clause requires the AER to monitor compliance of regulated entities and other persons with the Law, the National Regulations and the Rules.

273—Obligation of regulated entities to establish arrangements to monitor compliance

This clause requires regulated entitles to establish and observe policies, systems and procedures to monitor compliance with the Law, the National Regulations and the Rules.

274—Obligation of regulated entities to provide information and data about compliance

This clause requires a regulated entity to provide to the AER information and data relating to the entity's compliance with requirements of the Law, the National Regulations and the Rules.

275—Compliance audits by AER

This clause allows the AER to carry out, or arrange for the carrying out, of a compliance audit of a regulated entity.

276—Compliance audits by regulated entities

This clause requires a regulated entity to comply with an AER request to carry out a compliance audit.

277—Carrying out of compliance audits

This clause requires a compliance audit to be carried out in accordance with the AER Compliance Procedures and Guidelines.

278—Cost of compliance audits

This clause provides for the cost of compliance audits to be borne by the regulated entity.

279—Compliance reports

This clause requires the AER to publish an annual compliance report on its website.

280—Contents of compliance reports

This clause specifies the required content of a compliance audit report.

281—AER Compliance Procedures and Guidelines

This clause requires the AER to make AER Compliance Procedures and Guidelines and specifies matters the procedures and guidelines may deal with.

Division 2—AER performance regime

282—Obligation of regulated entities to provide information and data about performance

This clause requires a regulated entity to submit to the AER information and data relating to the entity's performance.

283—Performance audits—hardship

This clause allows the AER to conduct performance audits in respect of performance of retailers by reference to hardship program indicators.

284—Retail market performance reports

This clause requires the AER to publish an annual retail market report on its website.

285—Contents of retail market performance reports

This clause specifies the required content of a retail market performance report.

286—AER Performance Reporting Procedures and Guidelines

This clause requires the AER to make AER Performance Reporting Procedures and Guidelines and specifies matters the procedures and guidelines may deal with.

287—Hardship program indicators

This clause requires the AER to determine and publish hardship program indicators in accordance with the Rules.

Part 13—Enforcement

Division 1—Enforceable undertakings

288—Enforceable undertakings

This clause allows the AER to accept and enforce enforceable undertakings.

Division 2—Proceedings generally

289—Instituting civil proceedings under this Law

This clause provides that proceedings for breach of the Law, the National Regulations or the Rules may not be instituted except as provided in this Part.

290—Time limit within which proceedings may be instituted

This clause provides for the time limit within which proceedings may be instituted.

Division 3—Proceedings for breaches of this Law, the National Regulations or the Rules

291—AER proceedings for breaches of this Law, the National Regulations or the Rules that are not offences

This clause provides for the orders that may be made in proceedings in respect of breaches of provisions of the Law, the National Regulations or the Rules that are not offence provisions.

292—Proceedings for declaration that a person is in breach of a conduct provision

This clause allows a person other than the AER to apply to a court for a declaration that a person is in breach of a conduct provision.

293—Actions for damages by persons for breach of conduct provision

This clause allows a person other than the AER to apply to a court for a declaration that a person is in breach of a conduct provision.

Division 4—Matters relating to breaches of this Law, the National Regulations or the Rules

294—Matters for which there must be regard in determining amount of civil penalty

This clause sets out matters to be taken into account in determining civil penalties.

295—Breach of a civil penalty provision is not an offence

This clause provides that a breach of a civil penalty provision (as defined in clause 2) is not an offence.

296—Breaches of civil penalty provisions involving continuing failure

This clause provides for breaches of civil penalty provisions involving continuing failure.

297—Conduct in breach of more than one civil penalty provision

This clause provides for liability for one civil penalty in respect of the same conduct constituting a breach of two or more civil penalty provisions.

298—Persons involved in breach of civil penalty provision or conduct provision

This clause provides for aiding, abetting, counselling, procuring or being knowingly concerned in or party to a breach of a civil penalty provision.

299—Attempt to breach a civil penalty provision

This clause provides that an attempted breach of a civil penalty provision is deemed to be a breach of that provision.

300—Civil penalties payable to the Commonwealth

This clause provides that civil penalties are payable to the Commonwealth.

Division 5—Judicial review of decisions under this Law, the National Regulations and the Rules

301—Definition

This clause defines 'person aggrieved' for the purposes of this Division.

302—Applications for judicial review of decisions of the AEMC

This clause provides that aggrieved persons (as defined in clause 301) may apply for judicial review in respect of AEMC decisions and determinations, and that the operation of a decision or determination is not affected by an application for judicial review, unless the Court otherwise orders.

Division 6—Further provision for corporate liability for breaches of this Law

303—Definition

This clause defines 'breach provision' for the purposes of this Division.

304—Offences and breaches by corporations

This clause provides that an officer (as defined) of a corporation is also liable for a breach of an offence provision or civil penalty provision by the corporation if the officer knowingly authorised or permitted the breach.

305—Corporations also in breach if officers and employees are in breach

This clause provides that an act committed by an officer (as defined) or employee of a relevant participant (as defined) will be a breach where the act, if committed by the relevant participant, would be a breach.

Division 7—Application of provisions of NGL

306—Tribunal review of information disclosure decision

This clause applies the provisions of Division 3 of Part 5 of Chapter 8 of the National Gas Law to a decision by the AER to disclose information under clause 214 of this Law.

307—Costs in a review

This clause specifies how the Australian Competition Tribunal may award costs.

308—Infringement notices

This clause applies the provisions of Part 7 of Chapter 8 of the National Gas Law in relation to civil penalty provisions in this Law.

309—Search warrants

This clause applies the provisions of Division 2 of Part 1 of Chapter 2 of the National Gas Law (with such modifications as prescribed by the National Regulations) in relation to the provisions of this Law, the National Regulations and the Rules.

Part 14—Evidentiary matters

Division 1—Publication on websites

310—Definitions

This clause provides for definitions specific to this Division.

311—Publication of decisions on websites

This clause provides for when a decision or document is taken to be published on a website.

Division 2—Evidentiary certificates

312—Definitions

This clause provides for definitions specific to this Division.

313—Evidentiary certificates—AER

This clause enables an AER member or certain persons assisting the AER to sign a certificate stating that certain matters are evidence of the matter.

314—Evidentiary certificates—AEMC

This clause enables an AEMC Commissioner or the AEMC chief executive to sign a certificate stating that certain matters are evidence of the matter.

Division 3—Time of commencement of a Rule

315—Time of commencement of a Rule

This clause provides for the time a Rule commences.

Part 15—General

316—Immunity in relation to failure to supply energy

This clause provides an immunity to a retailer or distributor, or an officer or employee of a retailer or distributor, in relation to a failure to supply energy in certain circumstances.

317—Distributor—retailer mutual indemnity

This clause provides a mutual indemnity between a retailer and distributor of a shared customer.

318—Immunity in relation to personal liability of AEMC officials

This clause protects AEMC officials from any personal liability as a result of performing their functions under this Law and the Rules.

319—Giving of notices and other documents under Law or Rules

This clause specifies how notices and documents may be served under the Law or the Rules.

320—Law and the Rules to be construed not to exceed legislative power of Legislature

This clause provides that a provision of the Law and the Rules is to be construed so as not to exceed the legislative power of the Legislative of the jurisdiction.

Debate adjourned on motion of Hon. D.W. Ridgway.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (21:38): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (National Energy Retail Law) Bill 2010* makes amendments to the *National Electricity Law* in the Schedule to the *National Electricity (South Australia) Act 1996*, the *National Gas Law* in the Schedule to the *National Gas (South Australia) Act 2008* and the *Australian Energy Market Commission Establishment Act 2004*, which are necessary and consequential to the implementation of the *National Energy Retail Law (South Australia) Bill 2010*.

Consequential amendment of National Electricity and Gas Laws

The consequential amendments set out in this Bill are essentially the same for the *National Electricity Law* and for the *National Gas Law*. These consequential amendments enable rules to be made about new subject matters that form part of the National Energy Customer Framework and to align the reporting, compliance and enforcement regimes across the three national energy laws (the *National Electricity Law*, the *National Gas Law* and the *National Energy Retail Law*).

Application of the Statutes Amendment (National Energy Retail Law) Bill 2010

The *National Energy Retail Law* will not commence in any participating jurisdiction (including South Australia) immediately upon enactment by the South Australian Parliament. Rather, its commencement will occur in each jurisdiction when the jurisdiction applies the Law. Similarly, the amendments to the *National Electricity Law* and *National Gas Law* made by this Bill will apply in a participating jurisdiction when the *National Energy Retail Law* is applied in that jurisdiction.

Rule making power of the South Australian Minister

The *National Electricity Law* and the *National Gas Law* are amended to give the South Australian Minister the power to make initial *National Electricity Rules* and *National Gas Rules* relating to the implementation of the *National Energy Retail Law* and Rules. There are two new sets of initial rules, for retail customer connections and for regulating the retail support arrangements (including credit support) between energy distributors and retailers. The content of these new rules is considered to be appropriately located in the *National Electricity Rules* and the *National Gas Rules*, rather than in the *National Energy Retail Rules*.

As is the case under the *National Energy Retail Law*, this Bill confers a residual power for the South Australian Minister to make necessary and consequential changes to the initial Rules, should it become evident as part of jurisdictional implementation of the *National Energy Retail Law* that adjustments are required. Any such changes may only be made by the South Australian Minister until any one of the participating jurisdictions applies the *National Energy Retail Law* and must first be approved by the Ministerial Council on Energy. Thereafter, all Rule changes will be subject to the standard Australian Energy Market Commission rule change process.

Australian Energy Market Commission's rule making powers

The rule making powers of the Australian Energy Market Commission under the *National Electricity Law* and the *National Gas Law* will similarly extend to the new subject matters set out in this Bill.

In addition, where the Australian Energy Market Commission receives a rule change request under the *National Electricity Law*, it will be able to make a consequential amendment to another rule that may have been made under the *National Electricity Law*, the *National Gas Law*, or the *National Energy Retail Law*. The Bill also

makes a similar amendment to the Australian Energy Market Commission's consequential rule making power under the *National Gas Law*.

Harmonisation of reporting and information management

This Bill provides for a number of ways in which reporting and information management may be streamlined or harmonised under the three national energy laws, which will reduce duplication and costs to industry participants in providing information to the various regulatory bodies. For example, it provides that information used by the Australian Energy Regulator for performance reporting obligations under the *National Electricity Law* or *National Gas Law* may be used in preparing similar reports under the *National Energy Retail Law*. It also provides for the preparation of single documentation by the Australian Energy Regulator under the three national energy laws and for the use of information obtained by the Australian Energy Regulator under each Law for a purpose connected with the performance or exercise of its functions and powers under any of the other national energy laws.

Enforceable undertakings

This Bill will make amendments to the *National Electricity Law* and *National Gas Law* to establish for the first time in the energy sector a power for the Australian Energy Regulator to accept enforceable undertakings from energy market participants, similar to the power which the Australian Competition and Consumer Commission has under the *Trade Practices Act 1974* (Commonwealth). Similar provisions will exist in the *National Energy Retail Law*, creating a uniform enforcement power for the Australian Energy Regulator under the three national energy laws. This type of administrative remedy gives the Australian Energy Regulator an alternative tool in achieving compliance, rather than having to proceed straight to court action.

Conduct provision regime for the National Electricity Law

In addition, the Bill introduces a conduct provision regime into the *National Electricity Law*, which mirrors the conduct provision regimes in the *National Gas Law* and the new *National Energy Retail Law*. This enables persons regulated under the *National Electricity Law* to take direct action against another party where appropriate. For example, this regime will operate in relation to certain specified obligations owed by retailers to distributors and vice versa under the new credit support arrangements.

Nominated Distributor

There are some distribution entities that are not subject to full economic regulation but who provide services to retail customers, such as uncovered gas distribution pipelines. In order to allow jurisdictions to include these distributors in the national connection framework or the retail support rules, this Bill enables the 'nomination' of these distributors by a jurisdiction. The application Act of a participating jurisdiction, for either the *National Electricity Law* or the *National Gas Law*, may provide for the making of a local regulation nominating an entity to operate as a nominated distributor. That regulation may apply specified provisions of the *National Electricity Rules* or the *National Gas Rules* (as the case may be), with or without modification, to the nominated distributor relating to the connection of premises of retail customers and retail support (including credit support) obligations between distributors and retailers. A nomination of an entity as a nominated distributor may be made for the whole or a specified part of the geographical area of a jurisdiction, or the whole or a specified part of the distribution system or pipeline that is owned, controlled or operated by the entity.

Corporations Act displacement

This Bill will provide for the displacement of some provisions of the *Corporations Act 2001* (Commonwealth) to ensure the primacy of certain *National Electricity Rules* and *National Gas Rules* in the event of a retailer of last resort event. This is consistent with a similar limited displacement of the Corporations legislation provided for by the *National Energy Retail Law* for the purpose of supporting the operation of the national retailer of last resort regime in Part 6 of that Law.

Minor and other amendments

This Bill includes a range of other minor amendments consequential to the enactment of the *National Energy Retail Law* or necessary for the implementation of the new national connections rules and the retail support rules as part of the *National Electricity Rules* and the *National Gas Rules*. These include the introduction of new or amendment of existing definitions, the identification of relevant civil penalty provisions, and other minor amendments to bring consistency to the terminology used in the three national energy laws.

The immunity in relation to failure to supply electricity in section 120 of the *National Electricity Law* will also be amended to prevent the variation or exclusion of the statutory immunity in that section under an agreement between a retailer, or a distributor, and a person who is a small customer within the meaning of the *National Energy Retail Law*. This, along with similar provisions in the *National Energy Retail Law*, will ensure that the statutory immunity applies to electricity and gas retailers and distributors under agreements with small customers, while preserving the right of such customers to seek redress where there has been bad faith or negligence by the other party.

Amendment of *Australian Energy Market Commission Establishment Act 2004*

This Bill also makes minor consequential amendments to the *Australian Energy Market Commission Establishment Act 2004* to enable the Australian Energy Market Commission to exercise its functions and powers under the *National Energy Retail Law*.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Clause 2(1) provides for the measure to be brought into operation by proclamation. Clause 2(2) excludes the operation of section 7(5) of the *Acts Interpretation Act 1915* due to the fact that this measure forms part of a co-operative legislative scheme involving other Australian jurisdictions.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Australian Energy Market Commission Establishment Act 2004*

4—Amendment of section 3—Interpretation

The definition of *National Energy Law* under the *Australian Energy Market Commission Establishment Act 2004* is to be amended to make reference to the legislative instruments associated with the *National Energy Retail Law*.

Part 3—Amendment of *National Electricity Law*

5—Amendment of section 2—Definitions

This clause inserts new definitions in the *National Energy Law* (the *NEL*) on account of the new *National Energy Retail Law*.

6—Substitution of section 2A

An access dispute will include a dispute between a retail customer (or other person specified by the Rules) and a regulated distribution system operator about an aspect of access to a connection service specified by the Rules to be an aspect to which Part 10 applies.

7—Insertion of section 2AA

This clause inserts a section which outlines the provisions which apply a civil penalty.

8—Amendment of section 2D—Meaning of regulatory obligation or requirement

These amendments insert references to the *National Energy Retail Law* or the *National Energy Retail Rules* in various provisions of section 2D of the NEL.

9—Insertion of section 6A

This clause inserts a section which allows a participating jurisdiction to nominate an entity as a distributor to which certain aspects of the Rules will apply.

10—Insertion of section 10A

It is necessary to displace certain provisions of the *Corporations Act 2001* of the Commonwealth.

11—Amendment of section 11—Electricity market activities in this jurisdiction

12—Amendment of section 14A—Regulated transmission system operator must comply with transmission determination

13—Amendment of section 14B—Regulated distribution system operator must comply with distribution determination

These amendments up-date cross-references.

14—Amendment of section 15—Functions and powers of AER

15—Amendment of section 16—Manner in which AER performs AER economic regulatory functions or powers

These amendments make technical drafting amendments.

16—Amendment of section 28N—Compliance with regulatory information notice that is served

17—Amendment of section 28O—Compliance with general regulatory information order

These clauses identify sections as civil penalty provisions.

18—Amendment of section 28V—Preparation of network service provider performance reports

Any information that is used to prepare a report under section 28V of the NEL will be able to be used for the purposes of preparing a report under the *National Energy Retail Law* or the *National Energy Retail Rules*.

19—Substitution of section 28ZD

20—Amendment of section 28ZF—AER enforcement guidelines

These are consequential amendments.

21—Insertion of sections 28ZH and 28ZI

A new provision will allow the AER, where it is authorised to prepare a document under the law or the Rules, and under the *National Gas Law* or the *National Gas Rules*, or the *National Energy Retail Law* or the *National Energy Retail Rules*, to prepare a single document to satisfy all requirements.

Another provision will allow the AER to use information obtained under the Law or the Rules for a purpose connected with its performance or exercise of a function or power under the *National Gas Law* or the *National Gas Rules*, or the *National Energy Retail Law* or the *National Energy Retail Rules*.

22—Amendment of section 34—Rule making powers

These are consequential amendments to the rule making powers of the AEMC and the NEL.

23—Amendment of section 49—AEMO's statutory functions

This is a consequential amendment.

24—Amendment of section 50D—Network agreement

This amendment identifies section 50D(1) as a civil penalty provision.

25—Amendment of section 50F—Augmentation

This is a consequential amendment.

26—Amendment of section 53C—Compliance with market information instrument

These amendments identify specified sections as civil penalty provisions.

27—Amendment of section 54C—Disclosure required or permitted by law etc

This amendment up-dates terminology.

28—Deletion of section 58—Definitions

This is a consequential amendment.

29—Insertion of Part 6 Division 1A

This clause inserts a provision that will allow the AER to accept and enforce enforceable undertakings.

30—Amendment of section 60—Time limit within which AER may institute proceedings

31—Amendment of section 61—Proceedings for breaches of a provision of this Law, the Regulations or the Rules that are not offences

These are consequential amendments.

32—Insertion of sections 61A and 61B

This clause inserts a provision that will allow a person other than the AER to apply to a court for a declaration that a person is in breach of a conduct provision.

Another provision will allow recovery of damages by people who suffer loss as a result of a breach of a conduct provision.

33—Amendment of section 64—Matters for which there must be regard in determining amount of civil penalty

34—Amendment of section 67—Conduct in breach of more than one civil penalty provision

These are consequential amendments.

35—Substitution of section 68 and insertion of section 68A

Section 68 must be recast to recognise that a person may breach a conduct provision.

New section 68A provides that an attempted breach of a civil penalty provision is deemed to be a breach of that provision.

36—Amendment of section 69—Civil penalties payable to the Commonwealth

37—Amendment of section 74—Power to serve a notice

38—Amendment of section 75—Form of notice

39—Amendment of section 79—Withdrawal of notice

40—Amendment of section 81—Payment expiates breach of civil penalty provision

41—Amendment of section 83—Conduct in breach of more than one civil penalty provision

42—Substitution of section 86

These are consequential amendments.

43—Insertion of section 90D

New section 90D will allow the Minister to make initial Rules associated with the operation of the *National Energy Retail Law* or the *National Energy Retail Rules*.

44—Amendment of section 91B—AEMC may make Rules that are consequential to a Rule request

This amendment will allow the AEMC to make a rule associated with the operation of the *National Gas Law* or the *National Energy Retail Law* that is necessary or consequential, or corresponds, with a rule under this law.

45—Amendment of section 120—Immunity in relation to failure to supply electricity

This amendment will exclude section 120(2) from operating with respect to certain agreements with small customers (as defined by the *National Energy Retail Law*).

46—Amendment of section 136—Compliance with access determination

47—Amendment of section 157—Preventing or hindering access

These amendments identify certain provisions as civil penalty provisions.

48—Amendment of Schedule 1—Subject matter for the National Electricity Rules

This is a consequential amendment.

49—Amendment of Schedule 3—Savings and transitionals

This amendment will insert a clause that will provide that the amendments made to the NEL by this measure will not apply in a participating jurisdiction until the *National Energy Retail Law* is applied in that jurisdiction as a law of that jurisdiction. This provision will ensure that the amendments do not flow 'automatically' into a participating jurisdiction unless or until it applies the *National Energy Retail Law*.

Part 4—Amendment of *National Gas Law*

50—Amendment of section 2—Definitions

This clause inserts new definitions into the *National Gas Law* (the *NGL*) on account of the new *National Energy Retail Law*.

51—Amendment of section 6—Meaning of regulatory obligation or requirement

These are consequential amendments.

52—Insertion of section 8A

This clause inserts a section which allows a participating jurisdiction to nominate an entity as a distributor to which certain aspects of the Rules will apply.

53—Insertion of Chapter 1 Part 5

It is necessary to displace certain provisions of the *Corporations Act 2001* of the Commonwealth.

54—Amendment of section 64—Preparation of service provider performance reports

Any information that is used to prepare a report under section 64 of the NGL will be able to be used for the purposes of preparing a report under the *National Energy Retail Law* or the *National Energy Retail Rules*.

55—Substitution of section 66

New section 60 will allow the use of certain information for the purposes of the other laws or related Rules.

56—Amendment of section 68—AER enforcement guidelines

This is a consequential amendment.

57—Insertion of sections 68A and 68B

These new provisions will correspond to new sections 28ZH and 28ZI in the NEL.

58—Amendment of section 74—Subject matter for National Gas Rules

59—Amendment of section 91A—AEMO's statutory functions

These are consequential amendments.

60—Amendment of section 91GC—Disclosure required or permitted by law etc

This amendment up-dates terminology.

61—Insertion of section 178A

The new section will apply the dispute provisions to certain disputes under the Rules.

62—Insertion of Chapter 8, Part 1A

This amendment inserts a provision that will allow the AER to accept and enforce enforceable undertakings.

63—Amendment of section 232—Proceedings for declaration that a person is in breach of a conduct provision

This is a consequential amendment.

64—Insertion of section 294C

New section 294C will allow the Minister to make initial Rules associated with the operation of the *National Energy Retail Law* or the *National Energy Retail Rules*.

65—Amendment of section 297—AEMC may make Rules that are consequential to a Rule request

66—Amendment of Schedule 1—Subject matter for the National Gas Rules

These are consequential amendments.

67—Amendment of Schedule 3—Savings and transitionals

This amendment will insert a clause that will provide that the amendments made to the NGL by this measure will not apply in a participating jurisdiction until the *National Energy Retail Law* is applied in that jurisdiction as a law of that jurisdiction. This provision will ensure that the amendments do not flow 'automatically' into a participating jurisdiction unless or until it applies the *National Energy Retail Law*.

Schedule 1—Statute Law Revision

This Schedule provides for references to the *Trade Practices Act 1974* to be up-dated.

Debate adjourned on motion of Hon. D.W. Ridgway.

STATUTES AMENDMENT (CRIMINAL INTELLIGENCE) BILL

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

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Industrial Relations, Minister Assisting the Premier in Public Sector Management) (21:39): I move:

That this bill be now read a second time.

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

Leave granted.

When the Government began the process of drafting that led to the enactment of the *Serious and Organised Crime (Control) Act 2008*, it became clear that that Act would have to deal with the situation where the Commissioner of Police was in possession of certain information critical to a decision and that information could not otherwise be made public or, in particular, disclosed to the individual to whom it related. This kind of information is called 'criminal intelligence'.

Criminal intelligence is evidence that suggests that a person is or has been involved in crime but which, if disclosed, could prejudice criminal investigations, enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement, or endanger a person's life or physical safety.

This is not a concept new to the law. The common law had long recognised such a category of information and subsumed it under the name of 'public interest immunity'. But the common law did not deal with it well, or sufficiently, and it was not clear that public interest immunity applied to some administrative (as opposed to judicial) proceedings.

The concept of criminal intelligence had been the subject of specific legislation in other Acts that dealt with this kind of situation. As it turned out, the most significant of these was in the *Liquor Licensing Act 1997*.

The development of criminal intelligence provisions in a number of Acts directed to the disruption of the activities of organised crime has meant that there are now three versions on the statute book. One of them has been upheld as constitutional by the High Court. It is highly desirable and in the public interest that all these provisions conform to the constitutional model.

Criminal intelligence provisions are controversial. They operate by denying a person, for example, an applicant for a licence or a party to legal proceedings, the right to know of and respond to evidence that is prejudicial to their application or to their case. This is a breach of procedural fairness and denial of natural justice.

Because of this, criminal intelligence provisions have been the subject of constitutional challenge. There have been two such challenges to South Australian provisions;

- an applicant for a liquor licence challenged the constitutional validity of former section 28A of the *Liquor Licensing Act 1977*. This provision was held to be constitutionally valid by the High Court (*K-Generation Pty Ltd v Liquor Licensing Court* [2009] HCA 4);
- an owner of premises that were the subject of a fortification removal order unsuccessfully challenged the constitutional validity of section 74BB of the *Summary Offences Act 1953*. This provision was held to be valid by the Full Bench of the Supreme Court (*Osenkowski & Anor V Magistrates Court Of South Australia & Anor* [2006] SASC 345).

The case before the High Court in K-Generation was being argued right at the time that the *Serious and Organised Crime (Control) Bill 2008* was being drafted. The Solicitor-General of the day (Mr C Kourakis QC) was apprehensive

that the Court would strike down the particular version of the criminal intelligence provision before it. He advised the drafters that some modifications should be made to criminal intelligence provisions generally to make them more amenable to High Court approval. This was done in some cases (including in the Liquor Licensing Act itself).

As it turned out, the High Court upheld the validity of the criminal intelligence provision in the *Liquor Licensing Act 1977*. The result was that the statute book then had (and has) on it two versions of the criminal intelligence provision. One is the one, the validity of which was upheld by the High Court. One is not.

But that is not all. The criminal intelligence provision in section 74BB of the *Summary Offences Act 1953* upheld as valid by the Full bench of the Supreme Court is different yet again. So there are three versions on the statute book.

This is not a defensible position. Experience shows directly that there are those affected by criminal intelligence provisions who are willing and able to litigate the constitutionality of the provision to the High Court. This is not only very expensive for the State but, literally, takes years, during which time the operation of the provision and the legislation that depends upon it are placed in limbo. the State cannot afford the needless expense and the disruption to the operation of its policies as expressed in legislation.

If action is not taken now and quickly, these unproclaimed provisions will eventually come into force of their own effect because of the two year rule in s 7(5) of the *Acts Interpretation Act 1914*. For example, the one in the *Liquor Licensing Act 1997* will come into effect on 4 December 2010.

All criminal intelligence provisions, including the old one in the *Summary Offences Act 1953* should conform to the model upheld as constitutionally valid by the High Court in the *K-Generation* case. The Acts that must be amended are:

- the Casino Act 1997;
- the Firearms Act 1977;
- the Gaming Machines Act 1992;
- the Summary Offences Act 1953;
- the Liquor Licensing Act 1997; and
- the Security and Investigation Agents Act 1995.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure will commence on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Casino Act 1997*

4—Substitution of section 66A

Section 66A of the *Casino Act 1997*, which deals with the confidentiality of information classified by the Commissioner of Police as criminal intelligence, is to be repealed. A new section that is consistent in its terms with criminal intelligence provisions in other legislation is to be substituted. The new section provides that in any proceedings under Part 8 of the Act (Review and appeal), the Independent Gambling Authority or the Supreme Court must, on the application of the Commissioner of Police, take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence. Steps are to be taken to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives. The provision also provides that the Authority or Court may take evidence consisting of or relating to information that is classified as criminal intelligence by way of affidavit of a police officer of or above the rank of superintendent.

5—Amendment of section 69—Confidentiality of criminal intelligence and other information provided by Commissioner of Police

Section 69(4) is to be repealed by this clause. The subsection, which imposes certain requirements in relation to delegation of the function of classifying information as criminal intelligence, is unnecessary because section 19 of the *Police Act 1998* deals with delegations by the Commissioner of Police.

Part 3—Amendment of *Firearms Act 1977*

6—Amendment of section 5—Interpretation

This clause amends the definition of *criminal intelligence* in the interpretation provision of the *Firearms Act 1977*. The purpose of the amendment is to ensure that the term is defined consistently in the State's legislation.

7—Amendment of section 26C—Right of appeal to District Court

This clause amends section 26C by substituting new provisions relating to the confidentiality of criminal intelligence. The section as amended will provide that, on an appeal to the District Court, the Court—

- must, on the application of the Registrar, take steps to maintain the confidentiality of information classified by the Registrar as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives; and
- may take evidence consisting of or relating to information so classified by the Registrar by way of affidavit of a police officer of or above the rank of superintendent.

Part 4—Amendment of *Gaming Machines Act 1992*

8—Amendment of section 3—Interpretation

The definition of *criminal intelligence* that applies for the purposes of the *Gaming Machines Act 1992* is amended by this clause so that it is consistent with other definitions of the term. As a result of the amendment, the term will include information relating to actual or suspected criminal activity (whether in South Australia or elsewhere) the disclosure of which could reasonably be expected to endanger a person's life or physical safety.

Part 5—Amendment of *Liquor Licensing Act 1997*

9—Amendment of section 28A—Criminal intelligence

This clause amends section 28A of the *Liquor Licensing Act 1997*, which provides for the confidentiality of information classified by the Commissioner of Police as criminal intelligence. The purpose of the amendment is to make the section consistent with similar provisions in other Acts. The section as amended will provide that in proceedings under the Act, the Liquor and Gambling Commissioner, the Licensing Court of South Australia and the Supreme Court are to take steps to maintain the confidentiality of information classified by the Commissioner of Police as criminal intelligence, including steps to receive evidence and hear argument about the information in private in the absence of the parties to the proceedings and their representatives. The provision also provides that evidence consisting of or relating to information so classified by the Commissioner of Police may be taken by the Commissioner or Court by way of affidavit of a police officer of or above the rank of superintendent.

Part 6—Amendment of *Security and Investigation Agents Act 1995*

10—Amendment of section 3—Interpretation

This is a further amendment made for the purpose of ensuring that *criminal intelligence* is defined consistently in each of the Acts in which the term is used. Currently, the definition does not refer to the disclosure of information that might endanger a person's life or physical safety.

Part 7—Amendment of *Summary Offences Act 1953*

11—Amendment of section 74BA—Interpretation

This clause amends section 74BA to insert a definition of *criminal intelligence* that is consistent with the definitions in other Acts.

12—Amendment of section 74BB—Fortification removal order

This clause deletes the current provisions which protect sensitive material by reference to the principle of public interest immunity.

13—Amendment of section 74BC—Content of fortification removal order

This clause amends section 74BC to ensure that information included in, and attached to, a fortification removal order made by the Court does not include information the disclosure of which would be inconsistent with a decision of the Court under proposed new section 74BGA.

14—Insertion of section 74BGA

This clause inserts a new section relating to criminal intelligence that is consistent in its terms with criminal intelligence provisions in other legislation.

Debate adjourned on motion of Hon. D.W. Ridgway.

At 21:40 the council adjourned until Thursday 11 November 2010 at 14:15.