LEGISLATIVE COUNCIL

Thursday 15 September 2011

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:17 and read prayers.

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:17): By leave, I move:

That the sitting of the council be not suspended during the continuation of the conference on the bill.

Motion carried.

LEGO EXHIBITIONS

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 512 residents of South Australia requesting the council to urge the government to sponsor and partner with Lego to bring Lego exhibitions back to South Australia.

RIGHT TO FARM BILL

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 16 residents of South Australia requesting the council to urge the government to support the Hon. Robert Brokenshire MLC's private member's bill to implement a statutory right to farm and acknowledgement by new residents in farming areas that protected farming activities occur in their area.

PARKS COMMUNITY CENTRE

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 87 residents of South Australia requesting the council to urge the government to reinstate funding for the redevelopment, continuation of existing services and locating of new community services at the Parks Community Centre site and support legislation that will guarantee protection of the Parks site as community land reserved for future generations.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 17 residents of South Australia requesting the council to urge the government to again allow free parking at the Repatriation General Hospital.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 22 residents of South Australia requesting the council to urge the government to again allow free parking at the Hampstead Rehabilitation Centre.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 159 residents of South Australia requesting the council to urge the government to again allow free parking at the Noarlunga Hospital.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 2,432 residents of South Australia requesting the council to urge the government to:

1. reverse the decision to introduce or increase paid car parking to all public hospitals, health services and facilities; and

2. rule out privatising or otherwise reducing state ownership and control of car parking at public hospitals, health services and facilities.

SCHOOL BUS CONTRACTS

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 15,261 residents of South Australia requesting the council to urge the government to:

1. reverse the decision to give a majority tender to a Victorian company for school services to South Australia; and

2. ensure that school services are contracted to South Australian local small businesses instead and in future.

FISHING POSSESSION LIMITS

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:24): I table a ministerial statement made today in another place by the Hon. M.F. O'Brien regarding possession limits.

PAPERS

The following paper was laid on the table:

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

Report of actions taken following the Coronial Inquiry into the deaths in custody (whilst on bail home detention) of Troy Thomas Lee and Scott Leslie Matthews, dated August 2011

VISITORS

The PRESIDENT: It is nice to see the Hon. Andrew Evans in the gallery today and looking well.

QUESTION TIME

SOCIAL INCLUSION UNIT

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:28): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question regarding Monsignor David Cappo's Social Inclusion Unit.

Leave granted.

The Hon. D.W. RIDGWAY: Monsignor David Cappo is Labor Prime Minister Julia Gillard's new mental health chief. He leaves his current position (for which, by the way, he is paid $115,000 a year for this part-time work) as head of soon-to-be ousted Labor Premier Mike Rann's Social Inclusion Unit. However, he leaves a fractured staff. More than half of the unit's 12 staff are suffering stress of such magnitude they need professional help. I am given to understand that Monsignor Cappo was unable or unwilling to resolve the mess. I am further given to understand that the majority of staff in the unit are women.

The Social Inclusion Initiative claims to help create 'a society where all people feel valued, their differences are respected and their basic needs, both physical and emotional, are met'. My questions are:

1. When did the minister become aware of the serious problem facing the predominately female staff working in that unit?

2. Has the minister met with either Monsignor Cappo and/or any of the female staff in a unit that is clearly not making them feel valued or meeting their physical and social needs, especially in the workplace?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:29): I thank the honourable member for his questions, although they are obviously ill-directed. Nevertheless, he has been in this place for such a long period of time and he still cannot work out the policy and portfolio responsibilities.

In relation to the first question about when I first became aware of there being any issues in relation to the Social Inclusion Unit, an article in, I think, yesterday's newspaper was the first time that anybody or anyone had given me any indication that there were any issues in relation to that unit. To the best of my knowledge, I have received no correspondence or any other form of communication raising any issues of concern about staff in that particular unit. Other than an article that I think was in *The Advertiser* yesterday, and the inflammatory statements made by the member in the house today, he is the only person, to the best of my knowledge, who has raised this issue with me directly.

In relation to the staff being predominately female, that is an assertion the honourable member has made. I would not know that. It is not a unit that I have any responsibility for. I would not know in other agencies what the proportion of staff is. I do care about women's issues—of course I do. I bring them here regularly but, given that nobody, including any of the women who might work in that unit, has raised any issues of concern with me, it would be somewhat difficult for me to pursue such issues.

I think it is obviously a bit of a whip-up by the opposition. They are highly inflammatory statements. We know that members come here and members opposite make things up as they go along. We know how they embellish. We know how they do not check their facts. Time and time again we have members of the opposition come into this place with incorrect information, inaccurate facts and figures, and assertions that are quite simply incorrect. They are lazy.

They are a lazy, indifferent opposition. They do not do their research. They fail to check any of their facts. I recall that not long ago the Hon. Rob Lucas accused me of attending some event and function that I did not attend. We see time and time again members coming into this place making all sorts of snide innuendo. Time and time again they do not check their facts and fail to do any of their research, because we know they are a lazy, indifferent opposition.

If there are any issues of concern in that office—if there are—we have a range of support systems in place to assist, as government is the employer. We have a range of things in place to support staff. There are systems in place that allow staff to make complaints. There are systems in place to assist people to counsel. We have occ health and safety legislation in place. There is a wide range.

We have a public sector that is very close to being right up there in terms of best practice, and I am very proud of our track record. So, if there are any issues of concern, I am confident that the appropriate minister will be pursuing those and that any problems, if they do exist, will be being addressed in an appropriate and timely way.

LOCAL GOVERNMENT GRANTS COMMISSION FUNDING

The Hon. J.M.A. LENSINK (14:33): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question on the subject of Local Government Grants Commission funding.

Leave granted.

The Hon. J.M.A. LENSINK: The minister wrote to me (and, I assume, all honourable members) on 25 August in relation to the Local Government Grants Commission funding. In one of the paragraphs, he advised the following:

> ...the Commonwealth advised that there was an underpayment of $0.6 million in the 2010-2011 grants due to the difference between CPI and population estimates made at the beginning of last financial year and the actual outcome.

My questions are: is the minister concerned that South Australia's loss of regional status will reduce local government funding directed to it as population falls, and does he have a strategy to manage this issue?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:34): I thank the honourable member for her question. Yes, you are right; I did send a letter out to all members of parliament to inform them of the results of the local government grants. The formula which regulates the money that goes out to councils is reviewed every now and again and a number of things are taken into consideration. Population would be one of them, so I imagine there could be a review in the coming year. There are a number of factors, and population is one of them. It has to be constantly reviewed because circumstances change, so that may have an impact on the grants.

The PRESIDENT: The Hon. Ms Lensink has a supplementary question.

LOCAL GOVERNMENT GRANTS COMMISSION FUNDING

The Hon. J.M.A. LENSINK (14:35): Does the minister have a strategy to address that issue?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:35): At the moment I do not have a strategy at the back of my mind to help with the population growth.

The Hon. J.M.A. Lensink interjecting:

The Hon. R.P. WORTLEY: No, there are a number of factors taken into consideration. You ask me a question and you start laughing. This is how ridiculous it is. There are a number of factors which contribute to the local government grant. You mentioned population. I am saying right at this moment that I don't have a strategy to increase our population. There are a lot of ways of doing it—immigration intakes. There are a lot of ways of doing that, but that is more of a federal issue. I will say this, though: if there is anything I can do to improve the status and to help local government and councils to get more grants, I will be quite happy to participate.

The PRESIDENT: The Hon. Ms Lensink has a further supplementary question.

LOCAL GOVERNMENT GRANTS COMMISSION FUNDING

The Hon. J.M.A. LENSINK (14:36): Did the minister actually read the letter before he signed it?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:36): Of course I read it. I signed it; I read the letter. It says population. There are a number of issues which may affect these grants. Population is one of them, and that is why I mentioned it. I do not have a strategy on me at the moment to improve our population strategy. I do not think anyone in this chamber has, but in saying that, if there are ways I can help increase the population, I will be quite happy to help.

LOCAL GOVERNMENT BY-LAWS

The Hon. S.G. WADE (14:37): Take one for the country. I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to local government by-laws.

Leave granted.

The Hon. S.G. WADE: The recent Supreme Court ruling in the case of the Corporation of the City of Adelaide v Corneloup and Ors legally considered the council's by-law making power under the Local Government Act in the context of the constitutionally implied protection for political communication. On 11 August 2011, the day after the court case, the Local Government Association issued a circular, circular 32.6. The new template referred to in that circular melds the previous template Canvassing (by-law 9.14) and Preaching (by-law 9.32) into a single by-law under the heading 'Soliciting'. The by-law has also had references to 'preach and harangue' removed. My questions are:

1. Will the government be appealing or supporting the Adelaide City Council to appeal the Corneloup case to the High Court?

2. Is the minister satisfied that the local government acts provide sufficient authority for councils to enact by-laws that comply with the Supreme Court ruling and will withstand legal challenge?

3. Is the minister confident that the council and police have sufficient laws and powers to protect public safety in the face of recent disturbances in Rundle Mall?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:38): These are reasonably complex issues, so I will take that on notice and get back to you as soon as possible.

REGIONAL COMMUNITIES CONSULTATIVE COUNCIL

The Hon. I.K. HUNTER (14:38): I seek leave to make a brief explanation before directing a question about the Regional Communities Consultative Council's first meeting to the Minister for Regional Development.

Leave granted.

The Hon. I.K. HUNTER: It is a truism to say that communication is an important part of any relationship. As we all know, communicating with communities is a vital part of the work of leaders, agencies and governments. I know there are some longstanding arrangements on consultation with regional communities, so I ask the minister: will she update the house on these consultation arrangements?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:39): I am very pleased to be able to remind members about one of our very effective means of consultation with regional communities, one that is led by one of South Australia's most dedicated and public-spirited citizens; in fact, he is quite a South Australian icon. I refer, of course, to Mr Peter Blacker and to the Regional Communities Consultative Council, which was established by this government in November 2002 to provide a voice for regional communities to speak to the government. So the RCCC is an important voice for regional communities. As I said, it is chaired by Peter Blacker, and I was very pleased to receive his support and his agreement to again chair this important council.

Having the RCCC enables a structured dialogue through which government and regional communities can work together. This joint effort strengthens our capacity to respond to current and emerging local issues and opportunities. The aim is that, using the work of the RCCC, we can draw on the ideas, aspirations and energy in regional communities, and together work to maximise the competitive advantage of regional South Australia. This aim is the basis of the RCCC terms of reference. Members may be aware that the terms of reference were recently updated to give the RCCC a stronger advocacy focus. The expanded role for the RCCC is to 'advise on regional communities' access to information on government initiatives, programs and services being delivered to regional South Australia'.

Understanding is a two-way process: communities have to know what is being done for them by the government and what is available to them, but they also need to be able to see the available opportunities within various policy frameworks and program initiatives to be able to plug into them and obtain the best possible results. The process also helps us identify where gaps might be occurring so that we are better able to plan for the future.

I am very pleased today to be able to advise that the RCCC will be going into communities to begin a conversation and develop that understanding, starting with its first regional visit to the Riverland on 22 and 23 September. Members will be briefed on the Murray Mallee region by the President of the Murray and Mallee Local Government Association and consider issues and opportunities raised by the community at a community dinner, which will be held the night before.

Since becoming Minister for Regional Development, I have spoken several times in this place about the importance of this iconic region. The state government has made a commitment of $20 million to help build a sustainable economy through the Riverland Sustainable Futures Fund following the devastating drought, which was then followed by floods. I am very delighted that these efforts are beginning to really gain traction.

Now with a smaller membership of 11, but continuing under the strong and steady leadership of Peter Blacker, the RCCC has a balance of representation across economic, social, cultural and environmental sectors, as well as regional communities, and builds on the leadership capability in communities. Peter, of course, is a great advocate for regional South Australia, and I value his wisdom and insight greatly. He is also a real gentleman and a real pleasure to work with. Peter will be assisted by the new format RCCC. The RCCC has been invigorated with five new members but retains the experience of six continuing members. I hope this mix will help generate new ideas and fresh approaches while maintaining continuity, expertise and experience.

I understand that an advertisement has been placed in local newspapers inviting the public to meet and talk with the RCCC. In addition, its program involves site visits and the community dinner, which will be held at Loxton on the evening of 22 September. I encourage people in the Riverland area to go along or to get in touch with the consultative council and provide their views and their ideas to the RCCC.

SAFEWORK SA

The Hon. G.A. KANDELAARS (14:44): My question is to the Minister for Industrial Relations. Will the minister provide the chamber with details of the report by Mr Robin Stewart-Crompton, following his review into SafeWork SA's inspection practices?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:45): I thank the honourable member for his very appropriate question. I would like to acknowledge that it is the honourable member's first question, and I congratulate him.

A core Labor value is to protect the health and safety of all workers. Any workplace injury is unacceptable; any workplace death is a tragedy. It is a fundamental right of all South Australians to expect that their loved ones—whether it is a father, mother, husband, wife, son or daughter—return each day from work safe from harm. That is why the functions of SafeWork SA are of such importance to the community, and it is why the work undertaken by this agency needs to be of a very high standard.

State Coroner Mark Johns conducted an inquest into the death of Mr Daniel Madeley due to an accident at Diemould Tooling Services Pty Ltd in 2004 and made several recommendations regarding SafeWork SA. My heart goes out to not only the family of Mr Daniel Madeley but all families in South Australia who have lost a loved one simply in the act of going to work.

In light of the recommendations of the Coroner, the government initiated the review into SafeWork SA's inspection practices. The review was managed by the SafeWork SA Advisory Committee which is comprised of representatives from both employee and employer associations. The advisory committee established a steering group to coordinate the review. This process was completely independent of SafeWork SA.

This independent team engaged Mr Robin Stewart-Crompton to conduct a review consistent with the Coroner's recommendation. Mr Stewart-Crompton is a highly regarded occupational health and safety expert who has been involved in the field for many years. He was one of the authors of the National Review into Model Occupational Health and Safety Laws, which provided the foundation for the development of the nationally harmonised model work, health and safety laws which are currently implemented across Australia.

Generally, Mr Stewart-Crompton found that SafeWork SA is comparable in its operations, organisation and performance with most other Australian occupational health and safety regulators. In fact, Mr Stewart-Crompton pointed out that South Australia is one of only two states whose performance has improved sufficiently to meet the national target of reducing workplace injury rates. However, the report highlights key areas in SafeWork SA's inspection regime and preparation of prosecution briefs that need attention.

Some of the recommendations contained in the report include: SafeWork SA to collaborate with WorkCoverSA on a three-year data improvement plan; SafeWork SA to upgrade its internal data management system; SafeWork SA to prosecute lower-level offences rather than the Crown Solicitor's Office; SafeWork SA to upgrade a number of internal procedures, including those for compiling prosecution briefs; and SafeWork SA to collaborate with WorkCoverSA on programs to assist those bereaved after a workplace fatality.

I accept and welcome this sound advice from the independent reviewer. The recommendations to improve operations have also been embraced by SafeWork SA and the SafeWork SA Advisory Committee, and planning is well underway to deliver those recommendations. This review provides a long-term improvement plan for SafeWork SA, incorporating the very significant impact of national harmonisation of safety laws.

The SafeWork SA Advisory Committee will monitor progress with implementing the review recommendations, and this will be reported to the government on a regular basis. It is important that we grasp every opportunity to improve the effectiveness of SafeWork SA as the lead agency for ensuring standards of occupational health and safety.

SCHOOL AMALGAMATIONS

The Hon. T.A. FRANKS (14:48): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Education, a question regarding the review process for the amalgamation of collocated schools.

Leave granted.

The Hon. T.A. FRANKS: As members of the chamber are aware, currently there are a number of schools—some 42, I believe—undergoing a process of establishing review processes and review committees to address the possibility that they may have to amalgamate their collocated schools. The minister representing the minister will also be aware that delegates and members are duly assembled to form those committees that are on those review processes, and these include two ministerial appointed people, a representative of local government where appropriate, teachers, parents, and, of course, a representative of the Education Union.

For some schools such as those at Largs Bay, this review process has actually become a regular occurrence, with that school community voting in 2009 at a rate of 88 per cent of that community against the idea of an amalgamation. I would like to point out that teachers, staff members and parents are putting in their volunteer time and resources to sit on these review committees and they are only doing so because they are not in favour of an amalgamation. Yet, they are being asked in that particular case, and in many others, to reconsider that decision.

I also emphasise that parents are putting in their voluntary time away from paid jobs or caring commitments to sit on these committees and, not only is there no recompense at the moment, there is no guarantee that their recommendations will in fact be acted upon. My questions to the minister are:

1. Can the minister inform this council of the overall costs being allocated to establish these review committees and this review process?

2. Are those costs being taken from the education budget or from general revenue?

3. How many of the ministerial appointed members within these review committees are receiving payment for sitting fees or the like or other tasks they have been allocated?

4. How many of those members are receiving payments? What level of recompense are they receiving at either an hourly or other rate? What is the total expected to be of those payments?

5. What compensation is the minister providing to school staff who were providing their time and resources for these committees?

6. What recompense is being allocated to the parents and volunteers who were missing out on paid work and other caring commitments to serve on these committees?

7. Could the minister tell us also whether the savings of some $300,000 to $360,000 per school will actually be returned to the education budget or whether they will also be returned to consolidated revenue?

8. What guarantee do these schools have that the minister will accept their concerns and, if the minister does accept their concerns, that they will not be doing this process again in this current term of the Rann-Weatherill government?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:52): I thank the member for that very important question. I will take it on notice and refer it to my colleague in the lower house.

NATIONAL OCCUPATIONAL HEALTH AND SAFETY LAWS

The Hon. R.I. LUCAS (14:52): I seek leave to make an explanation prior to directing a question to the Minister for Industrial Relations on the subject of a regulatory impact statement.

Leave granted.

The Hon. R.I. LUCAS: Yesterday the Assistant Treasurer and Minister for Technology in Victoria, the Hon. Gordon Rich-Phillips, issued a press statement on the regulatory impact statement for the National Occupational Health and Safety harmonisation laws. In a statement the minister said, 'the Commonwealth had committed to including impacts in dollar terms for each state and territory.' He commented that the regulatory impact statement, which had just been released by the federal minister for workplace relations, had failed to include those critical details on the impact of the harmonisation laws for Victoria. He went on to say:

> The RIS released by the Commonwealth falls far short of including the vital detail that should have been in the final impact statement. This leaves Victorian businesses in the dark on the potential costs of this proposed scheme. It is also concerning that the final RIS released by the Commonwealth varies considerably from the draft provided to state jurisdictions just one month ago and the projected benefits of the scheme have been significantly reduced.

The minister then said that Victoria would now complete further analysis of the final RIS provided by the commonwealth and consider whether a separate Victorian RIS is required. My question is to the minister are:

1. Is it correct, as the Victorian minister has asserted, that the commonwealth government did give a commitment to the South Australian government that the regulatory impact statement would include impacts in dollar terms for each state and territory?

2. Does the government accept that any uniform law will have differential impacts on different states depending on the state of the pre-existing law in each of those states?

3. What regulatory impact statement or cost benefit analysis has the South Australian Labor government undertaken? If it has not undertaken any of its own volition, will it now conduct any analysis of the regulatory impacts of the harmonisation package on South Australian business and industry? If not, why not?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:55): I thank the member for his question. The Regulation Impact Statement was released only recently. I was told today that apparently what the federal government is saying regarding this statement is that there are savings of around $250 million a year, from memory, for the next 10 years. Victoria has made it quite clear that it has certain issues with this impact statement and that it will consider looking at its own.

As I said, this only came to my attention today and I have not had a chance to consider or discuss this issue with SafeWork officials or the chief executive officer. However, I will be looking at and examining the document and, once we have a position, I will come back and provide information to the chamber.

SAFEWORK SA

The Hon. R.I. LUCAS (14:55): I have a supplementary question arising out of the minister's answer. Has the minister read the Executive Summary to the Regulatory Impact Statement?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:55): As I said, I was notified of this today. I have not read any of the report, and that is why I want to read the report and also the impact statement, and that will determine our consideration of whether we pursue an impact statement or not.

STATE STRATEGIC PLAN

The Hon. CARMEL ZOLLO (14:56): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about South Australia's Strategic Plan.

Leave granted.

The Hon. CARMEL ZOLLO: As members would be aware, South Australia's Strategic Plan outlines targets that contribute to the wellbeing of South Australians. It is an important blueprint outlining the state's priorities and goals. Can the minister tell the chamber more about the new women's target?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:56): I thank the honourable member for her most important question. Mr President, as you would know, last week saw the release of South Australia's updated Strategic Plan. As the Minister for the Status of Women, I would like to mention the involvement of the Premier's Council for Women in the extensive consultation that was done as part of this debate.

As one of the government's key advisory bodies, the Premier's Council for Women has been actively involved in the review of South Australia's Strategic Plan and has membership on the Strategic Plan Audit Committee and Community Engagement Board. The council contributed actively to the plan's review process by hosting consultation sessions with women across South Australia to listen to and find out what issues are important to them. I am very pleased to advise that the Premier's Council for Women consulted with over 250 women at 10 different sessions across South Australia in places like Naracoorte, Tailem Bend, Port Augusta, etc.

There were also specific consultations involving Aboriginal and Torres Strait Islander women, young women, older women—a wide range of different women—and I attended one of these consultation sessions to listen to women's aspirations for myself. As well as these consultations, there were government community consultations. The engagement board undertook a community engagement process, consulting with 9,200 people across South Australia, with a specific focus on regional areas.

The Community Engagement Board, taking into account all the public consultations and feedback, then made recommendations to government on revisions to the plan and, in particular,

what South Australians said was most important to them—namely, community and individual safety, access to affordable homes, and securing our water supplies—and 21 new targets have been developed to match these community goals and visions. I also wish to commend the PCW for its success in ensuring the data used to measure a number of SASP targets and progress towards achieving these targets.

Partially because of the PCW's advocacy, the new plan includes an appendix that outlines the disaggregation of all targets by gender, youth, older South Australians, Aboriginality, region and disability. The plan includes targets seeking to increase women's participation in formal leadership roles and places a strong emphasis on safety and social inclusion. The plan recognises the continued importance of ensuring gender equality and to make sure it is promoted in all areas of South Australian life. I am delighted that the primary women's targets have been retained. I will continue to be responsible for the number of women on government boards and committees and the number of women who chair these boards as well, increasing the number of women employed at executive levels in the public sector, and I look forward to continuing to encourage women to run for political positions.

The revised Strategic Plan also contains a new target which relates to violence against women. The Labor government has made women's safety a key priority area; the government's women's safety strategy was launched on International Women's Day back in 2005 and outlined the government's vision to address issues of violence, including rape and sexual assault, and domestic and Aboriginal family violence. That strategy has a broad focus from early intervention work focusing on preventing violence through to community education to raise awareness about the level of complexity of women's safety.

The strategy is currently being revised to bring it into line with the priorities articulated in the Council of Australian Governments' National Plan to Reduce Violence against Women and their Children. The new target in the Strategic Plan seeks to reduce violence against women through to 2022, and as Minister for the Status of Women I am committed to progressing work both here and at a national level, which will improve the safety for women. I certainly applaud the new target as another example of Labor's ongoing commitment to women and those issues that impact on their lives.

The PRESIDENT: The Hon. Ms Franks has a supplementary question.

STATE STRATEGIC PLAN

The Hon. T.A. FRANKS (15:02): When will Aboriginal women see the state government release the Aboriginal strategic plan, first promised in 2008 as a companion to the State Strategic Plan?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:02): I will refer that question to the minister, Hon. Grace Portolesi, in another place and bring back a reply.

COLES CAMPAIGN

The Hon. R.L. BROKENSHIRE (15:02): I seek leave to make a brief explanation before asking the Minister for Consumer and Business Affairs a question about Coles' 'Down, down and staying down' campaign moving into our schools.

Leave granted.

The Hon. R.L. BROKENSHIRE: From the point of view of both consumers and small businesses we are seeing an unprecedented move by a national company directly into our schools promoting the 'Down, down and staying down' campaign, including, I understand, sending managers of local Coles supermarkets into schools to judge singing competitions and then rewarding students with Coles' propaganda. Today on my way into parliament I saw the next step of this, admittedly on a private school, with a banner appropriately badged with Coles' logos all over it promoting tokens and 'Down, down and staying down'. My questions to the minister are:

1. Will the minister ask her department to investigate this issue with respect to equity and fairness with other businesses when it comes to Coles' unprecedented moves?

2. Does the minister have concern and, if so, will the minister speak to the premier-in-waiting and current Minister for Education to ask him and discuss with him his views on this, given

that until now there has always been a convention on how far private sector companies go to market their products in schools?

3. If the government endorsed this behaviour of Coles, is it prepared to allow Hungry Jacks, McDonald's, Lions and other corporates to also go in there promoting their propaganda?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:04): I thank the member for his important questions. They pertain to the minister for business affairs, the Hon. Tom Koutsantonis, who has some responsibility for this area. It is largely a federal matter and to do with national competition and relates to the ACCC. Those businesses—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —and their access to the marketplace is a business issue. It is not a responsibility that comes under my portfolio. As I have said, I am happy to refer that to the appropriate minister in another place.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: I am happy to refer it to the Minister for Education as well to see whether he has a view. As I said, I believe that it is largely a matter for the ACCC.

COLES CAMPAIGN

The Hon. R.L. BROKENSHIRE (15:06): I have a supplementary question. Arguably as a layperson in this area, I ask the minister to explain to me for my benefit, and possibly that of my colleagues in this house, why the minister feels that it is a federal matter and a matter for the ACCC?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:06): I have already stated quite clearly that this is an issue to do with business trading in this state. That is not a matter that comes under my purview; I am not responsible for that. I have already indicated that I am willing to refer the matter to the appropriate minister in another place.

The PRESIDENT: The Hon. Ms Lee.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! You might stick to yours, too.

WORKCOVER CORPORATION

The Hon. J.S. LEE (15:07): Thank you, Mr President.

Members interjecting:

The PRESIDENT: The Hon. Ms Lee, when your comrades are quiet.

The Hon. J.S. LEE: I seek leave to make a brief explanation before asking the Minister for Industrial Relations a question about WorkCover.

Leave granted.

The Hon. J.S. LEE: According to the Return to Work Monitor 2010-11, released by the heads of workers compensation authorities, it was reported that the SA scheme has the nation's worst return-to-work record and the highest proportion of people on workers compensation, coupled with the nation's highest average employer levy.

South Australia's return-to-work rate is 80 per cent, whilst the national average is 86 per cent, and South Australia has the highest rate of injured workers, with 35 per cent receiving compensation, whilst the national average is 23 per cent. The state performed poorly in keeping injured workers in paid employment once they returned to work, and employees also took longer to return after an accident than was the case in other states. My questions are:

1. How is the government going to help manufacturers and businesses in South Australia to compete with their interstate counterparts when South Australia's workers compensation scheme is the most expensive in the nation for businesses and has been the worst performing of all the states?

2. The CEO of WorkCover reported in *The Advertiser* on 13 September that WorkCover is presently proposing to overhaul the levies paid by medium and large employers. Can the government provide details about WorkCover's proposed new levies and any other related measures that will improve the scheme's outcomes?

The PRESIDENT: The minister representing the minister in the other place.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:09): Thank you, Mr President. The question was directed to me as industrial relations minister. I would like to respond by informing the honourable member that, if she looks on her desk, there is a list of ministers responsible, and under Gail Gago there is the Treasurer and the minister for WorkCover. So, what the honourable member should do is direct the question to my colleague in this place, and she will then direct it to the appropriate minister.

LOCAL GOVERNMENT ASSOCIATION

The Hon. J.M. GAZZOLA (15:09): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about building relationships with regional LGA organisations across South Australia.

Leave granted.

The Hon. D.W. Ridgway interjecting:

The Hon. J.M. GAZZOLA: At least I didn't get it from the newspaper.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: The Hon. Mr Ridgway should go back to chewing his cud.

The Hon. J.M. GAZZOLA: And reading the paper—six weeks to read the paper. I understand that local government representative bodies in South Australia are organised into regional groups, and there are six primary organisations in country South Australia, as well as the LGA metropolitan group. I also understand that the minister has had the opportunity recently to visit the South East LGA, the LGA for the Southern and Hills region and the regional LGA for the Eyre Peninsula. Will the minister update the council on the outcomes of his visits to our state's regional areas?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:10): I thank the honourable member for his very important question. Upon being appointed Minister for State/Local Government Relations, I made the decision to try to meet as many representatives from councils across the state as soon as possible. I wanted to find out firsthand from mayors, councillors and council staff about the specific challenges they face in their region or area. At the beginning of August, I attended the South East LGA (SELGA) AGM in Mount Gambier. The South East LGA is comprised of Grant, Kingston, Mount Gambier, Naracoorte Lucindale, Robe, Tatiara and Wattle Range councils.

Members may be aware that the Local Government (Financial Management) Regulations 2011 provide for the Minister for State/Local Government Relations to grant exemptions to regional subsidiaries from the requirement to establish an audit committee subject to any conditions specified. The regulation also requires an application to be made by the regional subsidiary's constituent councils. Audit committees play a critical role in the financial reporting framework of councils and their subsidiaries by overseeing and monitoring the contributions of management and external auditors in the financial reporting process.

Nevertheless smaller regional subsidiaries may only have a limited role for an audit committee, and the costs may outweigh the benefits of having one. This is a matter that was raised by the Hon. John Dawkins MLC in this place some weeks ago. During my visit I was pleased to advise that a request from the South East Local Government Association for an exemption for the requirement to have an audit committee has been approved. Additionally I was pleased to advise the Eyre Peninsula LGA, when I visited them in Tumby Bay earlier this month, that their request for an exemption has also been approved.

During August, I attended a meeting of the Southern and Hills Local Government Association. The constituent councils of the Southern and Hills association are Adelaide Hills Council, Alexandrina Council, Barossa Council, Kangaroo Island Council, District Council of Mount Barker, City of Victor Harbor and the District Council of Yankalilla. The meeting was chaired by Jayne Bates, Mayor of the Kangaroo Island Council and Deputy President of the Southern and Hills LGA, and in attendance was Mayor Kym McHugh, President of the Local Government Association and Mayor of Alexandrina Council.

The Southern and Hills LGA 2009-13 Business Plan sets out the charter of the association and includes objectives such as to provide leadership and advocacy on regional issues, encourage and promote the interests of an autonomous and democratic system of local government and plan at a regional level when determining the needs of the community. I was able to hear firsthand from councillors and council staff about specific challenges facing the region including social infrastructure and service provision, road networks and transport services.

Earlier this month I attended the Eyre Peninsula Local Government Association meeting at Tumby Bay. The regional LGA for the Eyre Peninsula brings together 11 councils: the district councils of Ceduna, Cleve, Elliston, Franklin Harbour, Kimba, Lower Eyre Peninsula, Streaky Bay, Tumby Bay and Wudinna, and the corporations of the City of Whyalla and the City of Port Lincoln.

Eyre Peninsula's fortunes continue to rise with the well-established farming, fishing and tourist sectors now being reinforced with aquaculture and mining industries as drivers of the local economy. Nevertheless, all these developing sectors create new and diverse challenges for local government, challenges which representatives were able to bring to my attention during my visit. It was a pleasure to meet Mayor Julie Low, President of the Eyre Peninsula Local Government Association and Mayor of the District Council of Lower Eyre Peninsula (Chair), and Laurie Collins, Mayor of Tumby Bay, who also hosted the day.

Among the agenda items for the September meeting were discussions on the Eyre and Western Region Plan, which was released for public consultation by minister Rau in another place in June this year. The draft plan provides a coordinated vision for land use and development across the region and aims to grow the area's renewable energy, mining and aquaculture industries whilst protecting the environment and scenic landscape.

I look forward to continuing to meet and work with councils and ensuring that we do not lose sight of the fact that our constituency is the same—the South Australian people. One way that we can increase public confidence is to continue to work closely together as state and local governments to achieve meaningful reforms.

LOCAL GOVERNMENT ASSOCIATION

The Hon. R.L. BROKENSHIRE (15:14): I have a supplementary question arising from the minister's answer on local government and regional development.

Members interjecting:

The PRESIDENT: Order! It's not always easy when you are not reading it out of *The Advertiser*.

The Hon. R.L. BROKENSHIRE: Thank you, sir. Given the minister's answer to the question without notice, does he agree with the LGA president today, when he came out in the media calling for local government, regional development and industry development all to be put to one minister and to be taken right up to the top of the executive of the cabinet?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:15): I have not read the statement by Mr McHugh, but I do say this: this state government takes regional development and local government very seriously. The Minister for Regional Development and I will work together to improve the lot of our people in the regions.

Members interjecting:

The PRESIDENT: Order!

GENDER IDENTITY

The Hon. K.L. VINCENT (15:15): I seek leave to make a brief explanation before asking the minister representing the Attorney-General a question regarding gender identity on official documents in South Australia.

Leave granted.

The Hon. K.L. VINCENT: I have been contacted by several constituents in the past who have struggled to get recognition on official documents for their true gender identity. These are people who are of an unspecified sex identity: they are neither male nor female. Obviously these people are a minority in our community, but I do not believe that that makes them any less deserving of having their true sex reflected in documentation. As it stands at the moment, while a South Australian can be recognised with an X in the gender box on their Australian passport, they are only able to pick between male or female on their birth certificate. There are several other examples of this limitation in South Australia, including when filling out forms required to get medical treatment.

This state of affairs is unacceptable. It goes against all concepts of self-determination and empowerment which our society supposedly embraces. Further, not only are these people being forced to lie on documents about their gender, they are also being forced to present incorrect information about their gender and being forced to present incorrect information on medical records, which could clearly affect the quality of care that they receive.

I have previously written to the Attorney-General about this issue, and I have received a flat out refusal to consider changing this policy. My questions to the Attorney-General are:

1. Given that people of neutral gender identity are a reality in Australia, what are the reasons for denying these people the right to have the correct information recorded about them on official documentation?

2. What would he advise South Australians of unspecified sex to do when confronted with forms requiring them to choose between male and female gender?

3. Has the Attorney-General considered the recommendations of the 2009 report, The Sex Files, while forming his stance on this issue?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:18): I thank the honourable member for her important questions and will refer them to the Attorney-General in another place and bring back a response.

SANTOS STADIUM

The Hon. T.J. STEPHENS (15:18): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Recreation, Sport and Racing, questions about the recent upgrade of Santos Stadium.

Leave granted.

The Hon. T.J. STEPHENS: Recently, I met with representatives from Athletics SA and they expressed concern that the outdated facilities at Santos Stadium are a blight on the venue's image and its quality when compared with primary athletics stadia in other Australian capital cities. While it is fair to say all are very happy with the recent track upgrade, the failure to upgrade the rest of the stadium prevents it from being a world-class venue for athletics in this country. Currently Adelaide does not attract its fair share of major athletic events and all the benefits that come with a major sporting event. It is time for Adelaide to shake the backwater tag. My questions are:

1. Why was an upgrade of the clubroom facilities not considered when the track was upgraded earlier this year?

2. What is the minister doing to ensure that this city and state have a state-of-the-art athletics facility?

3. Can the minister confirm that he is doing all he can to secure a world-class athletics meet for Adelaide?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:19): I thank the member for his question. I will take it on notice and refer it to my colleague in the lower house and get an answer back to you as soon as possible.

WOMEN IN HOTELS CONFERENCE

The Hon. I.K. HUNTER (15:19): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the Women in Hotels Conference.

Leave granted.

The Hon. I.K. HUNTER: The Women in Hotels Conference is a biennial event bringing together women from across the South Australian hotel industry for two days to learn, share their knowledge and experiences, and develop and strengthen networks with one another. Will the minister share with honourable members any feedback that she has received on this event?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:20): I thank the honourable member for his important question and for his interest in these matters. Indeed, I have received information about this event, as a representative from the Office for Women opened the conference on my behalf because, unfortunately, I was unable to attend, in particular due to commitments in this place.

The 13th Women in Hotels Conference was held on 13 and 14 September at the Sebel Playford, Adelaide. This important event was attended by about 100 women, including hoteliers from across the state, and I am told that the highlight of the event was motivational key speaker Gill Hicks, a survivor of the London bombings of 2005. Gill shared her story of tragedy, challenges and triumphs.

I understand that the Women in Hotels Conference dinner was held at the Strathmore Hotel and provided a great opportunity for delegates to network with like-minded women working in this area. At the dinner, the 2011 inductees into the Women in Hotels Hall of Fame were announced, and I am pleased to advise that this year two women were inducted into that Hall of Fame: Sue Binns from the Robin Hood Hotel, and Maxine Sullivan, whose family has been involved in the hotel industry for many years.

The Women in Hotels Hall of Fame was introduced at the 2005 Women in Hotels Conference in order to recognise women who have made a very significant contribution to the South Australian hotel industry, and it is great to see women continue to be recognised in a field that is generally dominated by men. For the last 200 years women have played a huge part in the hotel industry—behind the bar, in the kitchen, in accommodation, or as publicans and licensees. Women have often been a considerable power behind the throne, so to speak, because, going back to the beginning of the last century, I understand there were times when women held nearly half all publican licences.

Each year the Women in Hotels Conference is presented and organised by the Women in Hotels Committee, comprised of women members of the Australian Hotels Association SA and representing different hotels either as owners or managers. As members are no doubt aware, the AHA is working with the Yarrow Place Rape and Sexual Assault Service, with a violence against women awareness and prevention project that has a specific focus on rape and sexual assault. This 12-month project will see Yarrow Place work with the AHA, United Voice and the Office for Women to explore the hospitality industry's role in the prevention of violence against women and to develop strategies to increase awareness of rape and sexual assault in the hospitality industry. This may include specific training programs for hospitality industry students and the inclusion of rape and sexual assault information in existing occupational health, safety and welfare training programs for the industry.

Conferences like this provide women with a powerful platform from which to redress the ongoing underrepresentation of women as hoteliers and in management levels in hospitality. I would like to congratulate the Women in Hotels Committee for facilitating yet another successful conference.

BURNSIDE COUNCIL

The Hon. J.A. DARLEY (15:24): I seek leave to make a brief explanation before asking the Minister for Regional Development, representing the Minister for Police, questions regarding the investigation into the former Burnside council.

Leave granted.

The Hon. J.A. DARLEY: I understand that in September 2010 persons named in the draft MacPherson report into the Burnside council were given a copy, or an extract, of the draft report in order to allow those named to provide a response before the natural justice period expired. On 11 September 2010 *The Advertiser* reported that the draft report 'outlines an inadequacy in South

Australia Police systems which made it difficult for investigators to access the email accounts of its members'. *The Advertiser* further reported that Mr MacPherson said:

> The lack of transparency and accountability within the SAPOL email system has hampered the investigation, and, in my opinion is cause for serious concern.

I understand that, in these circumstances, an extract of the draft report would be forwarded to the Commissioner of Police for his consideration and to provide an opportunity to respond during the natural justice period. My questions are:

1. Given the comments made about SAPOL, can the minister advise whether the Commissioner of Police was provided with an extract of the draft report?

2. If so, can the minister advise whether the commissioner acted upon any of the information contained in the extract of the draft report?

3. Further, if the commissioner did receive an extract of the draft report, can the minister advise what prompted the commissioner to request a copy of the full draft report from the Minister for State/Local Government Relations in July 2011?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:26): I thank the honourable member for his questions. I will refer them to the Minister for Police in another place and bring back a response.

ADELAIDE CASINO

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:26): I seek leave to make a brief explanation before asking the Minister for Gambling a question about the proposed Casino expansion.

Leave granted.

The Hon. D.W. RIDGWAY: Members are well aware that the SkyCity Casino wishes to expand as part of the Riverbank Precinct. Can the minister advise how often she has met with the Casino and the last date on which she met with the Casino in relation to the proposed new gaming facilities?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:26): I thank the honourable member for his questions. I can say that, in relation to meetings with the Casino about their proposed expansion, the honourable member would know that a task force has been established to conduct negotiations with the Casino, and all negotiations around any future proposed changes are conducted through that task force.

I have met with the Casino on a number of occasions since becoming the gambling minister, dealing with matters around things like precommitment and other issues that are relevant today. I certainly have not participated in any negotiations around their proposed new developments.

ANSWERS TO QUESTIONS

EASTERN MOUNT LOFTY RANGES DRAFT WATER ALLOCATION PLAN

In reply to the **Hon. J.A. DARLEY** (3 May 2011).

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling): The Minister for Environment and Conservation has been advised:

1. The offices at Murray Bridge, Mount Barker, Strathalbyn and Cambrai have been in existence for ten years or more.

Mount Pleasant Natural Resources Centre (NRC) is not an office of the SA Murray-Darling Basin Natural Resources Management (NRM) Board or the Adelaide and Mount Lofty Ranges NRM Board, but a Council / community based advisory centre.

Running costs for the following four offices are:

- Murray Bridge $31,900 per month;
- Mt Barker $8,900 per month;
- Strathalbyn $1,800 per month; and
- Cambrai $200 per month.

These costs cover rent, electricity, cleaning and council rates. No rent is paid at Cambrai.

2. The staff of the Mount Pleasant NRC are not Board employees.

The number of staff employed at the following four offices are:

- Murray Bridge 27
- Mt Barker 15
- Strathalbyn 4
- Cambrai 3

3. All offices are accessible to the public and are open Monday to Friday, 9am-5pm. Contact details for each office can be found at the relevant NRM Board's website (www.nrm.sa.gov.au).

WESTERN MOUNT LOFTY RANGES DRAFT WATER ALLOCATION PLAN

In reply to the **Hon. J.A. DARLEY** (5 May 2011).

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling): The Minister for Environment and Conservation has advised:

1. The validity of a Water Allocation Plan is determined by the *Natural Resources Management Act 2004*.

2. I am unaware of any parts of the National Water Initiative being ignored.

3. I have not released a draft plan. Draft plans are released by Natural Resources Management Boards for public consultation pursuant to the *Natural Resources Management Act 2004*.

4. The Western Mount Lofty Ranges draft Water Allocation Plan is yet to be submitted to me by the Adelaide and Mount Lofty Ranges Natural Resources Management Board.

5. The development of Water Allocation Plans is a matter for the Natural Resources Management Boards, which are comprised of community representatives.

6. No Water Allocation Plan has been submitted to me for endorsement in relation to the Western Mount Lofty Ranges.

7. No Water Allocation Plan has been provided to me for endorsement in relation to the Eastern Mount Lofty Ranges.

INTERNATIONAL DAY AGAINST HOMOPHOBIA

In reply to the **Hon. S.G. WADE** (17 May 2011).

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling): The Minister for Health has advised that:

1. & 2. Services will continue to be designed to be accessible to vulnerable young people and address their specific needs. This includes specific issues such as sexuality, ethnic background, gender, age and family status.

The Inside Out and Evolve projects for same sex attracted and gender questioning young people will continue to be provided and developed by The Second Story youth health service. As part of the service planning for The Second Story, the Inside Out and Evolve projects will be brought in line with national best practice.

INTERNATIONAL DAY AGAINST HOMOPHOBIA

In reply to the **Hon. T.A. FRANKS** (17 May 2011).

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling): The Minister for Health has advised:

1. I can reassure the Honourable Member that the Inside Out and Evolve projects for same sex attracted and gender questioning young people will continue to be provided and funded to the same level by The Second Story youth health service.

ROYAL ADELAIDE HOSPITAL

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (18 May 2011).

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling): The Minister for Health has advised:

1. The question remains hypothetical and a real answer cannot be given to a hypothetical question. The new Royal Adelaide Hospital will be the greenest hospital in Australia. In a media release, the Green Building Council Australia said:

'According to Chief Executive of the GBCA, Romilly Madew, SA Health has targeted a 4 Star Green Star rating for the hospital project, representing 'best practice' in environmentally-sustainable design.'

'SA Health should be acknowledged as a national leader in sustainable health facilities, with a commitment to minimising environmental impacts and effectively future-proofing its buildings'.

2. No. Contractual and Financial close has been reached.

ENVIRONMENT AND NATURAL RESOURCES DEPARTMENT

In reply to the **Hon. J.S.L. DAWKINS** (21 June 2011).

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling): The Minister for Environment and Conservation has been advised:

1. The Department of Environment and Natural Resources (DENR) is reviewing its priorities to identify a range of operational and financial efficiencies. Supporting strategies and initiatives such as the Visitor Strategy and Linking Adelaide with Nature will assist by targeting effort and resources to meet the needs of the community.

2. Working with volunteers continues to be a high priority for DENR. DENR is putting significant effort into to the way community, including our volunteers are engaged and supported.

A review of DENR's volunteer support arrangements has commenced. This review is part of DENR's program to integrate Natural Resource Management (NRM) functions of the NRM Boards with the regional responsibilities of DENR.

3. Provisions exist within the *National Parks and Wildlife Act 1972* to create a tiered framework for the co-operative management of National Parks and Conservation Parks. The co-management model in South Australia is a partnership with Aboriginal people that follows a single shared set of goals to manage land, a synergistic and inclusive approach and reflects a change in our thinking of combining traditional knowledge with contemporary park management. Native title negotiations often include Co-operative Management Arrangements with Traditional owners over parks.

DEVELOPMENT (BUILDING RULES CONSENT—DISABILITY ACCESS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September 2011.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:28): I rise on behalf of the opposition to speak to the Development (Building Rules Consent—Disability Access) Amendment Bill. This legislation was introduced by minister Rau as a mechanism to align the Development Act and the regulations with the Commonwealth Disability Discrimination Act to ensure greater and dignified access to buildings for people with a disability and also to provide greater certainty to the

building industry, particularly where an applicant is seeking to upgrade or extend an existing building.

The framework for development assessment and for building rules and standards in South Australia is provided by the Development Act. The main technical document called up under the act and the regulations is the Building Code of Australia. The Building Code of Australia is a national technical document which sets the standards for building work.

Since the Commonwealth Disability Discrimination Act was initiated in 1993, there have been inconsistencies between it and national building law which, of course, we call the code. The incongruities between the anti-discrimination law and the building law have made it untenable for developers and property owners in situations where building works, carried out in compliance with the building law, have ended up in complaints with the human rights commission. This has often meant extra work for builders, costs for clients and general difficulty within the industry.

In 2000, the commonwealth Disability Discrimination Act was amended so that it could allow for a set of standards, which were the Premises Standards, relating to building access. Since then, discussions have been taking place on the federal level, mainly with the Australian Building Codes Board, to negotiate a set of technical requirements which would form the basis of those Premises Standards.

The standards, in the form of the commonwealth disability (access to premises) standards, were passed by the commonwealth parliament last year and take effect on 1 May 2011. I understand that they will be reviewed every five years. The standards set out administrative provisions and an Access Code detailing the technical building requirements. That code will be mirrored in the Building Code of Australia, which is maintained by a national board under intergovernmental agreement. The standards will apply to public buildings—new buildings, as well as upgrades or extensions to existing buildings requiring building approval.

The Premises Standards must now be reflected in the development regulations under a head power within the act. The regulations will be picking up the exemptions and concessions for existing buildings out of that document. There are two main aspects to be considered, and they are section 53A of the Development Act, which already describes the situation in which an application for the building rules consent would require a building upgrade as a condition of approval.

Section 53A is divided into two subsections. The first deals with cases where an existing building is deemed to be unsound from a structural perspective. The second deals with an existing building deemed to be inadequate from a disability access perspective. The new buildings are not subject to this legislative change that they will be covered by the code. The bill defines the 'affected part' of a building on which building work is to be carried out. The affected part is the principal pedestrian entrance of the building and any part of the building that is necessary to provide a continuous accessible path of travel from the entrance to the location of the building work.

The bill also makes a number of technical amendments. Firstly, it removes the prescribed date of construction, before which a building may be subject to section 53A if deemed to be structurally unsound. It defers the date to the new regulations. As I mentioned, it may also be required that prescribed alterations to a building impose the requirement to upgrade inadequate access and facilities. This clause would amend the section so that 'the affected part' (rather than simply 'the facilities') may need to be upgraded if not compliant with the Building Code. Further, where there is currently a restriction on that subsection only applying to buildings constructed before 1 January 1980, that restriction is removed and the application of this section is fully dependable on alterations of a class prescribed by the regulations.

The Premises Standards also contain a general exemption, which is the same as is found in the Disability Discrimination Act, for situations involving an unjustifiable hardship. The Premises Standards spell out much more clearly, however, what factors would need to be considered by a court if someone was defending the decision not to comply with the Premises Standards. In essence, this bill simply provides a head power where all the requirements to an upgrade of buildings in certain cases will be referred to the regulations which reflect the Premises Standards and therefore the commonwealth Disability Discrimination Act and the Building Code.

I was a little disappointed to learn that the regulations had not been finalised at the time that we were briefed on the bill and that there had been no consultation conducted on the bill. It seems a pretty simple and sensible piece of legislation. It was interesting to note that there had not been any consultation. Certainly, the opposition undertook consultation with a number of groups, including the Property Council, the Housing Institute, the Master Builders, Local Government

Association, Julia Farr, Minda and Novita. They raised a number of concerns but none were of the view that the act needed to be amended; however, they were concerned with the level of consultation.

I request that the government consults with industry fully when they develop the regulations because, as I said, I do not believe there was any resistance to the proposed changes but there certainly was concern that the level of consultation was lacking. With those few words, I indicate the opposition is happy to support the bill.

The Hon. M. PARNELL (15:35): The Greens will be supporting this bill but we acknowledge that it is a very small step in what needs to be a longer march towards making our built environment more accessible to people living with various disabilities. Certainly, there have been advances made in relation to public buildings over the years to make them more accessible to people with mobility disabilities. However, all of us know that the general rule in our built environment is that the vast bulk of buildings are not accessible.

This bill makes a number of technical amendments to the Development Act that will support the introduction of the Disability (Access to Premises—Buildings) Standards 2010. These Premises Standards will apply to all new buildings and upgrades or extensions to existing buildings and will be incorporated into the next revision of the Building Code of Australia.

One of the main difficulties with using the Development Act and the Building Code of Australia to bring about changes to our built environment is that they only apply to new applications; that is, they only apply to new buildings or substantial alterations to existing buildings. In simple terms, if you do not need to lodge a development application you do not need to comply with these new standards. If that analysis is incorrect then I look forward to the minister clarifying it, but that is my understanding: if you do not put your head over the parapet by applying for development approval then you will not be caught by these standards—certainly not via their introduction through the Development Act.

This type of approach guarantees that progress will be slow. In many ways I think it reflects the relative lack of importance attached to disability access compared to other areas of government regulation. For example, our pollution regulators have the right to modify pollution standards or to set appropriate guidelines and they can change mandatory standards, and they can do it as the need arises or perhaps in a licence renewal situation. However, they do not have to wait until an industry comes along and lodges a development application. It is the same with public health standards in relation, for example, to food premises.

This tool will be a very slow and ad hoc way of making our city more accessible, and it certainly needs to be supplemented with other strategies. If we were really serious about accessibility then there would be a strategy of retrofitting existing buildings. There would also be a range of concessions and other incentives to do so, but this bill does not go that far.

I note that the new disability access standards will apply to shops, offices, educational facilities, entertainment and commercial buildings but not to detached houses or apartments unless they are used for short-term rental. That raises a number of interesting issues. Certainly, the public policy rationale for insisting that premises that provide services to the public should be accessible is, in my opinion, beyond challenge, but the situation is different with private dwellings.

At one level you might say that, if someone wants to build a house that is multilevel and has lots of steps and narrow doorways and the like, they should be able to do so. However, on the other hand, we know that the average Australian changes house about every seven years and that buildings generally last much longer than that. Therefore, houses will contain a range of occupants over their life. I think there is a case for at least providing (in relation to housing) that it should be capable of later retrofitting for accessibility even if that work is not done at the stage of initial construction. However, that is a debate for another day as it is not included in this bill or, as I understand it, in the latest accessibility Premises Standards.

I note, though, that in relation to apartments if they are built for the purpose of short-term rental then they will be covered by the standards but apartments that are built for owner-occupiers or long-term rentals will not be. Whilst this approach makes some sense, it does not acknowledge the fact that such buildings can and do change use and that the change of use does not necessarily require any additional building work but might require development approval in the form of a provisional development plan consent in relation to the change of use.

What I would like to do, given that the minister's adviser is listening, is put a question on notice now rather than in the committee stage, and that is to pose a question. For example, an apartment block is built for long-term rental and, subsequently, the owner applies to a relevant authority (a local council) to change the use to, say, serviced apartments—so for short-term rental—but they do not propose to alter a single brick or any aspect at all of the physical infrastructure. Will the new provisions of the Building Code of Australia apply, given that they will not be applying for any building approval?

So, the situation is the same. The Hon. Kelly Vincent in her contribution yesterday raised the issue of other applications that require development approval in the form of planning consent, but do not require building consent. The classic example is the old house that is turned into offices, consulting rooms, shops or the like. Can the relevant authority insist on the applicant for development approval actually undertaking additional building work that they did not intend to do as a condition of approving the change of use of land? With those brief comments, the Greens support the second reading of this bill.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:41): I believe there are no further second reading contributions, so I take this opportunity to make a few concluding remarks. I thank members who have contributed to this second reading and for their support: the Hon. Kelly Vincent, the Hon. Mark Parnell and the Hon. David Ridgway. This bill is a straightforward piece of legislation and really is about providing consistency of standards around building disability access. A number of issues were raised during second reading contributions on which I will comment; one was in relation to the lack of consultation around the bill.

I have been advised that, subsequent to that, the agency has undertaken consultation with all relevant stakeholders and that the bill has been positively received by those stakeholders, so consultation was done. In terms of the work that has been done on regulation, I have been advised that the honourable member is quite correct: work has not commenced on development of the regulations as yet. However, members can expect that those regulations will be in line with those of the commonwealth, so we expect that they would be very similar to those. I have been advised that the regulations will go out to all key stakeholders for consultation, so members can be assured that they will have an opportunity to input into those.

In relation to the issue the Hon. Mark Parnell raised—that is, he gave an example of an apartment block, the use of which would be changed—I have been advised that, if the changes effected a change to the classification of the building (and I believe the example he gave would constitute a change in the classification), then the building would be captured. If it did not result in a change to the classification, it would not be captured. The effect of that, I am advised, is that any significant changes to the building, whether they be structural or in the use of the building, would be captured by this bill.

I believe I have addressed all matters, but any I have failed to address, or if there are further questions, we can deal with them in committee, and I thank members again for their support.

Bill read a second time.

In committee.

Clause 1.

The Hon. M. PARNELL: I thank the minister for answering my question. I am not an expert on the various classifications of buildings under the Building Code of Australia, but I appreciate your answer. The example I used, which was apartments for owner-occupier or long-term rental, is a different category from apartments for short-term rental, such as serviced apartments. Is the situation the same in relation to the old stately home that is then turned into a doctor's consulting rooms or into an accountant's office; is that a different category as well? I am trying to work out the range of examples where a retrofit would be triggered by a change of use, even if it does not require building work.

The Hon. G.E. GAGO: I have been advised that the example the honourable member has given would be captured by the legislation—a change from a home to doctor's rooms, for instance. Another example would be a change of use from shop to, say, office use. This is, of course, assuming that no walls are being pulled out, etc., because that would automatically be captured.

This is just simply a change of use. Basically, the classification system, I have been advised, is a series of classifications of use, and where there is a major change of use, I am advised they would be captured by this legislation.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill reported without amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:50): I move:

That this bill be now read a third time.

I would just like to make a few comments to clarify the record. I was asked a question on consultation, and I advised that we subsequently had provided consultation to relevant stakeholders. I have been advised, however, just for the sake of clarifying the record and setting that straight, that we did not consult with Minda and that there were some other groups, but generally letters did go to industry stakeholders. I just needed to correct the record in case I had confused or misled the chamber.

The Hon. S.G. WADE (15:51): I think the government has put us in an awkward position, but let me speak in that context. I think the fact that the minister chose to provide that information out of committee has denied members the opportunity to unpack the information. It is actually extraordinary. To suggest that Minda, the largest private disability agency, was not consulted about this poses the question: what value were the other assurances the minister gave us at the second reading and committee stage about consultation?

It reminds me of a statement earlier in relation to a previous matter where the minister told us that the disability sector had been consulted because Disability SA had been consulted—the government bureaucracy. I think this is extremely unfortunate, and I would hope that there might be some way that the minister could actually provide more full information as to, if Minda was not consulted, who on earth was?

Bill read a third time and passed.

STATUTES AMENDMENT (DIRECTORS' LIABILITY) BILL

Adjourned debate on second reading.

(Continued from 13 September 2011.)

The Hon. M. PARNELL (15:53): As a general rule, the Greens support the concept of personal liability of company directors for offences that are committed by the company. We believe that such a regime provides for appropriate accountability and responsibility that ensure better governance of corporations. If a company director knows that he or she will be personally liable for offences that are committed by the company, this provides a great incentive for more scrutiny and supervision.

It is not enough for a director to say that they had no idea what their company was doing. However, this general principle has exceptions, and there are certain offences where the strict liability of directors is not appropriate and an additional level of personal culpability should need to be established before the director is held personally liable. This is the approach taken by the Council of Australian Governments in developing guidelines which they have asked to be applied in all states and territories.

Broadly speaking, the effect of the guidelines is that statutes should not routinely create criminal liability of directors for the offending of the company. Instead, it is necessary to consider the policy justification for that liability—for example, the potential for significant public harm—such that it is reasonably necessary to hold directors liable so as to deter offending.

Where liability is justified, the guidelines specify that directors could properly be held liable either where they are a party to the offence or where they have been negligent or reckless in relation to the offending. In some circumstances, the guidelines provide that it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable. As a consequence of the Council of Australian Governments' decision, South Australian statute law has been examined in the light of these

guidelines, and this bill makes amendments to some 25 statutes to bring them into conformity with the guidelines.

I will say at this point that an important consideration in the Greens' support for this legislation is that it does not affect important environmental protection, public health or occupational health and safety laws. Quite rightly, COAG and the state government have accepted that there are a range of laws where it would be inappropriate to give company directors a shield to hide behind. For example, under the Environment Protection Act the offence of causing serious environmental harm attracts a maximum fine of $2 million for corporations and $500,000 for directors of those companies.

This is an important provision that helps ensure that company directors make sure that the companies under their control behave appropriately towards the environment and they do everything in their power to prevent pollution and avoid environmental harm. The point to note here is that this provision and others relating to the environment, to worker and public safety, will not be affected by this bill. Those directors whose companies commit these crimes will continue to be personally liable, subject, of course, to the various statutory defences that are available. In these circumstances, we find the bill unobjectionable and will be supporting the second reading.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:56): I thank honourable members for their contributions. Again, this bill is quite straightforward. I thank the Hons Stephen Wade and Mark Parnell for their contribution and support. I look forward to dealing with it expeditiously through the committee stage.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: I would like to make a comment and then I anticipate asking quite a series of questions. I refer to the government's consultation. The Australian Institute of Company Directors, which would be the peak body in relation to corporate governance in Australia and for that matter, if you like, the representative body for company directors, has provided for the opposition today a series of suggested amendments to the bill. The council would appreciate that that is unfortunate, considering that the government has made it clear some time ago that this is a priority for this week. I am not disputing that the government has the right to progress today. However, I make the point that the fact that a peak body of that stature should be approaching the opposition today suggests that perhaps the government's consultation has not been as thorough as it should have been.

In that context, acknowledging the government's right to proceed with this matter today, I suggest to the Leader of the Government in this place that it may be appropriate to give priority to other matters. That is not the intention of the government. I will therefore be asking more questions at clause 1 than I might have otherwise intended, but I accept the government's right to proceed. Could the minister advise how many states in Australia have adopted similar reforms?

The Hon. G.E. GAGO: I have been advised that all states have agreed to the principles, and all states have conducted, or are conducting, an audit of their statute books against those principles. So, where deficits occur between the audit and the principles, all states have agreed to proceed with amendments. I have been advised that both New South Wales and the ACT have proceeded with amendments, and I understand that other states have agreed to proceed with amendments if their audits do not stack up. At this point in time, only two states have done so.

The Hon. S.G. WADE: So who does the audits? I presume that is an audit against the Ministerial Council for Corporations' principles for reform of directors' liabilities provisions. Is the audit therefore done by the commonwealth or by the states themselves?

The Hon. G.E. GAGO: I have been advised that it is by the states and territories themselves.

The Hon. S.G. WADE: That being the case, there is presumably the potential for the principles to be interpreted differently in relation to very similar provisions.

The Hon. G.E. GAGO: I have been advised that is potentially possible; however, the principles have been agreed to by all states and territories.

The Hon. S.G. WADE: Could the minister remind us which jurisdictions already have legislation enacted—not just bills—similar to legislation that this committee is considering today?

The Hon. G.E. GAGO: As I have already answered, New South Wales and the ACT have proceeded with amendments. I have been advised that it is difficult for us to say whether their legislation would be exactly the same or very similar to ours.

As I have tried to explain, it would depend on the result of the audit, what state the statute books were in and where variations occurred, and those variations might be different from state to state and territory. So, it is possible that the outcomes might all look quite different but achieve the same set of principles that have been agreed to by all states and territories.

The Hon. S.G. WADE: I take it from the minister's answer that she would not be able to answer the question: to what extent does the New South Wales act and the ACT act differ from this act in the interpretation of which offences should fall into three classes, for example, vicarious, accessorial and moderately serious, for want of a better word?

The Hon. G.E. GAGO: I have been advised, no, that we have not sat down and made those comparisons.

The Hon. S.G. WADE: The minister's comments actually suggest that it was not just that you had not done the comparisons; I thought the answer to your previous question was that it would be almost impossible to do that. My concern is that if that is true, if it is almost impossible to make that correlation, how does the government expect that this whole process will achieve its purpose, which is a nationally consistent set of directors' liability provisions that actually provide some confidence to directors of Australian boards that, when a decision is made in one jurisdiction, it is likely to be treated fairly and similarly in another jurisdiction?

The Hon. G.E. GAGO: I have been advised that there is a difference between whether the legislation is identical, which was one of the questions the honourable member asked. What I endeavoured to explain is that the legislation itself might look different clause by clause from state to state and territory, however, the outcome achieved by those legislative changes will result in a consistent set of principles agreed to by each state and territory. So, the outcomes will be the same.

The Hon. S.G. WADE: If I can unpack the minister's last commitment, which was an assurance that the outcomes will be the same, can the minister assure us that, in relation to the New South Wales act, the ACT act and this bill as amending the primary act, all similar acts in those three jurisdictions would fall into the same category in terms of the way the offence types are treated, in terms of accessory to the fact, vicarious liability and the third class which I am calling moderately serious, for want of a better phrase?

The Hon. G.E. GAGO: I have been advised, no, that we are unable to give those assurances. I have been advised that the principles are not a set of model provisions but, rather, a set of concepts or rules to be applied, and there is no certainty and no requirement that the same form of provisions will be used in each jurisdiction.

The Hon. S.G. WADE: If I could make a very brief comment, I certainly do not bemoan the fact that identical provisions are not being applied in every jurisdiction because, as the minister knows, I believe in federalism. But considering the whole purpose of this is to have operational certainty for directors to know what their obligations are, I am somewhat concerned that the government does not feel that there will be at least a shared outcome. If I could move then to consultation: could the minister clarify the consultation that the government undertook in relation to this bill, particularly in relation to the business community and organisations representing company directors?

The Hon. G.E. GAGO: I have been advised that in preparing the principles MINCO involved stakeholder groups, which included the Australian Institute of Company Directors and the Business Council of Australia, to provide MINCO with views on the current law and on proposed principles. I am advised that a survey was also conducted jointly by the commonwealth Treasury and the AICD of over 600 directors of ASX 200 companies about the effect of legal liability on their decision-making.

Throughout the project, information has been publicly available on the COAG website including the implementation plans and the reports of the COAG Reform Council. The Australian Institute of Company Directors has taken a keen interest in the project throughout and has commented about it in the media and, of course, we are aware that their view is that they would like

to see these provisions to go much further than they do. However, we believe that this has struck a balanced position.

The Hon. S.G. WADE: I appreciate the minister's answer but it was an answer to a question that I had not asked. The question that the minister apparently was anticipating was: what consultation occurred in relation to the MINCO principles on the reform of directors' liability provisions? It was informative nonetheless. Could I reiterate my question: what consultation did the government undertake with business and directors representative groups in relation to this bill?

The Hon. G.E. GAGO: I have been advised that in relation to South Australia, no separate consultation has taken place. It occurred comprehensively, as I have outlined, at a national level and involved all key stakeholders, including those peak organisations.

The Hon. S.G. WADE: When the minister refers to comprehensive consultation on the bill at the national level, could she explain when the bill was prepared and when was it provided to the national stakeholders to consult on the bill?

The Hon. G.E. GAGO: Yes. The bill was not consulted with: it was in fact the set of principles. I should have clarified that.

The Hon. S.G. WADE: Yes, it is unfortunate because the minister keeps answering a question I have not asked. The question is about the bill; in fact, it would be disorderly for me to ask questions about MINCO's principles, so I choose not to. What I am asking is about this bill, so can the minister confirm that the Australian Institute of Company Directors, at a national or state level, was not consulted on the content of this bill?

The Hon. G.E. GAGO: The member is correct. They were not consulted in relation to this bill but rather the principles that underpin the bill. This bill has been in the public arena since March this year; it has been out for public availability since then.

The Hon. S.G. WADE: So, in the context of the fact that the minister has assured the committee that the principles can be applied differently in different states, and the minister can give us no assurance that there will even be a consistency in application between the states, does it surprise the minister that the Australian Institute of Company Directors has provided the opposition with pages—unfortunately, it is not page numbered, but I can assure you that it is pages—of potential amendments to this legislation and yet the government is keen to persist with this legislation without consulting one of the key stakeholders in this state on this matter? By way of putting one last comment, one of the documents provided to me is an analysis of proposed amendments, and that is numbered at 33 pages.

The Hon. G.E. GAGO: In relation to the member's question, no, I am not surprised at all that the AICD may have put forward a series of amendments because it has disagreed with the principles underpinning this right from the outset. We were well aware that it disagreed virtually right from the beginning of the COAG consultative process and that the AICD does not agree with the principles. I am not surprised at all that it has a series of amendments to change this.

However, what I am surprised about is that this bill has been in the public arena for six months; it was tabled in the House of Assembly in March this year. It has gone through debate in the lower house. The Liberal opposition spoke to it in the lower house and supported it in the lower house and, what is more, supported it without amendment. That is on the public record—without amendment.

What I am surprised about is that at the eleventh hour, when due process and notice were given in the lower house, and when due notice and process were given in this house, at five minutes to the beginning of the debate the honourable member wants to close this debate down and pursue a rabbit down a burrow. I am shocked that his colleagues, his Liberal counterparts in the other house, can support it without amendment in the other house but all of a sudden, here at the eleventh hour, we have to close everything down and stop it because of a series of amendments, when the legislation has been on the public record for over six months. It is a disgrace.

The Hon. S.G. WADE: The minister has somehow lost track of proceedings. We are actually at clause 1 of the bill. She seems to be anticipating a motion to report progress, which I have no intention of moving. All I am trying to do is to lay bare—

The Hon. G.E. Gago: To waste our time. That is what you are doing—wasting our time.

The Hon. S.G. WADE: I am sorry, I have every right as a member of this house to highlight the shoddy legislative practice of this arrogant government. What this government is telling us today is that, if a national consultative body does not win the day on a set of principles, their state body has no right to comment on a bill that results from that process. I do not think it will take the South Australian community long to understand that that is a very arrogant position, hardly surprising from a lazy government who cannot even decide who it wants as premier today—it is extraordinary. In terms of my consultation—

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: Excuse me, if you want the call—the more you talk the longer it will take for me to say what I need to say and sit down.

The Hon. G.E. Gago interjecting:

The CHAIR: You've got the call.

The Hon. S.G. WADE: Thank you, sir. As I was saying, the minister is trying to tell us that a consultation with a national body about broad principles is close enough to a consultation in relation to a bill. I find that extraordinary, and in fact I would like to ask the minister, considering her assertion that the AICD disagreed with the principles lock, stock and barrel, whether she could explain to the committee which of the principles for reform of directors' liability provisions agreed to by MINCO differ, and to what extent, from the set of principles proposed by the Australian Institute of Company Directors, so that the committee can be aware of the differences, my point being that it is a fabrication to say that the AICD opposes this lock, stock and barrel, and to say it has no right to be consulted on that basis is unreasonable.

The Hon. G.E. Gago: I didn't say that.

The Hon. S.G. WADE: You did; it's exactly what you said.

The Hon. G.E. GAGO: These are some of the statements the Australian Institute of Company Directors has put out publicly. I will not read the whole thing, but to quote from one of its releases, it states that the principles underlying this process agreed to by the commonwealth, etc., are fundamentally flawed and allow the states far too much scope to avoid genuine reform. It says it has failed by not using the financial levers it holds to ensure the states are held to account. It states that the current process is a fatally flawed set of principles and we must start again. That is what it is saying. That pretty much sums up its position. Its position is available online in a number of documents for the honourable member to look at the detail if he so chooses.

The Hon. S.G. WADE: I assure the minister that I am looking at the detail. I am looking at the principles as agreed by MINCO and the principles as proposed by AICD. I will not detain the council by going through them point by point, unless taunted by the minister. It is grossly misleading to use an AICD press release, urging the government to take the next step to go the extra mile, to misrepresent the Australian Institute of Company Directors as not being engaged in the process of reform of directors' liability.

I also do not want to allow the minister to distract us from the basic point. The basic point, I reiterate, is that the minister and government is claiming that, if a national representative body chooses to oppose the Labor state/federal government axis on principles at the national level, they lose the right—

The Hon. J.M.A. Lensink: Axis of evil.

The Hon. S.G. WADE: —an axis of evil, an honourable member suggests—to be consulted on legislation which will affect them. If this was a Liberal government and a union, we would have people swinging from the rafters in protest, but I will let the record stand for the hypocrisy this government is showing. My next question is: to what extent do these directors' liability provisions apply to directors of public sector corporations?

The Hon. G.E. GAGO: I have been advised that they apply by reference to particular acts. So, it depends on whether the company is engaged in activity that is caught by one of the acts amended in the bill.

The Hon. S.G. WADE: Can the minister explain how many company directors have been found liable under the directors' liability provisions in the acts which this bill amends in each of the last 10 years?

The Hon. G.E. GAGO: I am advised that we do not have that information.

The Hon. S.G. WADE: Does the government have an expectation as to whether the prosecutions are likely to increase or decrease as a result of this bill?

The Hon. G.E. GAGO: I have been advised that we would expect that they would decrease. However, at this point in time, we are unable to know for sure.

The Hon. S.G. WADE: Presuming that the minister thinks there has been a decrease, the minister thinks there have been some prosecutions against directors?

The Hon. G.E. GAGO: I have answered that question.

The Hon. S.G. WADE: No, the minister said that she did not have any idea, so I am presuming that at least the fact that she thinks they will decrease suggests that she thinks there have been some.

The Hon. G.E. GAGO: If there had been some—

The Hon. S.G. WADE: So, if there have been, there might be a decrease? Well, that is really helpful. In the AICD survey of directors or aspiring directors, which the minister referred to earlier, 74 per cent of those who identified themselves as aspiring directors said that the risk of personal liability had made them reconsider directorship as a career. Is the government concerned that South Australian businesses will not be able to perform to their best if directors decline to take positions on that basis?

The Hon. G.E. GAGO: I have been advised that the outcome of this bill is that it is likely to result in a decrease for the potential of liability directed at directors. Therefore, if that is so (and we believe it is likely to be so), one would expect that aspiring directors would feel more confident about applying for board directorships.

The Hon. S.G. WADE: That being the case, what steps is the government planning following the promulgation of this legislation to communicate that fact to aspiring directors? What is the communication plan?

The Hon. G.E. GAGO: I am not aware of any plan.

The Hon. S.G. WADE: Just to clarify, the government does not think that it is important enough to talk about the bill to aspiring directors on the way in and has no intention of communicating with aspiring directors on the way out. One wonders how we will actually have any benefit from this legislation if everyone is oblivious to the fact that life is getting easier under this government, allegedly.

Clause passed.

Remaining clauses (2 to 35) and title passed.

Bill reported without amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (16:31): I move:

That this bill be now read a third time.

Bill read a third time and passed.

MENTAL HEALTH

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:33): I table a copy of a ministerial statement relating to the Cramond Clinic made earlier today in another place by my colleague the Hon. Mr Hill.

SUMMARY OFFENCES (TATTOOING, BODY PIERCING AND BODY MODIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 July 2011.)

The Hon. S.G. WADE (16:33): I apologise to the house that because of the distraction of the committee stage of the last bill I have not been able to edit this speech, so I will read it slowly so you do not miss the benefit of it.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wade is going to read his speech slowly for us. The Hon. Mr Wade.

The Hon. S.G. WADE: I rise to speak on the Summary Offences (Tattooing, Body Piercing and Body Modification) Amendment Bill 2011. There are many ways a person can express themselves—

Members interjecting:

The Hon. S.G. WADE: But only one of us has the call.

The PRESIDENT: Who is that?

The Hon. S.G. WADE: Me.

The PRESIDENT: The Hon. Mr Wade has the call.

The Hon. S.G. WADE: —through speech, movement, association and creative pursuits. All are important for a healthy and vibrant democracy. The issues contemplated by this bill are also forms of individual or collective expression. It is about choices individuals make to form, even to define, their identity. Piercings, tattoos and body modifications are all legitimate ways an individual may choose to express themselves. While they are not forms of expression I have ever been attracted to, it is not for me to say that others should not be able to express themselves in that way.

While considering this bill, I took the time to visit a tattoo parlour on Rundle Street. I wanted to see firsthand how these procedures were performed and to hear more about the industry's views on the legislation. I was struck by the variety of people receiving a tattoo. An enormous variety of people from all walks of life seek tattoos for one reason or another. In the parlour that day, I spoke to a person receiving a tattoo who was a serving police officer.

Whether to remember a special occasion, to promote a sense of community through associating themselves with a football team or a Defence Force unit, or to highlight something about a person's individuality, a tattoo after all is a picture; it can say a thousand words. In almost all cases, a great deal of consideration goes into choosing what tattoo a person will receive. After all, people know that it is an indelible mark.

I was recently sent the story of the Flowerdale community, who suffered tremendously as a result of the 2009 Black Saturday fires in Victoria. To serve as a reminder of the loss and regeneration, the Flowerdale community chose a design by Jessica Mason that depicted a bare skeleton of a tree with one green leaf protruding from the trunk. Initially, the design was used on badges and T-shirts as a defiant expression of community solidarity as the community regrouped and rebuilt.

Soon after the logo began to be used, a resident named Odette visited a parlour to have the design tattooed on her forearm. Having heard the story of Flowerdale's loss and the meaning of the image, tattooist Olivia Brumen refused to charge for the work. It did not take long before 120 members of the community had followed suit. As time passed, community members added to the design to express the living story that the image meant to them. After two years, Odette added 13 green leaves to the design, symbolising the 13 friends she had lost to the fire.

Stories such as these serve to demonstrate the way forms of self-expression like tattoos can also be an expression not just of individuality but also of community. They can be a positive affirmation of group identity and are gradually becoming more and more part of mainstream culture in Australia. In fact, given the situation this afternoon, I might digress to mention that in terms of developing mainstream culture I was fascinated to hear of the fact that tattoos are not emerging in South Africa, whereas they are actively emerging in Canada and North America.

So, we are finding within Western democracies of a similar cultural origin quite a different development within mainstream culture. I am sure members of the house will recall that Winston Churchill's mother was a bearer of a tattoo. In previous generations, there has been quite a different cultural attitude to tattoos than the negative attitude that has been more prevalent in recent years. I think there are a number of sociological indicators that our community's attitude to tattoos is changing, and not just among the younger generation but also in the older generation.

There is research on this, and in fact South Australia is fortunate to have one of the world's leading experts on body image as a member of one of our faculties. Professor Marika Tiggemann is a member of the faculty of the Flinders School of Psychology. She noted in her research on body

image that studies abroad found the most common reasons for getting a tattoo were: first, self-expression; secondly, 'just wanted one'; thirdly, to remember an event; and, fourthly, to feel unique.

The most popular reasons were to do with self-expression and identity, not out of commitment to being a rebel or as a sign of social alienation. I think we would be extremely poorly served if we were to look negatively on tattooing and body modifications as some sort of antisocial statement. The evidence is quite the contrary. Freedom of expression is a fundamental right and it is crucial for democracy, but from time to time governments must intervene to regulate the expression of these rights for the sake of the protection of individuals or the community. The bill before us is an example of such a case.

The opposition has sought to address this issue from an informed and considered perspective. As Liberals we consider any restriction of freedom cautiously; that is why we are suspicious of proposals that have undertones of enforced personal morality or paternalism—what I must admit our party room often sums up as the nanny state mentality. That is why we are suspicious of expanded powers for government that are introduced without justification, and that is why we look to this bill for justifications for any restrictions on personal or business freedoms.

Given the Attorney-General's focus on this issue, you could be forgiven for thinking that these reforms were introduced to contain some sort of pandemic crisis sweeping Adelaide's suburbs. However, the facts from the government itself paint a very different picture. Under section 71A of the Summary Offences Act there has been just over one conviction per year in relation to under-age tattooing since 1992. A total of 21 convictions were recorded between 1992 and 2009; only six of these convictions were recorded since the year 2000.

I want to reiterate that, because in itself that is quite striking. We are talking about a period since 1992. The number for the full period is 21 convictions, and only six since 2000. That suggests there were almost three times as many convictions in the period 1992 to 2000 than in the period since. Now, if one were to notice that the Olsen-Brown-Kerin government was in power for most of the period 1992 to 2000, and that period bore 15 convictions, and the period since 2000 has only borne six convictions, one wonders whether there has been a change of prosecutorial practice under this government.

Data provided by the government says that most of these cases listed the offender's occupation as being unemployed. That might seem insignificant in itself, but what it does suggest is that those offences were not in relation to mainstream tattoo parlours. If they were mainstream tattoo parlours they would be listed as being employed in a tattoo parlour. The fact that most of those cases listed the offender's occupation as unemployed suggests to me that in those cases the tattoos were performed by backyard operators. Nothing contained in this bill will address the heart of where the problems actually occur; for the additional regulation of business, convictions in these premises would occur at most once every two years on average.

This is not the first time we have seen this kind of legislation in this place and the other place. The Hon. Bob Such, the member for Fisher, introduced legislation in 2001 to make it an offence to pierce a child under the age of 16 without their being accompanied by consenting guardians or parents. The member for Fisher's bill was passed by the House of Assembly but fell just short of passing the Legislative Council before prorogation.

Following the resumption of parliament in 2002, the now Hon. John Rau took up the Hon. Bob Such's proposal. The now Attorney-General took up the cause, but the bill took on a slightly different shape. At first it did not include earlobes in the definition of piercing; secondly, it required retailers to obtain and retain the particulars of the minor being pierced, as prescribed by regulation. It also required the business to retain this information for two years. Thirdly, there was a requirement for a written agreement before a tattoo was given, including a mandatory three-day cooling-off period. A ban on deposits and exit conditions was also proposed.

That bill was subsequently sent to the Select Committee on the Tattooing and Body Piercing Industries in 2005 for further examination. The 15 recommendations from that committee form the basis of the bill before us today. However, no legislation was passed by that parliament on the matter prior to the 2006 election.

The Hon. Dennis Hood introduced legislation in this area in 2007. That legislation would have made access to scarification just as restrictive as tattooing. Like the bill introduced by the Hon. Bob Such (the member for Fisher in another place), all piercings for minors would have to be accompanied by a consenting guardian or parent under that bill. That bill did receive the support of the Legislative Council. It then passed into the purgatory—that is, the space between the houses—

for a short time before suffering the same fate of its predecessor twin; that is, it lapsed through prorogation.

About nine years after his first attempt, having emerged from the political wilderness, the newly appointed Attorney-General resumed his quest to regulate the tattooing and piercing industries. In January 2011, a discussion paper was circulated seeking community views on the reform of industry practice. A few changes resulted, such as the dropping of the ban on deposits and the reduction in age requirements for minors receiving non-intimate piercings.

A bill was introduced in the other place on 6 April 2011 which sought to implement many of the select committee recommendations, such as, requiring clients to be provided with information about the procedure and the restrictions of access to piercing for minors. The bill passed through the House of Assembly on 5 May. The bill adopts the Hon. Bob Such's amendments to require a guardian or parent to be present or to consent to a piercing on a minor under the age of 16. However, the bill before us creates a second tier of piercing regulations for intimate piercings, restricting those procedures to persons 16 years or below.

Unlike the Attorney-General's 2002 bill, it does not include a cooling-off period or a ban on deposits. Consistent with the 2002 bill, it does exempt earlobe piercings from regulation. Like the Hon. Dennis Hood's 2007 bill, it now includes reference to scarification, but goes further to include body modifications more generally, as we will hear more about in a moment. In that sense, this bill represents the combined efforts of the three previous bills.

The opposition obtained most of the submissions to the public consultation conducted by the Attorney-General's Department through a freedom of information request. The Attorney-General, unfortunately, does himself and the people of South Australia a great disservice each time he refuses to provide us with copies of submissions on public consultation. It costs the parliament time, the taxpayer money and the resources of the public sector. The Attorney-General also damages his own credibility when he forces the parliament to use FOI processes when documents could be easily provided in the public interest.

The opposition undertook its own consultation. In the context of comments by a colleague in the other place, I should clarify that the opposition did not receive a submission from Mr Steve Parker. We are certainly aware of the work that Mr Parker does as a respected health practitioner in this area and we acknowledge that he was the recipient of the Minister's Innovation Award in November 2010 for the Healthy Body Art—Primary School Education Program. I find it noteworthy that, on the one hand, the government is keen to regulate this industry with undertones of controlling feral elements and, on the other hand, provides a Minister's Innovation Award to a key practitioner for his work on the Healthy Body Art—Primary School Education Program.

In the context of consultation, I would particularly like to acknowledge the assistance that I have received from Morag Draper. Ms Draper has been extremely helpful in helping myself and other members of the opposition to understand the history of the industry, to negotiate the range of issues the bill raises and to understand the realities of the industry today. I understand that Ms Draper has been in contact with a number of members of the council regarding the provisions of this bill, and I look forward to discussing with honourable members to what extent we believe those views should be reflected in the bill.

Another of the stakeholders from whom the opposition received feedback was the Youth Affairs Council of South Australia. It would be fair to say that the council is not supportive of the bill's provisions, and I quote, 'Such measures seek to impose social control on a particular group.' YACSA also suggests that the complications arising from such procedures have more to do with unsafe practices by body modification practitioners and poor after-care by individuals.

The Professional Tattooing Association of Australia also expressed a range of concerns, including the additional impost on businesses, the difficulty of assessing intoxication and the risk of enhancing the business of unregulated backyard operations.

The AMA also provided input and indicated broad support for the bill whilst raising concerns about aspects of it. In particular, they raised concern in relation to the:

> sterility of equipment and surrounding, infection control standards, procedural training of staff and indemnity and compensation mechanisms to afford the protection of the public's right to financial recovery in the event of suffering any consequential loss.

In that context I acknowledge that the Hon. Tammy Franks has recently filed, or is about to file, amendments in relation to enhancing infection control. We have not sought to address all of the

concerns raised by the AMA through this bill but we look forward to considering the Hon. Tammy Franks' amendments. Among other issues, the Australian Lawyers Alliance expressed concern that police powers were unnecessarily broad, and we seek to address that matter through opposition amendments.

I turn now to look at the detail of the bill. The bill before us would clarify that it is an offence for a person to perform a body modification or body piercing procedure on a person who is intoxicated. This would normally be an offence under the common law as it would be an assault to perform such a procedure on a person who cannot consent. Intoxication, of course, impairs the capacity to consent. This is a grey area of law and it continues to exist for minors, and some academics suggest that some minors may not be able to give consent despite being of the prescribed age. This is not an area easily remedied by statute law but the opposition acknowledges that the bill goes some way to providing some clarity.

In relation to piercing and body modification, the definition of body modification in the bill includes tattooing, body branding, body implantation, earlobe stretching, body scarification and other prescribed procedures. Tongue-splitting was added in the House of Assembly following a Liberal amendment in the other place.

Members interjecting:

The Hon. S.G. WADE: Perhaps we need to have one of those content warnings as at the beginning of the ABC news. In relation to police search powers, as I have already indicated, the Australian Lawyers Alliance has expressed concern and the opposition will be opposing the introduction of expanded police search powers because we do not believe they are justified. The proposed changes in the bill would unreasonably single out the tattooed and piercing industries for special treatment by police as compared with other businesses. The government has simply failed to make out a case as to why current laws are not sufficient to allow police to do their job, so we will be opposing proposed section 21I outright.

These amendments have undertones of the government's public relations campaign against bikies, but we are also concerned that these provisions will become the thin end of the wedge for similar police powers against other businesses and will impact on the vast majority of participants in the tattooing, piercing and body modification industry who are not associated with criminal groups.

It does appear the government is targeting the industry because of perceived criminal associations and there is no doubt that there are links between the industry and other groups. Vince Focarelli, the owner of the Central Ink Tattoo Parlour on Hindley Street, was formerly of the New Boys and now heads the South Australian chapter of the Comancheros. While the police are rightfully keeping a close eye on people such as Mr Focarelli, we are yet to see evidence that existing legislation does not meet their needs for that enforcement.

The level of regulation proposed in the bill may also lead to further displacement of minors towards unregulated backyard operations in the future. Young people who cannot meet the identification requirements for intimate piercings and body modifications may look elsewhere for that service. Alternatively, persons concerned with supplying a business with personal information may also be discouraged from seeking the procedures through mainstream services.

If you accept the government's argument that tattoos and body piercing businesses are rife with crime, why would a law-abiding citizen who wants a tattoo provide such a business with their personal information? As we have already heard, alternative backyard operations are where young people are most at risk. Few young people have a need for formal identification cards at the age of 16 unless they are driving or seeking other licences. It is a matter that we believe needs to be given careful consideration.

This bill is also unusual in that the House of Assembly actually contributed to the legislative process. The government did listen to a number of the concerns raised by Ms Vickie Chapman in the other place on behalf of the opposition and moved amendments there to address those concerns. These included inserting tongue splitting (and I am sorry to mention that again, the Hon. Mark Parnell) into the definition of body modification and, remarkably, this procedure would not have been included in the original definition.

The opposition also raised the prospect of unintended consequences resulting from the undefined phrases 'medical practitioner' and 'medical treatment' in the original bill. The government

has clarified these definitions so that legitimate medical procedures by surgeons, dentists and other medical practitioners will not be affected.

The government moved an amendment in the House of Assembly to include a provision in the bill that would insert 'or service' in section 144F of the Criminal Law Consolidation Act 1935. The aim of this amendment is to exempt minors from being prosecuted for identity fraud and, consistent with the opposition's position on a range of other matters, we do not believe that minors should be encouraged to engage in identity fraud. We will be opposing those changes.

Research by Southern Primary Health Noarlunga highlights that the most common source of complications are piercings of the ear and the need for infection control. For these reasons the Liberal opposition will be moving an amendment to treat earlobe piercings in the same way as other non-intimate piercings, except for the requirement of a written procedure. As noted earlier, we will also be opposing some other matters.

The Liberal Party is committed to ensuring public safety and consumer protection and we will be supporting the bill with amendments and hope that the commonsense changes that we have proposed receive the support of the council. This bill should be seen as supporting freedom of expression and recognises the fact that adults cannot have real freedom without informed and free consent.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (16:57): I understand that there are no further second reading contributions to this bill and, in light of that, I will make a few concluding remarks. I thank honourable members who have contributed to the debate on this bill. As noted by members, this bill is the result of extensive public consultation and the government believes that it strikes an appropriate balance between protecting young people from harm and recognising the autonomy and individuality of that person.

The Hon. Ms Franks asked whether Indigenous communities had been considered or consulted in regard to traditional ceremonial activities and whether they might be intentionally or unintentionally caught up by the provisions of this bill. The bill restricts young people's access to body modification procedures and intimate body piercings on the basis of age in order to protect the health and wellbeing of young people. That these provisions may limit some cultural practices among Indigenous communities and other culturally and ethnically diverse groups was considered by the government during the drafting of the bill.

For those cultural practices that involve non-intimate piercings, the impact will be minimal as a minor can still obtain non-intimate body piercings with parental or guardian consent. For other cultural practices such as ritual scarification, the government considers that, given the invasive and permanent nature of the scarification, the age restrictions are justifiable in order to protect young people.

The Hon. Ms Franks also referred to calls for a ban on the use of ear piercing guns by some members of the industry and foreshadowed an amendment to ban the use of these devices. Ear piercing guns are manufactured specifically for the purpose of piercing a person's earlobes. If the gun is used in accordance with the manufacturer's instructions and in accordance with the Department of Health's 'Guidelines on the Safe and Hygienic Practice of Skin Penetration' then there is little chance of any major complications arising.

It is when the gun is used inappropriately that issues can arise. Advice from the Department of Health is that complaints occur when ear piercing guns are used to pierce the ear cartilage or the nose and not when the gun is used to pierce the person's earlobes. That some people use these devices inappropriately does not, in the government's opinion, warrant a total ban on their use. Many businesses that only use ear-piercing guns, and do so appropriately and without any complaints, would be significantly impacted were such a ban to be put in place.

Finally, I note that some members will be opposing the police powers. The government believes that these powers are necessary for the effective enforcement of the bill and we will be resisting any attempt to remove them again. I thank members for their contributions and the support that was given, and I look forward to dealing with this matter expeditiously through committee.

Bill read a second time.

In committee.

Clause 1.

The Hon. T.A. FRANKS: What implications does this bill have for body implantations performed on those under 16? In particular, does it have any implications for someone who is a minor seeking contraception in the form of Implanon without guardian or parental permission?

The Hon. G.E. GAGO: I have been advised that hormonal implantations, such as the example the honourable member gave, would not be captured by this bill as they would be captured by the exemptions because they are, in effect, a medical procedure.

The Hon. T.A. FRANKS: Following from that, I also have a question in regard to the body scarification component, which is defined here as meaning the cutting of a person's skin to encourage the production of scar tissue. The minister would be aware that many young people self-harm. Will they be captured by this bill and will there been any penalties for self-harming?

The Hon. G.E. GAGO: I have been advised no, because the bill is directed at service providers who are actually providing scarification to another person.

Clause passed.

The Hon. S.G. WADE: It was not the expectation of the opposition that we would move into committee this afternoon.

Members interjecting:

The CHAIR: Order! The government runs the business of the day.

Members interjecting:

The Hon. S.G. WADE: I can assure the minister that I do have two more speeches and I am more than happy to deliver them, but the issue is that, whilst the chairman suggests the government runs the place, my understanding is that the council has custody of its own business.

The CHAIR: And the President is in charge.

The Hon. S.G. WADE: I was not anticipating going into committee. The minister says it is on the paper. Well, I would like to see her paper because mine does not show it.

The CHAIR: Let's get on with it.

The Hon. S.G. WADE: I ask the government to report progress.

The CHAIR: The minister has made a determination that she will not report progress.

Clauses 2 and 3 passed.

Clause 4.

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

Page 4, line 28 [clause 4, inserted section 21C(2)(b)]—Delete '(other than an earlobe piercing)'

This amendment seeks to remove 'other than an earlobe piercing'. It is the view of the opposition that earlobe piercing should be treated similarly with other matters. After all, earlobe piercing is the area of greatest risk for infection, and one of the key needs of this legislation is to contain infection control. We believe it is important to treat all non-intimate piercing in the same way.

The Hon. G.E. GAGO: Earlobe piercing is a simple procedure that appears to be widely socially acceptable for children, therefore the current approach taken in the bill is to leave earlobe piercing unrestricted. However, honourable members and some members of the industry have expressed concerns about this approach as there are still health risks associated with earlobe piercing, such as infection of the pierced area.

The effect of this amendment and similar amendments proposed by the Hon. Ms Franks is to apply the same age restrictions to earlobe piercing as apply for non-intimate piercing. Thus a person under the age of 16 who wishes to have their ears pierced will require the consent of their parent or guardian before they can do so.

Although we do not believe it is necessary, the government is not opposed to the inclusion of earlobe piercing in the age restriction for non-intimate piercing, the approach taken in the amendment to be moved by the Hon. Tammy Franks is, in fact, the preferred amendment currently under consideration. So that people know where we are coming from, I indicate that we will be

supporting the Hon. Tammy Franks' amendment if it is put to the committee. We are therefore opposing the Hon. Stephen Wade's amendment.

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

That progress be reported.

The committee divided on the motion:

AYES (12)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Franks, T.A.	Hood, D.G.E.	Lee, J.S.
Lensink, J.M.A.	Lucas, R.I.	Parnell, M.
Ridgway, D.W.	Stephens, T.J.	Wade, S.G. (teller)

NOES (6)

Gago, G.E. (teller)	Gazzola, J.M.	Hunter, I.K.
Kandelaars, G.A.	Wortley, R.P.	Zollo, C.

PAIRS (2)

Dawkins, J.S.L.	Finnigan, B.V.

Majority of 6 for the ayes.

Progress thus reported; committee to sit again.

STATUTES AMENDMENT (COMMUNITY AND STRATA TITLES) BILL

Adjourned debate on second reading.

(Continued from 27 July 2011.)

The Hon. S.G. WADE (17:16): Now that the business of the house has resumed, I rise to speak on the Statutes Amendment (Community and Strata Titles) Bill. The Attorney-General tabled the Statutes Amendment (Community and Strata Titles) Bill 2011 in the House of Assembly on 7 April 2011. A draft of the bill was subject to public consultation in 2010. The bill seeks to improve the protections for consumers who buy into or own units in strata and community titled developments.

The bill followed a 2003 discussion paper which led to a 2008 bill under former attorney-general Atkinson. The opposition decided in May not to support the passage of the bill until the submissions to the public consultation on the bill are made available. This is a recurring theme under this government. In fact, I will remind council that earlier today we had issues of consultation in relation to the directors' liability bill, where the government had failed to consult with the people who were going to actually experience the legislation. We were told that because a national organisation had community consulted on the principles, the local people did not need to be consulted on the details of the legislation; they lost that right.

We also had that issue in relation to the previous legislation, the Development (Building Rules Consent—Disability Access) Amendment Bill. We also had the farcical situation of the minister informing us at the third reading stage, where members had no opportunity to unpack the advice given, that Minda, one of the most significant disability service providers, had not even been consulted in relation to the legislation. Of course, the question that that raises for us is: if the government botched the consultation so poorly that it was not even willing to consult a major disability service provider, what other entities in the disability sector had not been consulted?

As if to provide us with a trifecta, this bill also raises significant issues in terms of the failure to consult. The Attorney-General is very sensitive on the issue of consultation. Earlier this year, I highlighted how many matters he had out for review and how many matters there were where the review process either had not concluded or had concluded but the decision had not been made.

I suspect that was one of the factors that led the Labor caucus to decide that this man was not worthy to be premier. As of February, he was touted as the putative premier, the premier-in-waiting to replace Mr Rann; then, when the knives came out and the bodies fell, it was not

Attorney-General Rau who was to take the mantle but education minister Weatherill. So even early this year, issues were raised in terms of the capacity of the minister to make a decision once he had undertaken consultation.

As I said, this bill also raises significant concerns about the capacity of the minister to consult. We made the decision not to support the bill in May—when I say 'made the decision', that was in the context of the joint party room processes of the Liberal Party—and one of the factors was that we did not believe the consultation was adequate and that we wanted to see the submissions to the public consultation on the bill made available.

The government seems to take the view that when the public makes public comments about a public bill somehow that information becomes private information of the government. The opposition does not take that view. We believe that bills are the province, if you like, of the parliament. The government, of course, through the processes of the Westminster system, is usually the group that provides legislation, but not exclusively; any member of this house can provide legislation. However, it is logical that the group of parliamentarians who have access to the bureaucracy, access to some of the best advisers on these matters, should be the group that primarily develops legislation.

But just because we allow the executive to take the lead in developing legislation does not mean that it somehow owns the process. I am quite offended, as I know other members of this house are, by the proprietorial approach this government takes to the outcomes of consultations. The Hon. Mark Parnell has raised this issue in the context of environmental consultation, and I seem to recall that the Hon. Mark Parnell and his Greens colleagues have suggested that perhaps we should develop mechanisms for promulgation of input to consultation through things such as websites.

I understand that this is a practice of some public consultation mechanisms, and in that regard I would like to make a positive comment about the Attorney-General's Department and say that I believe the practice of putting the discussion papers on the website is well established in that department. That is welcomed, but—and as I am sure the Hon. Mark Parnell would say—that is only the first step. The first step is to put out the discussion paper. The community is entitled not only to the government's perspective on what it is trying to promote but also to be part of a dialogue with other stakeholders. So I think it is important for us, as a parliament, to say to the executive, 'If you think a matter is so significant that it deserves to have public consultation, and the matter will lead to a bill in the parliament, then you should allow members of the community to have access to submissions. In particular, you should allow members of the parliament to have access to submissions.'

It may be that a website is not the best approach, but it could be a shared directory within PNSG or the provision of USBs with submissions included. It is not beyond the wit of technology to inexpensively make this material available. I know some government members will say, 'Use your rights under the Freedom of Information Act to FOI the submissions.' Well, I do not believe that that respects the principle I have already suggested to the council, which is that governments do not own these documents. It is a public consultation on a public bill headed for a public discussion in the parliament.

The government might say, 'If you don't want to do FOI, why don't you go and ask the groups what they think?' I would say to the government, 'We don't know who to ask.' Often, the key stakeholders are clear but, even then, the government did not consult with the Australian Institute of Company Directors about the directors' liability bill. This government seems to be averse to consultation per se.

Even if we can identify the key stakeholder bodies that should be consulted, who are we to say that the other 1.4 million South Australians have no interest in the bill? Who are we to say that the unintended consequences of a piece of legislation have not been identified and raised with the government by a party? The government may be choosing to ignore it, and the bill will be poorer for it.

The Hon. A. Bressington interjecting:

The Hon. S.G. WADE: The Hon. Ann Bressington disorderly interjects and exclaims, 'No!', as though this would never happen. So, I am taunted to give you an example.

The ACTING PRESIDENT (Hon. I.K. Hunter): The honourable member's interjection was out of order, as would be any response to it.

The Hon. S.G. WADE: If I were reflecting on the point: is it conceivable that the government could ever ignore public consultation that might otherwise be of interest to the parliament, I would be reminded of the progress of the summary offences weapons bill through this place. On that occasion I took the opportunity to do an FOI application, and there were a number of submissions which, to be frank, I did not expect. I did not know that the scouts association would get in contact with the government and highlight how problematic it regarded the legislation to be. I must admit that, if I was a parliamentarian discussing the summary offences weapons act, I would not think, 'Gee, I need to speak to the scouts association about this one.'

I think the fact that this government takes a proprietorial approach to public consultation—a view generally that submissions should not be provided to non-government members—means that the legislative process is all the poorer. I must admit that I have engaged the Attorney-General on this and, in principle, he has indicated his willingness to share consultation; but, time and time again, we find that we are asking for the outcomes from consultation, and they are not forthcoming. This bill is a case in point.

As I said, in May, the opposition made the decision not to support the bill until submissions to the public consultation on the bill were made available. The wisdom of that decision was highlighted by events since that time. Since that time, we have been made aware of serious doubts by industry stakeholders on the quality of the consultation. Some of the statements offered to us by industry stakeholders are directly contradictory to statements made by the Attorney-General in the other place.

Challenged with this inconsistency in the other place, the Attorney-General turned to abuse of this council. In some sort of sweet irony, he actually chose to lampoon this council for its workman-like consideration of the summary offences weapons legislation. I would defy an independent observer to look at that bill as it came into this place and look at the bill at the end of the second reading stage and come to the conclusion that it had not been improved by the work of this council. But, no, the Attorney-General, with the arrogance that can only come from a government that is tired, lazy and well past its use-by date, went into a tirade in the other place against this council. Honourable members will make their own judgement on that.

Addressing the particular issue of the inconsistency in the statements, in his second reading speech on 7 April 2011, the Attorney-General said—this is not a full quote of the speech, just an excerpt:

> In light of the significant changes to the draft bill, the revised bill was released for a further... period of public consultation in December 2010, as a result of which further adjustments have been made to the bill.
>
> During consultation on the draft bill comment has been received from over 50 respondents, including the National Community Titles Institute (NCTI), the Property Council (SA Division), the Commissioner for Consumer Affairs, the Law Society, the Legal Services Commission, the Real Estate Institute of South Australia, the Australian Institute of Conveyancers (SA Division), several strata managers and a number of strata owners.

This is the key phrase: the Attorney-General advised us there was broad support for the measures contained in this bill.

Subsequently, in the second reading speech, the Attorney-General said that the NCTI (which I remind members is the National Community Titles Institute):

> and individual body corporate managers who commented supported the proposed disclosure and insurance requirements for managers. The NCTI was concerned that the proposal to allow contracts with managers to be terminated at any time could lead to managers suing for damages for termination without cause. However, the effect of this provision is that it will prevent such litigation.

What occurred subsequently is that the opposition received a number of communications, including from the NCTI, expressing real concerns about the consultation. In fact, the representations made by those stakeholders, including the NCTI, was that it would not be fair to say that they provided broad support for the measures contained in the bill. So, faced with that situation, in July at the second reading stage of this bill in another place, the member for Bragg said:

> I rise to speak on the Statutes Amendment (Community and Strata Titles) Bill 2011 and indicate that the opposition will not be supporting the passage of this bill and, specifically, we will be seeking that the government withdraw it and undertake a substantive consultation with the stakeholders and ensure that any future bill addresses development contract enforcement. That is our position and that is what we will be asking the government to do. Its passage through this house today, therefore, given that we also can count, will not be with our blessing.
>
> The history of this legislation is that the Attorney-General tabled this bill on 7 April 2011, and there had been a draft that had been presented, apparently, for some public consultation in December 2010. One of the difficulties that the opposition has, may I say at the outset, in understanding and therefore either appreciating,

acknowledging or recognising the level of consultation in these exercises and therefore, if appropriate, our acceptance that it has either been adequate or, indeed, it is comprehensive enough to satisfy us, is that there is a complete cone of silence and shield of secrecy around who gets told what, what submissions they are invited to present and what they say.

Further in the second reading contribution, the honourable member said the following:

> We have spoken with some of the key legal stakeholders, bearing in mind that the provision of documentation from the government as to what has been received has been woefully inadequate and that is his impossible for us to make an assessment without that information.

I remind honourable members that that statement was made on 27 July and we made it clear at that point that we did not feel able to fully assess the adequacy of the consultation without the information. The government is putting its side of the story, saying, 'This is what the industry told us. Trust us,' but it has not provided that information to the Liberal team in the Legislative Council. Further in the honourable member's contribution, she said:

> I ask the Attorney-General to provide the opposition with the submissions that have been received so that we may properly assess what may be beneficial support for some of the introduced reforms of the government and enable us to properly consider this bill.

That is the third example of the opposition requesting the consultation material. Later in the contribution the honourable member for Bragg made the following comment that the Attorney-General's comment:

> highlights the importance of all members—

and I take it from this that the member was talking about all members of parliament—

> having the opportunity to view these submissions and be able to generally consult and nut out where we might make improvement (and everything can always be looked at from the perspective of improvement), where the ills are that need to be remedied and how we might practically apply that.

So, that is the fourth example of the opposition in the other place asking for disclosure. That one is my favourite because it is more respectful to the non-opposition members of the parliament because she is explicit in saying that it is for all members. I would stress this: this is not just a matter of the opposition and the government swapping papers as though they were litigants in a court case.

As I said earlier, I think there is value, where appropriate, in consultation submissions going onto websites. I know that some of our parliamentary committees have that practice, and I think it is good to have that public dialogue. However, particularly in relation to parliamentary business, I think that all parliamentarians are entitled access to relevant information. They should not have to rely on FOI. To be frank, if we all had to rely on FOI to get hold of all government submissions we would need more than just one room and one Parliament House.

We as an opposition think that this is yet another example of the government failing to consult, which is making it extremely difficult for us as parliamentarians and legislators to do our job. I reiterate the request made on at least three occasions by the member for Bragg in the other place. I note that those four requests were made on 27 July 2011, which is six or seven weeks ago. The opposition has not received any further information or documentation in response to our requests, so we are not in any better position to assess the adequacy of consultation or, for that matter, to balance the merits of the government's proposals versus the industry proposals.

We will be seeking the support of other members of council to insist on full disclosure, not just to the opposition but to all members of the council who are interested. In that context, I would urge the government, if the government is serious about this piece of legislation finding its way onto the statute book, to expeditiously facilitate access by members of the opposition and other members of this council so that due consideration can be given. With those remarks, I seek leave to continue my remarks.

Leave granted; debate adjourned.

CRIMINAL ASSETS CONFISCATION (PRESCRIBED DRUG OFFENDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September 2011.)

The Hon. M. PARNELL (17:37): This bill proposes that where a person has been convicted of at least three serious drug offences over 10 years they will forfeit everything they own, regardless of whether that property had anything to do with the crime or the offending. The Greens

strongly oppose this legislation. It is draconian, it is diabolical, it is unfair and it infringes many legal principles, not the least of which is that punishment for criminal acts should be appropriate and proportionate.

The Greens are not alone in forming this view. The Law Society has provided all members with a very considered submission that does not mince its words. We are used to seeing submissions from the Law Society that strongly advocate a position in defence of the rule of law, due process and justice. The language is usually mild, but this particular submission from the Law Society does not mince its words. The submission was supplied to all members, so they will be familiar with it, but I am going to read some extracts from it anyway. The Law Society states:

> The Bill seeks to deprive offenders of their assets where there is no connection between the commission of the offence and the receipt of any income or benefit therefrom. Indeed, the fact that no income or benefit was derived is irrelevant. The assets are still subject to forfeiture.
>
> To the extent the Bill so deprives offenders, the Society does not support the bill. Indeed, the Society wishes to express its opposition in the strongest terms.
>
> The Bill is inimical to a free society which applies the rule of law and encourages the citizen to be self-sufficient. To say that it is draconian only tells a fraction of the story. A citizen should not be deprived of his or her lawfully acquired assets because he commits an offence.

I note that the government's main reason for bringing in this bill is that it promised to do so at the last election. I am happy to say that I would be delighted for this to be a broken promise, and I will not criticise the government for it. This is a bad idea and the government should dump it. The Greens' opposition to this bill has absolutely nothing to do with the types of offences that are identified as the trigger for the total confiscation of an offender's assets. The offences that trigger this confiscation are all serious crimes and they deserve to be punished appropriately. In fact, the crimes listed all do attract significant penalties, including gaol terms of up to life imprisonment.

Whilst the government will no doubt claim that any opposition to this bill is somehow people being soft on drugs, I need to say—and I think I have the support of the Hon. Ann Bressington in this, who no-one can accuse of being soft on drugs—the Greens' opposition is based on higher principles, on longstanding legal standards of fairness and justice that are being absolutely trashed in this bill. These principles are conveniently outlined for all members in the Law Society's submission.

The Law Society raises a number of issues and I will deal with a few of them in some detail. First, the Law Society questions the legality of this legislation. It refers to the High Court case of International Finance Trust Company Limited against the New South Wales Crime Commission in 2009. Whilst the society does not outline in detail the precise areas of the bill it believes are most likely to be held invalid, the government should take heed of the warning and go back to the drawing board.

I remind members that the government has form in relation to getting these things very wrong. As one of only two members in this place who voted against the serious and organised crime bill, aspects of which were ultimately found to be unlawful, I think I am entitled to raise my doubts again in relation to this bill. What legal advice does the minister have that this bill will not go the way of other draconian bills and be the subject of legal challenge and disallowance in the courts?

The Law Society points out that there is no requirement for there to be any nexus between the penalty, that is, the loss of all one's assets, and the offending. That approach does offend the principle of the penalty being appropriate and proportionate to the crime that has been committed. The Law Society points out that this bill effectively provides for an additional penalty to that which has been set by statute as the appropriate response to this offending. The Law Society says that:

> It is patently unjust and unfair for a citizen to be given an additional punishment for an offence above that for the actual offending, let alone one of losing their lawfully acquired assets. Not only is there no nexus to the assets, but there is no quantitative formula or basis that applies in assessing the value of the assets that should be forfeited. In truth, there could be no quantitative formula because there is no nexus between the offending and the assets.

The Law Society also points out that the situation here needs to be contrasted with laws that we do have that relate to authorities being able to acquire the proceedings of crime or even acquire property that was used in the commission of the crime. I will come back to both those later. The point to note now is that we do in fact have a substantial raft of legal tools that enable the authorities to acquire ill-gotten gains and in fact to acquire property used in the commission of offences. Members would be well aware, for example, certainly of cases involving money derived

from drugs or theft but also even those who are caught poaching abalone who would find their boats and other property confiscated.

The government points out, as one of its justifications for this legislation, that it has been done elsewhere and it invites us to be part of a race to the bottom. In the minister's second reading explanation there is a remarkable passage that I think we are supposed to take from it that the government is exercising an act of kindness in the fact that it will not take absolutely every single thing that a person owns.

What the minister said in the second reading explanation, when he referred to the scheme in Western Australia and the Northern Territory, was:

> Under the WA scheme and its counterpart in the Northern Territory, all of the declared drug trafficker's assets are subject to forfeiture. Absolutely everything. Baby clothes, washing machine, garden hose, children's toys—the lot.

The minister then goes on:

> So, in order to ameliorate the harshness of the scheme, it is proposed that the prescribed trafficker forfeit everything except what a bankrupt would be allowed to keep.

It then sets out where you can find that list of basic necessities of life that a bankrupt can keep. That does not really tell the whole story, because there was a sentence in there that I left out and that is a sentence which basically gives you the true reason why the government is not going down the absolutely draconian path of the WA and the Northern Territory and that is:

> The Government has taken the view that, under the current attitude of the High Court, such a scheme is, if challenged, likely to be held unconstitutional.

That is remarkable, that the government is itching to take baby clothes, washing machines and garden hoses and the only reason they are not doing it is because they are worried that the pesky High Court—the pesky court that has recently declared their Malaysia solution invalid—may well declare that taking absolutely every single thing a person owns and leaving them naked in the street might be unconstitutional and, therefore, they could not go quite that far. What a remarkable thing for a government to say.

The Law Society also points out that the legislation before us is discriminatory; that is, that it discriminates against those who have actually acquired some property against those offenders who have absolutely no assets at all. The Law Society points out that a range of innocent third parties will become victims under this legislation. Children will become homeless when their parents' home is confiscated under this legislation. They will be deprived of their means of transport. They may be deprived of their tricycles and bicycles, if those are owned by the drug offender. In fact, it is beyond comprehension that a government could see that this is a good thing to be doing to affect innocent third parties, in particular children, in this way.

The Law Society points out a range of existing provisions that apply, including provisions that relate to the proceeds of crime being attached and also unexplained wealth. In fact, I support measures that do attach unexplained wealth, even though that is on the edge a little bit, the fact that a person can have assets taken from them even though there might not be absolute direct proof that those assets were acquired through the commission of an offence, but I think there is a place for unexplained wealth.

If a person cannot explain why it is they had millions in their bank or why they had this portfolio of shares, then I think there is a case to say that in the absence of an explanation a presumption in favour of the fact that it might be the proceeds of crime can be drawn, but this does not go anywhere near that. This is saying: if you commit these offences and you own something, it is gone, it is taken. It does not matter that it was your hard-earned life savings, it does not matter that it was a bequest from your late grandmother, it does not matter where it came from, it is going to be taken.

The Law Society also points out that there is a complete lack of due process in relation to the ability to challenge any such order. Your property is taken from you and you do not have any right of appeal or challenge.

There are a number of other things that I will not go into in detail. I think members get the idea that the Greens are not happy with this bill. We will not be supporting the bill, and we will be opposing the bill. Having said that, there are a number of amendments on file—certainly the ones I have seen from the opposition—which seek to remove the draconian elements and leave in place

some very minor inoffensive provisions. We will consider those amendments; that might be the way to go.

Certainly, the way in which this bill has been drafted, it looks to be very close to beyond redemption. We will keep an open mind in relation to the amendments, but certainly it is not in anything like the form the Greens would be able to support. We will be opposing this bill at the second reading and then we will see whether it goes further.

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

LEGAL SERVICES COMMISSION (CHARGES ON LAND) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 September 2011.)

The Hon. S.G. WADE (17:51): I rise to speak on the Legal Services Commission (Charges on Land) Amendment Bill 2011, which was introduced in the House of Assembly by the Attorney-General on 8 June 2011.

The bill amends section 18A of the Legal Services Commission Act 1977 to confirm the status of the Legal Services Commission's statutory charge over land under the Real Property Act 1886 and so remove potential impediments to the recovery of legal aid costs secured by such charges. As a matter of convenience, I will now refer to the Legal Services Commission as 'the commission'.

The bill amends section 18A of the Legal Services Commission Act 1977 because of concerns that have been raised about the impact of that provision. Currently, the commission notifies the Registrar-General of a charge over land so that it is noted on the title, and the Registrar-General registers that notice by entering a memorandum of charge in the register book or the register of crown leases.

If there is a default in the payment of the contribution, the commission has the same powers of sale over the charged land as a mortgagee would have under the Real Property Act 1886 in respect of a mortgage where there has been a default in payment of the principle. However, uncertainty about the status of the charge may impede the commission's ability to recover the costs secured by the charge when it is sold by the holder of another interest registered on the title. The purpose of this bill is to remove that uncertainty.

The doubt arises from the fact that, despite the purpose of section 18A (that is, that the charge be treated as an interest registered under the Real Property Act 1886), the recording of the memorandum of charge by the Registrar-General does not of itself amount to registration of the charge under the Real Property Act 1886. This has resulted on occasion in disputes over the commission's entitlement under the Real Property Act to share in the proceeds of the sale of the charged land by a prior registered mortgagee or encumbrance. Continuing uncertainty may diminish the effectiveness of the charge.

While the government claims that there have been disputes, in briefings we had from the government, the government was not able to advise of us of whether it was aware of any lost revenue or any court cases resulting from the uncertainty. Be that as it may, we do not oppose the legislation on the grounds of no justifiable need. We are happy to consider it as whether or not it improves the law. However, on the basis of these facts, there seems to be no basis for the commission's estimate that the enactment of these amendments would result in an annual 5 per cent increase in the average amount of legal aid costs secured by the charge that it recovers.

If honourable members were inclined to be persuaded on the basis of a revenue increase to the government, I would ask them to reflect on the fact that that revenue may be spurious because, as I said, the government was not aware of any lost revenue or even a court case. You would think that at least a court case that was then won might well have highlighted a risk but, no, we were not even offered one of those. The solution taken by this bill is to clarify that the statutory charge be taken to be a registered interest on the title and, as such, to have priority with respect to other interests that is consistent with the scheme of registration and the Real Property Act.

The amendments will have retrospective effect. The government argues that that is to avoid confusion arising from an inconsistency in the priority rules for mortgages registered after a statutory charge, depending on whether they are registered before or after the commencement of the legislation. Isn't that cute? The best way to justify retrospective legislation is to say, 'Well, wouldn't it be confusing for people to be charged under one set of laws today and another set of

laws yesterday?' In that comment, the government fails to recognise the fundamental principles in relation to retrospectivity and the law.

In that context, I know honourable members are asking, 'Well, what is wrong with retrospectivity?' I would remind those honourable members that retrospectivity is a longstanding offensive aspect of legislation. As Helen Irving so accurately described in the *Macquarie Law Journal*:

> Amongst other things, the rule of law requires that laws should regulate conduct prospectively. Persons must be able to shape their future conduct with knowledge of, and in anticipation of, its conformity to the law. Retrospective laws militate against this. They render the character of the law both uncertain and possibly arbitrary.

It does not take long to think about the impact a failure to observe retrospectivity could have on the daily lives of South Australians. If South Australians were not merely assumed to the know the laws on the statute book but had to actually anticipate what the South Australian parliament might legislate in the future for fear that they might fall foul of a future law with retrospective effect, the inhibiting effect on the lives of South Australians to go about their lawful business would be acute. That is why English, Australian and other common law jurisdictions around the world have upheld the sanctity of avoiding retrospectivity wherever possible.

It is not surprising in the context of these principles and of this legislation that the Law Society took the opportunity to raise the issue of retrospectivity. In a letter dated 20 June 2011, the Law Society raised its concerns in the following terms:

> In the Society's view, such retrospectivity would be unfair to mortgagees or encumbrancees who have existing registered interests that are subsequent to the Commission charges. The amendments made by this Bill will have the effect of entitling the Commission to a distribution of sale proceeds under section 135 of the Real Property Act in priority to subsequent mortgagees and encumbrancees. That entitlement does not exist at present. Existing mortgagees and encumbrancees should be entitled to rely on the legal position as it was at the time they registered their mortgages or encumbrances. They may have advanced loans or incurred other detriment on the basis that their entitlement to sale proceeds would not be postponed to a prior Commission charge, as is the current position.

That is a practical application of the mischief of retrospectivity highlighted in relation to this bill, and I thank the society, as always, for its learned advice. The society went on to note the statement of the Attorney-General in his second reading explanation in the other place in relation this bill, where he said:

> Without such a transition provision, there would be an inconsistency in the priority rules for mortgages registered after a statutory charge, depending on whether they are registered before or after the commencement of the amending legislation, and this might cause confusion in years to come.

The Law Society suggests that any such confusion could readily be avoided if new commission charges, following the commencement of the amendments, are endorsed on titles by the Registrar-General in a manner that differs from endorsements of such charges under the former legislation.

For example, the new charges could be described as 'charge in the nature of mortgage'. This would make the status of such a charge perfectly clear and would distinguish it from ones registered under the previous legislation. I regard that as a polite response to the Attorney-General; a more blunt response might be that I think South Australians would rather suffer with some element of confusion than have their legal rights changed midstream, to have their decisions made on the basis of one set of facts impugned because the government chose to move the goalposts mid-process.

We as an opposition certainly are concerned to support a certainty of the law because it is a fundamental principle of the rule of law. Unless there is a significant reason to move from the principle against retrospectivity, we will resist doing so. As the member for Bragg mentioned in the other place, we have sought information, we have given the government the opportunity to justify retrospectivity. We do accept that, from time to time, it is necessary. However, no such justification has been provided to date in relation to this bill so accordingly we will be moving an amendment to remove retrospectivity.

I also want to take the opportunity to question the treatment of the statutory charge as an encumbrance under this bill. This issue was highlighted to the opposition again by the Law Society, so it seems apt to quote from the society's letter:

> Section 135 of the *Real Property Act* deals with the appropriation of the proceeds of a sale of land by a mortgagee and, for that purpose, makes no distinction between subsequent mortgagees or encumbrancees in the way those proceeds are to be distributed.

On the other hand, s 135A applies only to encumbrances and contemplates situations in which long-term obligations to pay annuities or rent-charges may exist under an encumbrance. Such obligations might not be satisfied by one-off payment, as would be possible with a debt secured by a mortgage. To meet such circumstances, s 135A sets up a procedure whereby surplus sale proceeds are to be paid to the Public Trustee upon trust to satisfy the accruing payments of the annuity, rent-charge or other sum secured by the encumbrance.

I draw attention to the society's query as to the relevance of the encumbrance-related provisions of section 135A to charges lodged by the commissioner as security for payment of legal aid costs. In its view, liability for payment of legal aid costs is surely more akin to a debt secured by a mortgage than to the kinds of ongoing obligations that are secured by encumbrances, such as payment of annuities and rent-charges.

So I ask the minister: why does the bill treat the statutory charge as an encumbrance rather than a mortgage? The opposition would be appreciative if the government could provide an answer to this question before the second reading of the bill so that we can consider the response before we proceed to committee. With those remarks, I indicate that the Liberal Party looks forward to the committee stage and looks forward to a bill that is fair to all passing in this place.

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

CRIMINAL LAW (SENTENCING) (SENTENCING CONSIDERATIONS) AMENDMENT BILL

Second reading.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (18:04): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill regulates and makes transparent sentencing discounts given to offenders who plead guilty or offer assistance to the authorities.

The Bill has two primary objectives. Firstly, it is intended to improve the operation and effectiveness of the criminal justice system by reducing current delays and backlogs in cases coming to trial. It encourages offenders who are minded to plead guilty, to do so in a timely way. Secondly, it is intended to encourage offenders to assist the authorities in the administration of justice, for example if they provide valuable assistance in the context of serious and organised crime.

The Bill identifies three pivotal stages in major indictable cases which are the core around which provision for discount for guilty pleas can be made. The Bill provides for a modified and simplified two stage process for matters dealt with summarily, to reflect the different nature of the typical summary case and operational considerations in the Magistrates' Court.

The Bill provides for a graduated series of discounts for pleas of guilty and/or co-operation with the authorities. The quantum of the discounts are dependent upon the timing of the guilty plea and the nature of the co-operation with the authorities. The earlier the plea, the more significant the discount. The Bill restricts the conferral of discounts for late guilty pleas. Any perception that offenders will escape their 'just desserts' and appropriate punishment by pleading guilty and/or co-operating with the authorities is mistaken.

The figures for the discounts in the Bill are not intended to be overly rigid or mechanically applied. They provide the upper limit at which a discount for a guilty plea and/or co-operation with the authorities can be set. Though there may be debate as to what should be the precise quantum of the upper limits, the figures in the Bill are not overly generous. They are consistent with existing and established judicial sentencing practice. What the Bill achieves is the codification of the rule that the earlier the guilty plea the greater the discount. It limits the freedom of the courts in providing discounts in sentencing.

The Bill is a carefully thought out, comprehensive and balanced measure. The major effect of the Bill is to make transparent and regulate what already happens in the State's criminal courts on a daily basis. In fact in the criminal courts of the entire nation.

Consultation

The Bill draws on recommendations made by His Honour Judge Rice of the District Court some years ago and later the Criminal Justice Ministerial Taskforce (CJMT). At the relevant time, the Criminal Justice Ministerial Taskforce was chaired by the then Solicitor-General (now Justice) Chris Kourakis QC and comprised the Commissioner for Victims' Rights and representatives from the Office of the Director of Public Prosecutions, the Office of the Commonwealth DPP (Adelaide), South Australian Police, the Law Society, the Bar Association, the Legal Services Commission, Aboriginal Legal Rights Movement, the Department of Treasury and Finance and the Attorney-General's Department. The Courts Administration Authority was represented in an observer capacity.

In its first report, the CJMT highlighted the need to reform and rationalise the recognition to be given to offenders for guilty pleas. Amongst its recommendations was the introduction of a graduated series of sentence discounts to offer incentives for accused persons to plead guilty at an early stage.

The Bill has been the subject of an exhaustive consultation process with many expert commentators. The draft Bill was placed on the Attorney-General's Department website and public comment was invited. The final version of the Bill has been the subject of further comment by the heads of the judiciary, and the Joint Courts Criminal Legislation Committee.

The original draft Bill was specifically sent for comment to a range of interested parties. Comment on the draft Bill was received from the Chief Justice, the Joint Courts Criminal Legislation Committee; the Chief Judge; the Chief Magistrate; the Senior Judge of the Industrial Court; the Senior Judge of the Environment, Resources and Development Court; the Senior Judge of the Youth Court, the Law Society, the State DPP, the Commonwealth DPP, the Legal Services Commission, the Victim Support Service, Prisoners Advocacy, the Commissioner for Victims' Rights, the Police Commissioner, the Bar Association and Volunteering SA. The Solicitor-General for South Australia, Mr Martin Hinton QC, a very experienced criminal lawyer, provided invaluable advice to the Government and officers of the Attorney-General's Department in finalising the Bill.

The result of the consultation process was inevitably mixed. Though there was near unanimous support for the Government's objectives to encourage early guilty pleas and to improve the effectiveness of the criminal justice process, there was an inevitable difference of emphasis in how this should be attained. On the one hand some parties considered that the figures for the discounts in the Bill are too generous while on the other hand some respondents considered that the figures are too low and that the Bill is too restrictive of judicial discretion, especially in relation to guilty pleas entered just before trial.

Certain issues regarding the practical operation of the Bill and its wording were raised, both in the initial and the follow up consultation processes. As far as possible without undermining the objectives of the Bill, these concerns (especially as raised by the judiciary) have been taken into account in the drafting of the final Bill.

The problem

The increasing backlogs and delays in cases coming up for trial in South Australian higher courts have been a major and longstanding concern. If allowed to continue, this trend will seriously erode public confidence in the criminal justice system and cause major problems in the administration of criminal justice. It is a well known and apt maxim that 'justice delayed is justice denied'. This applies equally to victims and witnesses as well as defendants.

The situation in the criminal trial list is not acceptable. In most years the number of new criminal cases received in higher courts has exceeded the number of cases finalised. The number of criminal cases still 'in the system' has therefore significantly increased. The 2009-2010 Courts Administration Authority Annual Report confirmed that although the number of new cases received at the District Court had remained largely steady from the previous year, the number of criminal trials listed but not heard at both the Supreme Court and the District Court had actually increased despite more cases being dealt with and concluded during the year in the District Court. The increased number of cases finalised in the District Court is insufficient to reduce the current lengthy backlog of cases pending in that court.

Efficiency in the system is the responsibility of all those that participate in it. No one participant can solve the problem acting alone, It is for this reason that the Government will continue to look at a range of measures designed to contribute to the efficient administration of the criminal justice system without compromising justice.

The impact of the problem

Some of the many aspects of the undesirable consequences of long delays include:

- Increased risk of offenders escaping justice through attrition of witnesses including deterioration of witnesses' recollection of key events over time.
- Compounding of the well known adverse psychological effects on victims of crime with delays inherently extending the period of anxiety for victims awaiting participation in trials and the giving of evidence.
- Increased legal aid and public prosecution costs as current protracted criminal procedure provides for many pre-trial hearings.
- Increased prisoner time spent on remand by people who either will not get a sentence of imprisonment at all or who will be sentenced to imprisonment for a period equal to or less than that spent on remand—at a well-known cost to the correctional system.
- Police and prosecution and defence (especially the Legal Services Commission) resources devoted to preparing and processing cases unnecessarily for trial, when those limited resources could be better devoted elsewhere.
- Unproductive use of limited judicial time and resources, especially reserving courts for trials that ultimately turn out to be non-effective.

A guilty plea just before trial is especially undesirable as it magnifies many of the adverse effects of delay. The longer a case remains in the courts' list, the greater the delay it causes in other cases being reached. Consequently, getting cases out of the list should contribute to a reduction in delay.

What causes the problem

The number and timing of not guilty pleas has been clearly identified as a major, though not the sole, contributor to delays and inefficiencies in the criminal trial process. At common law there may be a reduction in sentence for an early plea of guilty. In *R v Place* (2002) 81 SASR 395 at 412-413 the Court of Criminal Appeal endorsed an earlier statement by Chief Justice King about the importance of a discount for a plea of guilty and the rationale for such a discount:

> 'This Court of Criminal Appeal has stressed the importance of the discount for a plea of guilty in the administration of justice. It is intended to encourage guilty persons to admit their guilt, instead of putting the State to the cost and trouble of a criminal trial and thereby contributing to the congestion of the criminal lists. This is an important public policy consideration, and judges are to be encouraged to foster an awareness amongst people charged with criminal offences, and those who advise them, of the advantage to be gained by a guilty person by acknowledging his guilt at the first reasonable opportunity.'

The present practice in relation to reducing sentences by reason of a guilty plea is unsatisfactory. An offender who pleads guilty to an offence before trial will attract a sentence discount varying in quantum but generally up to a third where the defendant pleads guilty at the first opportunity and up to 50 per cent where the defendant pleads guilty at the first opportunity and gives evidence for the Crown.

Over recent years it appears that the requirement the plea be early is sometimes overlooked. Reductions of 20 per cent and 25 per cent are not uncommon for pleas entered within a few weeks of trial and defendants even receive significant discounts for a guilty plea literally entered at the doors of court on the day of trial. There does not appear to be sufficient difference between the reductions for early guilty pleas and those much closer to trial. The trend of belated guilty pleas is undesirable and should be actively discouraged. Late guilty pleas represent a wasteful use of limited public and judicial resources and are unhelpful to all the parties in the criminal justice process, including defendants.

A guilty plea is far swifter to progress and finalise than a criminal trial. Clearly, any defendant is entitled to plead not guilty and to insist that the State prove his or her guilt beyond reasonable doubt. But what is a source of considerable and particular concern is the continuing substantial number of defendants who plead not guilty initially and are committed for trial, only to plead later in the proceedings, often literally at the doors of court on the day of trial.

The State DPP has noted that in 2008-2009 late guilty pleas were the cause of 188 of the 686 fixed higher court trial dates that had to be vacated. This represented over a quarter of the higher court trials that did not proceed. In 2009-2010 late guilty pleas were the cause of 308 of the 883 fixed higher court trial dates that had to be vacated. This amounts to well over a third of the higher court trials that did not proceed to trial. Over half of the defendants who are sentenced in the District Court, only plead guilty at the District Court and not in the Magistrates' Court at committal. This all represents a considerable waste of limited court, prosecution, police, forensic science, Legal Services Commission and prison resources. The situation places major pressures on the operation of the District Court and other agencies, and contributes to South Australia's high rate of prisoners on remand. It is common for trials to take well over a year from committal to be heard.

The problem of court delays is acute and complex. There is no simple answer. It is clear that additional resources, (even if available), would not, of itself, solve the problem. The Government has already increased the number of District Court Judges and provided additional courtrooms in an attempt to alleviate the problems. It is timely and appropriate to consider other avenues such as encouraging early guilty pleas through this Bill and other linked measures to improve court effectiveness.

The Bill in detail

The Bill has a number of major features and, where appropriate, provides for a different application in matters heard summarily compared to those dealt with in higher courts, to reflect the different procedures for those matters.

The Bill provides, in all cases, a discount of up to 40 per cent for pleading guilty within four weeks of the defendant's first scheduled appearance, whether in person or through a legal or other representative, in a court in relation to the case. The accused will be admitting his or her guilt at the earliest opportunity. This discount applies to all offences. It is expressly contemplated on the basis that the prosecution will not have effected full disclosure of its case. There will be some offenders who will be willing to plead guilty without sight or consideration of the prosecution's detailed evidence. More often than not a summary of the alleged offence, an 'apprehension report', will be the only information available. The accused will be admitting his or her guilt at the earliest opportunity and the police or other investigative agency will be spared the time consuming task of compiling a brief of evidence that would otherwise be required. This higher discount is expressly confined to this class of case and can only be varied in narrow circumstances, namely that a court was not available within the four week period to take the plea.

For matters not dealt with summarily, the committal is another suitable focal point under existing legislation and practice for the accused to be properly expected to offer a meaningful and informed decision as to plea. At present it is clear that far too many offenders plead not guilty at committal, only to plead guilty later in the proceedings. The encouragement and expectation should be for those defendants, who are likely to plead guilty in respect of major indictable offences, to do so, before or at committal and not at some later date.

The Bill provides for a discount of up to 30 per cent for a guilty plea after four weeks from the defendant's first scheduled appearance but before the committal for trial. This will typically be after the prosecution has completed the bulk of its investigation and supplied the bulk of its evidence to the defence and defence lawyers are in an informed position to advise their client as to the strength of the prosecution case and to the appropriate pleas.

The Bill provides for a discount of up to 20 per cent for a guilty plea in the period after committal and up to 12 weeks from the arraignment date set at committal. This discount is not absolute and a limited exception is provided in the Bill. This third stage of 12 weeks after the arraignment date accords with the view expressed in the consultation process. This third stage is designed to maximise effective court listing and to tackle the all too common present practice of belated guilty pleas. For those offenders who are still likely to ultimately plead guilty but who have not already done so within four weeks of charge or at committal, then the third focal point is designed as a final 'filter' to catch such defendants and encourage them to plead guilty before the considerable inevitable final effort involved in preparing for trial.

Under the Bill, there will ordinarily be no discount in the higher courts if the guilty plea is entered in the period after 12 weeks of the first arraignment date and up to, and including, the first trial date. A limited exception is provided in the Bill where a court is satisfied that the only reason that the defendant did not plead guilty within the relevant period was because the court did not sit during that period; the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or the court was, because of reasons outside of the control of the defendant, unable to hear the defendant's matter during that period. The Bill aims to deter late guilty pleas by precluding any discount after the third stage unless the exception is satisfied.

There may be assertions in favour of retaining a small discount after the cut off date and it may be said there is still some utilitarian value in a guilty plea, no matter how late. This point was raised during the consultation process. However, after careful consideration this argument was not accepted. There is a need for a strict approach in this area. The firm policy of the Bill is to discourage the all too common present practice of defendants pleading guilty just before the trial. It is considered that in order to tackle this culture that a point in time long before a listed trial date should be the cut off for a discount in the ordinary course of events. This will facilitate the aim of the Bill in achieving cost savings and efficiencies through early guilty pleas. The retention of even a minimal discretion for a late guilty plea up to the trial date would undermine the policy behind the Bill.

The timing of the stages for pleading guilty in the higher courts will be capable of variation by Regulation. This is if, as is quite possible, working and listing practices and pressures in the higher courts should change in due course. It is more efficient that the periods can be changed to reflect these practices and pressures by Regulation as opposed to having to return to Parliament to change the periods. There is a need for the law to be responsive in this regard.

The Magistrates' Court is the workhorse of the criminal justice system and deals with over 90 per cent of criminal cases. The Bill provides for a simplified regime to reflect the differing practices and pressures applying where matters are dealt with summarily. The Bill provides for a discount of up to 30 per cent for a guilty plea after four weeks of the first scheduled appearance, whether in person and/or through a legal or other representative, but before four weeks of the first date set for trial for matters dealt with summarily. This will typically be after the prosecution has satisfied its pre-trial obligations of disclosure so that any defence lawyers are in a position to advise their client as to the strength of the prosecution case and the appropriate pleas.

The Bill provides that no discount is permitted for matters dealt with summarily if the guilty plea is entered in the four weeks before the first trial date. A limited exception is provided in the Bill.

As with the higher courts, the timing of these stages in the Magistrates Courts will be capable of variation by Regulation. This is if, as is quite possible, working and listing practices and pressures in the Magistrates Courts should change in due course. As with the higher courts, it is more efficient that the periods can be changed to reflect these practices and pressures by Regulation as opposed to having to return to Parliament to change the periods.

If the delay in any case in the accused pleading guilty is beyond his or her control and he or she has pleaded guilty at the earliest practicable opportunity, the court will still have a limited discretion to confer a discount up to 30 per cent. This exception cannot usefully be further defined. It may, for example, be due to the late service of important evidence that has a major bearing on the strength of the prosecution case. The plea of the accused may be accepted to a lesser or alternative offence. The accused may even have provided a firm and reliable offer to have pleaded guilty to a lesser offence to the court and the prosecution, but the prosecution rejected that proposal with the result that the case proceeded to trial but the accused was ultimately convicted of only the lesser offence to which he or she had previously offered to plead guilty to. The reason for the delay in pleading guilty may even be due to others such as the court. The reason for the delay may not lie with either the accused or his or her lawyers for the discount to be available. The onus is on the accused to satisfy the court that this exception is made out It is not contemplated that this will require lengthy hearings or the calling of witnesses to resolve. Indeed, it is contemplated that, in most cases, this will be capable of being achieved either 'on the papers' or on the basis of counsel's submissions without the calling of any evidence.

The Bill contains an overriding provision for the court to be able to decline to provide all or part of a discount for a guilty plea within the above ranges having regard to public interest considerations, namely where the gravity of the offence and/or the circumstances of the accused are such that the sentence that would arise from conferring the discount would be so inadequate as to 'shock the public conscience'. This expression is not new and is consistent with that already used in governing prosecution appeals against sentence. It is expected that the use of this provision will be rare but it is a necessary provision to make very clear that the courts discretion is to award up to the level of the discount – it need not award the level of discount, especially for the most repugnant offender or offences. In fact, it need not award a discount at all if the circumstances demand such a course.

The Bill also allows a discount of up to 40 per cent for pleading guilty and effective co-operation with the authorities, whether by providing helpful and significant information and/or testifying on behalf of the prosecution. This is consistent with existing judicial practice. The courts have long since recognised that the concept of 'honour amongst thieves' is one that should be actively discouraged (see *R v Golding* (1980) 24 SASR 161).

The Bill includes a provision for a discount of up to 20 per cent for effective co-operation with the authorities, whether by providing helpful and significant information and/or testifying on behalf of the prosecution, but where the accused pleads not guilty. This too accords with current practice.

The Bill includes the allowance of an overriding discount of over 40 per cent in 'exceptional' circumstances at the absolute discretion of the court for pleading guilty and co-operating where the nature of the case, the value of the co-operation and the testimony, the risk to the accused and his family and the potential consequences to him or her in prison are such as to justify departure in the public interest from the normal upper limit of 40 per cent. This clause has been the subject of much thought. This provision is particularly aimed at offenders who give information and testify in the prosecution of cases involving serious and organised crime. These will be persons who, at considerable risk to themselves and their families, have provided valuable assistance to the authorities, generally through testifying, that has enabled major criminals involved in offending of the utmost gravity to be brought to justice. It is likely that, without the assistance of these persons, these offenders would not have been able to be brought to justice.

Whilst the Bill aims to encourage co-operation by offenders, it is especially targeted to encourage exceptional co-operation from those involved in, or with knowledge of, serious and organised crime. Hence the distinction in the Bill between 'normal' co-operation where the maximum permissible discount is 40 per cent and 'exceptional' co-operation where the possible discount is at large.

There may be unease about the prospect of criminals receiving a lesser sentence for informing on their erstwhile criminal associates but the offer of a discount in sentence in return for assisting the authorities is a valuable weapon in law enforcement, especially in serious and organised crime where other witnesses may be unwilling to come forward for fear of retribution. The President of the Queen's Bench Division in England in *R v P* [2007] EWCA Crim 2290 at [22] explained in strong terms, which are equally applicable to Australia (see *R v Cartwright* (1989) 17 NSWLR 243 at 252), the strong public interest in favour of encouraging offenders to come forward and co-operate fully with the authorities, especially to the 'Mr Bigs' of the underworld:

> 'There has never been, and never will be, much enthusiasm about a process by which criminals receive lower sentences than they otherwise would deserve because they have informed on or given evidence against those who participated in the same or linked crimes, or in relation to crimes in which they had no personal involvement, but about which they had provided useful information to the investigating authorities. However, like the process which provides for a reduced sentence following a guilty plea, this is a longstanding and entirely pragmatic convention. The stark reality is that without it major criminals who should be convicted and sentenced for offences of the utmost seriousness might, and in many cases, certainly would escape justice. Moreover, the very existence of this process, and the risk that an individual for his own selfish motives may provide incriminating evidence, provides something of a check against the belief, deliberately fostered to increase their power, that gangs of criminals, and in particular the leaders of such gangs are untouchable and beyond the reach of justice. the greatest disincentive to the provision of assistance to the authorities is an understandable fear of consequent reprisals. Those who do assist the prosecution are liable to violent ill-treatment by fellow prisoners generally, but quite apart from the inevitable pressures on them while they are serving their sentences, the stark reality is that who betray major criminals face torture and execution. The solitary incentive to encourage co-operation is provided by a reduced sentence, and the common law and now statute, have accepted that this is a price worth paying to achieve the overwhelming and recurring public interest that major criminals, in particular, should be caught and prosecuted to conviction.'

The Bill includes a specific provision allowing an offender to be resentenced if he or she promises to co-operate with the authorities and is sentenced on that basis but later fails to satisfactorily honour his or her side of the arrangement. He or she should be resentenced but on the basis of the sentence that they would have received but for the original deduction for the promise of co-operation with the authorities.

The Bill does not allow an aggregation of the combined discounts for a plea of guilty and co-operation with the authorities. If an accused should both plead guilty at an early stage and offer significant co-operation at an early stage, the maximum discount, in the absence of exceptional co-operation, remains at 40 per cent.

It is not intended that the Bill will affect the general way in which the criminal courts go about formulating the correct sentence applicable in any given case. The High Court, in cases like *R v Wong* (2001) 207 CLR 584 and *R v Makarian* (2005) 228 CLR 357, has said that the correct method for determining an appropriate sentence was by a process of 'instinctive syntheses' of all the relevant circumstances. The Bill is not intended to displace or overturn this approach to sentencing. The Bill only modifies this approach to the extent that it requires the court to state in its sentence the amount of any discount that it is providing to reflect the guilty plea and/or co-operation with the authorities. The Bill does not require the court to go beyond this and to state any discount for any other mitigating factor.

The Bill retains the existing requirement that the court in determining sentence may not have regard to the fact that a mandatory minimum sentence is prescribed for the offence, even though it may result in the court fixing a longer non-parole period than the court might think was otherwise appropriate in the circumstances. This especially arises with respect to the general 20 year non-parole period provided for offences of murder. The policy and content of this requirement has been discussed by the Court of Appeal in its recent decision in *R v A* [2011] SASCFC 5. The Government will carefully consider its position on this important issue and respond to the court's judgement in due course. The present Bill is not the appropriate vehicle to reconsider the issue of mandatory non-parole periods, especially in respect of murder.

The Bill finally includes some limited 'tidying up' of s 10 of the *Criminal Law (Sentencing) Act* and consequential amendment as a result of the consultation process to clarify the operation of two provisions. The Bill

uses this opportunity to 'tidy up' the operation of that section. Though s 10 in its original form merely set out the established common law principles of sentencing, it is considered that s 10 has become progressively unwieldy over recent years with the addition of various, sometimes only loosely connected, provisions. Therefore, for ease of reference and practical application s 10(1) in the Bill lists the original factors as stated in the original 1988 version of the Act whereas the additional factors added since 1988 to s 10 have been included in a new separate s 10(2).

Two consequential issues that were raised in the consultation process are rectified in the Bill. First, the existing s 10 says that there is a 'paramount need' to protect children from 'sexual predators' by ensuring the need for deterrence. The State DPP says that this provision is undermined in practice by some judges insisting that the prosecution prove something more than sexual offending against children, namely that the offending was 'predatory' rather than 'opportunistic'. The State DPP suggested that the term 'sexual predator' be changed to 'an offence involving the sexual exploitation of a child'. This suggestion makes sense and has been accepted. The amended provision promotes the original intention of Parliament in inserting this provision. Secondly, problems were identified with the interpretation of the existing section dealing with the lighting of bushfires. This has been replaced by an amended provision which makes it absolutely clear the extreme gravity with which Parliament regards such offences.

Any perception that the Bill goes too far and unfairly restricts the conferral of discounts, notably in late guilty pleas, is mistaken. The Bill is both comprehensive and fair. It is necessary to restrict the conferral of discounts for belated guilty pleas in the manner as stated in the Bill so as to tackle the underlying culture of late guilty pleas and major problems and effects of late guilty pleas. It is acknowledged that not only must the underlying culture of late guilty pleas be addressed but there are other linked issues of the criminal justice process that also require reform.

The effectiveness of the committal process and the need for timely and effective prosecution disclosure and accurate and informed and early prosecution decisions on charging are significant. A prerequisite if the Bill is to achieve its stated objectives of reducing delays and encouraging early guilty pleas is sufficient and timely prosecution disclosure of its evidence. It is acknowledged that defendants and their lawyers are not to be solely blamed for the current delays arising from late guilty pleas. The Bill is not an isolated measure or a sole panacea. It is an integral part of a series of wider and ongoing series of linked reforms to improve the effectiveness of various aspects of the justice criminal process and to continue to address court delays and backlogs.

Several measures to address the problem have been implemented. These include measures designed to reduce the workload of Magistrates to make way for more cases moving down from the District Court, specifically legislation making driving unregistered and uninsured offences expiable as well as amendments to the *Magistrates Court Act* in late 2009 to increase the jurisdiction of Special Justices in the Petty Sessions division of the Court to deal with other minor offences. In addition, case conferencing (also a recommendation of the CJMT) is operating in the Adelaide Magistrates' Court. This provides a forum for constructive early negotiations to facilitate the speedy and appropriate resolution of matters or identify issues and exchange information to expedite pre-trial and trial time frames. The 12 month pilot commenced in April 2009 and has been extended following positive initial reviews.

Other measures to improve the operation of the criminal courts have been recently announced. These include drafting changes to the *Bail Act* designed to simplify proceedings. Work has been shifted from the District Court to the Industrial Court—in particular dust diseases and liquor licensing cases and appeals from the Health Practitioner's Tribunal. This last change will free more District Court time to deal with criminal cases and help address the present backlog. The District Court has also commenced case conferencing.

This Bill is a major step forward in this Government's determination to address court delays. It sets a benchmark in Australian criminal justice reform.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

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

4—Amendment of section 9—Court to inform defendant of reasons etc for sentence

This clause substitutes subsection 9(1) of the principal Act to require a court, when sentencing a person who is present in court (whether in person or by video or audio link) for an offence to state the sentence it is imposing and the reasons for the sentence.

A court is not, however, required to state any information that relates to a person's cooperation, or undertaking to cooperate, with a law enforcement agency

5—Substitution of section 10

This clause substitutes the following provisions for section 10 of the principal Act:

9E—Purpose and application of Division

This section clarifies the relationship between Part 2 Division 2 of the principal Act and the common law. The provision also makes clear the fact that, unless a particular provision in the Division expressly provides otherwise, nothing in the Division affects mandatory sentences, mandatory non-parole periods and similar special provisions.

10—Sentencing considerations

This section sets out the matters a court must, or must not, have regard to when sentencing a person for an offence.

10A—Reduction of sentences for cooperation etc with law enforcement agency

This section provides that a court may reduce a sentence it would otherwise impose on a defendant on account of the fact the defendant has cooperated or undertaken to cooperate with a law enforcement agency.

The section contemplates 3 different circumstances in which a reduction may be given. First, subsection (2) allows a court to reduce the sentence of a person who has pleaded guilty and who a court has declared to be a person to whom subsection (1) applies by an amount the court thinks appropriate in the circumstances, including reductions of more than 40 per cent. However, a declaration can only be made, and hence a sentence reduced, under this subsection if the court is satisfied that the defendant has cooperated or undertaken to cooperate with a law enforcement agency and that the cooperation—

(a) relates directly to combating serious and organised criminal activity; and

(b) is provided in exceptional circumstances; and

(c) contributes significantly to the public interest.

Second, subsection (3) allows a court to reduce the sentence of a person who is not subject to a declaration but who nevertheless has pleaded guilty and has cooperated or undertaken to cooperate with a law enforcement agency. However, a reduction under that subsection cannot exceed 40 per cent.

Finally, subsection (4) allows a court to reduce the sentence of a person who has not pleaded guilty but who nevertheless has cooperated or undertaken to cooperate with a law enforcement agency. However, a reduction under that subsection cannot exceed 20 per cent.

The section also sets out matters a court must have regard to in determining the quantum of any reduction under the new section.

10B—Review of sentences reduced under section 10A

This section allows a court to review a person's sentence that has been reduced on account of the person undertaking to cooperate with a law enforcement agency but where such cooperation has not occurred, or only part of the undertaking honoured. A court may, after reviewing the matter—

(a) vary the sentence previously imposed on the defendant by increasing the sentence by such percentage as the court thinks fit, having regard to the extent to which the defendant failed to comply with his or her undertaking;

(b) confirm the sentence previously imposed on the defendant;

(c) make any consequential or ancillary orders the court thinks fit.

10C—Reduction of sentences for guilty plea in Magistrates Court etc

This section sets out a scheme whereby a sentence that a court would have imposed for an offence may be reduced on account of the defendant pleading guilty. This section (as opposed to section 10D) applies where the sentencing court is the Magistrates Court, some other court sentencing for a matter that was dealt with as a summary offence, or in the circumstances prescribed by the regulations.

The maximum amount a sentence can be reduced is dependant upon when the defendant pleads guilty; subsection (2) sets out the maximum discounts available in relation to pleas at various stages in the proceedings.

The section provides for a defendant to receive the maximum available reduction despite having pleaded guilty outside the relevant period if the reason he or she could not meet the deadline was one set out in subsection (3).

The section also sets out matters a court must have regard to in determining the quantum of any reduction under the new section.

10D—Reduction of sentences for guilty plea in other cases

This section provides a scheme of the same kind as in section 10C in circumstances where that section does not apply. For example, this new section applies to the District Court and Supreme Court sentencing indictable matters.

The scheme is essentially the same as in section 10C, modified to take account of the different stages of proceedings applicable in relation to indictable matters.

6—Repeal of section 20

This clause repeals section 20, the effect of which is now located in new section 9E.

Schedule 1—Transitional provision

1—Transitional provision

This clause makes clear that the *Criminal Law (Sentencing) Act 1988*, as amended by this measure, applies in relation to proceedings relating to an offence instituted after the commencement of this measure, regardless of when the offence occurred.

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

RADIATION PROTECTION AND CONTROL (LICENCES AND REGISTRATION) AMENDMENT BILL

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

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (18:06): I move:

That this bill be now read a second time.

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

Leave granted.

In July 2007 new directions for the management of native vegetation were announced with the aim of strengthening biodiversity conservation in the State, while at the same time supporting sustainable development. At that time, a comprehensive consultation process was conducted on a draft Bill to amend the *Native Vegetation Act 1991*.

Subsequently, the Native Vegetation (Miscellaneous) Amendment Bill 2008 was introduced to Parliament in the spring session of 2008. The House of Assembly approved the Bill without amendment on 26 November 2008 and debate on the second reading of the Bill commenced in the Legislative Council. While this 2008 Bill was generally supported, no further debate was conducted after May 2009 and the Bill lapsed. The Bill before you today builds on the lapsed 2008 Bill.

The continuing health and prosperity of all South Australians depends on the health of our environment, our landscapes and our biodiversity. In turn, improving and restoring the health and resilience of our environment will rely on the good will and endeavours of all South Australians.

The extensive modification of the South Australian agricultural landscape—necessary to support the strong rural base for this State—will not sustain viable populations of many plant and animal species in the limited habitat remaining. With climate change placing increasing pressure on our native species we face the risk that South Australia could lose up to 50 per cent of our terrestrial biodiversity over the coming decades. Innovative and strategic changes are needed to connect and accelerate the effort to support the 'no species loss target'.

The *Native Vegetation Act 1991* remains a key legislative instrument supporting South Australia's Strategic Plan 'no species loss' target. The central purpose of the *Native Vegetation Act 1991* is to control the clearance of significant native vegetation in this State and to ensure that where clearance occurs to support economic development, the loss of biodiversity is offset by a significant environmental benefit. The amendments proposed are not intended to alter the central purpose of the Act.

The key features of this Bill are to:

- Increase flexibility in the delivery of significant environmental benefit offsets for vegetation clearance;
- Add new expertise to the Native Vegetation Council;
- Update evidentiary provisions to reflect modern technology;
- Ensure that offences constituted under the *Native Vegetation Act 1991* lie within the criminal jurisdiction of the Environment, Resources and Development Court;
- Make minor modifications to existing powers and penalties to improve the administration of the legislation and to provide better integration with the *Natural Resources Management Act 2004*.

Significant environmental benefit offsets

The requirement in the Act for the clearance of native vegetation to be offset by a significant environmental benefit is in itself an innovative way to support necessary development for this State while also achieving biodiversity conservation objectives.

All remnant native vegetation has value and it is important that the impacts of a proposed development on native vegetation should be avoided or minimised. Requirements for significant environmental benefit offsets provide a mechanism for redressing impacts that cannot be avoided or minimised.

A number of amendments are proposed in this Bill to provide more flexibility for the delivery of significant environmental benefit offsets, including:

- providing for offsets to be delivered where they are most needed, including outside of the region of the original clearance;
- providing that the Native Vegetation Council, when considering a proposed significant environmental benefit offset outside the region of the original clearance, must have regard to guidelines prepared and published in accordance with section 25 of the Act;
- making it clear that a credit may be registered, against future requirements for offsets, where an offset is delivered that exceeds that which is required to offset the related clearance of native vegetation;

In normal circumstances, the loss of biodiversity associated with clearance of native vegetation should be offset by works on the same property or within the same region that clearance has occurred. However, there may be circumstances where clearance occurs in well represented habitats and a more significant environmental benefit might be achieved by regenerating less well conserved native vegetation associations (eg vegetation that provides critical habitat for threatened species) outside the region where the related clearance occurs.

Such decisions should not be taken lightly and it is necessary that the Native Vegetation Council be satisfied that, where an offset for native vegetation is proposed in another region of the State (from that where the clearance occurs), it will result in a more significant environmental benefit than if undertaken in the region where the clearance occurs.

The Bill establishes a requirement for guidelines for the operation of the out-of-region offsets. Draft guiding principles have been endorsed by the Native Vegetation Council that clarify that the offset mechanism is limited to avoid the potential for critical habitat to be offset with habitat that is already well conserved. The draft guiding principles will be an interim measure pending completion of the formal consultation process required by section 25 of the Act.

Offset credits

The Native Vegetation Council has a policy of recognising conservation works previously undertaken when considering offset requirements. Consistent with this, the Council has supported, and sometimes encouraged, a landholder to undertake offset works that exceed requirements. Reasons may include:

- conservation outcomes being delivered before they are needed to offset clearance;
- maximising conservation outcomes—e.g. feral animal control can only be effective if applied over a larger area;
- minimising impacts—e.g. a requirement to fence a small offset area within a larger area may result in more clearance.

The provisions in the Bill make it clear that the value of a 'credited offset' is determined at the time it is extinguished (i.e. when it is used to offset clearance).

Membership of the Native Vegetation Council

The Bill changes the membership of the Native Vegetation Council. Since the Commonwealth Minister for the Environment decided not to continue to nominate a representative to the Council, the Bill proposes to replace the Commonwealth Minister's nominee with a person who has expertise in planning or development nominated by the Minister responsible for administering the *Native Vegetation Act 1991*.

This reflects the importance of the interaction between native vegetation clearance and the housing and employment priorities of the 30 year plan for Greater Adelaide and associated regional plans. The Minister is provided with appropriate flexibility in nominating a suitable person for appointment and persons from other sectors who have appropriate expertise will not be excluded from nomination.

Offences under the Act to lie within the jurisdiction of the Environment Resources and Development Court

The Bill includes a provision that offences constituted under the *Native Vegetation Act 1991* lie within the jurisdiction of the ERD Court. This will bring the Act up to date with more recent environmental legislation and ensure that a Judicial Officer will have wide practical knowledge of and experience in the preservation and management of native vegetation thereby avoiding lengthy explanations in a technical context.

Miscellaneous amendments

The Bill includes other miscellaneous amendments that:

- ensures the admissibility of evidence derived from remotely sensed imagery unless proof to the contrary is produced.
- make minor modifications to existing powers and penalties to improve administration of the legislation and to provide better integration with the NRM legislation;
- provide that a breach of a heritage agreement is a breach of the Act to correct an inadvertent omission resulting from changes made in 2002;
- clarify that the Act applies to that part of the City of Mitcham consisting of the suburbs of Belair, Bellevue Heights, Blackwood, Coromandel Valley, Craigburn Farm, Eden Hills, Glenalta and Hawthorndene.

Conclusion

The new directions for native vegetation management in South Australia, announced during 2007 are supported by the amendments included in this Bill. The *Native Vegetation Act 1991* remains a key legislative instrument supporting South Australia's Strategic Plan 'no species loss' target. The amendments update the Act and ensure consistency with the State's other environmental legislation. They will strengthen landscape approaches to biodiversity conservation in the State and support economic development by providing improved flexibility for business.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Native Vegetation Act 1991*

4—Amendment of section 3—Interpretation

This clause makes consequential amendments to the definitions of certain terms used in the Act.

5—Amendment of section 4—Application of Act

This clause inserts new subsection (2ab) into section 4 of the Act, setting out the parts of the City of Mitcham to which the Act applies (being the suburbs of Belair, Bellevue Heights, Blackwood, Coromandel Valley, Craigburn Farm, Eden Hills, Glenalta and Hawthorndene).

The clause also makes consequential amendments to the section to reflect the inclusion of new subsection (2ab).

6—Amendment of section 7—Establishment of the Council

This clause inserts a new subsection (3) into section 7 of the Act. The new subsection provides that the Native Vegetation Council is subject to the general direction and control of the Minister, but prevents the Minister from directing the Council in respect to advice or recommendation that the Council might give or make, or in relation to a particular application that is being assessed by, or that is to be, or has been, assessed by, the Council.

7—Amendment of section 8—Membership of the Council

This clause deletes paragraph (f) of section 8(1) of the Act (which states that 1 member of the Council must be nominated by the Commonwealth Minister for the Environment) and substitutes a new paragraph (f) that provides that 1 member must be a person with extensive knowledge of, and experience in, planning or development nominated by the Minister.

8—Amendment of section 9—Conditions of office

This clause inserts new paragraph (e) into section 9(2) of the Act, which allows the Governor to remove a member of the Council for breaching, or not complying, with a condition of his or her appointment.

9—Amendment of section 14—Functions of the Council

This clause substitutes a new subsection (2) into section 14, requiring the Council, when performing a function or exercising a power under the Act to take into account and seek to further the objects of the Act and the relevant principles of clearance of native vegetation, and also to take into account relevant NRM plans. The new subsection also requires that, in any event, the Council must not act in a manner that is seriously at variance with the principles of clearance of native vegetation.

10—Amendment of section 21—The Fund

The clause inserts new paragraphs (cc) and (cd) into subsection (3) of section 21 (which sets out what the fund consists of) to include amounts paid into the Fund in accordance with an order under section 31EA of the Act (inserted by clause 17 of this measure) and any provision made by the regulations.

The clause substitutes a new subsection (6) (which sets out how certain money in the Fund must be used) so that money may now be used to preserve etc existing native vegetation in the region where the relevant land is located.

The clause also inserts a new subsection (6a), which enables the Council to use money of a kind referred to in subsection (6) to be used to establish etc native vegetation in a region of the State other than the region where the relevant land is located if the Council is satisfied that the environmental benefit to be achieved in the other region will outweigh the value of achieving a significant environmental benefit within the region where the relevant land is located, the native vegetation satisfies certain criteria and the establishment etc of the native vegetation is carried out in accordance with relevant guidelines adopted under section 25 of the Act.

The clause also inserts new subsections (6b) and (6c) which set out procedural matters related to the operation of new subsection (6a).

The clause also amends the definition of relevant land in subsection (7) to include (if new subsection (3)(cd) applies) land on which the native vegetation that is relevant to the operation of the particular regulation was grown or was situated.

11—Amendment of section 25—Guidelines for the application of assistance and the management of native vegetation

This clause amends section 25 of the Act, adding the establishment etc of native vegetation under section 21(6a), and any other matter required by the regulations, to the list of matters for which the Council must prepare guidelines.

The clause also inserts a new paragraph (ab) to subsection (2), requiring the Council to submit draft guidelines prepared by the Council to the Minister for comment.

12—Amendment of section 26—Offence of clearing native vegetation contrary to this Part

This clause increases the expiation fee for an offence under subsection (1) or (2) of section 26 to $750, up from $500.

The clause also extends the time within which the Council must initiate civil enforcement proceedings following conviction of an offence against those subsections to 6 months, up from 21 days.

13—Amendment of section 28—Application for consent

This clause makes amendments to section 28 of the Act that are consequential on the insertion of new section 28A by this measure.

14—Insertion of section 28A

This clause inserts a new section 28A into the Act. The new clause enables a person to be credited with having achieved an environmental benefit if the person has achieved an environmental benefit other than as required in relation to a consent to clear native vegetation or under any other requirement under this Act. A person can also be credited if, acting in accordance with a consent to clear native vegetation, the person achieves environmental benefits that exceed the value of the minimum benefit needed to offset the loss of the cleared vegetation. In both cases, the Council must be satisfied that the benefit or excess benefit (as the case requires) is of significant value.

Having been so credited, the new section allows the credit to be offset against such requirements in relation to a future application for consent to clear native vegetation.

The clause also sets out procedural matters in relation to determining and applying such credits.

15—Repeal of section 31

This clause repeals redundant section 31 of the Act (the substance of which is now effected by the definition of *breach* in section 4 of the Act, as amended by this measure).

16—Amendment of section 31E—Enforcement notices

This clause amends section 31E of the principal Act to extend the time within which an authorised officer can give a direction under the section to two years, up from 12 months. The clause also makes a consequential amendment to the section.

17—Insertion of section 31EA

This clause inserts new section 31EA, which allows a person to whom an authorised officer has given a direction under section 31E(1)(b) (that is, a direction that the person make good the breach in a manner, and within a period, specified by the authorised officer) to apply to the Council for a substituted direction if it is not reasonably practicable for the person to comply with the direction.

Subsection (3) sets out the directions the Council may substitute for the original direction, and the clause makes procedural provision in relation to such directions.

18—Substitution of section 33

This clause substitutes new section 33 to allow civil enforcement proceedings (being proceedings where the respondent has expiated or been convicted or found guilty of an offence under the Act) to be commenced within 6 months after the date on which the respondent expiated, or was convicted or found guilty of, the offence. This prevents commencement of the proceedings from being barred where the length of a trial, or the delayed detection of an offence, exceeds the time allowed for commencement of such proceeding (changed by this measure to five years to ensure consistency with other provisions in the Act).

19—Amendment of section 33A—Appointment of authorised officers

This clause repeals paragraphs (b), (c) and (d) of section 33A(3) of the Act, varying the information that must be printed on the identity cards of authorised officers.

It also removes the requirement that an appointment of an authorised officer be for a fixed term.

20—Amendment of section 33B—Powers of authorised officers

This clause repeals subsections (4), (5) and (6) of section 33B of the Act in order to make the section consistent with the *Natural Resources Management Act 2004*.

21—Amendment of section 33D—Provisions relating to seizure

This clause amends subsection (2) of section 33D of the Act to increase (from six to 12 months) the prescribed period relevant to the section, making the section consistent with the *Natural Resources Management Act 2004*.

22—Substitution of section 33J

This clause inserts new sections 33J and 33K into the principal Act.

Section 33J allows the ERD Court to be constituted of a magistrate and a commissioner if the Senior Judge of the Court so determines, and further provides that offences under the principal Act lie within the criminal jurisdiction of the ERD Court (rather than the Magistrates Court).

Section 33K makes procedural provisions regarding what can happen in respect of making orders under the Act (in civil enforcement proceedings) if criminal proceedings for an offence against the Act are also on foot.

23—Amendment of section 34—Evidentiary

This clause amends section 34 of the principal Act to allow for certain remotely sensed images (for example, an image captured by a camera mounted on a satellite) to be accepted as proof of certain certified facts in the absence of proof to the contrary.

24—Amendment of section 35—Proceedings for an offence

This clause amends section 35 of the Act to increase the time within which proceedings for an offence under the Act may be commenced to five years, up from the current four years (or six years in exceptional circumstances). This provides consistency with similar provisions in the *Natural Resources Management Act 2004*.

25—Amendment of section 41—Regulations

This clause amends the regulation making power in section 41 of the Act to increase the maximum expiation fee under the regulations to $750, to enable the regulations to provide for certain amounts of money to be paid into the Fund and to enable the regulations to create offences with fines of up to $10,000 and make evidentiary provisions in relation to those offences.

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

At 18:07 the council adjourned until Tuesday 27 September 2011 at 14:15.