

C A B I N E T G U I D E

**Institutions of Government**  
How we are governed



**IMPORTANT NOTE:**

The information in this Guide is current as of the date of publication but is subject to change.

Please check with Cabinet Office (see the contacts listed below) if you intend to rely on this information after January 2016

January 2015

Department of the Premier and Cabinet  
State Administration Centre  
200 Victoria Square  
ADELAIDE SA 5000  
8226 3661

GPO Box 2343  
ADELAIDE SA 5001

[www.dpc.sa.gov.au](http://www.dpc.sa.gov.au)



# Contents

Introduction .....	3
Applying this Guide .....	3
The Constitution of South Australia .....	4
The Queen .....	8
The Governor .....	8
The Lieutenant-Governor .....	9
The Executive .....	9
The Public Sector .....	14
The Parliament .....	21
The Courts .....	39



## Introduction

This publication is designed as a practical guide to the main government institutions in South Australia.

The background material it contains about the institutions draws heavily on the work of the State's former Solicitor-General, the late Judge Bradley Selway, whose book, *The Constitution of South Australia*, ([The Federation Press](#), Sydney, 1997) deals with these issues in much greater detail.

The Guide aims to provide:

- an overview of the structure and business of Parliament, the Courts and the Executive in South Australia
- an introduction to the principles of Cabinet collective decision-making and the role and responsibilities of ministers which underpin many of the strict requirements surrounding the preparation and handling of Cabinet submissions
- an introduction to the role and function of the Executive Council and a practical guide to the manner in which it performs some of its functions
- a guide to the workings of the Parliament, in particular the passage of legislation, ministerial accountability and the role of Parliamentary committees
- an overview of the Courts system in the State.

---

## Applying this guide

This Guide will be useful for:

- ministerial office staff, Chief Executives, agency and statutory authority staff who are involved in the preparation of Cabinet submissions or who assist ministers in the conduct of Parliamentary business, including the drafting and presentation of legislation
- all staff who deal with Parliamentary Officers and Cabinet Office in other areas of activity
- staff interested in gaining a general overview of the role and interaction of Parliament, Cabinet, Executive Council and the Courts.

# Constitution of South Australia

The structure and powers of the South Australian Government are defined by the South Australian constitution. Unlike the Commonwealth's, the State constitution is not contained in a single document.

Sources of the State constitution include the Commonwealth Constitution, the (Commonwealth) Australia Act 1986 and the Letters Patent issued by Her Majesty on 14 February 1986, as well as the specific State Acts mentioned below.

## Constitution Act 1934 (SA)

The Constitution Act 1934 establishes the House of Assembly and the Legislative Council, provides for the number of members of each House, the term of the South Australian Parliament, the appointment of ministers and other officers, confers certain powers on the Governor, and sets out certain provisions relating to the judiciary.

Relevant provisions include:

**Section 6:** The Governor fixes the places and times for holding sessions of Parliament, prorogues the Parliament from time to time, and dissolves the House of Assembly.

**Section 7:** There must be at least one session of Parliament in every year.

**Section 10A:** A Bill that provides for the abolition of the House of Assembly or the Legislative Council, or an alteration of the powers of the Legislative Council, cannot be brought into law unless it has been approved at a referendum.

**Section 13:** Casual vacancies in the Legislative Council are filled by a person chosen by an assembly of both Houses of Parliament.

**Section 14:** Generally speaking, 11 members of the Legislative Council retire on each occasion that a general election is held for members of the House of Assembly.

**Section 28:** The term of each House of Assembly is set at 4 years. A general election for members of the House of Assembly must be held on the third Saturday in March every four years (subject to earlier dissolution under the Act).

**Section 28A:** The House of Assembly cannot be dissolved otherwise than as provided in section 28 unless the Government no longer has the confidence of the House, the Legislative Council rejects a "Bill of special importance", or a "double dissolution" is invoked to resolve a deadlock between the Houses.

**Section 57:** A Bill that has passed its second reading in either House but has not been finally disposed of at the close of a session may be restored to the notice paper by motion.

**Section 59:** A Bill for any appropriation requires a "message" from the Governor.

**Section 61:** A money Bill, or a money clause, must originate in the House of Assembly.

**Section 62:** The Legislative Council may only make “suggestions” for amendments to money clauses.

**Section 65:** The number of ministers must not exceed 15. Ministers will bear such titles and fill such ministerial offices as the Governor from time to time appoints.

**Section 66:** Every minister is a member of the Executive Council.

**Section 67:** The Governor may appoint a minister to act in the office of another minister.

**Section 68:** The appointment of all public offices under the Government of the State is vested in the Governor. Minor appointments may be vested in Heads of Departments or other persons.

**Part 5:** Electoral distributions are investigated after each general election.

## Administrative Arrangements Act 1994

This Act provides for various matters relevant to the administration of the State by ministers, including under a scheme of delegations.

Relevant provisions include:

**Section 4:** The Governor may, by proclamation, alter the title of a ministerial office.

**Section 5:** The Governor may, by proclamation, commit the administration of an Act to a minister.

**Section 6:** The Governor may, by proclamation, confer a ministerial function or power on a minister named in the proclamation.

**Section 7:** The Governor may, by proclamation, constitute a ministerial office as a body corporate, transfer assets of a minister to the Crown or an agent or instrumentality of the Crown, and dissolve a body corporate constituted of a minister.

**Section 8:** The Governor may, by proclamation, direct that a reference in an Act or other instrument or document to a minister, public service employee or administrative unit will have effect as if it were a reference to a minister, public service employee or administrative unit named in the proclamation.

**Section 9:** A minister may, by notice in the Gazette, delegate a function or power under an Act to another minister. A delegation does not prevent the delegating minister from carrying out the function or power.

**Section 9A:** The Governor may, by proclamation, appoint a minister as the delegate minister of another minister. A delegate minister has all the functions and powers of the other minister (but the other minister may continue to exercise the functions or powers). Delegate ministers were last appointed in South Australia in 2002.

**Section 11:** A proclamation under this Act has effect despite any other Act or law to the contrary (although another Act may exclude the operation of this provision).

## Acts Interpretation Act 1915

This Act provides for the interpretation of language used in Acts of Parliament.

Relevant provisions include:

**Section 4:** This section sets out various terms that have a common meaning when used in any Act (unless the contrary intention appears), including:

**financial year** means the period of 12 months ending on 30 June;

**Gazette** means the South Australian Government Gazette published by the Government Printer;

**Minister** means:

- when used in an Act – the minister responsible for the administration of that Act;
- when used in a statutory instrument – the minister responsible for the administration of the Act under which the statutory instrument is made;

**month** means calendar month;

**person** includes a body corporate;

**prescribed** means prescribed by an Act or statutory instrument under the Act where the term is used;

**proclamation** means a proclamation made by the Governor and published in the Gazette;

**sitting day** means a sitting day of a House of Parliament;

**writing** includes any visible form in which words may be reproduced or represented.

**Section 7:** An Act that contains no provision for its commencement will come into operation on assent.

An Act expressed to come into operation on a day to be fixed by proclamation allows the Governor to:

- fix a day for the Act to come into operation; or
- fix different days for different provision to come into operation; or
- suspend the operation of specified provisions until a day or days to be fixed by subsequent proclamation or proclamations.

Unless otherwise specifically provided, a provision that has not sooner been brought into operation by proclamation will come into operation automatically on the second anniversary of the date on which the relevant Act received assent.

**Section 14:** An expression used in an instrument under an Act has, unless the contrary intention appears, the same meaning as in the Act.

**Section 14C:** A power conferred by a provision that is yet to be brought into operation can be exercised before the provision comes into operation, but whatever is done pursuant to that power cannot take effect until the relevant provision is brought into operation.

**Section 16:** This section sets out various saving and transitional provisions.

**Section 20:** Unless the contrary intention appears, an Act passed after 20 June 1990 will be taken to bind the Crown, but not so as to impose any criminal liability on the Crown.

**Section 22:** An Act should be construed so as to promote the purpose or object of the Act.

**Section 23:** A power of the Governor conferred by statute must be exercised with the advice and consent of the Executive Council.

**Section 26(b):** A word in the singular number will be taken to include the plural number.

**Section 28A:** This section sets out the amounts that apply if a penalty or fee is expressed as a divisional penalty or divisional fee.

**Section 36:** The power to make an appointment includes a power to suspend or remove, and to make an appointment when the position is vacant.

**Section 37A(b):** A delegate may exercise a delegated power on the basis of his or her own state of mind, opinion or belief in relation to a particular matter.

## Subordinate Legislation Act 1978

This Act relates to the making and promulgation of subordinate legislation in the form of regulations. A regulation is defined to mean any regulation, rule or by-law made under an Act. It is also possible for the Governor, by proclamation, to declare that the Act (or specified provisions of the Act) will apply to other instruments of a legislative character made pursuant to an Act (see section 9).

Relevant provisions include:

**Section 10:** Except as provided otherwise, regulations must be made by the Governor, and then laid before both Houses of Parliament.

Regulations may be disallowed by resolution of either House of Parliament. A resolution for the disallowance of a regulation must be passed in pursuance of a notice of motion given with 14 sitting days (which need not fall within the same session) after the regulation was laid before the House.

**Section 10AA:** Unless otherwise provided, a regulation will come into operation 4 months after the day on which it is made. (A regulation may specify a later date).

A regulation may also specify a date that is earlier than the 4 month period, but this is only possible if the minister responsible for the administration of the Act under which the regulation is made certifies that, in his or her opinion, it is necessary or appropriate that the regulation come into operation on an earlier date. A certificate, separate from the Regulations is prepared by Parliamentary Counsel and cannot be called into question. This certificate is required to be signed by the minister as well as the regulations.

The commencement date for a regulation cannot be retrospective unless that is specifically authorised by the Act under which the regulation was made.

**Section 10A (1a):** If the minister issues a certificate under section 10AA in relation to the commencement of a regulation, the minister must cause a report setting out the reasons for the issue of the certificate to be given to the Legislative Review Committee.

**Part 3A:** This Part sets out a scheme for the expiry of certain regulations.

## Parliamentary Committees Act 1991

This Act provides for the establishment, and functions and powers of various Parliamentary Committees.

Included in this Act is a provision (section 19) that allows a Committee report to refer a matter to a minister for a response. In such a case, the minister must, within 4 months, respond to the report and included statements as to:

- which (if any) recommendations of the Committee will be carried out, and how; and
- which (if any) recommendations will not be carried out, and why.

## Public Sector Act 2009

This Act provides for the management and duties of the public service.

Relevant provisions of the Act include:

**Part 3:** This Part sets out the fundamental public sector principles and practices.

**Section 12:** Each public sector agency must prepare an annual report and submit it to the responsible minister. The report must be laid before Parliament.

**Sections 26:** This section allows the Governor, by proclamation, to make provision for the structure of the public service. This includes the power to establish or abolish administrative units and to alter the titles of an administrative unit.

**Part 6 Division 3:** This part of the Act relates to Chief Executives.

**Part 7:** This Part relates to Public Service appointments and general employment conditions and positions in the Public Service.

**Part 8:** This Part relates to general employment arrangements in the Public Service.

**Section 71:** This section relates to the appointment of ministerial staff outside the public service.

**Section 74:** This section deals with the issue of incompatible public offices.

**Schedule 1:** This Schedule relates to hours of attendance and leave entitlements for public servants.

**Schedule 2:** This Schedule establishes the Public Sector Grievance Review Commission

## Public Finance and Audit Act 1987

This Act provides for the management and regulation of State finances.

Treasurer's Instructions are issued under this Act to provide detailed regulation of the expenditure of public moneys.

## Public Corporations Act 1993

This Act may operate in relation to the management of a public corporation. The Act is applied to a public corporation by an Act or by regulation.

The Act also makes provision for the establishment, by regulation, of subsidiaries of public corporations.

## Electoral Act 1985

This Act regulates elections. More information about elections in South Australia is available from the State Electoral Office website at: [www.aec.gov.au](http://www.aec.gov.au)

## Parliament (Joint Services) Act 1985

This Act provides for the administration of Parliament.

**House of Assembly Standing Orders** regulate the procedure of the House of Assembly.

**Legislative Council Standing Orders** regulate the procedure of the Legislative Council.

---

## The Queen

The Queen is the Queen of Australia, a separate legal entity from the Queen of the United Kingdom, although the same person wears the Crown. In constitutional theory the South Australian Government is the means by which Her Majesty governs the territory and people of South Australia. The only tasks personally performed by Her Majesty in the Government of South Australia are the creation of the office of Governor in the Letters Patent and the appointment and dismissal of the Governor, in each instance upon the advice of the Premier.

---

## The Governor

The Governor is the representative of the Queen and may exercise all of the Queen's powers in relation to the State. The Governor is appointed at pleasure, but usually is expected to serve for a term of around five years.

The Governor's powers are derived from statute (for example, the power to make subordinate legislation) and from the prerogative.

Prerogative powers of the Governor include the power to prorogue, dissolve and summons Parliament, the power to assent to Bills, the power to recommend measures to the Houses of Parliament, the exercise of the prerogative of mercy and the power to enter into contracts.

With some exceptions, in the exercise of these powers the Governor must act upon the advice of his or her ministers, usually in Executive Council.

One exception is the so called 'reserve powers' where the Governor is not required to act upon advice. These powers are subject to conventions, but include the power to dismiss a government which has lost the support of the House of Assembly or which is acting unlawfully and fails to take appropriate steps to correct the illegality. It also includes the power to appoint a government following an election and, in certain limited circumstances, to refuse a dissolution to a Premier who advises one.

---

## The Lieutenant-Governor

The Lieutenant-Governor is appointed by the Governor on the advice of the Premier of South Australia. Appointment as Lieutenant-Governor of itself confers no powers or functions. Pending the appointment of a Governor or in the event of the Governor's absence from the State or incapacity, the official functions of Governor would be performed by the Lieutenant-Governor acting either as Administrator or the Governor's Deputy, depending on the circumstances.

If expecting to be unavailable for a short period only, the Governor with the consent of the Premier usually commissions the Lieutenant-Governor to act as Deputy for the Governor, performing some or all of the powers and functions of the Governor. If the Lieutenant-Governor is unable to act the Chief Justice of the Supreme Court is usually appointed as Administrator or Governor's Deputy.

---

## The Executive

The executive arm of government in this State is made up of ministers of the Crown appointed by the Governor on the recommendation of the Premier. In performing their roles ministers are sometimes called collectively 'the Government', the 'Executive', 'the ministry' and 'the Cabinet'.

## Executive Council

Executive Council is the body by which the Government formally advises the Governor in the exercise of most of his or her powers. Many of the statutes enacted by the South Australian Parliament have delegated a form of legislative authority to the Governor in Council, enabling it to make 'subordinate legislation' (including regulations, hospital and university by-laws, rules and ordinances).

Other matters requiring the approval of the Governor in Council include:

- commissions that are required to be issued in the Sovereign's name.
- appointments including judges, magistrates, Chief Executives and certain public officials, members of statutory authorities and boards and justices of the peace
- proclamations including resumption of land and easements, limitation of access, commencement of legislation and regulations
- loan guarantees and unforeseen expenditure
- releases on parole
- a number of miscellaneous matters.

Executive Council must comprise at least the Governor (or the Deputy or Lieutenant Governor if the Governor is absent) and two ministers.

The Premier as leader of the Government advises the Governor on the appointment of ministers and members of Executive Council. Under the Constitution Act (as amended at the end of 2002) all ministers are now *ex officio* members of Executive Council, restoring the longstanding position in this State that Executive Council is the made up of all members of the Cabinet with the Governor presiding.

Meetings usually take place on Thursdays at Government House.

Support to the Executive Council is provided by the Clerk of Executive Council and the Cabinet Coordination section of Cabinet Office.

Minutes of decisions of Executive Council are maintained. Most decisions of the Executive Council are published in the Government Gazette.

## Cabinet

Cabinet is the central decision-making body of the Executive Government. The pre-eminence is based upon two conventions: all ministers are bound to support the collective decisions of Cabinet and the discussions in Cabinet are absolutely confidential.

Cabinet currently comprises 15 ministers (the maximum number fixed by section 65 of the Constitution Act). Although the practice differs between administrations, it is the practice of the current Government that the Chief Executive of the Department of Premier and Cabinet and the Chief of Staff to the Premier are present during Cabinet meetings.

Cabinet operates under conventions and principles established under the Westminster system of Government. Cabinet, as such, has no formal legal

powers or status. Some Cabinet decisions result in the initiation and subsequent enactment of legislation; other decisions become legally binding through ratification by Executive Council or through powers vested in individual ministers for the administration and control of their respective government agency. In addition to government departments, statutory authorities also come under some degree of ministerial or parliamentary oversight.

The Premier chairs Cabinet meetings and has control over the Cabinet agenda. Cabinet is serviced by the Cabinet Office which forms part of the Department of Premier and Cabinet.

## Principles of Cabinet

Cabinet is the Government's central decision-making body. It is responsible for the overall development and coordination of the policies of the Government. In performing this important role, Cabinet is guided by the following fundamental principles:

- Cabinet collectively and ministers individually, are responsible and accountable to the Crown, the Courts, the Parliament and ultimately the electorate;
- Cabinet decisions reflect collective deliberation and are binding on all Cabinet ministers as Government policy;
- the processes of Cabinet are established by the Premier to ensure that all ministers are bound by the same rules and by high standards of probity;
- the deliberations of Cabinet and Cabinet Committees and task forces must be conducted in a secure and confidential environment;
- the Cabinet process will allow for considered and detailed examination of specific matters before Cabinet;
- consultation is an essential element of the Cabinet process.

Adherence to these principles is the cornerstone of an effective and efficient Cabinet system.

## Cabinet decision making

Cabinet is responsible for the performance of the Government. Its decisions are put into effect by ministers whose actions are authorised under particular Acts of Parliament or under machinery approved by the Governor in Executive Council.

Decisions at Cabinet meetings are usually reached by consensus. The recommendations contained in Cabinet submissions form the basis of Cabinet's decisions, which are recorded on each submission by the Premier or presiding minister.

The Premier or the Deputy Premier or, in their absence, the next most senior minister, presides at all Cabinet meetings. All Cabinet ministers are expected to attend every meeting or to provide the Premier with reasons for being unable to attend.

Votes are rarely taken. Once a decision has been made, however, it is supported collectively by all ministers, regardless of their personal views and whether or not they were at the meeting concerned.

### The convention of collective responsibility

The convention of collective responsibility is an essential underpinning of the system of Cabinet Government. It provides that, in their capacity as a minister, individual ministers act jointly with and on behalf of their Cabinet colleagues.

Cabinet decisions reflect collective conclusions and are therefore binding on all ministers as Government policy. Ministers must take collective and individual responsibility for their decisions, the decisions that are taken in their name, and the measures which they propose. Not only does this ensure collective responsibility but it also enhances collective adherence to all Government decisions made in Cabinet.

All ministers are required to give their support in public debate to collective decisions of the Cabinet and the Government. They must represent those decisions in Parliament, effectively voting and speaking as a block. Ministers whose opposition to a Cabinet decision is such that they wish to publicly dissociate themselves from it must first resign from the ministry.

### Parliamentary accountability and collective responsibility

Ministers can be called to account in the Parliament for the performance of the Government. Individually, ministers are accountable to the Parliament for the administration of Acts for which they are responsible and for the actions of any administrative units and public servants under their control. They are expected to deal with and speak on any issue concerning their area of responsibility but they do so ultimately under the Premier's direction and within the context of the collective decision-making responsibility of the Cabinet.

### Confidentiality

Confidentiality is crucial at every stage of Cabinet's operations.

Cabinet Office is regarded as the custodian, but not the owner, of Cabinet submissions. Ministers are responsible to the Premier for the safe keeping of the original Cabinet documents which they have prepared and submitted to Cabinet.

The requirement to maintain confidentiality begins with the consultation phase during the drafting of Cabinet submissions and extends to Cabinet's deliberations and beyond.

Detailed, practical guidance on the application of this principle is contained in [Cabinet Guide No.6: Cabinet processes](#).

### Cabinet ministers

Cabinet is currently made up of 15 ministers.

## Acting ministers

The Premier may from time to time agree to one minister's discharging the ministerial responsibilities of another. In practice, this arrangement would normally operate for short periods, for example, when a minister is indisposed or outside the jurisdiction where it would be difficult for him or her to properly discharge the duties of the office.

Under the Constitution Act 1934, the power to appoint an acting minister arises because the substantive minister is 'unable to carry out the duties of the Office'. With advances in electronic communication, the exact circumstances where one minister should act for another are a matter of judgement but issues such as ease of accessibility for urgent matters must be taken into account. As a matter of practice acting ministers are appointed when ministers are interstate or overseas.

Proposals for acting arrangements must be brought to Cabinet.

The Governor appoints a minister to act in the office of another minister for a specific period of time (section 67, Constitution Act 1934) and a notice of the appointment must be published in the Government Gazette.

## Ministerial Powers

Ministers exercise those powers expressly given to them by statute. They also exercise powers given to them by the Governor. For example, all ministers have an express agency to bind the Government in relation to their portfolio (see Government Gazette of 24 February 1994 page 525). Ministers are responsible to the Parliament for the performance of the departments under their supervision. The ministerial control over departments arises by virtue of:

- the power of the minister to direct the chief executive of the relevant department save only for individual personnel matters
- the power of the minister to control departmental expenditure.

Ministers are responsible to the Parliament for the administration of various Acts committed to them by proclamation. A list of the Acts committed to each minister is issued regularly by Parliamentary Counsel.

The Attorney-General also has common law powers by virtue of his office. In particular, the Attorney-General has the constitutional role of representing the Government in the courts and providing legal advice and other legal services to the Government. As first law officer all legal advice and services to government are subject to the control of the Attorney-General.

## Delegation of ministerial powers and functions

In addition to the ongoing delegations held by delegate ministers, the Administrative Arrangements Act 1994 permits ministers to delegate specific powers or functions to other ministers for more limited periods or purposes.

The most usual case where a minister will delegate a specific power or function is where there is a potential conflict of interest for the minister.

The delegation is effected by a notice published in the Government Gazette and is also revoked by such a notice—the need for public notice being

important for those potentially being affected by the exercise of such powers and in the interests of open government.

The delegation of a power or function does not prevent the delegating minister from carrying out the power or function. As with the creation of an acting minister, care must be taken to avoid the potential problems of this dual holding of the same power.

---

## The Public Sector

The public service is divided into administrative units or departments, each of which is headed by a chief executive answerable to one or more ministers.

The public service consists of government employees whose task is to administer the laws made by the Parliament and/or to provide services to the public. They are employed within hierarchical structures with each employee having assigned duties, including the duty to carry out the directions of specified superior officers. The hierarchical structure ensures that the decisions of the Cabinet and of the ministry are carried out.

The employment conditions of public servants are more flexible than they have been historically. Nevertheless, it remains the fundamental duty and responsibility of the public service to serve the Government of the day with complete political impartiality.

## Statutory Authorities

The question whether a government function should be managed by means of public servants or by means of a statutory authority involves what are essentially policy issues to be resolved by the Cabinet.

Statutory authorities may only exercise those powers conferred upon them by statute whether expressly or by necessary implication. The powers will be read narrowly. The powers can only be exercised for the purposes of the statutory authority provided for by the relevant Act. Where a minister or other person has power to direct a statutory authority, that power of direction can also only be exercised for the purposes of the statutory authority.

Statutory authorities can be categorised into two types.

- **Those that are not independent of government.** These are authorities that are expressly subject to ministerial direction. The employees of such authorities are often public servants who are ultimately answerable to a chief executive officer, although on a day to day basis they are subject to the direction of a board.
- **Those that are independent of government.** These authorities are not directly subject to the chief executive of a department, although the relevant chief executive may be involved in budget discussions. These bodies include those which are required to be independent for constitutional reasons, such as the Courts Administration Authority. In relation to such bodies a written arrangement detailing the relationship between the authority and the Government may be appropriate.

Others are bodies that are required to act 'commercially'. Such bodies should be subject to the Public Corporations Act. Finally there are the statutory authorities that are not part of the government framework, but which are providing a service to a particular group which the authority represents, for example, marketing authorities. With this group it is necessary to have sufficient statutory or other safeguards to ensure that their operations do not place government revenues at risk.

## Principles of Government

There are a number of constitutional principles that underlie the system of government in South Australia. An understanding of those principles and their operation is necessary in order to understand that system of government.

These principles include the rule of law and accountability.

## Rule of Law

One of the essential features of the system of government in South Australia is that all of the institutions of the Government are subject to the law. This does not merely mean that each of the institutions (including the courts) is required to comply with judicial orders directed at that institution. It also means that the relevant institution has a duty to ascertain what the law pertaining to its activities is and then to comply with that law. Indeed, each individual public officer has an individual duty to comply with the law. The officer can properly assume that directions given to him or her are lawful, but where the officer knows that they are not, the officer has a duty to ensure that the directions are changed.

The Attorney-General has a special role in this regard, at least in relation to the executive arm of government, but also in relation to the Legislature. As first law officer it is his role and function to have ultimate responsibility for advising as to what the law is and how it should be complied with.

There are a variety of means by which the rule of law can be enforced. Decisions and actions made without legal authority can be ignored by the citizen who will generally be able to argue in any subsequent legal proceedings that the decision or action is void. In any event judicial review proceedings may be available to require the Government to comply with the law.

Where a public officer or employee knowingly fails to comply with the rule of law that officer may commit a criminal offence. In particular, under the Criminal Law Consolidation Act 1935, bribery and corruption, the abuse of public office (which might include knowingly exceeding lawful powers) and the making of improper demands of benefits, are all criminal offences.

The wilful and deliberate failure to discharge the duties of public office in circumstances where a government or a third party suffers loss or damage by reason of that failure may result in the personal liability of the officer for that loss or damage. This clearly includes a breach of any of the fiduciary duties of trust owed by that officer. Subject to any statutory protection that the officer may have, it could also include circumstances where the officer's failure to perform his or her duties to the government could be characterised as wilfully negligent.

One of the reserved powers of the Governor is to dismiss a government for a deliberate or continuing breach of the law. The deliberate breach of the law would also constitute a ground of dismissal for an individual officer or employee.

## Accountability

Another of the essential principles of the system of government in South Australia is that it provides for the ultimate accountability of government to the people. Parliament is directly accountable to the people through elections. The ministry is responsible and accountable to the Parliament including in respect of the revenues. The public service is accountable to the ministry. Independent officers (including members of statutory boards) are invariably subject to the power of dismissal by the Parliament. The judiciary is internally accountable through the process of appeals, and is externally accountable through the power of the Parliament to dismiss judges.

## Employee conduct standards

Section 5 of the Public Sector Act 2009 establishes the following fundamental public sector principles underpinning the work of all public sector agencies:

- Public focus
- Responsiveness
- Collaboration
- Excellence
- Employer of choice
- Ethical behaviour and professional integrity
- Legal requirements

## Code of Ethics for the South Australian Public Sector

[The Code of Ethics for the South Australian Public Sector](#), is issued under Section 6 of the Act and applies to all public sector employees, including: a chief executive of an administrative unit or an employee in an administrative unit or other employee of a public sector agency.

Breaching the Code may result in consequences ranging from warning or reprimand through to termination of employment.

## Underpinning values

The following values are the foundation of ethical behaviour in the South Australian Public Sector:

- democratic values
- service, respect and courtesy
- honesty and integrity
- accountability
- professional conduct standards

## Democratic Values

- It is the first duty of the public sector to loyally serve the government in a politically impartial and responsive way through the efficient delivery of services to citizens and through the formulation, implementation and administration of its policies and programs
- the principle of political neutrality of the public sector is at the heart of its professional ethos. In the course of their work public sector employees conduct themselves in such a way as to ensure that the institution always enjoys the confidence of the government no matter from which political party its ministers are drawn
- public sector employees ensure they are aware of, properly administer and comply with all legislation and regulations relevant to the performance of their duties and/or their role as a public sector employee
- public sector employees are open in all of their dealings. They recognise that public information must be readily accessible and written in plain English and will lend assistance to members of the public to gain access to public information
- public sector employees have a duty to the Parliament in support of the government. The conduct of employees before Parliamentary Committees is governed by the conventions of the day but must always be respectful, honest and frank.

## Service, Respect and Courtesy

- public sector employees recognise that, on behalf of the government, they hold in trust a duty to provide quality services to the citizens of South Australia
- respect for human dignity and the value of every person is at the heart of every action employees take and every decision employees make
- public sector employees understand the importance of collaboration and the genuine engagement of citizens in the design and delivery of public services as fundamental to the achievement of excellence
- in dealing with citizens, public sector employees act impartially, fairly and equitably and with genuine respect for their rights as citizens of South Australia
- public sector employees demonstrate their commitment to serve South Australians by continually striving to improve the quality of service and by responding to changing needs through teamwork, innovation and creativity
- in shaping organisational structures, deploying resources, setting goals and priorities and in the training of staff, public sector leaders and all employees recognise that the provision of services to citizens is central to the work and obligations of the public sector
- public sector employees understand the importance of collaboration and information sharing between agencies where it is appropriate to do

so. Employees also recognise that respect for privacy and confidentiality are important safeguards against the inappropriate use of information

- public sector employees place a high value on workplace diversity and recognise the contribution diversity makes to innovation and the capacity to provide services that are respectful of the culture of people seeking those services. They therefore strive to create a workplace environment that is free of discrimination, harassment and/or victimisation in any form.

## Honesty and Integrity

- first and foremost, public sector employees respect the rule of law
- they act honestly in every aspect of their work and are open and transparent when making decisions or providing advice
- public sector employees perform their official duties and arrange their private affairs in such a manner as to ensure that public confidence and trust in the integrity and impartiality of government is strong
- decisions are always made and actions taken in the public interest. Other than in exceptional circumstances, where there is a conflict between the private interest and official duties of an employee the matter must be resolved in favour of the public interest
- the decisions and actions of public sector employees must at all times bear the closest public scrutiny; this is an additional test beyond the obligation to act within the law
- public sector employees act impartially by making decisions and providing services on merit and without bias, favouritism or self-interest
- they act fairly and equitably in their dealings with citizens, the government and fellow employees by basing their actions on an objective consideration of all of the relevant issues

## Accountability

- accountability is one of the foundation values of the South Australian Public Sector. Within a broad system of accountability under which ministers are accountable to Parliament, public sector employees are accountable to ministers for the exercise of delegated authority
- all public sector employees have an unequivocal obligation to always act both within the letter and the spirit of the law
- when assigned statutory powers, public sector employees are accountable for the manner in which those powers are exercised. The nature of this accountability will vary according to the nature of the power. Of particular importance is the requirement to uphold the principle of independence from ministerial or agency influence when required to do so by legislation
- public sector employees - whether working in teams or individually - are accountable for the achievement of results. They understand that

structured teamwork and a system of performance management and development is critical to the achievement of results

- public sector employees understand the importance of working to clear objectives issued by the government or agency heads of the time

## Professional Conduct Standards

- in order to maintain public confidence in the integrity of the South Australian Public Sector, employees exhibit the highest standards of professional conduct in undertaking their duties
- professional standards include the observance at all times of lawful and reasonable direction, policies and procedures and other instruments which define what is expected or required of public sector employees
- these conduct standards are issued by the Commissioner for Public Sector Employment under Part 4, Section 15(1)(b) of the Public Sector Act 2009, and apply to all public sector employees. They apply, regardless of the:
  - nature or level of employment
  - employment status (eg. ongoing, term, casual, traineeship, apprenticeship)
  - nature of the public sector organisation (eg. administrative unit, attached office, public corporation, statutory authority, public hospitals, schools etc)
- contravention or failure to comply with these professional conduct standards will constitute misconduct as defined by the Public Sector Act 2009. Any employee who contravenes or fails to comply with these conduct standards may be liable to disciplinary action and/or termination. These professional conduct standards are the disciplinary provisions of the Code of Conduct for the purposes of the Public Sector Act 2009
- agency heads may choose to issue agency-specific conduct standards. Additional standards must be consistent with these standards, the Public Sector Act 2009, the Public Sector Regulations 2009 and any other relevant legislation, industrial instrument or Government policy

## Further Sources of Information

- legislation and regulations, including:
  - Public Sector Act 2009
  - Public Sector (Honesty and Accountability Act) 1995
  - Public Corporations Act 1993
  - Criminal Law Consolidation Act 1935
  - Summary Offences Act, 1953
  - Equal Opportunity Act 1984
  - Freedom of Information Act 1991

- Occupational Health, Safety and Welfare Act 1986
- Public Finance and Audit Act 1987
- Whistleblowers Protection Act 1993
- Lobbyist Code of Conduct
- State Records Act 1997
- Disability Discrimination Act 1992 (Commonwealth Government)
- any other relevant agency specific legislation
- public sector wide policies issued by Cabinet and the Commissioner for Public Sector Employment
- determinations and guidelines issued by the Commissioner for Public Sector Employment
- any agency specific policies and ethics/conduct standards
- guidelines for agencies issued by Cabinet or other relevant sources
- Treasurer's Instructions
- South Australia Police Anti-Corruption Branch

---

## The Parliament

There are two House of the Parliament. The House of Assembly has forty-seven members each of whom represents a single electorate. The presiding officer is the Speaker. The Legislative Council has twenty-two members each elected by the whole State. The presiding officer is the President.

The Parliament has two primary functions. With the Governor the two Houses of Parliament make new laws and amend existing laws. In addition, the two Houses of Parliament are responsible for the oversight and accountability of the ministry.

Each Parliament lasts for four years unless dissolved earlier on special grounds by the Governor. Upon dissolution all seats in the House of Assembly and (usually) half of the seats in the Legislative Council are open for election. The election is managed by the Electoral Commissioner. There are conventions governing the actions of the Government during the election period, known as 'caretaker conventions'.

Parliament controls and supervises the ministry and, through the ministry, the Executive. Parliament can cause the dismissal of a government which has lost the support of the House of Assembly or which cannot obtain supply. It can refuse to authorise the Government to impose new taxes. It can question ministers in the relevant House and the House of Assembly can ultimately hold ministers accountable for any perceived failings. This controls and supervision are usually governed by political rather than legal issues.

The Houses of Parliament have equal powers except in relation to the supervision of the Executive, which is primarily the responsibility of the House of Assembly. So, for example, the person having the support of the House of Assembly is entitled to form the Government, at least as long as that person can secure supply. Similarly, money Bills, that is any Bill increasing any tax or charge or appropriating revenues, must originate in the House of Assembly and be recommended by the Governor.

Each House and their members enjoy a number of privileges. These include freedom of speech in Parliament, freedom from some civil court processes during the sitting of the Parliament, the power to regulate the proceedings of the Parliament and the power to punish contempts of the Parliament.

The Parliament may appoint a number of committees. There are statutory committees comprised of members of Parliament. They include the Economic and Finance Committee, the Legislative Review Committee, the Public Works Committee, the Environment Resources and Development Committee, the Social Development Committee, the Statutory Authorities Review Committee, the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation, the Statutory Officers Committee and the Joint Services Committees. Each House may establish sessional and select committees from time to time.

## Parliamentary Procedure

The procedures of the Parliament of South Australia are set out in the Constitution Act 1934 and in the Standing Orders. They are also influenced to a significant degree by common law and by convention.

It is a constitutional requirement that at least one session of Parliament be held every year. This is also a necessity as the large sums of money required to carry on with government services are subject to annual parliamentary approval.

### Standing Orders

The Standing Orders of each House and the Joint Standing Orders regulate the public business of the House of Assembly and the Legislative Council. Power to make these Standing Orders is given in the Constitution Act 1934. They are supplemented as necessary by the rulings of presiding officers, by local conventions and, in any other case not covered by these rules, by the rules, forms and practice of the British House of Commons.

It is the role of the Speaker and the President to ensure members adhere to Standing Orders to ensure that both Houses of Parliament operate in a smooth and productive manner.

### Daily Proceedings

The Governor opens each new session of Parliament in the Legislative Council by reading a speech prepared by the Government which outlines the policies the Government intends to pursue and the legislation proposed to be introduced during the coming session.

Both Houses of Parliament sit on Tuesday, Wednesday and Thursday for approximately twenty-two weeks of the year with some optional sitting weeks available if required. The House of Assembly sits from 2.00 pm until approximately 10.00 pm. The Legislative Council sits from 2.15 pm until adjournment, which is often midnight on sitting days.

In the House of Assembly Tuesdays and Wednesdays of the sitting week are devoted to government business, which is discussed in the order outlined on the notice paper. Thursday morning (between 10.30 am and 1.00 pm) is reserved for the discussion of matters raised by private members. After 2.00 pm it is a normal sitting day following the usual routine of business.

The Legislative Council is similar except that private members' business is held on Wednesday afternoons, beginning after Question Time. The Council does not usually sit on Thursday mornings, but will when required to progress additional business during busier than usual times.

### Routine of Business

Parliament's business is conducted in accordance with detailed rules and procedure. Amongst other things these provide for the following daily sequence of business:

- prayers
- presentation of petitions

- statements by ministers, reports of committees and presentation of papers
- questions without notice;
- notices and orders of the day—usually the introduction of Bills or the consideration of Bills introduced previously or discussion of matters of public importance
- adjournment.

## Notice Papers

Both the House of Assembly and Legislative Council have notice papers which display all aspects of government and private members business to be considered by Parliament, including: notices of motions, the tabling of reports and questions on notice, together with details of the work of the Parliament during the current session (the Bills and subordinate legislation to be considered) and the composition of committees.

The material on the notice paper to be discussed by members is coordinated by the Premier's Office in conjunction with the Government Whip.

## Hansard

Speeches made in either House are reported by the parliamentary reporting staff and produced as the Official Reports of the Parliamentary Debates, commonly known as Hansard. Hansard was the name of the first printer of the House of Commons debates. The head of the Hansard staff is called the Leader, and staff include an Assistant Leader and reporters.

Shortly after a member makes a speech a transcript is available. On the following day, proof copies of Hansard for the previous day's proceeding in both Houses are available. Proof copies are for internal use in Parliament and within government agencies and are therefore prominently labelled at this stage as: 'confidential and subject to revision'.

A weekly Hansard booklet is published and bound indexed volumes are produced after each parliamentary session. Members of the public may obtain copies of these documents from the State Information Centre.

## Petitions and the Tabling of Papers

Each parliamentary sitting week usually begins with the presentation of petitions and the tabling of other papers, including:

- subordinate legislation (notably regulations, rules and by-laws)
- parliamentary committee and other inquiry reports
- ministerial or government responses to inquiries
- the annual reports of statutory officers or agencies
- other reports by statutory officers or agencies.

Specific legislation controls the tabling of subordinate legislation and some reports by committees, agencies and statutory officers. Other papers are tabled as a matter of practice or convention: to keep Parliament informed of important ministerial decisions or to facilitate informed debate on important issues.

Petitions and other papers are brought to Parliament's attention at the same time but they are handled differently.

## Petitions

Any citizen or group of citizens in South Australia may make a formal written request or 'petition' to the House of Assembly to take action on a particular issue. Standing Orders and parliamentary tradition impose a number of rules that must be followed when submitting a petition.

It is the role of the House of Assembly's Bills and Papers Office to ensure that petitions forwarded by members of the House of Assembly for tabling comply with the Standing Orders. The clerks in the Legislative Council perform this role.

## Tabling Papers

Papers are tabled in both Houses of Parliament on behalf of the Government under a process coordinated by Cabinet Office. In particular, contact between parliamentary and ministerial staff is coordinated by Cabinet Coordination which has the task of ensuring that papers are prepared in an appropriate form for tabling.

Papers are usually tabled only on Tuesday of each sitting week. Three copies of all papers to be tabled (one for each House and one for the Opposition) should be sent by ministers' offices to the Cabinet Coordination section of Cabinet Office by the Monday before the required tabling day. Where possible, Cabinet Coordination should be advised well in advance of the need to table documents on any other day.

It is the role of the Cabinet Coordination staff to prepare papers in the proper format for tabling by the appropriate minister in each House, to give advance notice to parliamentary staff of the papers to be tabled and send the prepared papers to Parliament House for processing. The relevant files and dockets are then returned to ministers' offices. When Parliament is in recess, papers for tabling are held by Cabinet Office, prepared for tabling and sent to Parliament House before the next sitting begins.

## Parliamentary Questions

Ministers have a public duty to answer questions concerning their portfolio, although there are recognised exceptions to this duty.

A minister is not required to provide information where to do so would be contrary to the public interest. This exception is recognised as being similar to the public immunity test applied by the courts.

A minister is not required to provide information as to the terms of any Cabinet submission, the deliberations of Cabinet or the advice tendered to the Governor.

A minister is not required to cite or provide a copy of any legal opinion given to the Government by the Attorney-General, the Solicitor-General or the Crown Solicitor. The practice in this State is that opinions may be cited but are not tabled without the permission of the Attorney-General.

A minister should not name or identify a public servant. This is part of the convention that ministers take responsibility for the actions of their agencies.

A minister is probably not required to answer a question if the answer would breach commercial confidentiality.

Although these exceptions have no formal status they are generally accepted by Parliament as being reasonable.

A more formal exception is the *sub judice* rule. Under this rule, the House acting through its presiding officer will intervene and prevent debate on matters still under adjudication in a court of law, unless the House has determined that the public interest requires that the debate proceed.

## Questions Without Notice

Question Time is a feature of the daily proceedings of the Parliament and a full hour is allocated to it every sitting day. Members probe, criticise or praise the actions of the Government in the form of questions seeking information. Their questions may cover the whole field of the State's activities and they vary greatly from day to day as the House reacts to issues.

The presiding officer of each House calls members in turn to put their questions to ministers about matters for which they are directly responsible. Some ministers also field questions about matters that are the responsibility of ministers from the other House. Questions are asked by the Opposition as well as by members of the Government.

If ministers cannot answer questions or need to obtain further information from the relevant agency, they ask to take them 'on notice' and undertake to provide answers as soon as possible. This is especially relevant where questions are asked of a minister representing a minister from the other House, when the minister fielding the question will often undertake to refer it to the portfolio minister for a reply.

These undertakings appear in Hansard the next day and each individual minister's office arranges an answer to matters within their portfolio area through the relevant agency. Once the answer is returned to the minister's office and approved by the minister it is forwarded to the Clerk of the House in which the original question was asked. The answer is then forwarded to the Hansard Leader for incorporation into Hansard. Unlike formal questions on notice (see below), these answers are not routinely considered by Cabinet.

## Parliamentary Briefing Folders

Each minister has a parliamentary briefing folder created by their office that contains briefings on important current portfolio issues. Ministers use these folders in Parliament to assist them in answering questions during Question Time. Ministerial parliamentary clerks are usually responsible for the preparation, collation and maintenance of the folders.

It is essential that the briefings are kept current and relevant. As the folders contain a number of briefings and as the information they contain must be accessed quickly, it is also essential that they be concise and readable.

Each minister has a preferred format for their briefings and for the layout of their folders. Officers preparing briefings should therefore check with the minister's parliamentary clerk on the correct current format.

The Premier also has a parliamentary briefing folder that not only contains briefings on issues within the Premier's portfolio, but also briefings from each minister.

### Questions on Notice

Questions on notice are printed on either the House of Assembly or on the Legislative Council Notice Paper in an exercise coordinated by the clerk of the relevant House. Notice papers are sent to ministerial offices which then have the responsibility of ensuring that their ministers are able to answer those questions which fall within their portfolios.

Once the responsible ministers sign off answers to questions they are then forwarded to the Department of the Premier and Cabinet for presentation to Cabinet by the Deputy Premier.

The questions are then discussed and approved in Cabinet in a discussion led by the Deputy Premier or, in her or his absence, the next most senior minister. Once approved, the answers are forwarded to the clerk of the relevant House for tabling and printing.

## Legislation and the Legislative Process

Legislation consists of Acts of Parliament and subordinate (or delegated) legislation.

A Bill is a proposed Act of Parliament that has been introduced into the Parliament. It becomes a new Act of Parliament (or amends an existing Act) when assented to by the Governor after having passed through both Houses. Many Acts come into force on a later date than the date of assent (for example, after detailed regulations required to support their operation are prepared).

The principal stages in the consideration of Bills by each House are as follows:

- first reading: the introduction of a Bill
- second reading: consideration of the general principles and purposes of a Bill
- committee stage: when a Bill may be considered in detail and may be amended
- third reading: final consideration of the Bill.

The convention of reading a Bill dates back centuries to when most people were illiterate and the Clerk had to read the Bill aloud.

After being passed by the House in which it originated, a Bill is then sent to the other House for its consideration. Difficulties may arise if both Houses disagree. Negotiations often occur and a Bill may be referred to a 'conference of managers' appointed by the Houses. If no compromise can be reached, a Bill will lapse. Once both Houses agree to a Bill it is sent to the Governor for formal assent and becomes law.

## The Government's Legislative Program

The Leader of the House of Assembly is responsible for preparing the Government's legislative program. A legislative program is prepared for each sitting of Parliament to ensure that legislation in priority areas is considered first, that Parliamentary Counsel has enough time to prepare Bills and draft regulations and that there is an even flow of Bills during a parliamentary sitting.

Ministers should notify the Leader of the House two weeks prior to the start of a Parliamentary sitting of the legislation proposed for that sitting. The Leader should be told the title of the proposed legislation; a brief description of its purpose; a statement of its relative priority; whether lengthy debate is expected in the Parliament; the stage of preparation the Bill has reached (for example initial submission being prepared for Cabinet approval or Cabinet approval for drafting or progress in drafting or whether a Bill is ready for introduction).

Cabinet will consider the legislative program informally and set priorities for it. It then becomes a planning document to be used by the Leader in managing government business in the Parliament.

## The Role of Parliamentary Counsel

Parliamentary Counsel drafts all government Bills for Acts of Parliament and subordinate legislation made by the Governor, including regulations and proclamations. Parliamentary Counsel also provides advice and assistance on ministerial notices and other instruments made under an Act by a person or body other than the Governor; proposals for legislation, including any impact on existing legislation; and whether there are other options for legislation which will achieve the same policy objectives.

All policy issues should be well developed before the drafting instructions are provided to Parliamentary Counsel.

Parliamentary Counsel attends Parliament House during the passage of Bills to provide advice and assistance and to prepare amendments.

Non-government members of Parliament are entitled to use Parliamentary Counsel for confidential advice and the drafting of Bills and amendments to Bills.

Parliamentary Counsel should be consulted early in the process of developing a legislative proposal. This will help to identify alternative courses of action if appropriate, and ensure that the agency's instructing officer understands his or her role. Officers preparing instructions for complex or substantial legislation should feel free to consult Parliamentary Counsel before the instructions are finalised for Cabinet approval.

After Cabinet has approved a legislative submission the drafting instructions are sent by Cabinet Office to Parliamentary Counsel. Parliamentary Counsel will then hold preliminary discussions with officers of the agency to ensure that Parliamentary Counsel understands the aim and means of the legislation and to resolve any legal or other preliminary issues and fill in matters of detail.

Parliamentary Counsel may advise on Cabinet issues, but do not decide questions of policy. However, they may be able to advise on legislative means

of achieving particular policy objectives. If further policy issues arise during the drafting process, the agency officer liaising with Parliamentary Counsel should be in a position to make a decision and provide clear instructions.

Parliamentary Counsel will prepare a draft Bill for the agency to comment on. Comments should be made either in writing or orally. However, Parliamentary Counsel prefer that attempts to amend the draft legislation are not included with comments.

From time to time, Parliamentary Counsel may need to hold further discussions with the officer liaising. If that officer is not readily available, Parliamentary Counsel may move on to other pressing work. This can lead to delay in getting Bills ready. For the same reason, it is important to prepare comments on draft legislation as promptly as possible.

Agencies are responsible for ensuring that their ministers are kept informed about progress in the drafting of Bills.

Parliamentary Counsel are instructed by Cabinet. They are under a duty to meet the Government's legislative timetable and to give effect to the Government's overall legislative plan and requirements. This duty takes precedence over the duty to an individual minister or agency.

## Second Reading Report

When ministers introduce Bills into Parliament, they deliver a second reading speech. The speech is basically a report on the Bill, setting out in detail its purpose and effect, with relevant history or background information. The agency is responsible for preparing this report and sending it to Parliamentary Counsel, once the Bill is ready.

At this time Parliamentary Counsel will check to ensure that the report is consistent with the draft legislation and is in an appropriate form for use within the Parliament. Parliamentary Counsel then prepare multiple copies for the use of the minister.

The second reading speech report needs to be cleared with the minister before sending it to Parliamentary Counsel. The report should be double-spaced. It is also helpful to send an electronic version of the report on disk, in case Parliamentary Counsel needs to revise the report as a result of amendments to the Bill in Parliament.

Parliamentary Counsel will prepare an explanation of the effect of each clause of the Bill and attach it to the report prepared by agencies.

## Further Cabinet Consideration

Parliamentary Counsel will send the Cabinet submission file, the agency's operating file, the Bill, the second reading report (now incorporating the explanation of clauses) back to the minister for presentation to Cabinet.

Agencies are responsible for preparing a Cabinet submission for their minister to take to Cabinet. In the submission any differences between the Bill and the legislation approved by Cabinet for drafting should be identified.

After Cabinet approves the Bill for introduction to Parliament, the Cabinet submission file is sent by Cabinet Office to Parliamentary Counsel to arrange for the printing of the Bill. Parliamentary Counsel then sends the Cabinet

submission file, with the appropriate number of copies of the Bill and the second reading speech report to the minister for introduction into Parliament.

## The Passage and Implementation of Legislation

Consideration of legislation by Parliament usually proceeds as follows:

- a minister is required by Standing Orders to give at least one sitting day's notice of an intention to introduce a Bill
- the minister introduces the Bill and then provides the second reading report. The matter is then usually adjourned, with the Opposition member handling the Bill usually moving the adjournment
- usually at least one week will pass before the second reading debate on the Bill starts
- the second reading stage is followed by the committee stage, where the clauses of the Bill are considered in detail and any amendments moved
- the largely formal third reading stage follows.

The House of Assembly usually moves through the final stages on the same sitting day. In the Legislative Council, the second reading stage and the committee stage usually occur on different days. The Bill as passed by the originating House is then introduced into the other House and passes through the same stages under the control of the minister's counterpart in the other House.

If the other House makes any amendments before passing the Bill, they must be considered and either accepted or rejected by the first House.

If the two Houses cannot agree, a private conference between representatives of the two Houses (or 'managers' as they are known) takes place.

Each House puts out a notice paper and the House of Assembly issues a daily program. These can be used by liaison officers to monitor the progress of Bills. Ministerial staff will advise exactly when the minister will need agency officers to be present in Parliament.

## The Role of Agency Liaison Officers

Agency officers responsible for liaison with Parliamentary Counsel should be present in Parliament or at least on call during the debate. If amendments to Bills are suggested, their advice may be urgently required.

Officers may sit in the Speaker's Gallery in the House of Assembly or in the Strangers' Galleries in the Legislative Council during debate or (if requested by the minister) in Parliamentary Counsel's box during the committee stage.

House of Assembly Standing Orders limits the number of agency officers on the floor of the House to a maximum of two. Although no restriction is stated in Legislative Council Standing Orders, a maximum of two officers is usual.

During the committee stage, ministers may ask liaison officers to sit in a chair alongside their benches. However, no more than one officer at a time in the House of Assembly and two in the Legislative Council may sit here. At the

conclusion of the committee stage of the Bill, agency officers should leave the Chamber and the lobby area of the House immediately.

### Ministers' Bill Folders

It is also the agency's responsibility to ensure that the minister is briefed about the Bill he or she is introducing. A Bill folder should be prepared with a copy of the printed Bill; a copy of the second reading speech; a copy of the explanation of clauses; a concise briefing note on each contentious clause, this is used to highlight problems or any amendments which may be moved during the debate; a concise briefing note on amendments circulated by government or Opposition members and comments on major issues, to assist the minister to respond to points made during the parliamentary debate.

The folder should be updated daily by including a copy of the Hansard record of the previous day's debate. Briefings on any amendments that are made during the debate and a copy of the amended Bill should also be added to the folder as amendments are placed on the Bill file in the relevant House.

After the Bill has been passed in one House, the folder is forwarded via departmental parliamentary officers to the minister who will be responsible for it in the other House. Parliamentary Counsel will prepare and sign revised copies of the second reading speech for distribution in the House. These will be available for the minister to collect from Parliamentary Counsel's office in Parliament House.

If major changes have been made to the Bill, Parliamentary Counsel may request that an officer provide changes to the second reading speech. A second print of the Bill, if available, incorporating amendments from the House of introduction should be included in the Bill folder.

An opportunity to update the folder occurs during the adjournment after the second reading speech but before the second reading debate. All Hansard records of debate from the other House and any new briefing notes or comments which will assist the minister in the second House should be added.

### After Parliament

The Bill will be reprinted and the Speaker or President and the Clerk of the House in which the Bill was introduced will certify it as a true copy of the Bill as passed by both Houses. The Speaker or President of the House in which the Bill was introduced will present the Bill to the Governor. The Governor usually assents to the Bill at the next meeting of the Executive Council.

If it is urgent for the Bill to come into operation, the minister will need to inform the Clerk of the House. Sometimes there are a number of Bills waiting to be certified, particularly at the end of a session. The process can take a couple of weeks, or longer if the Bill is lengthy and there are numerous amendments. There may be a delay in passing the Bill to the Governor for assent unless the Clerk is made aware of any urgency.

Before the Executive Council meeting at which the Governor is asked to assent to the Bill, Parliamentary Counsel will give a certificate to the Attorney-General stating that there is no legal objection to the Governor's assenting to the Bill. The Attorney-General then gives a similar certificate to the Governor.

If a commencement clause has not been included in the Bill, an Act will come into force as soon as it is assented to by the Governor. If a commencement clause has been included, the Act will need a proclamation to bring it into force on a later date. A Cabinet submission is required for this.

If the Act is not proclaimed to come into operation within two years of the date of assent, by virtue of section 7(5) of the Acts Interpretation Act 1915, it will automatically come into operation on the second anniversary of the date of assent.

## **Parliamentary Committees**

Small groups of parliamentarians are formed into committees to help manage the Parliament or to investigate matters in more detail on behalf of all members. The main purpose of committees is to perform functions which the Houses themselves are not well fitted to perform, such as carrying out investigations, hearing witnesses, sifting evidence and discussing matters in detail. Committees also provide a public forum for the presentation of the various views of individual citizens and interest groups and they provide a mechanism for citizens to have a direct input into the policy making process.

### **Types of Committees**

Committees may be either administrative in nature—dealing with day to day operational or procedural matters, or they may deal with substantive issues—as required by statute or by direction of the House or Houses establishing them. Strictly, parliamentary committees are those formed by the Houses themselves, either as sessional committees or as select committees established from time to time with specific terms of reference. They enjoy the privileges of the Houses from which they are drawn. There are five different types of committees.

#### **Sessional committees**

These are chosen at the beginning of each Parliament for its full term, the Standing Orders and Printing Committees of each House deal with important procedural matters.

#### **Joint committees**

These are chosen at the beginning of each Parliament for its full term and made up of the Presiding Officers and members from both Houses. The Joint Parliamentary Service Committee deals with shared administrative, procedural and operational matters. Joint committees may also be established to consider a matter of general importance.

#### **Select committees**

These deal with substantive issues. They are established to hold inquiries into specific topics as required by the House establishing them.

#### **Estimates committees**

During the Budget Session of Parliament, the Government's budget, the estimates and the Appropriation Bills are all considered in detail by

committees of the House of Assembly known as Estimates Committees. Estimates Committee hearings are an important feature of the Budget Session.

Examination of the estimates is conducted over a two week period, with a day usually allocated to each minister. Ministers are examined for a set period of time. Once the time allocated has expired, members may place any unasked questions into Hansard for answering within a two week period. It is usual for ministers to be briefed before their examination and to attend estimates hearings with their chief executives and key staff from their agencies, who can answer the more complex financial questions if the minister wishes. There is a clear convention that questions that involve opinions on matters of policy are reserved for ministers and are not directed to agency officers.

### Standing committees

The main standing committees are more properly statutory committees established under the Parliamentary Committees Act 1991. That Act requires each committee to inquire into and report to the Parliament on the broad range of matters indicated by their titles:

- the Economic and Finance Committee
- the Legislative Review Committee
- the Public Works Committee
- the Environment, Resources and Development Committee
- the Social Development Committee
- the Statutory Authorities Review Committee
- the Parliamentary Committee on Occupational Safety, Rehabilitation and Compensation
- the Statutory Officers Committee.

Each of these committees obtains its general terms of reference from the Parliamentary Committees Act 1991. The Act provides that a standing committee may conduct its business as it sees fit but that, if it is to enjoy the privileges, immunities and powers of its appointing House, it must conduct its business in accordance with the appropriate Standing Orders.

The work of three of these committees is described briefly below. They play an important role in maintaining a balance between the power of the Parliament, the executive arm of government and, to some extent, the courts.

### Legislative Review Committee

The Legislative Review Committee is a joint committee consisting of three members from the House of Assembly and three from the Legislative Council. It has the general power (on its own initiative or as requested by a House or the Governor) to inquire into, consider and report on legal, constitutional or parliamentary reform issues, the administration of justice and intergovernmental relations. It also has the general power to examine legislation with a limited time span to see if it should continue in operation or be modified or replaced.

The committee also has specific responsibility under the Subordinate Legislation Act 1978 to scrutinise all subordinate legislation (including every regulation, rule or by-law made under an Act). All subordinate legislation to be tabled in Parliament is referred to the Legislative Review Committee for examination. Although the committee does not have the power to disallow regulations of its own motion, an adverse or critical report on regulations may lead to either House resolving to disallow them.

The committee critically examines subordinate legislation to ensure that it is in accordance with the general objects, the letter and the spirit of the Act under which it is made. The committee also assesses whether the subordinate legislation is in accord with the principles of natural justice, does not unduly trespass on established legal rights, does not make rights, liabilities or obligations dependent on non-reviewable decisions, does not include matters which should be included in an Act of Parliament, is clearly, precisely and unambiguously expressed, does not have unintended and unforeseen consequences, does not attempt to achieve objectives that can be achieved by alternative and more effective means, and has been assessed to determine whether it is likely to result in costs which outweigh the likely benefits it seeks to achieve.

Queries about the committee's operations should be referred to the Secretary to the committee, who is located at Parliament House.

### Public Works Committee

The Public Works Committee is made up of five members drawn entirely from the House of Assembly. Its role is to examine public works with a view to ensuring that individual projects are in line with the Government's broad strategic goals; that the proposed work has a sound basis; and that the proposing agency has incorporated best practice in project management during the concept and design stages.

Ministers refer major projects to the committee after they are considered by Cabinet and usually before contracts are let and before construction begins.

The committee's reports take the form of an overview of the proposed projects together with recommendations to Parliament on their efficacy and appropriateness. Any queries about the committee's operations should be referred to the Secretary to the Committee who is located at Parliament House.

### Economic and Finance Committee

The Economic and Finance Committee is made up of seven members drawn entirely from the House of Assembly and elected by the House at the commencement of each Parliament. The committee has a general mandate to inquire into and report to Parliament on the State's finances and its economic development; the structure, organisation and efficiency of any area of public sector activity; the functions or operations of public officers, state instrumentalities or publicly funded bodies (other than statutory authorities) including whether they should continue to exist or whether changes should be made to improve their efficiency or effectiveness and the regulation of business or other economic or financial activity.

Armed with wide powers to investigate government activities, the committee often works in cooperation with the Auditor-General. It may follow up any matters raised in the Auditor-General's reports to Parliament and may also investigate a broad range of issues at its own initiative.

Any queries about the committee's operations should be referred to the Secretary to the committee who is located at Parliament House.

## Committee Powers and Procedures

A government member traditionally chairs committees with the majority of positions occupied by government members and the remainder reflecting the party and independent groupings within the appointing House or the whole Parliament. Committee reports are usually arrived at by consensus and represent the views of the committee as a whole.

Committee inquiries provide an opportunity for interested members of the public to seek out and put their detailed views on issues to members of Parliament. Committee members also have the power to 'send for' persons, papers and records.

Although they may compel witnesses to attend, the usual practice is for committees to invite persons or organisations with a known interest in the subject matter of an inquiry to provide relevant documents and to make written or oral submissions. Committees also seek information from ministers and their agencies (including appearances by agency representatives) at hearings.

Most oral submissions are made at hearings that are open to the public and the media. At these hearings Hansard staff record the evidence given, although some hearings or parts of hearings may be closed to enable committee members to receive confidential information.

Committee members often take the opportunity to question witnesses about their evidence.

As members of Parliament, ministers may not be compelled to give evidence and, if from the other House, may not be competent to give evidence without the approval of that other House.

Where a public servant is instructed to object to answering a question, the public servant should inform the committee of the instruction and should request that the committee refer any questions on that matter to the minister. An officer of the Crown Solicitor's Office is obliged to assert legal professional privilege in any instance where it is properly claimable unless the Attorney-General has approved the waiver of the privilege.

A committee does not itself have any power to take action against a person who refuses to comply with a lawful direction of the committee. Instead the committee must refer the matter back to the relevant House or Houses for the House to take any action for a breach of privilege.

Responsible ministers are required to respond to the recommendations contained in committee reports within four months of their presentation to Parliament. Those responses must also be tabled in Parliament.

## Parliament and the State's Finances

Parliament's control over public money—how it is raised and how it is spent—is the most significant of its powers over the executive arm of government. The power emerged and developed over the centuries as a result of the continuing struggle between the English Crown and the House of Commons.

Two of the most important principles that emerged as a result of this struggle continue to underpin the management of public finances in this State. They are that:

- only Parliament, by statute, can raise taxes
- Parliament must authorise the expenditure of any moneys raised by taxation.

Despite this apparent victory by the parliamentary forces, a significant degree of Crown, or executive government, control remains.

A minister, acting on behalf of the Government must initiate all financial business. Ordinary parliamentarians (that is private members) are not able to move a motion or an amendment that imposes a charge upon the people or authorises the borrowing or expenditure of public money.

Financial business must originate in Parliament in the House of Assembly, where the Government obtains its support. The Legislative Council may not amend any money clause, although it may suggest amendments.

No Bill raising or increasing any tax or charge or appropriating any of the revenue can be passed by either House unless the measure has been recommended by the Governor to the House of Assembly during the relevant session. The Governor's recommendation is usually conveyed to the House by a minister in the House or by a note from the Governor to the House.

### Revenue

It is an important constitutional principle that the executive arm of government cannot impose any taxes unless they are authorised by statute. The statute imposing the tax must be lawful and within constitutional power.

The State's power to impose taxation is limited by section 90 of the Commonwealth Constitution which says that a state cannot impose duties of customs or excise. Similarly, the State cannot impose taxes that impose discriminatory protectionist burdens upon interstate trade.

The sources of revenue to meet the expenses of government include:

- State taxation (land tax, stamp duties and motor vehicle and other licence fees)
- fees for the provision of public works and services (railways, waterworks and sewers, hospitals, harbours and the like)
- territorial proceeds (Crown lands rents, land sales and mining fees)
- reimbursement of income tax and other payments from the Commonwealth Government.

Money received by public officers for or on behalf of the executive arm of government must be paid into bank accounts managed by the Treasurer.

## Expenditure

It is a basic constitutional principle that public moneys are subject to the control of the Parliament until those moneys are expended by the executive arm of government in a manner (and during a period) authorised by an Act of Parliament.

The annual Appropriation Acts authorise expenditure for a financial year. When enacted, they provide statutory authority for the expenditure of the hundreds of millions of dollars necessary to meet the current expenses and the capital requirements of the Government for the financial year.

The main Appropriation Act is debated during Parliament's Budget Session. If necessary, Parliament may pass further Appropriation Acts to supplement the previous appropriation. These further Acts are not usually preceded by a budget speech or consideration by parliamentary committees.

These Acts are the most obvious source of statutory authority but they are not the only such source. Parliament also exercises its powers of appropriation by passing Acts that contain standing appropriations. Examples include:

- the payment of salaries and allowances to the Governor, ministers of the Crown, judges, members of Parliament, and some government officers
- the payment of interest on public loans and contributions to the National Debt Sinking Fund
- government contributions to the South Australian Superannuation Fund
- the payment of the net proceeds of motor vehicle registration fees into the Highways Fund.

These special Acts may be amended by Parliament from time to time.

Formal annual appropriation controls have also been reduced by a number of other mechanisms recognised in the Public Finance and Audit Act 1987. These include:

- the use of money appropriated out of the previous year's Appropriation Act by the Governor and credited to the Governor's Appropriation Fund
- the power of the Treasurer, subject to residual Financial Agreement controls, to borrow money and to repay loans and interest
- the use by agencies of Special Deposit and Imprest Accounts.

## The Budget Session

The annual Appropriation Bills for the next financial year are now introduced into the Parliament in April or May each year, near the beginning of the 'Budget Session'. At that time the Government also lays before the Parliament its estimates of the income and expenditure it will require for the next financial year.

The Treasurer makes the main budget speech in moving the second reading of the Appropriation Bill. This is done in the House of Assembly even if the

Treasurer is a member of the Legislative Council. Then follows a wide-ranging debate of a general financial nature.

Following the second reading, the ancient right of members to speak in the House, seeking redress of grievances before proceeding 'to grant a supply to Her Majesty', is retained and members may bring before the House any matter of concern to them. This is known as the 'grievance debate'.

At the conclusion of the grievance debate, the estimates of expenditure are referred to Estimates committees, where members seek detailed explanations from ministers about their agencies' proposed expenditures.

After this examination is completed, the House considers the reports of the committees. The third reading of the Bill follows and it is then considered in the Legislative Council. Being a financial measure, it may not be amended by the Legislative Council.

Because the annual Appropriation Bills are now introduced and passed before the previous Act expires on 1 July of a particular year the practice of introducing Supply Acts, to secure supply for the period not covered by the previous Appropriation Act, should not now be necessary. The general appropriation and expenditure rules applying during this 'supply period' are outlined in the Treasurer's Instructions.

### Treasurer's Instructions

In managing the public accounts, the Treasurer may issue instructions to public employees and public authorities under the Public Finance and Audit Act 1987. The Treasurer's Instructions serve the same purposes as audit regulations in other jurisdictions.

The Treasurer is required to deliver detailed financial statements on the operation of all the public accounts within two months of the end of each financial year. The statements must also include details of South Australian Financing Authority transactions and a statement of the total indebtedness of the Treasurer.

Statutory authorities are also required to deliver financial statements to the Auditor-General so that the overall financial position of the public sector can be reviewed each year.

-----

## The Courts

The courts comprise the third arm of government. Their purpose is both the enforcement of the law (for example, criminal jurisdiction) and the provision of a service to those with legal disputes. The State's three principal courts are:

- the Supreme Court
- the District Court
- the Magistrates Court.

Other participating courts that make up the South Australian courts system are:

- the Youth Court
- the Environment, Resources and Development Court
- the Coroners Court
- the Industrial Relations Court.

The jurisdictions exercised by these courts can be broadly separated into civil and criminal matters, with some appellate and specialist jurisdictions.

The functions and powers of the main South Australian courts are given below.

Other courts operating in South Australia are established under the authority of the Commonwealth Constitution and are governed by Commonwealth legislation. They include:

- the [High Court](#)
- the [Federal Court](#)
- the [Family Court](#)

Information about them is also available from the Commonwealth Government web site ([www.australia.gov.au](http://www.australia.gov.au))

The South Australian judiciary is ultimately responsible for the provision of executive and administrative services to the courts in this State. Under the Courts Administration Act 1993, the judiciary's responsibility for courts administration is exercised through the State Courts Administration Council. The council is presided over by the Chief Justice and consists essentially of the judicial heads of the Supreme Court, the District Court and the Magistrates Court.

The operation of the courts is supported by the administrative organisation of the Courts Administration Authority, which provides a wide range of administrative and management support functions, including registry services, case management, records management, security and court reporting, advisory services to clients, and provision and coordination of support staff for the courts and judiciary.

## Supreme Court of South Australia

The Supreme Court is the superior court of record in and for the State of South Australia. It is a court of both law and equity. Generally the Supreme Court has unlimited civil and criminal jurisdiction. It deals with the more important civil cases and the most serious criminal matters.

The Supreme Court is inferior only to the High Court of Australia in relation to those matters that may go to the High Court in its original jurisdiction and on appeal.

In its appellate jurisdiction, the Supreme Court corrects errors that may have occurred in other courts of the State and interprets and expounds the law for the authoritative guidance of other courts. Its decisions are binding on all other State courts. This means that on issues of law, all other State courts must follow the interpretation and decisions made by the Supreme Court.

In the exercise of its jurisdiction of judicial review, it supervises proceedings and activities of the other courts and of various tribunals and bodies in order to ensure their decisions are made in accordance with the law and the principles of natural justice. This important function (and the role of the courts generally in reviewing administrative action) is discussed in greater detail below.

### Constitution of the Supreme Court

The Supreme Court is constituted by the Chief Justice, thirteen other judges (known as 'puisne' judges) and three Masters of the Supreme Court who are all appointed under the Supreme Court Act. A puisne judge is simply a judge of the Supreme Court who ranks below the Chief Justice. A Master is also a judicial officer of the court who ranks below a judge.

Appeals from single judges of the Supreme Court and the District Court are heard before a Full Court consisting usually of three but sometimes five judges of the Supreme Court. A single judge of the Supreme Court determines most other appeals.

### Civil jurisdiction

In this jurisdiction the Supreme Court deals with claims made pursuant to the court's inherent jurisdiction and other jurisdictions vested in the court pursuant to legislation. Such matters are dealt with at trial or by way of chamber hearings.

### Criminal jurisdiction

In this jurisdiction the Supreme Court deals with the most serious criminal charges, brought primarily under the Criminal Law Consolidation Act 1935. Trials are conducted before a judge sitting alone or with a jury and, in almost all instances such matters have been referred to the Supreme Court following a committal process in the Magistrates Court.

## District Court of South Australia

The District Court is the court of intermediate jurisdiction in South Australia, sitting between the Supreme Court and Magistrates Court in this State's court hierarchy. The District Court is made up of:

- the Chief Judge
- judges who preside over all of the divisions of the court
- two Masters who conduct hearings in the Civil, Criminal Injuries and Administrative and Disciplinary Divisions.

### Criminal jurisdiction

In its Criminal Division, the District Court has jurisdiction to try a charge of any offence except treason or murder. Trials are conducted before a judge sitting alone, or with a jury. Almost all such matters have been referred to the District Court following a committal process in the Magistrates Court (see Magistrates Court below).

### Civil jurisdiction

In its Civil Division, the District Court exercises essentially the same civil jurisdiction as the Supreme Court (except for Probate or Admiralty), and claims for amounts greater than \$40 000 are administered towards a final settlement or judgment.

### Criminal injuries

All applications for compensation under the Criminal Injuries Compensation Act 1978 are brought in the District Court. A judge or Master makes the final determination.

### Administrative and disciplinary

Various Acts of Parliament provide for appeals to the District Court. These include the Mental Health Act 1993, the Guardianship and Administration Act 1993, the Freedom of Information Act 1991, the Meat Hygiene Act 1994, and the Passenger Transport Act 1994. The judges of the District Court also preside over a number of statutory tribunals, including the Medical Professional Conduct Tribunal and the Dental Professional Conduct Tribunal.

## Magistrates Court Of South Australia

The Magistrates Court hears by far the greatest number of cases in the State. All criminal matters are commenced in the Magistrates Court and 99% of such matters are finalised there. Most people who commit offences whether as serious as the crime of murder or whether it be a traffic offence will, if required to appear before a court, appear in the Magistrates Court.

The civil jurisdiction deals with a person's individual rights. A civil action is commenced when an individual, a company or an institution lodges a claim against another person, business, company, institution or the State. The claims vary, but the most common are for debt, motor vehicle accident damage, property damage, for goods sold and delivery and personal injury.

The court offers free mediation in some cases and in the Adelaide Magistrates Court, magistrates and senior court administrators conduct mediation conferences and preside over directions hearings. The court has available to it experts who may sit with magistrates in civil matters

### Criminal division

The Criminal Court can hear matters where the penalty can be a fine, a prison sentence of up to two years, a good behaviour bond or a community service order.

In criminal matters punishable by more than two years gaol, the Magistrates Court conducts a preliminary examination of a charge and may commit the accused person to be dealt with by a higher court.

### Civil (general claims)

The court may hear general claims are for amounts that are greater than \$6000 and less than \$40 000. It may hear also claims for damages for injury arising from motor vehicle accidents up to \$80 000. The District and Supreme Courts deal with larger amounts.

### Civil (minor claims) Division

In this division, matters are dealt with without formality and the parties are not entitled to be represented by lawyers except in special circumstances. This court deals with small claims (those involving a claim for less than \$6000, claims for relief arising from neighbourhood disputes such as trespass or nuisance and applications under the Fences Act 1975).

### Civil Consumer and Business Division

In this division, the court deals with disputes over warranty claims relating to second-hand motor vehicles, disputes between landlord and tenants relating to shop premises and disputes with domestic buildings.

## Youth Court Of South Australia

### Composition

The Youth Court comprises the Court, a Family Conference Team, and a Care and Protection Unit. The Court hears criminal trials and pleas for youths under the age of 18 years, child protection applications and applications for the adoption of children. The Family Conference Team conducts family conferences for young offenders. The Care and Protection Unit conducts family care meetings. Youth Court hearings, family conferences and family care meetings are conducted in metropolitan and country areas.

The court is comprised of two District Court judges, one of whom is designated by proclamation as the Senior Judge of the Youth Court, plus two specialist magistrates. All magistrates have been appointed to sit in the jurisdiction, as they are often required to deal with Youth Court matters in country regions.

### Jurisdiction of the Court: Young Offenders Act 1993

A youth is defined as a person of or above the age of ten years but under the age of eighteen years. The objective of this Act is to secure for youths who

offend against criminal law, the care, correction and guidance necessary for their proper development into responsible and useful members of the community and the proper realisation of their potential.

The Act provides for the court and diversionary mechanisms for dealing with juvenile offenders. Under the Act, only judges are permitted to hear and sentence young offenders in relation to major indictable offences. Amongst their other sentencing powers, judges have the power to order detention for more than two, and up to three, years.

### Family conferences

Family conferences are convened by youth justice coordinators and take place when a youth admits the commission of a 'minor offence'. Conferences are intended to divert matters away from the court system. At a conference the young offender, the offender's guardian/family/or other appropriate person, the victims of the crime, a police officer and a coordinator meet together. These people discuss the offence and determine a suitable outcome that will attempt to address the needs of all parties, while adhering to the philosophy and policy directives set out in the Young Offenders Act.

This model is based on a "family decision making" philosophy. Current worldwide thinking in this area is that, given supports such as information, opportunity and resources family members and other participants are able to make decisions appropriate to the circumstances. This process empowers participants to take responsibility for key decisions affecting them.

### Children's Protection Act 1993

Under this Act the Care and Protection Unit responds to referrals from Families SA and from the Youth Court. Referrals state the care and protection concerns in relation to children. The Care and Protection Unit offers families the opportunity to address these concerns via a family care meeting. It is the family's right to have such a meeting if they believe it would be useful. However, they are not obliged to do so and may prefer to seek alternatives.

These meetings are conducted by care and protection coordinators. The meetings involve the guardians/parents of the child, family members, an officer from Families SA, any person who has counselled or treated the child, and can involve the child. Additionally, the child must be represented by an advocate so that his/her wishes are adequately represented at the meeting. It is the coordinator's role to arrange for the appointment of the child advocate.

The aim of the meeting is to provide an opportunity for the child's family to make arrangements which will secure the best care and protection of the child and to review those arrangements from time to time.

### The State Coroner

The State Coroner:

- ensures investigations and inquests into deaths, fires, accidents and the disappearance of missing persons are properly managed
- makes what are called "findings" about the cause of death in certain cases

- decides if it is necessary to hold an inquest into the death or disappearance of a person, a fire or an accident
- conducts inquests to determine the cause or circumstances of a death, disappearance, fire or accident.

The State Coroner is a judicial officer, not a doctor. The State Coroner is assisted by a Deputy State Coroner and other Coroners, as required.

## Inquests

An inquest is a court hearing in which the Court gathers information to assist in determining the cause and circumstances of death and if appropriate, to make recommendations that may prevent similar deaths occurring in the future. The Court calls witnesses to give evidence of what they know about the death. An inquest is not a trial, rather it is an investigative process to shed light on the cause and circumstances of a death.

The Coroner's Court is less formal than other Courts. It is not bound by the laws of evidence and is not too technical or legalistic. In making a decision the Court can also make recommendations to any relevant authorities that may result in changes to laws or practices in order to prevent similar deaths in the future. It is not the Court's role to establish whether a crime has been committed or to find a person guilty of that crime. Nor is it the Court's role to make judgments about matters of civil liability.

Inquests are generally open to the public. In certain circumstances, the Coroner may exclude individuals or the public generally, or prohibit the publication of evidence. Next of kin are not required to attend an inquest unless they are being called as witnesses.

When satisfied on consideration of the material produced from the investigation (statements of witnesses and medical reports) as to the cause and circumstances of death, the State Coroner may decide not to hold an inquest. Few deaths reported to the State Coroner become the subject of an inquest.

However, if the State Coroner believes that the cause or circumstances of death are a matter of substantial public importance particularly if they relate to public health or safety, he may decide to hold an inquest.

Inquests must be conducted where death has occurred in custody. This means a person in custody of the police, a person in prison or home detention, or a person under a detention order as a result of a mental or intellectual disability.

Any person who, in the opinion of the State Coroner, has a sufficient interest in the subject matter of the inquest may either apply to the State Coroner for leave to appear in person (ask questions themselves) or be legally represented.

## Further information

The Constitution and institutions of government in general

See: Selway [\*The Constitution of South Australia\*](#), (The Federation Press, Sydney, 1997)

The Governor

See The Governor of South Australia website: [www.governor.sa.gov.au/](http://www.governor.sa.gov.au/)

The Premier and ministers

See The Premier and ministers website: [www.ministers.sa.gov.au/](http://www.ministers.sa.gov.au/)

Office of Public Employment and Review

See the Commissioner's website: [www.oper.sa.gov.au/](http://www.oper.sa.gov.au/)

List of public sector agencies and their websites

See the Service SA website: [www.service.sa.gov.au/government](http://www.service.sa.gov.au/government)

Parliament of South Australia

See the SA Parliament website: [www.parliament.sa.gov.au/](http://www.parliament.sa.gov.au/)

South Australian Legislation

See the Legislation SA website: [www.legislation.sa.gov.au/index.aspx](http://www.legislation.sa.gov.au/index.aspx)

Courts Administration Authority

See the Authority's website: [www.courts.sa.gov.au/](http://www.courts.sa.gov.au/)

