LEGISLATIVE COUNCIL

Thursday 15 October 2009

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

STANDING ORDERS SUSPENSION

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (11:03): I move:

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

STATUTES AMENDMENT (RECIDIVIST YOUNG OFFENDERS AND YOUTH PAROLE BOARD) BILL

Adjourned debate on second reading.

(Continued from 22 September 2009. Page 3251.)

The Hon. S.G. WADE (11:04): I rise on behalf of the opposition to support the bill. A week ago, a crime wave that started in September escalated into one of the most concerning crime events in South Australia in recent years. Ordinary South Australians were anxious going to and from and being at work or even just driving around going about their daily business. On Thursday the police formed a task force, Operation Dimension, to try to deal with the outbreak, and I thank the police for their efforts and congratulate them on progress being made in their investigations and the prosecution of these offences.

In this context, early this week the Attorney-General went on radio and criticised this council for stalling this legislation, which he claims was necessary to deal with the crime outbreak. I remind the council of the facts. The government introduced this legislation in the House of Assembly in May, but did not pass it in the assembly until September. If there is a case for stalling, it lies with the government, which has control of the House of Assembly. This council received the bill on Wednesday 22 September; when the Attorney-General made his comment the bill had lain only one full day on the council table, and here we are addressing it on the fourth sitting day since the bill arrived.

The opposition's view on this bill is that we support the increased focus on community safety. However, it is our assessment that the government's proposal to introduce a class of recidivist young offender is likely to undermine community safety because in the youth context it is likely to stimulate rather than suppress criminal behaviour.

In concluding the second reading debate in the House of Assembly, and particularly over the past week, the Attorney-General has claimed that this bill is in furtherance of Monsignor Cappo's recommendation in the To Break the Cycle report. That recommendation states:

The objects of the Youth Offenders Act 1993 (Part 3, section 3) be amended to strengthen the requirement to take account of community safety when sentencing serious repeat young offenders. The strengthening of these provisions should occur in the context of a stronger focus on rehabilitation.

In speaking on the Statutes Amendment (Young Offenders) Bill 2007 on 17 October 2007, the Attorney-General advised that the bill implemented recommendation 2 of the To Break the Cycle report. In that speech the Attorney-General said:

The government also addresses Cappo's recommendation 2, which has urgent action status.

He went on to say:

Thus clause 6 amends section 3 to provide expressly for the case where a court is to sentence a youth who is being dealt with as an adult. The clause directs the court to consider general deterrence, public safety and rehabilitation. This is an attempt to balance two key factors noted by the Cappo recommendation: protection of the public and rehabilitation of the youth.

In May 2009, 18 months after the Statutes Amendment (Young Offenders) Bill 2007 passed this parliament, in the second reading on this bill in the House of Assembly the government did not even claim that it was implementing Cappo's recommendations. Minister Hill, representing the government, said:

This bill arises from the government's concern about the harm done by a small number of young offenders who persist in serious crime, despite our best attempts at diversion and rehabilitation.

Later, he went on:

> This bill is directed at the small number of young offenders who refuse to learn from experience. Those few present a danger to the public that the parliament cannot ignore. They require longer detention, both so that they understand how seriously society views their conduct and also to keep the public safe. That is not to say that these youths cannot be rehabilitated. We hope they can, and we are carrying out the recommendations of the To Break the Cycle report to that end. We cannot, however, jeopardise the public for the sake of the individual.

The To Break the Cycle report is referred to in passing and as the context for the bill, not the impetus; yet, recently, the Attorney-General has repeatedly claimed that this bill implements the Cappo report. For example, in his summing up on the second reading of this bill in the other place, the Attorney-General asserted:

> The bill was designed to meet, specifically, recommendation 2 of Monsignor Cappo's report...and we are doing that. The bill meets recommendation 2 of the Cappo report in that the bill amends the Criminal Law (Sentencing) Act and the Young Offenders Act to strengthen the requirement to take account of public safety when sentencing serious repeat young offenders.

I express my concern at two levels. First, the parliament and the people of South Australia should be properly informed of the drivers of policy and legislation. They should not be subjected to the rewriting of history for political purposes. Secondly, I see the Attorney-General's reframing of this story as a Cappo implementation issue as yet another attempt by a morally weak government to try to muster some semblance of credibility by trying to associate itself with a church voice. The government's actions also highlight the lack of credibility it has on anything to do with reducing crime.

Since 2002, when this government was elected, violent assault in South Australia has increased steadily. In 2008, 17,178 people were victims of assault. That is roughly 50 people per day in South Australia being violently assaulted. I would urge the council to be very wary of claims by this government that a proposal is implementing the Cappo report. In any event, if the government does want to associate with the policy prescriptions of Monsignor Cappo, the government selectively chooses those bits of the prescription that suit its political rhetoric. In a letter dated 20 July 2008 on this bill, at that stage in draft, Monsignor Cappo said:

> ...I would like to communicate my in-principle support of the draft bill. I would also like to take the opportunity to emphasise that any legislative changes that enable a young person to be deemed a recidivist offender should only be used in the most severe cases of repeat offending. For this group of young people, a continued focus on rehabilitation must remain. Using detention as the sole means to manage this group of young people cannot be an option if we are to justly improve community safety.

The key clause in what Monsignor Cappo said is, 'For this group of young people,' that is, even the recidivist offenders, 'a continued focus on rehabilitation must remain'. Yet, in *The Australian* newspaper yesterday, the Attorney-General makes clear that he is giving up on rehabilitation, and he is quoted as saying:

> The policy of this government is that there are some offenders who are part of the gang of 49 who may have been susceptible to rehabilitation when they were much younger and may again in the future be amenable to rehabilitation but are not currently amenable to rehabilitation.

The attitude of the Attorney-General was laid bare when he referred to the people involved in the crime spree as 'pure evil'. 'Turds' or 'scum' may be colourful descriptors, but the epithet of 'pure evil' takes the issue to a different and sinister level. People who are pure evil are, by definition, devoid of anything good, and good cannot take seed where all there is is evil. There is no scope for reform, and any attempts at rehabilitation are pointless.

Of course, we cannot afford to waste rehabilitation resources on people who are not open to it. However, we cannot afford to write off any people as pure evil, either. Even before a criminal turns away, we need to stand ready to be nimble in our services to ensure that we take advantage of any windows of opportunity that may come to convince people that their criminal behaviour is not in the interests of anyone. But, if we have written off offenders as pure evil, we have closed the door on rehabilitation. We miss opportunities when they come. We are condemning future South Australians to unnecessarily becoming victims of crime. If we do not take every opportunity to force offenders to address their criminal behaviour, they will be released back into the community with a higher risk of reoffending, and that means more victims than there needs to be. So, the government is failing to heed Monsignor Cappo's call for a continued focus on rehabilitation. The Attorney-General agrees with Cappo only when it reinforces his prejudices.

The government is also failing to deliver the community's supervision of offenders that Monsignor Cappo says is required. In this regard I quote again from the letter of Monsignor Cappo on the draft bill, as follows:

> The To Break the Cycle investigation identified there is a very small group of young offenders who are responsible for the majority of youth crime, some of whom pose a significant risk to both themselves and the broader community. It is this very small group of young people for whom the only sensible, immediate course of action is detention that is coupled with assertive individualised case management. For all young offenders, the focus should be delivery of individualised case management within the community setting.

Monsignor Cappo insisted on assertive, individualised case management. In a press release dated 22 May entitled '$11.5 million to break the cycle of youth offending', the Attorney-General announced that $11.5 million will be devoted in the state budget to breaking the cycle of youth offending. About half of the funding was to establish a community protection panel at a cost of $5.6 million. The release described the CPP in the following terms:

> Intensive case management and concentrated support services will be provided to serious repeat offenders. A panel of experienced members of the community and government will oversee this, and will recommend their return to custody if they do not fully take part in tailored programs.

A media report on the ABC of that day quotes the Attorney-General as saying:

> We're spending much of the money on a community protection panel that intensively case manages the so-called 49 and returns them to custody if they don't accept the offers that are given to them to turn away from crime.

So, where was the intensive case management when the so-called gang of 49 was running amok in the past few weeks? If the gang of 49 is being intensively case managed by the panel, as the Attorney-General promised, why did the police have so much trouble locating the perpetrators in recent weeks?

If the gang of 49 is being intensively case managed by the panel, how has the gang got out of control? Surely, at least some of them would have been returned to custody as the Attorney said they would be. Yet, the government's responses in the House of Assembly are not reassuring. On Tuesday, in answer to questions in the House of Assembly, the Attorney-General was not able to advise the parliament when the panel was established. He was unable to advise how much of the allocated $5.6 million had been spent on the panel. He was not even able to tell the parliament how many members of the gang of 49 are under the management of the panel. He took all the questions on notice.

Clearly, the Attorney-General is not on top of one of the key elements of the government's strategy to deal with youth offending—a strategy which was recommended by Monsignor Cappo and a strategy which I endorse. Apparently, the government is not delivering the assertive, individualised case management to the gang of 49 that South Australians were promised. The government's failure to effectively deliver on crime and to intensively case manage those offenders will not be hidden by its chest-beating on bills like this one.

I turn now to some of the key provisions of the bill. In 2003 the government amended the Criminal Law (Sentencing) Act 1988 to provide for courts to declare an adult offender to be a serious repeat offender. Through this bill, the government seeks to apply this same principle to recidivist young offenders. The opposition supported the introduction of serious repeat offenders for adults but we do not consider that it is appropriate for the juvenile justice jurisdiction. In that, we are not alone. The model in this bill was not recommended in the To Break the Cycle report. It has not been tried anywhere else in the world and I am not aware of any stakeholder, not on the government payroll, who is supporting the proposal.

I remind the council that we already have legislation which allows juveniles to be treated as adults in the criminal justice system. If a young offender's behaviour is so severe that they should be treated as an adult, then transfer them to the adult system but, while a young person still has a credible prospect of engagement with rehabilitation, society should use its best efforts to divert that young person from criminal behaviour. The opposition will be supporting the moves to strengthen youth parole because we believe that it helps young people to focus on addressing their offending behaviour.

What do we think might be the impact? The government estimates that there will be about 15 or 16 offenders who will meet the criteria of recidivist young offender. Presumably, that is the group that the Attorney-General calls 'pure evil'. What does he want to do with them? Does he want to exile them? Does he want to execute them? No, the Attorney-General's response to pure evil is

to commit them to a few more months of detention. I remind the council of the statement that Monsignor Cappo made which I quoted earlier:

> It is this very small group of young people for whom the only sensible, immediate course of action is detention that is coupled with the assertive, individualised case management.

The government knows how to deliver detention, but it is failing to deliver assertive individualised case management.

My colleague, the shadow attorney-general, provided a fuller rebuttal of the government's proposals in the other place. I will also be moving amendments to make the review independent of the government by making it a matter for the Social Development Committee. The opposition supports the bill but, as I foreshadowed, it will be moving amendments to it.

The Hon. A. BRESSINGTON (11:19): I rise to indicate that I will also be supporting this bill, but I would like to make a few brief points. I have received e-mails from police officers who have made it very clear that this gang of 49 is not a gang of 49; that is what it has been dubbed by the media. Most of these young people do not even know each other. They are breaking off or splintering into pairs or groups of three at a time.

They have created a reign of terror over the community which requires that some tougher action be taken. I do believe that treatment and rehabilitation is always the ultimate goal, but I also believe that there is a waking up phase, if you like, for people who are going to be exposed to treatment and rehabilitation, but that does not necessarily work as the immediate intervention.

I heard Monsignor Cappo on the radio with Leon Byner the other day saying that he agreed with the action that the government is taking with this group. He believes there are about 16 or 17 young people who are beyond rehabilitation right now. I believe it is that number of 16 or 17 young people that this bill truly targets as young recidivists. I believe that young people who commit these crimes need to be dealt with by a sentence that fits the crime. We cannot say that these young people are newcomers to the scene.

I support this bill and I am pleased that the Attorney-General picked up my amendment in the lower house and expanded on it. I would have taken my amendment further if I had thought that the government would support it. However, I am pleased that he has taken it on board and taken it another step further.

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

CONSTITUTION (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3467.)

The Hon. D.G.E. HOOD (11:23): I will not speak very long on this bill. The matters I will raise have been addressed by other members in this chamber, and I see that a number of members are listed to speak today and no doubt the points raised will be similar. The issues with respect to this bill have been dealt with in depth by other members—in particular, the contributions of the Hons Mr Lucas and Mr Lawson—and they have provided great detail and summary of the arguments. I will touch on some of the same issues as well as others.

This bill proposes four major changes to the operation of the Legislative Council. First, the bill reduces the size of the Legislative Council from 22 members to 16; and it reduces the term of a member of the Legislative Council from eight years (equivalent of two terms of the assembly) to a term of four years and requires all members of the Legislative Council to retire at each election as a result of that.

The bill provides the President of the Legislative Council with a deliberative vote in all circumstances rather than the current deciding vote in the rare event of a tie. In fact, in my time in this place I do not believe I have seen a tie. Fourthly, the bill also seeks to alter the mechanism for the resolution of deadlocks by providing for a joint sitting which has some resemblance to the commonwealth deadlock provisions.

This bill seems to me primarily motivated by the wrong reasons. It would see the influence of crossbench members and minor parties severely limited and it would entrench the power of the government of the day. Of course, I am not referring necessarily to this government but whichever government it may be in the future—Liberal or Labor.

There is an old adage that power corrupts and absolute power corrupts absolutely. By severely weakening the power of this house of review, the bill will squarely place tremendous power in the hands of the government of the day. Family First does not believe that South Australians want any government to be given such unrestricted, unrestrained power and we believe that South Australians want—and, in fact, demand—the checks and balances that this house of review provides.

One only has to look at the excesses of power interstate and overseas when those safeguards are removed or in some way downgraded. Indeed, the excesses in Queensland's Bjelke-Petersen government and the subsequent Fitzgerald inquiry showed some of the risks associated with unfettered government power. The Queensland Legislative Council was abolished after it was stacked with members wanting abolition in an act which took its effect on 23 March 1922. Despite this, the public strongly voted against abolition in a referendum, but since that time many political commentators have argued that some of the problems which surfaced in Queensland during that time were possible only because of the absence of a house of review.

On a commonwealth level, I think that many people, including those in the Liberal Party, would actually admit that even when the Howard government had complete control of the Senate in its last term, politically speaking at least, it probably turned out to be more trouble than it was worth. I believe that South Australians want a genuine house of review with genuine powers to call on the government and restrict unfettered power of the government of the day.

Turning to each of those issues individually, I will discuss the first one dealing with the reduction in size of the Legislative Council—that is, the reduction of the number of members from 22 to 16. In November 2005, the Premier announced that, if re-elected, he would hold a referendum at the 2010 state election to abolish the upper house of this parliament. As others have pointed out, there was clearly no public support for that and it was seen as unnecessary and undesirable. In fact, the government has stated—to its credit, I believe—that it does not believe it is the public will to abolish this council. So, now it has been determined that a reduction in the numbers of members is more appropriate.

Since Proclamation on 28 December 1836, the number of legislative councillors has varied from time to time. From 1857 to 1881, there were 18 members, increasing to 24 members from 1881 to 1901. From 1901 to 1913, the number was reduced again to 18 members. From 1913 to 1973, there were 20, and since 1973 there have been 22 members of this place. Even at the time of Proclamation, the tiny state of South Australia had 18 Legislative Council members. Apart from the reduction in the number of members from 1901 to 1913, the general rule has been that as the number of constituents has increased (that is, our population) so has the number of legislative councillors. This increase ensures that members of the public have a reasonable ratio of legislators whom they can approach and access in order for their individual needs to be represented.

Larger states generally have larger numbers of legislative councillors. What has been proposed here is clearly against the established trend. New South Wales has 42 members of its legislative council over one district. Victoria has 40 members over eight districts. Western Australia has 36 members over six districts and South Australia, as I have pointed out, currently has 22 members over one district. Tasmania, the smallest state with a population substantially smaller than South Australia, has 15 members which would be very similar to the proposal of 16 members for this place, yet Tasmania has a population of less than a third of South Australia's.

The general rule, according to a research paper put out by the parliamentary library entitled 'The Legislative Council of South Australia', dated July of this year, notes that the average ratio is slightly over two lower house members for every upper house member with the exception of Western Australia and Tasmania. If this reform were to pass, our South Australian constituents would have 47 lower house MPs to just 16 upper house MLCs—an unacceptable ratio of more like 3:1. This makes access to legislative councillors for constituents much more difficult. The following has been said in this place during the debate:

> The opposition's response to this proposed reform, to date, appears to be to claim that there will not be enough members to do all of the work. This is to miss the point entirely. The message that this government has received from the public is that there is a good deal of make-work going on.

I do not accept that statement; I do not agree with it at all. In fact, I think it does an immense disservice to the hardworking members of this place. I can only speak from my personal experience but I am sure that what I have done is only a shadow of what others have done in this place. Personally, I have introduced some 30 or 40 bills during my time here, some of which have become law and a couple of which I expect to become law in the near future. I have personally

spoken to thousands of constituents in trying to help them with their individual issues. Obviously, I appear in the media on many occasions, and on it goes.

As I said, my contribution is a shadow of the contribution of some others in this place. Indeed, my colleague the Hon. Mr Brokenshire, in his very short time here, has already been sitting on five separate parliamentary committees: on Families SA; the Aboriginal Lands Parliamentary Standing Committee; the Budget and Finance Committee; the inquiry into the taxi industry in South Australia, of which he is the chairperson; and also the inquiry into horseracing in South Australia. I ask the question: which particular select committee, or any other committee, do we think has been set up to make work for ourselves?

Is it the Families SA committee set up by the Hon. Ann Bressington? I do not think so. Is it the taxi industry committee set up by my colleague the Hon. Robert Brokenshire? I do not think so. The point I am making is that these committees do very important work, and we need a minimum number of members. I think 22 is about the right number in order for these committees to actually work in the real world. Both of the committees that I have just highlighted provide valuable information and I believe do a great service to the community.

As the Hon. Mr Lawson noted recently in his second reading speech, there seems to be no justification or logical reason at all for reducing the Legislative Council from 22 members to 16. It seems somewhat arbitrary. Indeed, it is clearly a move to reduce the number and scope of committees set up by the council and the valuable work done by its members such as the Hon. Mr Lucas and former members like the Hon. Mr Xenophon (now Senator Xenophon, of course) in exposing concerns and questions about the administration of the state and various departments. I should point out that this applies whoever the government of the day is. No doubt, in the future, Labor will have its turn.

I turn to the second aspect of this bill, and that is reducing the terms of legislative councillors. The second major proposal of course is to reduce the terms of MPs so as to, in effect, abolish the staggered terms that currently exist. At the general election to be held in March 2010, it is proposed that, as usual, 11 members of the Legislative Council will retire and then there will be an election to fill 11 seats. Those 11 members will be elected for a term of eight years. However, if the bill passes and the referendum passes, all the members of the Legislative Council will retire at the general election and at that election only 16 seats will be filled.

No one can claim that Family First is playing party political games here. As several commentators have pointed out, Family First actually stands to gain from the larger number of legislative councillors that would be elected in any one term—that is, from the current 11 to 16. Some would argue that it is against our party's interest to vote down this provision in the bill and, indeed, in a strictly numerical sense, that is correct. However, that is not our primary focus.

Personally, and indeed I speak for my colleague the Hon. Mr Brokenshire, we prefer to fight harder for election for us as individuals and indeed for members of our party, knowing that we have voted for a system that would actually place the appropriate balance and measures on the government of the day. Therefore, we will be rejecting the reduction of the term from eight years to four years, despite the fact that, if we acted in our own selfish interest, it would be to our advantage to accept that proposal.

The traditional reason given for staggering the terms is to provide that the upper house and the lower house are not an exact mirror of each other after each election. This helps to provide greater stability for the state, limiting major changes in direction after each election, and it is the reason why many bicameral parliaments in Australia, including the commonwealth senate, New South Wales and Tasmania and even many around the world, stagger their terms.

In fact, I think it was pointed out by the Hon. Mr Lucas the other day but I also uncovered during my research and preparation for this speech that it is interesting that the government's position on this has changed quite substantially in a very short period of time, because it is on record not long ago strongly supporting the concept of the staggering of terms.

In fact, when the member for Mitchell in 2005 proposed having all legislative councillors up for election every four years, the government strongly opposed the bill. I have these comments from the Attorney-General from *Hansard* dated 9 March 2005:

> The terms of members of the council (the other place) have always been staggered so that, usually, only one half of the membership is elected at any one election. The amendments proposed in this bill would mean that all 22 councillors would be elected at the same election, meaning a reduction in the quota from 8.3 per cent of the

formal vote to 4.3 per cent, or thereabouts. The importance of the other place and equivalent chambers is explained in *Odgers'* text as follows:

'The requirement for the consent of two differently constituted assemblies improves the quality of laws. It is also a safeguard against misuse of the law-making power and, in particular, against the control of any one body by a political faction not properly representative of the whole community.'

The government believes that the current system is consistent with the role of the other place as a house of review. It has been common for upper houses to be constituted in this way. For example, the Senate maintains a staggered system of appointment. Staggered terms allow members of the other place to be more removed from immediate electoral pressure. It offers stability and balance, as a strong populist vote in the house would not necessarily result in a majority of members in the other place. I believe that this is a safeguard. It has the advantage of ensuring continuity...

That was the Attorney-General back in 2005. Whilst the government has changed its position, we certainly have not and I would point out at this time that if this system that has been proposed here were in place at the last general election—that is, the 2006 state election—by my calculations, we would have had, I believe, five members of the No Pokies group elected to this place. Whilst that may have reflected the will of the people at that time, I think over the longer term that may not prove to be the case. That remains to be seen.

The third issue that is proposed by this law is to give the President of the Legislative Council a deliberative rather than a casting vote. From 1856 to 1973, both the Speaker and the President had a casting vote only in relation to constitutional matters, as I understand it. They could not vote for any measure unless there was an equality of votes on the floor. The Dunstan government reforms of 1973 include a provision that gave the President and the Speaker a casting vote on the readings of any bill that is now found in sections 26(3) and 37(3) of the Constitution.

The current proposal now extends this further to give the President but not the Speaker a deliberative vote; that is, effectively, full voting powers. I do not believe this is good law. There is a legal term for when a judge hearing a case starts barracking for one particular side and it is known as 'entering the arena'. When the President gains a deliberative vote, also, an element of impartiality is lost and the President becomes just one more participant in the arena.

I believe that it would undermine the respect that members and our constituents have for the office. It is important that we have an independent umpire to arbitrate debate in this place. We will not be supporting this provision.

Finally, I turn to the proposed deadlock provisions, which is the final new aspect of this bill. Apparently the new section is based on the equivalent in the Commonwealth Constitution, although, as the minister has stated, there is an important difference in that it will be for the House of Assembly to determine whether the position the Legislative Council has taken on a deadlock bill should result in a double dissolution and general election.

The numbers indicate again that, when we consider that the House of Assembly has 47 members and the Legislative Council under this proposal would have only 16 members, inevitably the House of Assembly's will is going to prevail. The question must be asked in these circumstances: why would you have a Legislative Council at all?

I believe that the South Australian Legislative Council is one of the most effective in keeping the government to account. This bill effectively strips that power away, and that is the primary reason Family First will oppose it. I will just make the point again that nobody could claim that we are in any way trying to serve our own political interests by opposing this bill; in fact, some of the elements of this bill, as I have outlined, actually would advantage us in a strictly electoral sense; however, we believe that the future of our state is much more important than our individual electoral aspirations. For that reason, we strongly oppose the bill.

The Hon. C.V. SCHAEFER (11:38): I rise to commend my colleagues, the Hon. Robert Lawson and the Hon. Robert Lucas, in particular, and the Hon. Dennis Hood, for their contributions. I think they have adequately put my position; however, I want to put on the record my absolute belief in a bicameral system of parliament and my equally absolute belief that these two bills before us are, in fact, an effort to diminish the power and the abilities of the upper house in the South Australian parliament.

It is very obvious that by reducing the number of members of parliament we would also reduce their influence and their ability to serve the people of South Australia. We are elected on a list system. As many older people would say, it is not a true preferential system but, rather, a list system; however we are meant to represent the whole of the state. I think for convenience many of

us choose areas where we have expertise and interest, and we concentrate on those areas, particularly those of us who belong to a major party, and we rely on our colleagues to cover some areas.

As I have said, to reduce the number of members would, in fact, diminish our roles throughout the state. I do not believe that it would save any money whatsoever because, to fill the gap, those 16 people would inevitably have to have more staff and there would inevitably be a growth in the bureaucracy to take up the void left by those members of parliament. So, in my view, there is no advantage to having fewer members.

The proposal to have four-year rather than eight-year terms concerns me probably more than any of the other proposed amendments to the act, because the purpose of a two-house system is, in fact, to hold up legislation long enough for those who have an interest in it to be able to peruse it after amendments have been passed in the one place.

Inevitably, there will be landslide victories for one side or the other in the future. Had there been a mirror system (a four-year system) in 1993, the Brown government would have had control of both houses of parliament. I do not believe that would have been good for democracy, nor would it have been good for the governing party. I believe that there is a need and a place for minor parties, and it is in the upper house.

I also believe that there is a need for the upper house to be effective, to not mirror the make-up of the lower house. Inevitably, four-year terms would do that. It could be argued that eight years is too long. I would agree that six years would probably be preferable if the state could afford or put up with staggered elections in between its normal elections. I do not believe that is the case; I do not think anyone would want any more elections than are forced on them now.

The third reform ties the chair to the party that has put him or her there. It removes the independence of the chair. In fact, I am of the view that we perhaps should go down the path of the English system of having appointed chairs from whichever party alternately, making them truly independent chairs. The idea of the chair voting on every occasion, I think, removes their independence and their ability to perform their duties in the governance of the parliament.

In the time that I have been here, I have seen a gradual watering down of the difference between the parliament and political parties and the difference between the parliament and the government of the day. I think this particular amendment moves further down the path of tying people to one or other of the major parties.

As with the issue of deadlocks, I realise that that is the system in place in Canberra and that it does, in fact, work reasonably well but, again, it diminishes the powers of the upper house. It simply says, 'Well, you can have a look at it and, if you don't agree with us, we'll block you twice and then we'll bluff you with a double dissolution.' I have been a participant in a number of deadlock conferences over the years and I think that, with only one exception, a compromise was able to be reached between the two houses and the two major parties. This takes away the ability to negotiate between the two houses.

I see little good coming from this bill. There are a number of issues that could be taken up quite genuinely and in a bipartisan fashion which would possibly reform and streamline the running of both houses of parliament. They need to be discussed in a dispassionate and bipartisan way, but I cannot see any of them within this proposed 'reform'. In fact, it is a rather clumsy method for Mr Rann to say, 'Well, I have honoured my promise that I would do something with the rabble in the other house. I have found out that the people of South Australia do not want to get rid of them, so I will do it by stealth.'

I am absolutely and utterly opposed to these amendments. I think they do nothing for the governance of this state, they do nothing for the democracy of this state and they put more power in the government of the day—whoever that is—for no gain for those we are meant to serve.

The Hon. M. PARNELL (11:46): If this bill is the answer, then clearly wrong questions were asked. If this is the best that the government can do in relation to parliamentary reform and advancing democracy in this state, then clearly the government does not get it. This is nothing more than a cynical attempt to make the more democratically elected of the two houses less relevant and less effective.

The Greens have debated this matter internally over the past year or so and our position is crystal clear. Until we saw these bills we were expecting that the Premier would be true to his word

and he would put an option to the people of South Australia to abolish the upper house; so the first thing the Greens resolved was that we were opposed to the abolition of the upper house.

It is hard to believe that the government ever thought it would get away with abolishing the house that is so much more responsive to the will of the people than the lower house. Look at the last election, look at the results. The people of South Australia clearly want checks and balances against the misuse of executive power and the dominance of the government in the lower house; and that is why the composition of this chamber includes such a substantial crossbench. Abolition was never going to be supported by the people of South Australia and it was never going to be supported by this parliament.

The next issue raised by the government was the number of members. In any parliament a critical mass of members is needed to properly fulfil the wide range of functions that are involved in scrutinising legislation and holding the executive to account. The Greens believe that maintaining the current number of MLCs is important, particularly in relation to the important but under-used committee function of this parliament. Currently, we have eight active select committees and 11 standing committees. These committees inquire in great detail into areas of government administration. We take evidence from experts in the community. We need a critical mass of members to be able to properly work those committees.

Most committees consist of between five and seven members. The South Australian parliament is already small when compared with parliaments in other jurisdictions. Every member of this chamber would have experienced committees not meeting for want of a quorum; and that is because there are so few of us trying to do so much work on behalf of this state.

The Greens oppose any reduction in the number of members of the Legislative Council. The traditional two to one ratio that is applied in other Westminster parliaments should remain here in South Australia. We cannot afford for the Legislative Council to be so few in number that we are ineffective in doing our work.

The next question raised is in relation to the term of members of the Legislative Council. Traditionally the term of upper house members has been twice the term of lower house members in order to provide for both stability and continuity in the face of wild electoral swings. Clearly, we have to strike a balance between the competing demands of maintaining a stable parliament and the right of electors to change their elected representatives at regular intervals.

The current system is that MLCs have eight year terms with only half the chamber facing re-election every four years. If we were to go to four year terms for members of the Legislative Council, then clearly the quota would be reduced and it would be easier for independent and smaller parties to get elected.

With four year terms the Greens would have had parliamentary representation as far back as 2002. On the other hand, research done by the parliamentary library has shown that there would have been some quite interesting results, including our former colleague the Hon. Nick Xenophon's ticket electing five people at one election.

The Greens in weighing up these two competing interests—that of continuity and stability compared with the right of the people to elect their representatives at regular intervals—have come down on the side of democracy and we are sympathetic to four year terms.

However, the Greens final position was always dependent on how the government packaged these measures. If the only question before us was going from eight year terms to four year terms—we think that is more democratic—we would have voted for it, but it has been packaged with a range of unacceptable measures. Therefore, we will be voting against it.

I come now to the deadlock provisions. As other members have said, the government does not even properly use the provisions we already have. I have been a member of one deadlock conference in relation to the Legal Profession Bill. We met once for 30 minutes and then there was complete silence: there were no meetings, discussions or negotiations. I agreed to be part of that process in good faith. I went there expecting to negotiate, discuss and come up with a good solution on that bill, but the government did not even give us the opportunity to do that.

The government wants to be able to go to an early election if the Legislative Council does not pass government bills, but the flipside of that coin is to ask: what about the sensible legislation that passes this council only to be stalled or defeated in the lower house, often for no good reason other than the government refuses to admit that it does not have a monopoly on good ideas?

Very often it votes against a bill, not because it is a bad bill but, rather, because it is not its bill. That is a remarkable and disappointing aspect of politics in South Australia.

The Hon. I.K. Hunter: That's a shameful observation!

The Hon. M. PARNELL: The honourable member interjects that it is a shameful observation. I can tell the honourable member that I have introduced bills into this parliament that have come from Labor bills in other states and territories. I am happy to admit that there is a range of good ideas out there. I want the best result for South Australia, and I will look to a range of sources. This government votes against Labor bills because they are not its current idea; it does not want anyone else to have credit for legislation.

What about the sensible bill that this chamber passed to fix up the solar rip-off; the big energy retailers who were refusing to pay a fair price for the electricity that they received from householders with solar panels on their roof? The Premier admits it is a rip-off but has failed to do anything about it. This chamber gave him the answer. We passed a sensible bill, but the government refuses to accept it, because the government does not want anyone else to have the credit for fixing up a mess of its own making.

Last night this chamber passed a bill to establish an independent commission against corruption. Here is the challenge to the Labor government: if you want a deadlock provision, let us make it work both ways. Let us go to an election when the more democratically elected house passes a sensible bill that the lower house rejects. If that is your concern—genuine deadlock resolution—let us make it work both ways.

The final position that the Greens reached when we debated this is to point out that, when it comes to genuine parliamentary reforms, there are far more pressing needs than tinkering with the composition of the Legislative Council. For a start, we could ask the House of Assembly to get its own house in order. We could look at how democratic that chamber is. We should be looking, for example, to the introduction of proportional representation and a return to multi-member electorates in the House of Assembly to make sure that that house was genuinely democratic, and that would improve and advance the concept of one vote, one value. The Greens support democracy, which is why we are opposing this bill.

The Hon. J.A. DARLEY (11:55): I rise briefly to indicate that I will be opposing these bills. As we all know, the main provisions are intended to reduce the size of the Legislative Council from 22 to 16, reduce the term of a member of the Legislative Council to four years, introduce new mechanisms for settling deadlocks and give the President of the Legislative Council a deliberative rather than a casting vote, as is presently the case. These changes have been presented to us as a take it or leave it package. Without repeating what has already been said by other members, I too am somewhat sceptical, but not surprised, by the government's approach on this issue.

The government has already conceded that abolishing the Legislative Council altogether is not going to happen. If the government was genuine about allowing the voters of South Australia to voice their opinions and decide once and for all the fate of the upper house then, as pointed out by Dr Dean Jaensch in a recent *Advertiser* article, surely it would have allowed them to decide which reform proposals they support and which they oppose. Instead, what is being proposed is a package of reforms which the government knows will not pass both houses of parliament with an absolute majority. It is another ploy by the government to attack the Legislative Council for not passing a bill which it says would put its fate in the hands of the voters.

The role of the Legislative Council as a house of review and watchdog cannot be underestimated. It serves an invaluable role in the legislative process, ensuring accountability, responsibility and transparency. As highlighted by Dr Clem Macintyre and Professor John Williams of the University of Adelaide in a paper entitled 'The embattled South Australian Legislative Council':

> The fact that there has been no overall political control of the Legislative Council for the past thirty years means that the Council has been able to exercise an independent power, and its capacity to apply checks and balances to the government of the day has been enhanced.

The fact that minor parties and Independents have held the balance of power in the Legislative Council for the past 30-odd years highlights the important role that it plays and the strong community support for its retention.

The level of scrutiny that occurs in the Legislative Council simply does not happen in the House of Assembly. It provides the opportunity for debate and amendments to bills proposed by

the government. While these amendments are usually met with opposition in the first instance, on many occasions the debate that occurs leads to a greater understanding of the reasons why the amendments have been moved an allows for a compromise position to be reached.

My colleague the Hon. Robert Lawson outlined very eloquently in his second reading speech the importance of the committee system and the effect that these changes would have on the Legislative Council's effectiveness in functioning properly in that regard. Macintyre and Williams, in the paper I referred to earlier, also highlighted that one of the most important ways the Legislative Council exercises independent power is through the committee system. They argue:

> As has been the case in other Australian upper houses, the growth of a robust and independent committee system has enabled the South Australian Legislative Council to assert a greater level of scrutiny and maintain greater accountability over the governments formed in the House of Assembly. As South Australia is the only Australian state with no Law Reform Commission, and as it does not have a permanent anti-corruption watchdog [at least not yet I might add], the need for independent scrutiny is all the greater.

They highlight the following fact:

> ...the Legislative Council committees have the capacity to irritate the government and provide one of the key means of the Parliament acting as a check upon the behaviour of the executive government.

Having been a member of several committees since coming to this place, I can attest to the importance of the committee work in the parliamentary system.

While the Premier has abandoned his call for the abolition of the Legislative Council, it is also worth noting some commentary regarding the Queensland experience, the only state to abolish its upper house. Earlier this year, Jill Rowbotham from *The Australian* newspaper reported on the effectiveness of the upper house in an article 'Upper house is worth the effort'. In that article she referred to the work of Nicholas Aroney, reader in law from the University of Queensland who, together with two of her colleagues, examined the effectiveness of having bicameral parliaments in a book entitled *Restraining Elective Dictatorship: The Upper House Solution?* As highlighted in the article, Aroney argues that an upper house controlled by 'an opposition can apply much more pressure inside and outside parliament'. He states:

> Upper houses can delay legislation getting through the parliament, meaning debate can be more effective and there is time for interest groups or stakeholders to mobilise against it…It facilitates greater public deliberation.

On the other hand, Aroney argues that 'Queensland is a place where the government simply dominates the parliament'. This is evidenced by the fact that Labor has been elected to a fifth consecutive term, something that does not happen elsewhere. He goes on to say that 'southern states have much more ebbing and flowing of the fortunes of their political parties'. Aroney makes the point that this is 'partly because governments are not challenged as deeply, so oppositions can make their arguments but are always out voted'.

The conclusion drawn is that Queensland should revert to the old bicameral system. I am sure that all members would agree that there is scope for reform in the Legislative Council but that it should be sensible reform worthy of debate rather than the disingenuous effort placed before us. The government's approach appears to be based on frustration and little else: frustration at not being able to pass legislation without thorough examination and scrutiny, frustration at the establishment of committees that scrutinise the action of the government and, more generally, frustration at not getting its own way.

Perhaps what ought to be of greater concern is the frustration of the community who elect the growing numbers of minor parties and Independents. This factor alone signifies the invaluable role that the Legislative Council plays in the legislative process, and the will of the community that the Legislative Council needs to be retained.

In their paper Dr McIntyre and Professor Williams highlighted the importance of good government over political convenience. The Legislative Council does not impede the legislative process; it encourages progress and effective debate and provides opportunities for voices within the general community to be heard and, indeed, acted upon. I am sure all members would agree that reform is always a good thing. That is why we all do what we do. Whether we agree that some reform to the Legislative Council is necessary is made irrelevant by this bill because of the ineffective and mischievous manner in which it has been presented to us and the manner in which it would be presented to the voters.

The Hon. S.G. WADE (12:02): I indicate my opposition to both Rann government Legislative Council reform bills. The council is rightly approaching these bills with a great deal of

cynicism because they are the remnant of a power grab by an arrogant leader. We remember that in November 2005, without even consulting his own caucus, the Premier committed to the abolition of the council. While the Premier has backed away from his proposal to abolish the council, this set of proposals remains tainted by a determination to strengthen the power of the executive by undermining the house of parliament that it does not control.

I will not detain the council by dealing in detail with the range of issues highlighted by members who have previously spoken. Instead, I will make a brief observation on the need to check power for the sake of good government and refer to a couple of quotable quotes in relation to the benefit of that check on power.

In his paper 'A Defence of the South Australian Legislative Council', presented to the 2007 APSA conference, Jordan Bastoni of Adelaide University said that a second reason for the Rann government announcing the referendum is its conceptualisation of the relationship between the government, the parliament and the people. The comments of Rann and his ministers show them all to be adherent to a view of the democratic process that is becoming more and more prevalent amongst people in positions of power: the extreme prescriptive view of mandate theory. He quotes Stanley Bach on the operation of mandate theory, as follows:

> Here is the mandate theory in full bloom. What need is there for any deliberative legislative process at all? The election determines a winner, so the winner—the government—has the right and responsibility and should have the power to do anything and everything it said it would do. The government allows the opposition to criticise its proposals, but the government will be violating its commitment to the public if it allowed itself to be swayed by the merits of the opposition's arguments.

It sounds remarkably familiar to the arrogance that we see repeatedly on sitting days in this place. We need to challenge this arrogant view of the government. It fails to recognise that both houses have a mandate: the house has a mandate to govern and the council has a mandate to represent broader community interests.

An upper house also avoids concentration of power. In this context I will quote from John Stuart Mill, who was writing in a book *Considerations on Representative Government*. He said:

> I attach little weight to the argument oftenest urged for having two chambers—to prevent precipitancy, and compel a second deliberation; for it must be a very ill constituted representative assembly in which the established forms of business do not require many more than two deliberations. The consideration which tells most, in my judgment, in favour of two chambers…is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult. It is important that no set of persons should, in great affairs, be able, even temporarily, to make their sic volo prevail without asking anyone else for his consent. A majority in a single assembly, when it has assumed a permanent character—when composed of the same persons habitually acting together, and always assured of victory in their own house—easily becomes despotic and overweening if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable there should be two chambers—that neither of them may be exposed to the corrupting influence of undivided power even for the space of a single year. One of the most indispensable requisites in the practical conduct of politics, especially in the management of free institutions, is conciliation; a readiness to compromise; a willingness to concede something to opponents, and to shape good measures so as to be as little offensive as possible to persons of opposite views; and of this salutary habit, the mutual give and take (as it has been called) between two houses, is a perpetual school—useful as such even now, and its utility would probably be even more felt in a more democratic constitution of the legislature.

The government may say that we are not about abolishing the council, just reducing its power, but whether the government seeks to abolish the council or simply denude it of its power, as reflected in these bills, the removal of the balance of power between the houses has the same effect, and I believe it would lead to a very unfortunate concentration of power.

As a number of honourable members have already indicated, I am not closed to reform of the council. For example, I consider that we could better serve the people of South Australia by refocusing our committees. In particular, I was attracted to the suggestions made by the Hon. Robert Lucas in relation to a proposed committee structure. Further, I would like to look at ways in which we can more effectively engage the broader South Australian community, perhaps even in relation to key pieces of legislation. I note that in recent years the House of Lords has used its committees to not merely review bills before the parliament but also engage the community on draft legislation.

While I would welcome reform to better serve our state, I do not consider that the bills before us are a vehicle to explore those opportunities. They are not a bona fide attempt to improve the council. It is the fallback of a failed attempt to abolish the council, and to give it credibility would be to acquiesce in the first step towards abolition. I oppose both bills.

The Hon. J.S.L. DAWKINS (12:08): I rise to speak briefly on this bill and the accompanying bill and indicate my concern and opposition to both measures. I support the comments of particularly the Hons Robert Lawson and Rob Lucas but also other members of the chamber who have expressed a variety of concerns about these two pieces of legislation.

I will not go through every matter in the constitution bill, but I will briefly make some comments, first, about the proposal to reduce the number of members of this chamber from 22 to 16. The Hon. Mr Lawson brought to the chamber some details of the proportion of upper house members compared to lower house members in other parliaments; and, of course, we have 22 in this house compared to 47 in the other chamber, which I think he said is 47 per cent. More importantly, I think it means that our 22 members represent about one-third of the 69 state members of parliament in this state. That is similar to the proportion in the Senate of the total number of federal members, and it is similar in other legislatures around the country. I support that proportion being continued.

The other matter that comes to mind in relation to the number of members in this chamber is that I think there are probably very few members of this council who have never been subjected to some suggestions—sometimes good natured, but not always—from members of the lower house that we have no constituents, we have no electorate and we do not do any work. I think the Hon. Mr Hood alluded to the fact that members of the Legislative Council do a lot of work that goes unnoticed and a lot of work that House of Assembly members would never acknowledge. I think that work around the state is very important.

If we reduce the number of members in this council to 16, it has been pointed out by the Hon. Mr Lucas and others that, if you take out a couple of ministers (or, more desirably, three ministers and the President), that reduces to 12 the number of members available to serve on committees. I am a strong believer in committees established by this council, and in recent times I have had the privilege of chairing a couple that I think have had some impact. They probably have not been given credence by the government but they certainly had some impact behind the scenes.

If we get to a stage where we have a number of committees similar to that which we have now (and I think that is unlikely to change), it means that those members who are available to serve on committees will spend most of their time doing just that. As I have pointed out to people, my ability to be in places such as Berri, Leigh Creek, Modbury, Elizabeth, and elsewhere will be severely restricted because I will spend most of my time on North Terrace. While we have a duty to be here in the parliament building for some of our time, we need to allow members of the Legislative Council to spend as much time out in our electorate as possible.

Briefly, I move to the matter of four year terms. I am not entirely wedded to eight year terms, but what I am very strongly wedded to is the fact that one of the great strengths of this chamber is that, as well as being elected by a totally different system to that for the lower house, we have that half-in, half-out measure and we have staggered terms. So, at times such as 1993 and 2006 when the political spectrum moves significantly one way or the other, you do not have a replica in this council of what happened in the other place. As long as this council remains—and may it remain forever in the future of this state—it must have a significantly different form of election and term of service involving its members.

I intended to conclude at that point, but the Hon. Mr Hood made reference to the suggestion that the President of this chamber should have a deliberative vote, and I would like to comment on that. I think he made the good point that we have been very well served in this chamber by many presidents who take their role very seriously. While they are a member of one side or the other, as the Hon. Mr Hood said, they take seriously the role of being the umpire in many respects. I think that to give that umpire the ability to kick one way or the other in the field of play before then making a decision is foolish. With those remarks, I support the comments of many other members of the opposition and crossbenches, and indicate my opposition to these bills.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:17): I want to make some brief comments about this piece of legislation and, in particular, the referendum proposed by the Premier some years ago to abolish the Legislative Council. I am of the view that it was just a response to the Premier's union mates when, in the first term of the Rann government, the Fair Work Bill was severely amended in the Legislative Council.

I think it is fair to say that neither the Premier nor the government really wanted that bill to pass in that form. However, he was able to say that it was those nasty people in the Legislative Council who gutted his piece of legislation. It was a bit of a sop to his union supporters and union

mates when he said, 'I'll tell you what, I'll abolish the Legislative Council.' He made those bold statements that he thought the Legislative Council should be abolished without ever really thinking it through. Clearly, as we saw with the Constitutional Convention (which came as a result of the deal the government did with Peter Lewis), the community did not want to see the Legislative Council abolished at all and, in fact, wanted it retained.

There has been some ongoing debate, of course. The Premier suggested (and I think also the Attorney-General) that we would have a full four years of debate about a referendum before the next election. We now have only five months, so if this bill is to pass this chamber and we do have a referendum we will have five months of public debate prior to the next election.

We are now looking not at abolition but at certainly a very much watered-down backflip from the Premier's original position of abolition. We are now looking at four-year terms and 16 members and a couple of other administrative changes to the way that the Legislative Council works.

From the opposition's point of view, we have never been opposed to reform but now we have only five months for debate. I think the Electoral Commissioner has budgeted for something like $1.5 million to run this whole referendum. I recall the many months (or perhaps even a couple of years) for the republican debate, which was run nationally, yet in South Australia we are going to try to have a debate in the community over five months for a significant change to the way our democracy works.

The plan now is to have two million people by 2030 (it was originally 2050 but is now 2030). I am sure there will be no move to increase the number of members of the House of Assembly. With 47 members, there is probably no room to seat more in the chamber which was built for roughly that number of people. However, we are looking at having another half a million people. The minister opposite has been talking about the government's 30-year plan for Adelaide with extra dwellings and extra people. To reduce the number of members of parliament really is an attack on democracy in South Australia.

The minister and members of the government are often frustrated—and I do hope that my team is on that side of the chamber next year and that the team over there is over here. However, we have always been frustrated when it comes to select committees. The operation and function of this place requires at least 22 members. Some of the members opposite are laughing. Perhaps they would like to have a reduced number of members in this place so that they can chair three or four committees. They do not have to be ministers but they can still take home the same amount of pay with no actual responsibility.

Perhaps we have finally seen why they are happy to support a reduction in numbers—so that we can still have the same number of standing committees and, instead of chairing one or two committees, they can chair three or four committees, having a 60 per cent loading on their salary. I can see the Hon. Russell Wortley almost jumping out of his socks with excitement that he might chair three or four committees. The Hon. Russell Wortley cannot believe the thought of that; he has just woken up about the size of his pay packet.

We have seen one particularly useful reform, and that is why the opposition has never been opposed to reform. We have the Budget and Finance Committee which is chaired by my colleague the Hon. Rob Lucas. It was basically his baby and his brainchild to come up with that committee. It has been seen to be a very worthwhile part of the function of the Legislative Council, and I am sure it is a committee that will continue to exist, regardless of whichever party is in power, because it is another level of accountability and another check and balance on the government of the day. I think that is where the improvements and reforms should take place—not by reducing the number of members of parliament but by enhancing the role of the Legislative Council. Clearly, the government has no interest in doing that. We have seen this backflip from the Premier—going from a call for total abolition of the upper house to this watered-down proposal—when we should be looking at enhancing our democracy in South Australia, not diminishing or undermining it.

This government has had little respect for democracy in South Australia in the way it rides roughshod over the community. This morning we saw a large transport announcement. We do not have a transport plan in this state. In fact, I FOIed the minister's transport plan recently and got one page. This page is the plan he claims he took to Anthony Albanese in Canberra in order to get some funding from the federal budget, yet every other state has a proper integrated transport plan.

This government talks about reform but one of the things it should do is reform the way it operates so that it keeps the community informed of its long-term planning. We have a 30-year

draft plan for Greater Adelaide but no 30-year transport plan. The minister opposite is talking about putting 150,000 people in Roseworthy but has no plans for them to get in and out of the city; there is no infrastructure plan.

A whole range of reforms need to take place long before we even consider a reduction of numbers in this place. The Hon. Robert Lawson has led the debate on behalf of the opposition, and the Hon. Rob Lucas, one of the wisest members in this chamber who has been here for some considerable time, has made some comments on behalf of the opposition. As I have not heard everybody's comments, I will be interested to read the debate in *Hansard*. With those few words, I indicate that I will not be supporting this bill.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (12:25): It has been an interesting debate. We have heard everyone tell us how essential the Legislative Council is and that we are having this debate so that everyone is well informed about the future of the Legislative Council, but I think the best comment one could make on this is that most members in the chamber are not ready to debate most of the bills the government has put forward for the better provision of governance in this state, so we have had to do this one as a fill-in. That says as much as anything about this chamber.

The Hon. J.S.L. Dawkins: Where were your people when you had to vote on this in the lower house?

The Hon. P. HOLLOWAY: Well, you know that members opposite are doing this; that is the reality. I want to put on record that a number of other matters that we had listed will have to be delayed, notwithstanding the fact that we had a two-week adjournment before this sitting week and the bill has been around for a long time and still members are not ready to debate them.

Essentially, the arguments that were put forward all boiled down to self-interest. It reminds me of the words of advice that Jack Lang was supposed to have said to Paul Keating: always bet on self-interest, son; it's the only horse in the race that is always trying! I think one can see it here. I thought the comments that took the cake were those of the Hon. Dennis Hood when he said that cutting terms to four years would be in the interests of his party. It has reminded me of what a huge sacrifice we make in only going to elections every eight years rather than every four years. Yes, it is a big sacrifice we make! In my personal case, because I came in through a casual vacancy, I soon hope to be facing my second election in 14 years. It is a real sacrifice for the upper house not having to subject itself to the scrutiny of the electorate every four years!

I think that if one looks at all the arguments like those of the Greens, for example, one sees that their formula for reform is entirely in their self-interest. What I thought was most disappointing about the debate was that there was very little reference to the provisions, particularly the deadlock provisions. I believe that one can accept the need for a bicameral system where we have two houses of parliament but there really has to be a workable system of dealing with deadlocks between the two houses. It is one thing—

Members interjecting:

The Hon. P. HOLLOWAY: Because the current deadlock provisions do not work. They are unworkable. They were not properly changed. The last reform we had was in 1973; that is when the major changes were made to the Legislative Council. The deadlock provisions that existed were designed for a multimember system. That is why, for example, you not only had to have defeat of a bill across an election but you also had to have extra seats in each of the upper house electorates at the subsequent election. Those provisions are obsolete.

What is wrong with having a provision like the Senate? Is the Senate system so bad? The double dissolution provisions in the federal parliament have been used only twice but, as we can see at the present time with all the debate about emissions trading, they do at least provide a focus on some of the issues. At least the government should have that capacity. Surely, if you are elected (as the federal government was) with a mandate for a particular course of action and if that proposal is rejected twice within the parliament, shouldn't the government be able to have an election on that matter? What is so wrong with that? I think it is illustrated here in this debate: nobody even tried to address that issue and argue against that provision.

We have heard a lot about democracy from a number of people. Take the proposal to give the President a deliberative vote. Why should the President be disenfranchised? Why should the voters who voted for the President (members of the Australian Labor Party) be effectively denied a

vote? How is that in any way democratic? It is not democratic. Everybody who is elected here should have the same vote as everybody else. Incidentally, I think one of the reforms that should also come in is one that involves Independent members. I note that the Independent members all have additional staff and additional resources. Apart from the 50 or 60 days we sit in here, they can be out in the media every moment of their lives. They have nothing else to do, effectively, on those days because, judging by what happens, they certainly do not appear to be preparing for the legislation. They can be out there every day. Why should they have more resources than members of either the Liberal Party or the Labor Party?

Whether the President is Liberal or Labor, why should the party be effectively disenfranchised and one vote down? If the President had had a deliberative vote, truly reflecting the vote of the people at previous elections, the results may well have been different on a number of occasions, and they should have been. The decisions that this council makes should reflect the wishes of the electors, but again nobody really sought to address that.

The main argument that appeared to be put in opposition to these matters—particularly the change in the size of the council—was the need for scrutiny, and this came up time and again. Yes; we do need scrutiny in our political system, but there has to be a balance between scrutiny and the right of a government to govern. If one has scrutiny to the extreme, where senior public servants spend hours providing information for parliament, rather than actually doing their job in relation to the business of governing the state, the less effective they will be.

I think that one of the real crises that democracy is facing is that, because our media is increasingly focussing on Independent members and the like, increasingly giving them political coverage, it has got to the stage now where the government can make an announcement and the media is not interested. However, when an opposition member says something—in many cases, totally untrue—it will be given completely unedited, unrestricted coverage. There is a shift in the balance there.

If we are developing in this state (and I believe we are) a system where there is a strong vested interest in making the government effective, if an opposition wants to win office, there are two things it can do: it can come up with better policies or it can try to effectively sabotage the government. It can try to effectively make the government ineffective. It can delay it. That is increasingly the direction that we are seeing with an opposition in this country.

We have been through it all before. A whole lot of Independents were elected to parliament back in the 1930s. The numbers became so great that eventually the public realised that it was not the way to go and they were all tipped out. Probably it is necessary to go through cycles of this. However, the one thing that the people of this state want is good government. They want the government to be able to govern.

In many cases, what the public is not aware of is the extent to which the capacity of government to deliver on those things is restrained and, I would suggest, unreasonably restrained. That is why, in relation to double dissolution provisions and the like, the government of the day—whether it is Labor or Liberal—should ultimately have some capacity to deliver on its promises after an election.

Yes; we can keep setting up more and more committees and we can get more and more senior public servants spending their time, taking them away from government, making them less effective and putting their time into preparing reports for parliamentary committees. We can keep adding so-called accountability provisions in bills which are adding millions and millions of dollars in extra reports and extra scrutiny, but it all takes dollars and cents away from providing the services that the people of this state want. That is a real challenge that is happening. It is something that sooner or later our democratic system must address. There must be a balance.

Yes; there must be accountability. I have been in opposition. I know what it is like and I know what oppositions are like. I know how they tend to have conspiracy theories about every action that a government takes—that is all part and parcel of the process. An opposition will inevitably try to make government difficult, but at the end of the day there should be reasonable means for resolving disputes. Governments, at the end of the day, have to be able to govern. What is the point of keeping a government accountable if the government does not have the capacity to do anything in the first place? I think that is really a very important issue for democracy.

I am straying away from the bill, but nonetheless it needs to be said. If, perhaps, all those academics like the Hon. Stephen Wade and others spent a bit more time out of their ivory towers,

looking at the practicality of government and looking at these issues about where the balance should lie, we would all be better off.

It is perhaps interesting that members such as the Hon. Mr Lucas and others concede that there is a need for change in the upper house. One thing that I want to put on the record is the fundamental dilemma we face in trying to get change to the Constitution of this state. Why do we have four particular issues on this referendum? Why can't we deal with them separately? I think this does fundamentally act as a restraint. I just want to put on record the answer to that.

The second bill—the companion bill to this one, if you like—cannot come into operation unless it has been approved by the electors in a referendum. It is a procedural bill. What we need to address is why all four reforms are in a single bill. There is a good reason for this. A referendum question must relate to a bill. So, the question that people would decide would be: do you or do you not support a particular bill?

So, while there can be multiple questions relating to multiple bills, there cannot be a single question posing a choice of multiple bills. If multiple questions are put to the electorate, there is no guarantee as to what combination of questions, if any, will receive a majority of votes. Yet some combinations of reform would be ineffective if passed; in particular, the length of term, for example, cannot be reduced without some sort of amendment to the deadlock provision: either the government's proposed amendment or some other amendment. Other reforms can stand alone legally but lose significance if not passed in combination with others. In particular, the change to the President's vote is linked to the change in the number of members.

The government opposes any proposal that would split up the bill, because it creates a risk that the way the electorate expresses its wish will not be able to be implemented. It would be impossibly complex to advise the public on all possible permutations of vote. In any event, the government's reforms are a package designed to have the combined effect on the role of the council. If they are diluted, the benefits will not follow.

What that means is that ultimately, if there is to be change to this council, it either has to be done outside the Constitution or we are stuck with the Constitution. I know of a famous constitutional lawyer who said of Australia that, in constitutional terms, Australia was the frozen continent because of the rejection of referendums, and I guess this state is similarly placed.

If we are not to have referendums that cover a number of issues that are all interrelated in terms of the effect of the change, I guess that the only alternative is to have a series of single referendums over a particular period but, of course, that would detract from the whole package of measures.

It is almost inevitable, I suppose, that there will be no change to the upper house; that was expected from day one, but it does not mean that we should not try. It certainly does not mean that this place is perfect. It certainly does not mean that the structures we have in this place are what a country needs in the 21st century to go ahead. All around us, society is changing. The media is changing. Newspapers, for example, are becoming increasingly obsolete.

The Hon. J.M. Gazzola: Even the House of Lords has changed.

The Hon. P. HOLLOWAY: Well, exactly. Lots of arguments were put during the debate about bicameral systems and upper houses. As the honourable member said, the House of Lords—on which this place is based, and which has a 750-year history—is changing enormously. In fact, the House of Lords now has far less influence over the United Kingdom parliament than this council has over the South Australian parliament.

The Legislative Council of South Australia is one of the most powerful upper houses in the world. There probably is not one anywhere else. Of course, members want it to be that way, because it is power without responsibility: oppositions can control what governments do, and they can do so without being held accountable. If this bill was passed, at least the government of the day might have had some opportunity, through double dissolution provisions, to be able to keep the upper house accountable.

This is one of the only places in the world where an upper house can reject legislation and not be held accountable. Anywhere else in the world the upper house would be held accountable. That will not change. This bill will be rejected—that was inevitable—but the need for reform will not go away. Inevitably this state will be much the poorer for our not having reform because, ultimately, the cost to this state will be enormous.

The PRESIDENT (12:42): As this is a bill to amend the Constitution Act and provides for an alteration to the constitution of the Legislative Council, its second and third readings are required to be carried by an absolute majority. This bill is of such a nature as to require the second reading to be carried by an absolute majority of the whole number of members of the council. I have counted the council and there being present an absolute majority of members, I put the question: that this bill be now read a second time.

Honourable members: No!

The PRESIDENT: There being dissenting voices, a division must be held. Ring the bells.

The council divided on the second reading:

AYES (7)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Holloway, P. (teller)	Hunter, I.K.	Wortley, R.P.
Zollo, C.		

NOES (13)

Bressington, A.	Brokenshire, R.L.	Darley, J.A.
Dawkins, J.S.L.	Hood, D.G.E.	Lawson, R.D. (teller)
Lensink, J.M.A.	Lucas, R.I.	Parnell, M.
Ridgway, D.W.	Schaefer, C.V.	Wade, S.G.
Winderlich, D.N.		

Majority of 6 for the noes.

The PRESIDENT: As section 26 of the Constitution Act indicates that the President can have a vote on this matter, I exercise that right. Therefore, there are eight ayes and 13 noes and the second reading is lost.

Second reading thus negatived.

REFERENDUM (REFORM OF LEGISLATIVE COUNCIL AND SETTLEMENT OF DEADLOCKS ON LEGISLATION) BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3467.)

Order of the day discharged.

Bill withdrawn.

HYDROPONICS INDUSTRY CONTROL BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3477.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:50): I rise on behalf of the opposition to speak to the bill. The hydroponics industry is particularly vulnerable to infiltration by serious and organised crime. Over the past few years South Australia has moved from having around 90 hydroponics retail shops to around 50 when the industry become regulated. SAPOL purports that many have been owned or linked to serious and organised crime groups. It is interesting to note that the Premier in 2002 had a drug summit, at which one of the outcomes he wanted was to reduce the incidence of drug abuse and the production and cultivation of drugs in our community. However, nearly eight years on, it is sad to say that South Australia is still known as the drug capital of the nation. In particular, with the clandestine drug laboratories operating, there is a ratio in South Australia of one for every 22,000 residents, whereas elsewhere in the nation there is one for every 60,000. So clearly the government's commitment has failed over the past eight years.

The opposition has always been very happy to have had a strong position on drugs, their cultivation and production, and sees this bill as a way of helping crack down on the cultivation of

cannabis. I have come into contact with some individuals over the 48 years of my life who, sadly, have been affected in some way, shape or form by the abuse of drugs and have some personal experience of seeing what certain forms of drug abuse can do to members of our community. I have a personal view that a range of these substances can be particularly harmful to some individuals.

The main facets of the bill involve the licensing requirements and online transaction monitoring systems. Businesses required to be licensed will be retail sellers who sell the prescribed equipment with a prescribed total wholesale value. The prescribed items of equipment are the seven items already regulated: the metal halide lights, high pressure sodium lights, mercury vapour lights of 400 watts or greater; ballast boxes, used to run the lights; devices, including control gear, lamp mounts and reflectors designed to amplify the light and heat from these lights; carbon filters (if growing cannabis in an enclosed room quite a strong smell comes from the plants, so the carbon filter is used to filter out the smell so that it is not exhausted outside by a fan and therefore alerting neighbours, residents or police in the community); cannabis bud or head strippers, designed to strip the heads and buds off the stalks; and the rotisserie device for cultivating seedlings. I have not seen the latter device but have had it described to me as being a device that rotates the plants around in a warm environment and exposes them to light and dark so that it has the effect of being a more rapid-growing environment.

To come back to the carbon filters, the opposition has always wondered where the extra 400 police in our community have gone. Recently I spoke to police officers who had regularly gone to a coffee shop as part of their normal routine when out on patrol. The coffee shop owner said, 'I think you should have a look at the house a few doors down, because there are a lot of people going in and out of there at strange times, and there is a very funny smell coming out of that house.' The police looked at the premises and found a large cannabis crop being grown hydroponically in that house. That demonstrates that some of this increased activity is occurring through our not having a greater police presence in the community. With most of these activities that take place in domestic homes, the neighbours and community members are aware of places where certain behaviour is occurring in the middle of the night.

I recall in my own home town of Bordertown somebody noticed something odd about a house. It was a relatively old house but, clearly, something was happening in the roof because light was shining out of the nail holes in the middle of the night and you could tell that a light was on in the roof cavity. Of course, on further investigation, and this is some years ago, the local police discovered some hydroponic cannabis in the roof.

Getting back to this bill, we are talking about being licensed to sell prescribed items. The most pertinent issue is not so much the licensing regime but the way it will be administered. The licensing process is normal. We have a host of industries where products cannot afford to fall into the management of people who are not fit and proper to deal with these things without endangering the community. However, here in South Australia we have an entity that has a large role in the licensing of industries, and I refer mainly to the Office of Consumer and Business and Affairs. This bill combines the responsibilities of the legislature and the judiciary and effectively makes the police commissioner the judge and executioner. That is one of the areas where the opposition has some concern.

I know that the Hon. Mr David Winderlich, an Independent member, has some amendments on file, and I look forward to taking those amendments to our shadow portfolio committee before we move to the committee stage of this bill. Certainly, as I said, the bill allows the police commissioner to be the judge and executioner. Although it is reasonable for a commissioner in a particular jurisdiction to have responsibility for licensing, we still need to ask whether the role of licensing should be with the police commissioner or some other independent body. As I said, the Hon. David Winderlich has tabled amendments which limit the grounds on which the commissioner can refuse a licence application and, given my argument, I can see his reasoning for filing the amendments. That is why I will be taking these amendments through the Liberal Party process to make sure we give them full examination.

The South Australian Retailers Association has identified over 2,000 sources of prescribed equipment, using hardware stores and electrical suppliers as examples. There is also the capacity for an electronic medium, such as eBay, to be used, and that has also been raised. I raised these issues with assistant commissioner Tony Harrison at a meeting on 27 August. While he conceded that eBay may well be a source of trading in this sort of equipment and that there are other electronic forms of trading—and he also conceded that there could well be some shops that will

decide not to stock these items—he said that SAPOL is trying to target the one stop shops, where you can go in and get the whole set of equipment to grow the product.

He even went as far as to say that he thinks that some of the shops are providing individuals with the complete range of equipment, a bit like what happens in the chicken industry. You have the shed with the lights in it, the company provides you with day-old chickens and the food stock, and at the end of the growing cycle of the chickens they take back the chickens, deduct the cost of the chickens, the food, etc., and give you a payment. I have been told by assistant commissioner Harrison that there is some evidence that suggests that the hydroponics industry operates in that way, where a shop is providing all the equipment and you do not have to pay for it until you have a crop, and he purported to say that the product may be even marketed through that shop.

So the intent is to lessen the ease of gaining the full hydroponics setup. Mr Harrison raised the point that most garden centres and hardware stores do not stock all the prescribed equipment and, really, this bill only targets those that provide the whole range. In relation to specialised lighting stores, some of the lights used on domestic tennis courts are the same types of lights, and Mr Harrison could see a situation where some exemptions could be granted for those people who have a legitimate use for one or two pieces of that sort of equipment.

For the few non-hydroponic stores that stock complete kits, it will be at their discretion to continue stocking them, not to stock them or to go under the licensing regime. Mr Harrison (and I think the rest of SAPOL) believes that there would be very few stores—if they were not particularly hydroponics stores but perhaps a garden centre—which stocked that type of equipment and which would not go out of business if they chose not to stock it. That was the view that SAPOL put to us.

Mr Harrison asserted that, in his career as a police officer of close to 30 years—it is a significant length of time—he had not witnessed the prescribed equipment being used to grow anything of a legitimate substance: for example, tomatoes, lettuces or cucumbers. This equipment is quite expensive and is really used to grow only high-value crops such as cannabis. I was concerned, having previously been a horticulturist, that this equipment is being used in the horticultural industry and—

The Hon. R.L. Brokenshire: You were a flower grower.

The Hon. D.W. RIDGWAY: The Hon. Robert Brokenshire interjects that I was a flower grower. If I had not been elected to parliament, I expect that I would have had a range of glasshouses on my property in the South-East now growing a whole range of crops, including looking at the hydroponic production of cut flowers. I was concerned that this bill might capture the hydroponic vegetable and flower growing industry, but Mr Harrison assured me that these products, which are the regulated ones, are not used—

The Hon. P. Holloway: Must be very funny-smelling flowers.

The Hon. D.W. RIDGWAY: That may be. I used to be very happy and enjoy what I did but I do not think I was intoxicated by growing the product I used to grow! However, I was concerned that we would be introducing a piece of legislation that would impact on legitimate primary production. Mr Harrison assures me that this will not be the case.

It is the commissioner who will decide the granting of licences, based on criminal intelligence. Clause 5 of the bill states that he will be subject to ministerial control. I was interested to read that, and I would like an explanation from the minister, because this seems to be one of the few pieces of legislation where I see the commissioner being able to be directed by the minister.

We have always talked about separation of powers, especially where they involve the police and the prospect of the minister directing the commissioner. Often the Minister for Police, even under questions, would say, 'Well, that's an operational matter. I cannot comment.' Certainly, minister Wright often uses that defence these days when he is questioned. I am intrigued as to why this piece of legislation has a clause in it which says the commissioner will be subject to direction by the minister. At this point I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

[Sitting suspended from 13:03 to 14:15]

WILLUNGA BASIN

The Hon. R.L. BROKENSHIRE (14:16): Presented a petition signed by 33 residents of South Australia concerning the Willunga Basin. The petitioners pray that the council will establish forthwith a statutory authority with powers to address major issues such as population growth and the adequate supply of public and private utility services to the said region and, further, to address issues of water security, food security, biodiversity conservation, landscape preservation, sustainable housing and the pursuit of sustainable employment opportunities through horticulture, agriculture, viticulture, tourism and any other enterprises compatible with the preservation and enhancement of the said region.

McLAREN VALE POLICE STATION

The Hon. R.L. BROKENSHIRE (14:17): Presented a petition signed by 51 residents of South Australia concerning closure of McLaren Vale Police Station. The petitioners pray that the council will—

(a) reverse its decision to downsize police services in McLaren Vale; and

(b) reinstate the one man police station in McLaren Vale.

STORMWATER HARVESTING

The Hon. R.L. BROKENSHIRE (14:17): Presented a petition signed by 85 residents of South Australia concerning stormwater harvesting. The petitioners pray that the council will call upon the state government, as a matter of urgent priority, to invest in stormwater harvesting for metropolitan Adelaide.

OLD NOARLUNGA DEVELOPMENT

The Hon. R.L. BROKENSHIRE (14:18): Presented a petition signed by 357 residents of South Australia concerning development in Old Noarlunga. The petitioners pray that the council will urge the state government to—

1. Ensure that an open space buffer is maintained between the suburb of Old Noarlunga and the said development from the suburb's boundary through to the northern junctions of Patapinda Road and South Road;

2. Provide for a minimum 100 metre open space buffer between the Onkaparinga National Park boundary and the said new development;

3. Rehabilitate the abandoned meatworks site from funds made from the state government's sale of land within the said development with a view to transferring the site to the National Park; and

4. Ensure that Old Noarlunga is not used as a thoroughfare to Main South Road by ensuring that traffic from the said development connects to southern suburbs amenities via a northern exit from the said development connecting to the Southern Expressway and Main South Road with no direct access from the said development to Patapinda Road or Piggott Range Road.

JOHN KNOX CHURCH AND SCHOOLHOUSE

The Hon. R.L. BROKENSHIRE (14:18): Presented a petition signed by 36 residents of South Australia concerning John Knox Church and Schoolhouse. The petitioners pray that the council will—

1. Take immediate action to acquire the John Knox precinct;

2. Partner with the Onkaparinga Council to determine a use for the John Knox precinct as a public asset and thereby;

3. Return the John Knox precinct to the people of Morphett Vale and the wider South Australian community.

ANTI-CORRUPTION BODY

The Hon. DAVID WINDERLICH (14:19): Presented a petition signed by 156 residents of South Australia concerning an anti-corruption body. The petitioners pray that the council will convey the community's desire for an independent anti-corruption body to the Premier, Mike Rann.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:21): I lay on the table the report of the committee on Upper South-East Dryland Salinity and Flood Management Act 2002.

Report received.

PAPERS

The following papers were laid on the table:

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

Reports, 2008-09—
Adelaide Entertainment Centre
Non Government Schools Registration Board
South Australian Tourism Commission

SOUTH ROAD SUPERWAY

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:21): I table a copy of a ministerial statement relating to the South Road Superway made earlier today in another place by my colleague the Premier.

QUESTION TIME

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the 30-Year Plan for Greater Adelaide.

Leave granted.

The Hon. D.W. RIDGWAY: Members would be aware that the government has released its draft 30-Year Plan for Greater Adelaide. What has been of considerable interest to a number of people is the proposal in the plan to have, I think, 139,000 extra residents plugged in around the community of Roseworthy over the life of the plan. As we know, this is some of the best farming land in the nation. Minister Gago screws up her face when I say it is the best farming land. It is some of the best farming land.

The Hon. G.E. Gago: Same old, same old!

The Hon. D.W. RIDGWAY: The same old, same old whinge and twisted look from the other side. In fact, this year, I suspect that some of the best wheat crops ever produced will be harvested in that area. The minister has been reluctant and, in fact, has refused to discuss any of the options that were put forward for future growth. Of course, the question that he has refused to answer is why the government chose Roseworthy for the 139,000 people. My question is: has the minister or any of his staff met with any of the present owners of the land around Roseworthy or anybody who has an option over those same parcels of land?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:24): First of all, let us get the facts correct because it is always important that we do that.

An honourable member: Not to them!

The Hon. P. HOLLOWAY: Well, no; it is not important to them, but it is important for the government before we make any comments that we deal with the facts at hand.

If one looks at the area called Barossa, the net additional population proposed for that area—those within corridors, including transit oriented development, 74,400; fringe growth, 43,800; townships, 20,800, for a total of 139,000. That includes, of course, areas around Two Wells, Roseworthy, Freeling and Kapunda, where I think a little increase is proposed. These were all discussed by the relevant councils, in the area of Light and Barossa, for example. That is the total for the entire area. So, a significant proportion in that area would be within the corridor areas. Roseworthy is good grain growing land. The fact is that the options that the government—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, it is interesting that the Hon. Mr Parnell and others have been talking about Mount Barker. It is interesting that the member did not use Mount Barker. If one looks at most of the area south of Mount Barker, which the government had proposed be looked at, there are a lot of little farmlets there with the odd alpaca or a few—

The Hon. D.W. Ridgway: I didn't ask about Mount Barker.

The Hon. P. HOLLOWAY: Well, no; this is all part of the same argument, that this was intensive agriculture. I refer to some of the growth area around the Gawler fringe—at Gawler East, for example, where much of the growth will take place in the future within the existing boundary and where the main crop growing there at present is Scotch thistles. There's the odd horse—

The Hon. D.W. Ridgway: Where?

The Hon. P. HOLLOWAY: This is on the land at the east of Gawler, where the current—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Well, it's all part of the growth. It has all been included in the fringe area. There has already been a significant subdivision in the area of Roseworthy. Before this government came to office, it was proposed that some of the industrial growth around—is it the Kingsford or Kingsmead Estate, that particular industrial area where the Amcor factory is?

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

The Hon. P. HOLLOWAY: Kingsford Estate. I thank the honourable member. That has been there—

The Hon. D.W. Ridgway: All I am asking is: have you met with the owners? It is a pretty simple question. I'm not worried about Scotch thistles. Have you met with the owners?

The Hon. P. HOLLOWAY: I thought your question was about the agricultural value of the land and so on. Do you want me to answer or not?

The Hon. D.W. Ridgway: Have you met with the owners?

The Hon. P. HOLLOWAY: Have I met with individual owners—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: I do not know who all the owners of the area are. I have certainly met with—

Members interjecting:

The Hon. P. HOLLOWAY: In fact, if one looks at the area of Roseworthy, there are numerous landowners. There are a number of small holdings as well as some larger holdings. One of those, of course, is the University of Adelaide, one of the land owners that I am aware of—or the adjacent landholders. Yes, I have met with the university in relation to that and, subsequent to the 30-year plan, I have met with a number of developers who have had proposals for that area subsequent to the 30-year plan being put out.

Members interjecting:

The Hon. P. HOLLOWAY: It is pretty obvious; because even the previous Liberal government signalled the Kingsford Estate to be a growth area, and councils have been touting it for some time. That is where most of the growth is likely to be. A number of developers would have taken options on land all over the place, thinking about where the expansion would be. Those who got it right may ultimately prevail, I suppose, but there will be plenty of others who would have got it wrong. Given that Adelaide is likely to grow, if people buy land on the fringes of the current growth boundary, sooner or later they will take the decision, if Adelaide continues to grow, that any area on the fringe of the boundary is ultimately likely to be included.

As to Roseworthy being a high value agricultural area, there are some good crops in the area but, when debating the bill last night, we discussed areas where there is intensive high value agriculture, such as McLaren Vale (where, in fact, there is high value horticulture) and the Barossa Valley which this government specifically excluded before the 30-year process. We made that quite clear. We also made it clear before the process that we would preserve the green buffer between

the current Gawler township and the current urban growth boundary; that is, north of the area of Munno Para.

An honourable member interjecting:

The Hon. P. HOLLOWAY: To address that quite spurious and offensive interjection, that promise was made by the government in the 2002 election campaign—well before the current member for Light won the seat in the 2006 election; so let us deal with that offensive rubbish right now.

CHILDREN'S CENTRES

The Hon. J.M.A. LENSINK (14:31): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about children's centres.

Leave granted.

The Hon. J.M.A. LENSINK: One of the objectives of the Women's Information Service is an outreach program for regular visits to children's centres and early childhood development and parenting in the metropolitan and outer metropolitan area. My questions are:

1. What issues have been identified as a result of this program?

2. Is there any input from the Women's Information Service into planned future children's services?

3. What are the expected outcomes?

4. Are any of the children's services that exist in those areas expected to close as a result of future development of children's services by this government?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:32): Indeed, a number of services have been put into that area and other regions. In relation to the work that has been done on children's services, I do not have those details to hand but I am happy to take those questions on notice and bring back a response.

ABORTION STATISTICS

The Hon. S.G. WADE (14:32): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations, representing the Minister for Health, a question about pregnancy terminations.

Leave granted.

The Hon. S.G. WADE: The opposition has been advised that between half and three-quarters of the pregnancy terminations being conducted at the Adelaide Women's and Children's Hospital are being provided to international students. Based on the 2007 annual report of the South Australian Abortion Reporting Committee, this would represent up to 460 terminations. My questions are:

1. How many international students have had a termination of pregnancy in South Australian metropolitan hospitals in each of the past five years?

2. Does the government have any strategy or plan to ensure that international students have access to education, information and support on contraceptive options?

3. So that trends such as these can be monitored, will the minister ensure that the annual report of the South Australian Abortion Reporting Committee includes indicators of the use of South Australian abortion services by non-South Australian residents?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:33): I will refer those questions to the Minister for Health in another place and bring back a response.

GAWLER RACECOURSE REDEVELOPMENT

The Hon. R.P. WORTLEY (14:34): My question is to the Minister for Urban Development and Planning. Is the minister aware of the proposed plan to upgrade the Gawler Racecourse and

whether it has provided opportunities for rezoning of the area due to a reconfiguration of the track layout?

The Hon. C.V. Schaefer interjecting:

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:34): Perhaps the Hon. Caroline Schaefer is suggesting that this place is redundant. We were told it had to be separate, but clearly they have a different view after lunch. I thank the honourable member for his question. I am aware of the proposed $12 million upgrade of Gawler Racecourse. The proposed redevelopment of Gawler Racecourse aims to upgrade the facilities into a second major metropolitan horseracing track, following the SAJC's decision to concentrate its racing activities at Morphettville.

Gawler Racecourse is to be improved by the comprehensive upgrade and reconfiguration of the track infrastructure and racing facilities, water management, landscaping and the new multipurpose function centre. The multipurpose facility will provide the local community with a function centre suitable for a variety of events, including business conferences, educational training programs and wedding receptions.

With Victoria Park no longer considered a viable racing option by the SAJC and the closure of Cheltenham Racecourse, Allan Scott Park Morphettville has become South Australia's only metropolitan racing venue. The construction of a newly designed track at Gawler will accommodate more race meetings and allow for more competitive racing.

The racecourse is conveniently situated between the main road and the railway line and has the potential to draw larger crowds following a significant upgrade. Additional race meetings plus making the multipurpose function centre available for other community based activities are expected to generate greater investment and economic activity in the Gawler and Barossa region. With all those people living out there in the future, I expect it will become an increasingly attractive facility.

The state government has committed $6 million towards the upgrade, with the balance of the funds to be sourced from the sale of 4.3 hectares of surplus land at the southern end of the racecourse. Thoroughbred Racing SA and the Gawler and Barossa Jockey Club have identified land south of the racecourse and bordered by the Main North Road and Barnett Street as being surplus to their needs following the reconfiguration of the track layout.

This reconfiguration and the proposed sale of the surplus land has prompted a request to rezone a section of the surplus land south of the reconfigured racecourse so that it can be used for other purposes that will benefit the Gawler community. After speaking with the Town of Gawler and other stakeholders, the Department of Planning and Local Government has prepared a draft plan amendment. Members of the public are now being invited to have their say on this proposed rezoning.

Through this ministerial development plan amendment, a portion of the surplus land is proposed to be rezoned as neighbourhood centre. This will allow residential, retail and service business development as well as the provision of community facilities. The remainder of the land has been earmarked for the proposed expansion of Gawler High School. The ministerial DPA also creates an opportunity to realign the local road network to improve traffic management. Anyone who has been in that area, particularly at times when the school is closing in the evenings from Monday to Friday, would be well aware of the need for this. It will also be able to more appropriately rezone the racecourse and associated facilities. This includes a new recreation zone to support the core use of Gawler Racecourse for training and racing purposes.

This government takes seriously the views of the public and, as with all proposed ministerial rezonings, there is an extensive consultation process. We want to hear feedback from the community to ensure that we can improve any of the proposed rezonings and identify contentious issues that can be addressed before the final development plan amendment is gazetted.

Members of the public, industry and community associations, government agencies, local councils and other interested parties are invited to lodge submissions by 5pm on Wednesday 9 December. These submissions will then be considered by the Independent Development Policy Advisory Committee, which will provide a report to the minister. The amended rezoning, when

finalised, will then be incorporated into the Town of Gawler development plan and used to assess future development applications.

The community consultation concludes with a public meeting at the Gawler Arms Hotel, 120 Murray Street, Gawler at 7pm on Thursday 17 December at which people will be able to speak to their submissions. All submissions lodged during the community consultation period will be available for viewing online at the Department of Planning and Local Government website from 9 December until 17 December. If it takes five or six hours and, if that is what the public wants, we are very happy to do that because, as I just said, we take our public consultation seriously.

I invite the honourable member as a resident of that area to put in a submission in relation to it, and I hope the Hon. Mr Dawkins will support this upgrading of the racecourse, because it will be a very good thing for the area. Further details of the rezoning, including the draft development plan amendment and instructions on how to lodge a submission, for the benefit of the Hon. Mr Dawkins, can be found at the department's website at www.planning.sa.gov.au.

GAWLER RACECOURSE REDEVELOPMENT

The Hon. M. PARNELL (14:40): By way of supplementary question, has the minister been lobbied in relation to the future of the Gawler Racecourse by former senator Nick Bolkus?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:41): No, the Hon. Mr Bolkus has not lobbied me in relation to that matter.

GAWLER RACECOURSE REDEVELOPMENT

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:41): By way of supplementary question, will the minister allow the residents to speak first at the meeting held in Gawler rather than government officials and members of parliament and councillors?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:41): The conduct of the public consultations is in the hands of the independent Development Policy Advisory Committee. It is up to it how it conducts the meeting. The process is at arm's length from government, so it will be up to it.

The Hon. J.S.L. Dawkins: Very poorly chaired.

The Hon. P. HOLLOWAY: I am not sure who was the chair at the particular meeting: it is normally taken in turns by members of the Development Policy Advisory Committee. I am sure if the chair of the committee, Mr Mario Barone, was available, I know that he does a good job of chairing the meetings. Clearly everyone who lodges a submission will have their say at the public meeting and I advise them to do so.

GAWLER RACECOURSE REDEVELOPMENT

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:42): By way of further supplementary question, is the minister aware that the usual practice is for members of parliament, local government officials and developers to be heard first rather than members of the community?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:42): The Development Policy Advisory Committee is in charge of the consultation. I imagine that it makes common sense that, when you are to have consultation, at least a discussion on the proposal should take place. Would it not make sense, if you are to have public consultation on what is to happen at Gawler Racecourse, and would be in everyone's interest to have Thoroughbred Racing, the Gawler and Barossa Jockey Club or whoever is proposing in this instance to outline the details first so there can be a more constructive discussion? If that is what DPAC decides to do, I can thoroughly understand it and it would have my full support. If it wants to do it another way, that is up to it. I do not tell it how to conduct its meetings.

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

The Hon. P. HOLLOWAY: If I was there I would be accused of influencing the outcome. People have already suggested that somehow there has been the involvement of Mr Bolkus and so on. Since this development plan came up I certainly have not spoken to Mr Bolkus at all in relation to this matter—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order! If the Hon. Mr Lucas has a question, he can get on his feet and ask it.

The Hon. P. HOLLOWAY: —during the period this matter has been proposed. It was something put forward by Thoroughbred Racing South Australia and the Gawler race club some several years ago. It makes sense, and I notice the Hon. John Dawkins has already said that he supports it. Anyone with any interest in racing would understand—and I hope the Hon. Terry Stephens with his committee also understands—the importance of enabling Gawler Racecourse to be redeveloped to become a much more important race track in the conduct of racing throughout South Australia.

I hope all of us with an interest in racing would agree that this proposal is in the best interests. Obviously there will be local issues. To enable this development to go ahead, the Gawler Racecourse is selling off some land. Some of that land can be used for the school, which will be great for the school, and there will be a realigning of roads. A whole lot of other benefits will result and they will affect local residents. Local residents should have their say in that regard, but it would be helpful at any meeting if people are first appraised of exactly what is proposed, and I encourage people to find out what is proposed in the plan and put in their submission so that they can be heard at the public meeting.

GAWLER RACECOURSE REDEVELOPMENT

The Hon. M. PARNELL (14:45): I have a supplementary question. In relation to the ministerial development plan amendment, can the minister advise what role private planning consultants played in the writing of that plan; and, in particular, was Connor Holmes involved?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:45): As I said, this is a ministerial development plan amendment, which is obviously under the control of the government. Who actually did the work for the Gawler Racecourse I will have to check. I will get the information from the department and respond to the honourable member as to who prepared the proposal on behalf of the racing authority.

I remind the honourable member that, again, it being a ministerial development plan, it is the department that conducts the process. Obviously, input comes from the racecourse because we need to know what they were proposing. It would not make much sense if you were to do a development plan amendment that did not reflect what the racecourse was proposing. That would be a bit bizarre. So, of course, we will reflect what they want. As to which consultants they have used, I will seek that information.

LAND AGENTS

The Hon. J.A. DARLEY (14:46): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about registered land agents.

Leave granted.

The Hon. J.A. DARLEY: In recent months there has been a dramatic increase in the number of first home buyers into the market. These first home buyers are relatively inexperienced in the process of purchasing a property and I am sure are grateful for the new consumer protection measures that were implemented in the Land Agents Act and the subsequent regulations last year. I understand that new provisions included on-the-spot fines for agents who were unable to produce their registration card when requested to do so by an OCBA officer. In addition to this, section 6(1) of the Land Agents Act requires that agents must be registered and that a person must not carry on business or hold himself or herself out as an agent unless registered as an agent under the act, with a maximum penalty of $20,000.

On 21 February, the minister stated in a media release that three $230 fines and 60 warning letters were issued last year for breaches that include advertising material not included in the agent's registration details. Four months later, only one additional fine and 57 additional warnings had been issued to agents, yet a recent count of the advertisements in the real estate section in Saturday's newspaper revealed 23 advertisements, or 5.5 per cent of the total advertisements, where no registered land agent number was provided. My questions to the minister are:

1. Is OCBA continuing to monitor the practice of individuals or companies purporting to be licensed agents, given that it was aware of the practice in February this year and there has been very little improvement in the past eight months?

2. What is the use of implementing consumer protection measures with harsh penalties if, in the majority of cases, OCBA is merely going to issue warnings?

3. What is the maximum penalty that has been applied for the offence of a person posing as a registered land agent?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:48): Indeed, the relatively new legislative changes were designed to protect consumers, in particular, but also improve the integrity of the real estate sector itself to improve public confidence in that sector. We believe that those reforms eventuated in a real win-win situation both for both agents and also for property owners and people selling and wanting to buy properties.

OCBA continues a monitoring program throughout the year and has various approaches to that monitoring strategy. At times its efforts can be directed into certain areas that may appear to be particularly problematic, so it might concentrate its efforts in one area rather than another at a particular time. It tends not to make those strategies and decisions public. It does not like to necessarily forewarn those people.

However, in saying that, I should stress that the agency went to great lengths to make sure that there was a good deal of education and explanation to the industry in the lead-up to those changes. I believe the industry was given ample opportunity to understand the changes and to make those changes within their organisations.

I assure the honourable member that OCBA continues to monitor, and it also does some routine things in terms of looking at advertisements and suchlike. It does respond to public complaints so, if the honourable member or any of his constituents believe that there is a particular problem somewhere, I encourage them to ring the agency and raise those concerns with it. I am confident that the agency will act on them.

In terms of the warnings, the agency works with a system of fines and warnings. The general principle is that once-off offenders tend to be issued with a warning and given an opportunity to make sure that they are informed and aware of what is required of them and are given an opportunity to improve their performance. Usually, the general rule is that repeat offenders are not tolerated and prosecutions are often sought in those cases. As I said, that is a general rule of thumb and is not an absolute policy position. However, OCBA tries to give organisations or agents an opportunity to lift their game before enforcing the full weight of the law. In terms of the maximum penalty, I will have to take that on notice and I am happy to bring back the information.

REGIONAL DEVELOPMENT AUSTRALIA

The Hon. J.S.L. DAWKINS (14:52): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Regional Development, questions about Regional Development Australia.

Leave granted.

The Hon. J.S.L. DAWKINS: Members will be well aware that the Regional Development Australia process was commenced by the federal government and its state and territory counterparts in the middle of last year. Since then, the process of the amalgamation of regional development boards and area consultative committees in South Australia has been protracted.

Despite a number of untimely deadlines for the local government funding partners of regional development boards to agree and the subsequently hurried signing of the MOU with federal and state governments in late June, there has been no finalisation of the Regional Development Australia boards.

Regional development boards are concerned about losing experienced local staff who are not assured of a long-term future—a repeat of the situation two years ago, due to the long delays in the state government renewing resource agreements. My questions are:

1. When will the composition of the seven Regional Development Australia boards in South Australia be announced?

2. Is the minister concerned that regional development boards are losing valued senior staff members due to uncertainty in the sector resulting from this delay?

3. Will the minister ensure that the Regional Development Australia boards are established in time to enable the considered approval of a constitution before the deadline for ongoing RDA funding of 31 December this year?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:54): I will refer—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —that question to the Minister for—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —Regional Development in another place and bring back a reply. As the honourable member would be aware, the former premier (Rob Kerin) was assisting the government in relation to the consideration of new boundaries regarding the regional development areas. The aim of the new Regional Development Australia program would be to build on the federal government's Area Consultative Committees Program, with the new Regional Development Australia taking on a broader role to provide input into national programs, to improve the coordination of federal regional initiatives and to link closely with local government and other regional organisations.

As part of that process, as the honourable member would know, it was proposed that our state move from 13 regional development boards to seven and, of course, the five federal bodies, the area consultative committees (ACCs), and they would go back to the seven regional RDOs. I will get a report from my colleague in another place and bring back a response for the honourable member.

REGIONAL DEVELOPMENT AUSTRALIA

The Hon. J.S.L. DAWKINS (14:56): I have a supplementary question. Will the minister also get some advice in relation to the feeling amongst the regional development sector in relation to the fact that, when the process has been applied to the funding partners of regional development, the deadlines have been hurried, but when it comes to action by the state and federal governments the action is very slow?

The PRESIDENT: I will allow the honourable member to get away with that supplementary.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:57): I am sure the federal government is doing everything it can to assist regional areas. I am well reminded of the significant amount of money in the water sphere, for example, that the federal government has put into assisting people in our rural areas, as indeed has this government.

WOMEN IN LOCAL GOVERNMENT

The Hon. B.V. FINNIGAN (14:57): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about women in local government.

Leave granted.

Members interjecting:

The Hon. B.V. FINNIGAN: Members opposite ask whether I know any—women, that is. There is something I do know, and that is that the Liberal Party's attitude to women makes the Adelaide Club look positively advanced—five out of 25 members of the state parliament and one is about to leave, and one out of 10 federals, and you are trying to knock her off.

Members interjecting:

The PRESIDENT: Order!

The Hon. B.V. FINNIGAN: You've got five in here, and one of those is on her way out.

Members interjecting:

The PRESIDENT: Order! When the President stands up, there will be order. Let us get back to the question, the Hon. Mr Finnigan, and let us cease exciting the opposition.

The Hon. B.V. FINNIGAN: I understand that the Local Government and Planning Ministers Council met recently and discussed local government workforce needs into the 21st century. Will the minister advise the council how the Local Government and Planning Ministers Council is contributing to increased participation by women in local government in South Australia?

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (14:58): I thank the honourable member for his important question and also for his insight into these matters, particularly in relation to the differences between Liberal Party performance and that of Labor in terms of its position on women in parliament. Anyway, for the time being, I will stick to the issue of women in local government.

I am delighted to advise the council that participation of women in local government was recently considered by the Local Government and Planning Ministers Council. This important forum brings together the three spheres of government. It comprises the commonwealth, state and territory local government and planning ministers and the national representative of local government, the Australian Local Government Association. It is a great way to progress initiatives and policies that will work across all jurisdictions.

Members may be aware that a looming issue for all of us is the reality of demographic change and concomitant workforce shortage, an issue that is obviously very topical for local government. Of course, in South Australia, we are already planning for this through the South Australian Strategic Plan. Target 6.23, Women in Leadership and Diversity in the Public Sector, is aimed at increasing women's participation in executive positions, and local government is one pathway to achieve this change.

Australia wide, only 20 per cent of local government senior management roles are filled by women and a mere 7 per cent of council chief executive officers are women. These extremely disappointing statistics are reflected in South Australia, too: 16 per cent of senior managers are women and only four councils—Kangaroo Island, Tea Tree Gully, Mitcham and Walkerville—have a female chief executive officer. With figures like that, one can only look forward to improvement.

This gender disparity is unacceptable and the government is already working with the sector to lift the participation of women. We have supported the establishment of a South Australian branch of the Australian Local Government Women's Association, sponsored both the National Conference on Women in Local Government in Adelaide in April 2009 and an Award for Excellence in Advancing the Status of Women in Local Government, first, in April 2008 and then again this year.

By endorsing the development of a national local government workforce strategy, our efforts will now be boosted by all jurisdictions working together to attempt to raise the bar. The draft workforce strategy focuses on attraction, retention and skills development in local government bodies. It considers broader issues such as an ageing workforce, shifting populations away from rural and remote regions and increasing competition for professional staff.

Key elements of the strategy are to grow the pool of highly skilled and specialist employees needed to staff councils in the future by attracting groups who are currently underrepresented in that sector. The draft strategy is a tool for consulting with state and local governments and local government associations. It poses a series of questions to identify the people who will be needed in this sector in the future and directs attention to the means of achieving change.

It is an important initiative, and I am keen to develop the strategies to eliminate barriers to women participating in local government both in senior positions and also as elected members. The commonwealth government has also announced an additional $490,000 to support improved participation by women in this important sector through things like scholarships, leadership and mentoring programs and also improved data collection.

South Australia is supporting and participating in that work, and it is abundantly clear that current participation by women in leadership roles in local government does not represent gender balance. We know, of course, that gender balance is not just the right thing to do but it is actually the smart thing to do in terms of good business. Women are an increasingly educated and skilled

segment of the labour pool and are enthusiastic about self-education to get ahead. As half of the talent pool, it is clear that women should be at the forefront.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: I want to ensure that women are developed and encouraged to aspire to influential positions and I am heartened by the renewed focus to address this issue by the jurisdictions working collaboratively. Culture change within local government, flexible working conditions and measures to attract and retain these valuable employees are the prime tasks for the sector.

A new national local government centre for excellence headed by Professor Graham Sansom will be the vehicle to refine the strategy and will be consulting with local government and the Office for State/Local Government Relations in the coming months. I certainly congratulate the Local Government Ministerial Council and the Australian government on taking this initiative leading up to the national Year of Women in Local Government in 2010.

I look forward to the outcomes of that project and, of course, we certainly congratulate the Rann Labor government on its performance in terms of its number of women in parliament. Labor currently has 15 women in the South Australian parliament; the Liberals have five.

ELECTRICITY FEED-IN SCHEME

The Hon. M. PARNELL (15:05): I seek leave to make a brief explanation before asking the Minister for Mineral Resources Development, representing the Premier, a question about the review into the solar electricity feed-in scheme.

Leave granted.

The Hon. M. PARNELL: On 8 April this year, the Legislative Council passed the Greens Electricity (Feed-In Rates) Amendment Bill to fix a loophole in the government feed-in scheme which allowed electricity retailers to stop paying for the electricity they were receiving from households with solar panels on their roof when the scheme began in June last year.

In June this year, in stating why the government was not going to support the bill, the member for Light in another place said the government was conducting a review into the scheme, and the officials conducting the review would consider 'options to ensure customers receive fair value from retailers for energy exported to the network'. He went on to say:

> It is anticipated that the government will be in a position to advise the parliament of the outcome of these deliberations in September this year.

This review is apparently being conducted by officers from the Premier's department. Yet, on the department's own climate change website, it currently states:

> In May 2009, South Australia reached the 10 MW capacity. This has triggered a review of the feed-in scheme which will commence shortly. The terms of reference will be published when the review is formally announced.

In response to media interest as to why electricity retailers continue to exploit this loophole in the government scheme, the Premier stated on Channel 7 News on 1 September:

> The electricity companies that are now basically dodging their responsibilities deserve to be labelled as rip-off merchants.

My questions to the minister are:

1. Has the review into the feed-in scheme actually begun?

2. If so, what are its terms of reference?

3. When will it be completed?

4. Will the government commit to resolving this situation—where the Premier himself says that electricity companies are dodging responsibilities and acting as rip-off merchants—before the state election, or will the 10,000 or so households in South Australia that export solar electricity to the grid continue to be ripped off until the middle of next year?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:07): I will refer that question to the Premier and bring back a reply.

COURT REGISTRY CLOSURES

The Hon. T.J. STEPHENS (15:07): I seek leave—

The Hon. B.V. Finnigan: The most inspiring member in the place.

The PRESIDENT: Order!

The Hon. T.J. STEPHENS: Mr President, please give me protection from the lump of lard on the other side.

The PRESIDENT: Order!

The Hon. T.J. STEPHENS: I seek leave to make a brief explanation before asking the Leader of the Government, representing the Minister for Justice, questions about the closure of regional court registries.

Leave granted.

The Hon. T.J. STEPHENS: Earlier this year I asked a question about upcoming closures of court registries in Coober Pedy and other regional areas. September 24 was the last day the Kadina and Coober Pedy court registries stayed open when the court was not sitting, and 25 September was the last day for the Ceduna Registry

. The Courts Administration Authority has argued that the registries were the least busy in the state. Fear not, however, as evidently consultants are now available on a part-time basis. Part-time Aboriginal justice officers (AJOs) will continue to visit these towns instead of full-time staff.

The mayor of Ceduna recently commented that this is unacceptable and argues that it is not how Aboriginal people do business. The mayor states:

> They historically had access to the registry staff when required and they simply go into the office and transact their business. They don't run to a program of appointments and to suggest that it will be properly covered that way is just ludicrous.

My questions to the minister are:

1. Does the government believe sufficient time was given to consult local communities about these closures?

2. Is the minister certain that these part-time AJOs will be able to offer locals the same level of service they received previously?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:09): I will refer the honourable member's question to the Minister for Justice in another place and bring back a reply.

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. CARMEL ZOLLO (15:09): My question is to the Minister for Urban Development and Planning. On 6 July, the government unveiled the historic 30-Year Plan for Greater Adelaide, a blueprint for tackling the economic and environmental challenges that face our generation. As the deadline for feedback from the public closed on 30 September, will the minister provide an update on the response from the community on this important strategic document?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:10): About two weeks ago the deadline closed for people to have their say about the draft 30-Year Plan for Greater Adelaide. Adelaide is where we live and it is important that we seek input from individuals, councils, industry and community groups about the plan for tackling the challenges that lie ahead in the next three decades.

The draft plan is a major forward looking document, the likes of which have not been seen in South Australia since the 1960s post-war baby boomer population expansion. This is a new vision that addresses issues being faced in the 21st century about where we live, work and travel and relate to our environment, but it also draws on the legacy created by Colonel Light in the original plan for Adelaide.

With the release of this draft plan this government has recognised the absolute necessity of forward planning as an important tool in guiding policy decisions in key areas, such as infrastructure, which includes housing, health, education, transport (for the benefit of the Leader of the Opposition) and water security.

Adelaide is already recognised as one of the world's most liveable cities. Our parklands, public spaces, heritage buildings, character streetscapes and proximity to both the hills and sea are all attributes that make our city a desirable place in which to live. Maintaining and improving the liveability of our city is one of the key objectives of the draft plan for Greater Adelaide.

The centrepiece of our approach will be to encourage transit oriented development and infill opportunities around transit corridors. Some of the ways in which these will contribute to liveability are:

- increasing densities around stations and transport interchanges that encourage the creation of walkable, safe and connected, less car reliant neighbourhoods;
- placing emphasis on good design and mixed use precincts that create distinct neighbourhoods with their own character and identity; and
- encouraging a diversity of housing that allows people to move from a house on a large block of land to a townhouse or apartment, but not have to move away from their existing community.

Given the rapid ageing of the population, the number of people aged 65 and over will increase from about 18 per cent to 22 per cent of the population over the course of this period. I think just about everyone in this parliament will be included in that group over the next 30 years, so the proportion will go from 18 per cent to 22 per cent. Clearly, in order to have diversity of housing that allows people to move from areas where they currently live to more complex, dense living in their neighbourhood is incredibly important.

Since the launch of the draft plan in July there has been a comprehensive program to advise and inform business, industry, local government and the community. Public comment is vital in developing a final version of this major strategic plan. At last count, the Department of Planning and Local Government had received more than 570 submissions. On 30 September, when the deadline closed, we had received—

The Hon. R.L. Brokenshire: I have one in there.

The Hon. P. HOLLOWAY: If it was in early it would have been one of the 350 we had at lunch on the last day, but a number of submissions were received subsequent to the deadline or in the mail the next morning. Obviously, we have included those submissions so it is now more than 570 submissions.

More than half the submissions have been lodged by individual South Australians. The remaining submissions have been received from councils, academics, industry, business and community groups, as well as government agencies. During the community consultation period the government faced a campaign of disinformation and misinformation, including things about maps and the colour of maps.

We had a campaign of misinformation. We had population growth forecasts, which we were told were overblown. Population forecasts were wilfully distorted and we had the expected carping about editorial and technical detail. Most of that criticism was a diversion, rather than a critique of the basic objectives of the 30-year plan. Much of the feedback, as a result of early review of the submissions, indicates that people are generally supportive of the thrust of the plan, although naturally there is some criticism about how it applies to specific regions, especially in terms of getting the planning right for infrastructure and services. No doubt there are those who are opposed to it. Of course, there are some people who are opposed to any growth at all, while others support growth, just somewhere else, not in their part of Adelaide.

Greater Adelaide covers a large metropolitan semi-rural area from Gawler in the north to Victor Harbor in the south out towards Murray Bridge in the east and Gulf St Vincent to the west. We need to create a framework for sustainable growth to accommodate the expected population growth of 560,000, up to 282,000 new jobs required and 258,000 additional dwellings during the next 30 years. Other features of the draft 30-year plan include planning the development of about 60 per cent of new housing within metropolitan Adelaide within 800 metres of a transit corridor, increasing housing density, particularly around mass transit hubs and corridors and bringing

housing, jobs, transport and services into these mixed use developments to reduce the need for people to drive their motor vehicles.

Also, of course, is the capitalising on record infrastructure spending, currently running at more than $11 billion over the next four years, including more than $2.5 billion in public transport upgrades. It is interesting that the Leader of the Opposition talks about a plan; I would have thought $2.5 billion worth of additional spending—$2.5 billion in public transport upgrades—is the policy that you want to have. I suppose what we will get from members opposite is an unfunded plan about doing something they have no intention of doing. This government is actually delivering real dollars—billions of dollars—in relation to the upgrading of infrastructure; I think something like seven times the level that existed prior to this government coming to office.

The draft 30-year plan also protects up to 375,000 hectares of significant agricultural land and earmarks about 5,000 hectares of land designated for employment opportunities. Also, of course, we are committed to ensuring a 25 year rolling supply of land, with 15 years zoned supply for future urban development. This will keep housing prices in Adelaide competitive and will support the affordable housing targets. I take this opportunity to thank all those residents of Greater Adelaide who took the time to obtain a copy of the draft plan and lodge a submission with the Department of Planning and Local Government.

Members interjecting:

The PRESIDENT: Order! If you want to waste the last five minutes of question time, keep interjecting.

The Hon. P. HOLLOWAY: I was acknowledging your indication that the debate should cease so that you could deal with those interruptions from members opposite. I would like to get this on the record, because I would like to thank all those members of Greater Adelaide who took the time to obtain a draft plan and lodge a submission with the Department of Planning and Local Government. I am delighted that so many individuals, community groups and organisations have taken the time to contribute to this blueprint for tackling these economic and environmental challenges that face our generation. These submissions will be used together with feedback from regional meetings held throughout Greater Adelaide during the past three months to determine the final shape of the 30-year plan.

Members interjecting:

The Hon. P. HOLLOWAY: It is amazing how members opposite are always making this spurious claim that somehow or other this government does not believe in community consultation. As soon as we talk about it, what do they do? They totally ignore it and try to ridicule it. They really are a divided group that is looking for somewhere. They are like a dog chasing its tail; they really do not know the direction they are going in. These submissions will be used to help shape the final 30-year plan. Local government and industry have also played a key role in reviewing the plan and its contents and holding specific events to discuss the targets and strategies within the draft plan.

The response to the 30-year plan shows the absolute necessity of providing forward planning as an important tool to guide government decision making in key policy areas such as infrastructure, housing, health, education, transport and water security. If the honourable member looks at the plan he will see where much of the indicated future transport is located, but of course it is a 30-year plan. Some of that will be indicative.

This government is not arrogant enough to suggest that we can determine everything that will happen in the next 30 years, but in the immediate future and over the next five years we will be putting an incredibly substantially large amount of money—billions of dollars—into our infrastructure. The final version of this document will give South Australia one of the most competitive planning systems in Australia, while ensuring that Adelaide remains one of the most liveable, competitive and sustainable cities in the world.

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. M. PARNELL (15:21): By way of a supplementary question, will the 570 public submissions be published on the web, as is the practice with other public consultations processes undertaken by the department?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:21): Normally that is done, but given the volume of them I am not sure whether it will be practical to do so. At the very

least they will be available for perusal in the department. I will seek an indication from the department. Obviously, there are some limitations to the website, but I am pleased that the Department of Planning and Local Government is one of the most available websites in the state.

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

The Hon. P. HOLLOWAY: That is rubbish. There is more information about nearly every activity of the planning department available on that website.

The PRESIDENT: Order! The minister should refrain from responding to interjections because interjections are out of order.

PARLIAMENT, SITTING PROGRAM

The Hon. R.L. BROKENSHIRE (15:22): I seek leave to make a brief explanation before asking the Leader of the Government a question regarding sitting hours.

Leave granted.

The Hon. R.L. BROKENSHIRE: I observe that at the conclusion of today's sitting we will have only nine sitting days until the state election in March 2010. On my calculations that leaves us with 156 days from today to the election, of which this parliament will sit for only nine days. Given the precedent of the last election, where the parliament, if we ignore the ceremonial 27 April sitting, effectively did not sit until 2 May—about 40 days after the election—we face 196 days with only nine sitting days or, looking at it another way, once the parliament rises on 3 December we will have 106 days without the parliament sitting.

Recent research I have conducted demonstrates that this year our parliament ranks right near the bottom nationwide on the number of sitting days. I also note that the present process of determining sitting hours involves no consultation with cross bench and Independent members and largely involves the government dictating to the opposition when parliament will sit. My questions to the leader, therefore, are:

1. Does the leader believe this lack of sitting days is good governance?

2. Will the leader consider a more consultative approach with other members in the setting of sitting hours?

3. Why does the government want to hide from the scrutiny of the parliament?

4. Will the government support my call to bring back the parliament in February for two sitting weeks?

5. Is the government trying to turn this council into the kangaroo council that a government backbencher described it as last night?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:24): Is it not extraordinary—

Members interjecting:

The PRESIDENT: Order! We have a lot of government business to finish, so we will have the minister heard in silence.

The Hon. P. HOLLOWAY: It was inevitable that we would get a question like that. If one looks back through the history of this parliament dating right back into the Playford era of the 1950s and 1960s, one will see that in that period elections were held regularly. Tom Playford used to call them the first Saturday in March every three years. In those days the parliament did not sit between October or November of the year before right through to the middle of the next year. That was the way it was done. There have been elections regularly in March ever since. If it has ever happened, parliament has rarely, if ever, sat in the first part of the year. That is the first point I would make. The honourable member talked about the lack of sitting hours. Yesterday this parliament sat—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: —all day until the late hours of the evening and there was not one bit of government business transacted. If one wants to go back—

An honourable member interjecting:

The Hon. P. HOLLOWAY: Because of what? How ridiculous it is to say that the government controls the council. If only we did. The fact is that, because the opposition and minor parties, in conjunction, control this chamber, we spend hours and hours discussing private members' business rather than government business. Can someone name another upper house in a parliament in this country—or in this world—where an entire day, week after sitting week, is spent entirely on private members' business? It happens here all the time. When this government has tried to reform sitting hours like the lower house has so that we have more reasonable sitting times for members without lengthy sittings at night, it has invariably been opposed.

The fact is that this parliament, during the course of the Rann government, has sat more frequently than the government of which the honourable member who asked the question was a member—significantly more.

An honourable member: That's untrue.

The Hon. P. HOLLOWAY: It is quite true. You go and check it out. We have sat—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. HOLLOWAY: The fact is that this parliament has more than adequate time at its disposal to deal with the business of government in the remaining period if it wishes to do so. I have no doubt that all sorts of games will be played, but we will deal with those as they surface. As I said, if one looks at the amount of time that is devoted to private members' business, there would be no other parliament in this country, or possibly in the world, that would devote as much time as this parliament does to private members' business.

ANSWERS TO QUESTIONS

AP SERVICES

In reply to the **Hon. R.D. LAWSON** (5 March 2009).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Aboriginal Affairs and Reconciliation has provided the following information:

1. I advise that the funds provided by the Aboriginal Affairs and Reconciliation Division of the Department of the Premier and Cabinet (DPC-AARD) to AP Services Aboriginal Corporation (AP Services) for the current 2008-09 financial year to 30 April 2009, are as follows:

- Two instalments of $358,088 (total $716,175) for the day-to-day operation and management of the Central Power House (CPH) at Umuwa;
- $1,254,806 for the net cost of diesel fuel used for power generation at the CPH;
- $221,008 for the balance of diesel fuel for Amata, Pipalyatjara and other Aboriginal community auxiliary power facilities;
- $180,000 for the provision of homeland bore and electricity services.

This funding is in accordance with two funding Agreements, one being for the management of the central power facility and the purchase of fuel plus essential services at Umuwa, and another for homeland electrical maintenance and servicing facilities.

It should be noted that the Department for Transport, Energy, and Infrastructure (DTEI) has funded AP Services $584,483 for road grading, whilst the Commonwealth through the Department of Families, Housing, Community Services and Indigenous Affairs continues to provide funding for municipal services.

2. The state government through DPC-AARD has applied the following measures to ensure there is no misappropriation of funds:

(a) Each Agreement with AP Services allows the Minister (or DPC-AARD) to:

- Require AP Services (as the Grantee) to repay either the whole or a portion of the Grant;

- Withhold all future funding of the Grantee;
- Pursue any legal rights or remedies which may be available to the Minister, and
- Terminate or curtail any program or project conducted by the Minister of which the purpose is part.

(b) DPC-AARD has sought reports from the AP Services administrators, KordaMentha Propriety Limited on the status of finances and that funding has been appropriately expended. DPC-AARD has provided funds based on invoices for services rendered.

(c) DPC-AARD has had regular meetings with KordaMentha regarding expenditure for the management of the Central Power House, homelands management, and essential services.

3. DPC-AARD has developed a contingency should AP Services actively fail to provide the services or reporting that is required of this Agreement. These options include direct service contracts with key service providers and essential services officers.

SUPER SCHOOLS

In reply to the **Hon. J.S.L. DAWKINS** (26 March 2009).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Education has provided the following information:

Now that contract and financial close has occurred, the builder's timeframes can be confirmed. The Playford North Birth to Year 7 School at Smithfield Plains and Regency Park School at Taperoo will open in Term 4, 2010, and Munno Para West Birth to Year 12 School will open in Term 2, 2011.

These schools will be delivered on budget. They will begin operating in Term 1, 2010 at their existing locations. The exception to this is for students from Smith Creek Primary School who will be transported by bus to attend classes at Davoren Park Primary School and Smithfield Plains Primary in 2010.

Once the new facilities are complete, the students will then transfer to their new schools.

COOBER PEDY, HOUSING

In reply to the **Hon. T.J. STEPHENS** (17 July 2009).

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy): The Minister for Housing has provided the following information:

1. The State Government has been working closely with the Federal Government on many funding proposals.

Through the Department for Families and Communities, the State Government has also had a number of discussions with both the District Council of Coober Pedy and the Umoona Community Council in Coober Pedy and other service agencies in the region about the need for a Transitional Accommodation Centre.

The Department is in the process of working with both the District Council and the Umoona Community Council to determine proposals for location and service model of a centre for Coober Pedy.

WILSON, MRS K.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:27): I table a copy of a ministerial statement relating to Mrs Kunmanara Wilson made earlier today in another place by my colleague the Hon. Jay Weatherill.

STATUTES AMENDMENT AND REPEAL (TRADE MEASUREMENT) BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3476.)

The Hon. R.P. WORTLEY (15:28): I rise today to contribute some remarks in relation to the bill, which is intended to give legal effect to COAG's 2007 decision to reform trade measurements and introduce a national trade measurements system.

This is no small matter. I am advised that the trade measurement system in this country provides an essential foundation for transactions valued at more than $400 billion a year. About three quarters of these dealings are between businesses, often for millions of dollars, with the balance being retail transactions that can be as simple as the purchase of a dozen 700 gram eggs from a corner shop. Clearly, whatever the magnitude of the dealings, certainly a measurement is essential. For purchasers it is a matter of receiving the goods they have bought in reliance on a price per metre, litre or kilogram; and, for vendors, even small errors in weight, length or volume can be significant. The use of inaccurate scales can result in considerable accumulated loss over time so certainty and integrity in measurement is clearly of benefit to both parties to a transaction.

Trade measurement may be defined as the measurement of area, weight, length, volume or count to determine the price in a transaction. As an example, the petrol pump measures the volume of petrol delivered and calculates its total price. A 'trade measurement system', therefore, is the phrase used to describe the infrastructure required to ensure that the petrol pump (or other trade measuring instrument) is accurate so that both vendor and purchaser can be confident that a fair result has been arrived at.

Section 51 of the Commonwealth Constitution confers on the commonwealth the power to make laws with regard to, among other things, weights and measures. The National Measurement Act presently allows for the defining of measurement standards and units, patent approval of instruments for legal purposes or in trade, and tracing of measurement. However, it does not encompass inspection and enforcement matters (save for utility meters) or the regulation of trade measurement. Those powers have, to date, resided with the state and territory governments, meaning that nationwide we have had eight systems of trade measurement.

The situation is clearly in need of streamlining and, to this end, the bill before us today will repeal the Trade Measurement Act 1993 and the Trade Measurement Administration Act 1993. It incorporates certain transitional provisions and makes a small consequential amendment to the Natural Resources Management Act 2004. Since the commonwealth has power by virtue of section 51, no referral of powers is required.

As for the advantages of the new regime, just consider those present inconsistencies and differences in trade measurement between the states and territories. In some instances, multiple licences are required for cross-border verification operations. Enforcement regimes differ, which results in road bumps on the highway of economic activity—unnecessary, often complex and frequently costly road bumps.

This new national system will mean a more seamless economic system, free of the overlaps, duplication and inconsistencies that so clearly impede trade and commerce when the state statutes interact. Members should be assured that not only will the new system continue to make certain the reliability of trade measuring systems such as scales and pumps but it also contemplates the introduction of new technologies.

In addition, uniform practices will be established for each class of measurement instrument so that traders will no longer have to deal with that inconsistency of practice across states. As before, the majority of verifications of trade measurement systems will be performed by the private sector with licences issued on the basis of competence.

To assist licensees and traders, the federal government will develop nationally-recognised qualifications for verifiers. Not only will this provide certainty for those involved in transactions but it will also provide national standards for skills training and development in the workforce. Commonwealth inspectors will perform an inspection function so as to ensure that licence holders and traders alike maintain the accuracy of their trade measuring instruments.

Meanwhile, the National Measurement Institute will continue to provide the technical infrastructure to support trade measurement and will administer the new system. While the National Measurement Amendment Act 2008 came into operation on 1 July 2009, the National Measurement Institute will commence administration of the system on 1 July 2010. The bill before us today facilitates this process and looks towards the implementation of necessary and welcome reforms. I commend the bill.

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (15:34): I have checked and I have agreement to put this bill into committee but not to progress, and for any other matters to be dealt with at clause 1. Thank you for your confidence and trust, Mr Acting President.

By way of concluding remarks, I wish to thank those members who have made contributions to the second reading debate, although I am disappointed that the opposition has indicated that it will not be supporting this bill. I find it difficult to understand that position, given that this bill is really a very common-sense piece of legislation. It is really about national consistency in relation to trade measurement. Currently, the responsibility around trade measurement rests with individual states and territories, so we have a number of states doing different things. This is about streamlining and making more efficient a system that is important to business right throughout the nation, and it also affects our international trade. This a very sensible and logical step to be taking. This bill would enable the repeal of the relevant South Australian legislation, which would then enable the commonwealth legislation to take effect.

I urge all members to support the bill. It is a very sensible step to be taking. The Hon. Terry Stephens asked some questions, and I am not sure whether there are answers to all of them. We are certainly checking those out and, where I can provide answers, I will do so during the committee stage. I thank all members.

Bill read a second time.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3468.)

The Hon. R.D. LAWSON (15:38): I indicate that Liberal members support the principle underlying this bill. We do support appropriate unexplained wealth declarations as a way of attacking organised crime. Contrary to claims frequently made by this government, this initiative is not one that began in South Australia. Both Western Australia and the Northern Territory already have legislation that contains unexplained wealth provisions, and in the United Kingdom and Italy there are also similar provisions.

It is interesting to see that, federally, in June this year, the federal Attorney-General, Robert McClelland, said that organised crime is costing this country some $15 billion a year. He notes that it inflicts substantial harm on the community, business and government, but he notes that, in many cases, people who arranged the crimes and profited from them are able to avoid prosecution, and he suggests that the commonwealth is closely examining legislation to include unexplained wealth provisions.

In August this year, the New South Wales government was pressed on the matter. The Premier there claimed that New South Wales wants a national approach to unexplained wealth laws but, as with all other governments, that government is examining these measures.

As I say, we support the principle of them but very often whilst one supports the principle, the detail by which the government seeks to achieve its aims is complex, and sometimes pitfalls arise, as indeed this government found with its ill-starred legislation in connection with the Serious and Organised Crime Control Act (the so-called 'bikies legislation') which the Full Court by a majority last month held contained a provision—and a central provision, section 14(1)—which was invalid because not merely the section itself but also other provisions of the act collectively compromised the institutional integrity of the court as a repository of federal jurisdiction, thereby invalidating the law.

We are anxious to ensure that this legislation does not contain similar defects. I think it is worth putting on the record what seems to me the essential principle that was applied by the majority—Justice Bleby and Justice Kelly—in reaching the decision they did in the 'bikies case', the correct name of which is Totani & Anor v the State of South Australia.

After very extensive analysis, Justice Bleby referred to the judgment of Chief Justice French in the case of K-Generation Pty Ltd v Liquor Licensing Court. That is a recent decision with which members will be familiar. It is a decision in which the High Court upheld provisions of South Australian law which enable the use of criminal intelligence in relation to applications under the Licensing Act. Justice Bleby quoted Chief Justice French as follows:

The question whether functions, powers or duties cast upon a court are incompatible with its institutional integrity as a court will be answered by an evaluative process which may require consideration of a number of factors. The evaluation process required is not unlike that involved in deciding whether a body can be said to be exercising judicial power.

There are a number of elements of this particular legislation that do require close examination. First, there is the use of criminal intelligence. Secondly, there is a reduced burden of proof. Proceedings for an unexplained-wealth declaration are conducted on the basis of proof on the balance of probabilities, which is of course the ordinary civil onus.

There are many other elements of the legislation that people would regard as questionable. For example, there is no requirement in this legislation that any offence or criminal conduct be proven against anybody. That in itself is a serious matter. Of course, it is easy to couch one's second reading rhetoric in relation to legislation of this kind on the basis that these provisions will only be used against organised criminals—the Mr Bigs, the drug traders and the like. However, the language of the legislation is not couched in that way. It is cast widely, so it is important that we ensure that all the appropriate protections required by law are in fact included.

I might mention by way of a general introduction some of the comparable legislation elsewhere. For example, the United Kingdom's Proceeds of Crime Act 2002 provides for the confiscation and restraint of the proceeds of crime. This is similar in respect of our existing confiscation of criminal assets legislation. In the United Kingdom Proceeds of Crime Act, assets can be either confiscated or restrained. To obtain an order from the court for a person's assets to be restrained, it is only necessary that the person is being investigated and there is a reasonable cause to believe that that person has committed an offence.

The United Kingdom also has a set of offences under the Proceeds of Crime Act which enable the confiscation of assets obtained from a 'criminal lifestyle'. Under section 75 of that act, a person is said to have a criminal lifestyle if they have been convicted of a number of serious offences, mainly drug trafficking offences, if they have been convicted of an offence over a period of at least six months from which they have obtained at least £5000, or if they have been convicted of a combination of offences which amount to a course of criminal activity, which is either a conviction in the current proceedings which are before the court of at least four offences from which they have benefited or a conviction in the current proceedings of one offence from which they have benefited, in addition to a least two other convictions on at least two separate occasions in the past six years.

Where a court has decided that a defendant has a criminal lifestyle, the act contains provisions which enable an assessment to be made as to the financial benefit that they have derived from their criminal lifestyle. The court may make certain assumptions in relation to property and expenditure, which the defendant is then required to disprove, thus reversing the onus of proof in relation to the assets held by those proven to have a criminal lifestyle.

By way of conclusion, in the United Kingdom legislation, the amount recoverable there is an amount equal to the defendant's total benefit from criminal conduct. I mention that because all of the United Kingdom provisions are predicated upon criminal conduct or criminal lifestyle. We do not have a similar stated requirement.

It is also interesting to note that there is a similar type of law in Italy. Italy has developed particular laws in relation to law enforcement to prevent the mafia from using illegally obtained assets to reinvest in further criminal enterprises. The Italian authorities claim that these laws have been very effective.

I mentioned earlier that Western Australia has unexplained wealth provisions, which were introduced in 2000. However, it must be said that the Western Australian legislation, which is much vaunted and supported by police authorities in Australia, has not been as successful as its original proponents might have expected or as some of its other supporters claim. For example, looking at the latest annual report of the Western Australian Office of the DPP, it appears that, whilst in that court they have been very active in relation to confiscation of criminal assets, in relation to obtaining assets on the grounds of unexplained wealth, there was only one case—bearing in mind that these were introduced in 2000—in 2003-04; one in the next year; in the following year 2005-06, there were three cases; none at all in the following year; and two cases in each of 2007-08 and 2008-09—in other words, a total of nine cases.

The number of declarations the Office of the DPP in Western Australia has obtained in relation to criminal assets amounts to some 409 over the same period, so in Western Australia

these have been relatively uncommon. In the Northern Territory they have similar provisions and appear to have been rather more successful. Indeed, the relatively small jurisdiction has recovered substantial amounts of money—some $13 million in criminal property forfeiture cases, approximately $5 million actually forfeited to the Crown.

The Northern Territory police told a Senate committee examining the Australian Crime Commission that these laws have been very successful in addressing issues concerning outlaw motorcycle gangs, as well as other criminal groups. The Northern Territory authorities did comment on a point which ought to be understood here. They said that one of the effects of this legislation has been to drive criminals out of the Northern Territory into other states, such as South Australia and New South Wales; so one gets that displacement effect which would not be as serious an effect if we truly had a national approach to these matters.

It is interesting that, when attacked recently about his government's attitude towards an independent commission against corruption, the Premier said that he was not opposed to one in South Australia but he thought it should be a federal commission with national responsibilities. In relation to getting around a particular difficulty there it is convenient that we wait for national action, but in relation to this matter the government has decided to proceed forthwith and alone.

In connection with unexplained wealth declarations it is appropriate to look at its effect on organisations and individuals. In this connection detective superintendent Hollowood of the Victoria Police told the Senate committee that it was the experience in Victoria in relation to outlaw motorcycle gangs that 'it is generally individuals within the clubs who are involved in organised crime as opposed to the whole club or groups within the club conspiring to commit organised criminal offences'. He explained that, while individuals may use their position within the club as leverage to support their organised criminal activity, it is those individuals who directly benefit from organised crime and not the motorcycle club as a whole. He suggested to the Senate committee that unexplained wealth laws may be better adapted to preventing criminal behaviour taking place within motorcycle clubs 'as they target the benefits accumulated by the individuals of greatest concern to law enforcement'.

I think it is also interesting to put on the record the view of the Police Federation of Australia in the same Senate inquiry. Its submission was:

> Do Australian police know who is involved in organised and serious crime in Australia? Do we know who they are? The answer is yes. Can we prove beyond reasonable doubt that these criminals are involved directly in those crimes? The answer is no. Are we aware that these criminals possess or have effective control of unexplained wealth? The answer is yes. Can these criminals or those holding the assets and wealth for these criminals explain on the balance of probability that they legally obtained that wealth or assets? The answer is no. We do not have to link anything to a crime. It is about them on the balance of probability explaining that they have got legally obtained wealth...We have not got any legislation in Australia to deal with that at the Commonwealth level...Unexplained wealth is the easiest way as a crime prevention method to stop further crime, because if the individuals who are holding onto those assets cannot explain them...the tendency is to just hand it over because they do not want to get into a debate about whether they are involved in criminality or not.

That encapsulates the police view, and it is a view which police commissioners have been expressing to police ministers conferences over very many years. We support the fact that something is being done, and I do not want to resile from that in any way at all.

It has been mentioned in the debate in relation to this matter that there are within the income tax laws provisions for the Commissioner of Taxation to undertake investigations and to issue an assessment on the basis of usually undeclared rather than unexplained wealth. It used to be termed a 'betterments assessment'. These are not unknown but are certainly not common.

There is a difference between that type of investigation by the Commissioner of Taxation and what is here proposed. In the taxation situation, the taxation authorities have to undertake an investigation under close examination and then to raise an assessment and issue it to the taxpayers on the basis that they cannot explain where their wealth has come from, but there is no capacity in the taxation regime to restrain those assets once they become suspected.

It is important, and it is an important element in this regime that is being considered in this bill, that there is a capacity on the part of the authorities to issue or apply to a court and obtain an order restraining the disposal of suspected assets because, as would be obvious to anybody, if anybody suspects that they are the subject of, or about to be the subject of, proceedings to seize their wealth, they will take immediate action to divest themselves of it and put it beyond the grasp of authorities.

There are some elements of the legislation that do require explanation. Because of the serious consequences of these orders, we think it is appropriate that the court that makes the orders be the District Court and that the power to make an unexplained wealth order is vested in the District Court. That is appropriate. However, some of the other procedures in the act can be undertaken in courts other than the District Court, presumably the Magistrates Court, as I read the legislation.

I ask the minister to indicate in his response the reason why, for example, clause 19, dealing with restraining orders, appears to enable any court, which would appear to include the Magistrates Court, to make such an order. It would be our view that it is more appropriate for the exclusive jurisdiction in relation to these powers to be exercised by the District Court because of the potential consequence for individuals. There is an appeal, which we strongly support, against any order made by the District Court to the Supreme Court.

We question why it is appropriate in South Australia to have the Crown Solicitor as the officer to initiate an unexplained wealth declaration. We notice below that the Attorney-General has said that these are civil proceedings and that it is appropriate that the Crown Solicitor undertake them. We believe it would be more appropriate, given the criminal underlay, for these applications to be made by the Office of the Director of Public Prosecutions. Indeed, in Western Australia it is the office of the DPP that undertakes these applications, and we will move accordingly.

We note also that the criminal intelligence provisions contain the usual protections and that the Commissioner of Police must keep criminal intelligence confidential. It can be divulged to the court, but there is a provision in clause 6 that criminal intelligence may be divulged to the Attorney-General. We query why it is necessary for criminal intelligence to be divulged to the Attorney-General in any circumstances. Obviously as the law provides it can be disclosed to the Crown Solicitor, the officer charged with making the application, and to the court. There is a provision that the Crown Solicitor acts entirely independently and exercises independent discretion. Why then should there been any occasion for the criminal intelligence to be divulged to a political office holder?

On the question of the role of the Crown Solicitor, it is said in clause 7 that the Crown Solicitor is to exercise an independent discretion in relation to his powers or functions, and it announces or proclaims that the Crown Solicitor does not act on the instructions of any other person or body. That is in the language of pronouncement: the Crown Solicitor 'does' not act. We believe a more appropriate formulation is that the Crown Solicitor 'shall' not act on the instructions of any other body or person; in other words, the section ought to be couched in the language of prohibition, because to simply put in a piece of legislation that the Crown Solicitor does not act on the instructions of any other person does not really establish anything but just proclaims the intention of parliament. It does not actually prevent some politician or official seeking to exercise some influence over the exercise of the discretion.

One of the matters that is agitating us closely is the fact that clause 12 of the legislation provides that an order can only be made against a person who has committed a serious offence or is subject to a control order. We know that at the moment the control order provisions of the serious and organised crime act in South Australia (our bikies legislation) have been declared void. No control orders can be issued because section 14(1), which provides that the magistrate must order a control order in certain circumstances, has been declared invalid. Therefore, we have a piece of legislation here which purports to make a control order, one of the elements which activates the court's powers. I ask the minister to explain during the committee stage, or in his summing up, how it is anticipated that this difficulty will be overcome.

I remind members that the powers that can be exercised under this act can only be exercised for the purpose of investigating or restraining the wealth of a person who has been convicted of a serious offence or is the subject of a control order, or in certain other circumstances where the Crown Solicitor reasonably suspects that the person was engaged or had been engaged in serious activity or regularly associates with persons who do engage in serious criminal activity or has been a member of an organisation which is a declared organisation. There is no way of testing the Crown Solicitor's belief in this regard.

So, there are a number of elements in the bill which can be explored during the committee stage to ensure that this legislation will not fall into the same trap that the government's earlier and much proclaimed legislation fell into. As I emphasised at the beginning, we support the principle. We want to ensure that the i's are dotted and the t's are crossed in relation to this matter, so that we have an effective regime.

One other question that I would ask the minister to explain arises under clause 38, which gives immunity from liability for the Attorney-General, the Solicitor-General, the Commissioner of Police or any other person exercising powers or functions under this act. We inquire why it is necessary to give special immunity to the Solicitor-General, because the Solicitor-General is not given any specific powers in relation to this act. Why name him and not the Crown Solicitor, who is the officer who is charged with the principal responsibility of initiating proceedings and pursuing them under this act?

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

HYDROPONICS INDUSTRY CONTROL BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3591.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:09): Prior to the lunch break I was discussing this bill and I said in closing that I would like the minister—given that this is one of very few bills where the commissioner is able to be directed by the minister—to give an explanation as to why that is the case.

I also note that the commissioner will approve applications for someone to be a hydroponics industry employee based on the same assessment, and attracting an application fee of around $600 along with a $150 annual fee. Members in the chamber realise that the opposition is likely to support this bill, but this does seem to be a reasonably large amount of money for an application fee and an annual fee and I am interested to know how the fees have been arrived at. The bill also outlines the licence application process and that a $20,000 fine accompanies contravention of any of the licensing requirements.

The commissioner assesses all applications on the basis of a 'fit and proper person' test; namely, discretion will be used as to an applicant's reputation, honesty, integrity and whether they have committed prescribed offences. The advice to the opposition was that these would be drug and firearm offences in the preceding five years. I guess if it had been longer than five years (in a previous decade) then the person may still be able to get a licence, so I would like some clarification of that.

As indicated before, the licence fee and annual fee seem quite high, and the Retailers Association is concerned about those licensing costs. Assistant commissioner Harrison indicated that SAPOL is currently considering the same schedule that is used within the security industry, so I would like the minister to table a copy of the schedule that is used in the security industry so that we can compare them.

The Second-hand Goods Bill, which has yet to be debated in the House of Assembly, has a list or schedule of fees that OCBA has, we believe, just created. We do not know where they have come from. We are more than happy to support the fees if they are consistent with other practices within the community, so we would like to see some evidence of where they have come from.

The Retailers Association also expressed concern regarding the transitional provisions which state that, at the inception of the new legislation, a hydroponics business can only carry on a business until a licence is achieved or until three months expires, whichever occurs first. Commissioner Harrison, in our briefing, said that he believes that SAPOL has the resources to evaluate all licence applications within that period.

I would like an assurance from the minister that that is the case because, if there are not enough resources to process the licence fees, somebody wanting to carry on a business legitimately and abide by all the terms and conditions laid out in this legislation may be trading illegally simply because their application has not been processed.

With regard to online transactions and monitoring, a number of concerns were raised by the Retailers Association relating to the ability to provide real-time information on transactions. The bill provides that only prescribed information will be required of the buyer at the point of sale and that the licence holder will have to transfer such information to the commissioner as prescribed, which would possibly be electronically.

The opposition is interested to know what information is required: is it just the sale of the prescribed goods or is it other prescribed information? Will there be a demand that it be provided

electronically and, if not—which, of course, we know can be virtually instantaneously—is it then provided in a hard copy, and what timeframe or what delay would be permissible?

It is also worth noting that the information system will be controlled by SAPOL, rather than OCBA, because they believe that much of the online system is already in place. That leads the opposition to believe that it will be electronic. In a stakeholder information paper issued by SAPOL, it stated that licensed businesses will all require a computer. I suspect that these days most businesses have some sort of computer, albeit a small computer, to run bookkeeping and accounting software and most tills are electronic these days.

A significant number of licence fee payments will be expected to be made, and there will also be a requirement on business owners to invest in a computer, which I am sure will have to be compatible in such a way that the information provided to the police will be compatible with the police system.

SAPOL asserts that the change will be phased in and businesses will be provided with a grace period, training and advice. SAPOL goes on to say that licensed dealers will not be disadvantaged in any way. Members can see from what has been said that there is a potential for some conflict, in that existing businesses will be required to have their systems in place and that, if they do not do so, they will not be licensed; but then, on the other hand, they will not be disadvantaged in any way. I would like the minister to give the opposition some assurance that that will not be the case. While we may go into committee today, it might be better for the minister to respond in clause 1 when we resume in a couple of weeks.

The bill adds a significant amount of red tape for the industry. Although it is a shame that we see this increase in red tape, we believe that this is probably required to make the industry less vulnerable to serious and organised crime. I am sure that this is an area of interest for the police and the community; we all want to stamp out the scourge of drugs in our community. I am a little concerned about this type of regulation in relation to other activities in the community. The second-hand goods bill has yet to be debated in the House of Assembly, and that bill is designed to capture issues in relation to stolen motor vehicles and a whole range of products. I can just see the potential for good law abiding second-hand motor vehicle dealers and second-hand dealers to be captured in a red tape burden in an effort to try to clamp down on some illegal activities, none of which is of their own doing.

In the hydroponics industry, potentially, this could be where you have people selling products as a bit of a package deal—buying the equipment, growing the crop and selling the crop back: we will deduct the value of the equipment and you get the profit! In relation to second-dealers, I am concerned that this legislation will open the door for an increased red tape burden on good, law abiding business people in South Australia.

We understand that the bill is not perfect in terms of stopping all the transactions involved in the cultivation of cannabis. As I mentioned earlier, there is a whole range of other ways in which these goods can be traded, such as eBay and other online trading systems, and I suspect SAPOL will have some difficulty in monitoring those. Nonetheless, the opposition sees this as probably the way forward to help frustrate the industry. As assistant commissioner Harrison commented in our briefing, whilst this will not capture every transaction, it will be a way of making it more difficult and closing off the easily available access points.

Thankfully, I did say to the minister's representatives that I wanted a copy of the submissions provided to SAPOL on this issue. I have received a copy of those, and I thank the minister's office for that. It is interesting to note that I asked for submissions on this particular bill and also the second-hand goods bill. I have been provided with all the submissions for this bill, but for the second-hand goods bill I have received only a sanitised copy of a summary of the submissions. I am disappointed about that because I think that bill has more far-reaching implications for South Australian businesses than this bill has. With those few comments, I indicate that the opposition supports the second reading of this bill, and I look forward to further debate during the committee stage.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:20): I understand that all members who wish to speak to this particular bill have already done so. I thank honourable members for their contributions to the bill.

The Hon. Mr Ridgway asked a number of questions before and after the lunch adjournment. In relation to his comments before the lunch adjournment, I can say that he is correct

in his assertion that the Commissioner of Police will effectively have the combined responsibility for the policing of the legislation and the judicial role, but this is not unusual.

Pursuant to the Firearms Act 1977, for example, the commissioner is responsible for the policing of the legislation as well as making many administrative decisions, including whether a person is suitable to hold a firearms licence or a firearms dealer's licence. As with the Firearms Act, the hydroponics bill contains checks and balances, including provision for a retailer or industry employee to appeal directly to the Administrative and Disciplinary Division of the District Court if they are dissatisfied with the commissioner's decision.

Further to this, the commissioner must report each year to the minister on the operation of the legislation. This report must be tabled in the parliament within six days of the receipt of the report. A final check is in place in that the minister is required, as soon as practicable after the third anniversary of the commencement of the legislation, to review the operation and effectiveness of the act.

The Hon. Mr Ridgway is also correct in his assertion that, subject to clause 5 of the bill, the minister will be able to direct the commissioner. Section 8 of the Police Act 1998 requires the Minister for Police to gazette and lay before the parliament any direction he gives the Commissioner of Police. These provisions are quite broad, but essentially relate to the administration of that act.

Clause 5 of the bill makes it clear that any direction given by the minister to the police commissioner under the hydroponics legislation will not be subject to section 8 of the Police Act 1998. The minister will therefore not be required to gazette or table those directions in parliament. The provisions are there not to permit the minister to direct the commissioner on daily operational decisions: rather, they relate purely to the administration of the act.

Members will note that, pursuant to clause 9 of the bill, the minister may exempt certain persons or class of persons from the act or certain provisions of the act. The minister, in granting these exemptions, must inform the commissioner and direct him or her as to this decision and exempt the person from the licensing regime. This daily administration of legislation is not something that I would expect the parliament would want to concern itself with.

The honourable member did raise some other questions. For example, I think he asked whether the operators of hydroponics shops would need to invest in computers. My advice is that probably that will be the case. As I understand it, the administration of this act will work in much the same way as the second-hand dealer's and pawnbroker's licence but, obviously, to make the operation of acts like this effective, you really do need some real-time connection of the computer systems.

My understanding is that businesses will not be in the position of trading illegally if their applications are processed. I understand that the legislation puts the onus on SAPOL to ensure that, within the three month transition period, all licences are applied. Perhaps when we resume debate on clause 1 during the committee stage I will provide some further detail in relation to the other questions asked by the honourable member.

At this point, I again thank members for their contribution to the bill and look forward to its passage before the end of this year.

Bill read a second time.

FIRST HOME OWNER GRANT (SPECIAL ELIGIBLE TRANSACTIONS) AMENDMENT BILL

Second reading.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:26): I move:

That this bill be now read a second time.

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

Leave granted.

The First Home Owners Boost ('the Boost') was announced by the Australian Government on 14 October 2008 and was extended in the Commonwealth Budget on 12 May 2009.

The First Home Owners Boost provides an additional $7,000 to first home buyers purchasing an established home and an additional $14,000 to first home buyers purchasing a newly-constructed home before the end of September 2009.

From 1 October 2009 to 31 December 2009, the Boost will halve to $3,500 for established homes and to $7,000 for newly-constructed homes.

The Boost is in addition to the existing First Home Owner Grant ('FHOG') and First Home Bonus Grant funded by the State Government, which provides assistance of up to $11,000 for first home buyers.

The Boost increases the assistance available to first home buyers from 14 October 2008 to 30 September 2009 to a maximum $25,000 for newly constructed homes and $18,000 for established homes.

With the halving of the Boost from 1 October 2009 to 31 December 2009, the maximum assistance available to first home buyers is $18,000 for newly-constructed homes and $14,500 for established homes in this period.

The States and Territories have agreed to administer the Boost, in addition to the existing FHOG.

To be eligible for the Boost, applicants must first satisfy all of the eligibility requirements for the existing FHOG.

To be eligible for the Boost for new homes the following additional criteria must be satisfied:

The home must not have been previously sold by the builder / vendor or ever occupied as a residence.

Construction of the home must commence within 26 weeks of entering into the contract, however the Commissioner will have a discretion to increase this period if the reasons for non commencement within 26 weeks are beyond the control of the applicant and the builder of the home.

The contract must specify a completion date of the eligible transaction within 18 months of the date of commencement of building or in any other case completion of the eligible transaction must occur within 18 months of the commencement of building.

Owner builders will be eligible for the Boost if they commence building between 14 October 2008 and 31 December 2009 and complete construction within 18 months of commencing construction.

Applicants who purchase new homes 'off-the-plan' will be eligible for the Boost if they sign a contract between 14 October 2008 and 31 December 2009 and the contract states that the eligible transaction will be completed by the relevant completion date stated in the Bill (which varies depending on the date that the contract was signed), or in any other case the eligible transaction is actually completed by the relevant date.

In addition to the above, the Commissioner will have a discretion to extend any of the completion time frames if building is delayed due to extenuating circumstances.

Home purchases and constructions which do not meet these time frames will nevertheless qualify for the existing State $7,000 FHOG and the $4,000 First Home Bonus Grant if they meet the eligibility criteria for these two existing schemes.

The Boost has been provided on an administrative basis since its announcement and this Bill will provide legislative backing to the Boost.

With the introduction of this legislation, the opportunity is also being taken to amend the *First Home Owner Grant Act 2000* ('the Act') to clarify the application of discretions provided to the Commissioner to vary statutory time periods and to clarify when the Commissioner is required to consider whether to write off a FHOG liability.

Under the current provisions of the Act, applicants must apply for the grant within 12 months of the commencement of their eligible transaction and occupy the home to which the application applies within 12 months for a continuous period of not less than 6 months.

The Commissioner has a discretion to vary these time frames.

Since the inception of the scheme in 2000, RevenueSA has interpreted the Act to enable the Commissioner to exercise his discretion to vary these time periods at any time, including after the time period has expired.

This approach provides the maximum flexibility to the Commissioner to pay the FHOG where applicants are unable to meet the strict requirements of the Act due to their particular circumstances.

RevenueSA is now concerned that, due to the structure of the FHOG Act, it is arguable that the Commissioner should only consider whether to exercise these discretions at the time that the FHOG application is made.

Given that in almost all cases the applicant is unaware of the need for the discretion to be utilised at the time of application, this would mean that the discretions are inoperative for practical purposes. It is therefore proposed to amend the Act retrospectively to give the Commissioner sufficient flexibility to exercise these discretions at any time, where there are good reasons for doing so.

In relation to the writing off of a FHOG liability, RevenueSA is concerned that the Commissioner may be under a positive duty to consider whether or not to write off a liability in all cases where it is determined that a grant is required to be paid back, regardless of whether the applicant has requested that the Commissioner consider this

course of action. This concern is based on the operation of common law principles regarding the exercise of discretions.

This interpretation places a significant administrative burden on RevenueSA to seek submissions from all taxpayers who are liable to pay back a FHOG when in most cases many of these persons will have no grounds for the liability to be written off. Additionally, this interpretation would result in many applicants being given an unrealistic expectation that they may not have to repay the FHOG.

It is therefore proposed to amend the Act to override these common law principles to clarify that the Commissioner need only consider whether or not to write off a liability in cases where the applicant has specifically applied to the Commissioner for this to occur or if the Commissioner is satisfied that action to recover the debt is impractical or unwarranted.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

The clause provides for the majority of the measure to be taken to have come into operation on 14 October 2008. Certain provisions will come into operation on assent.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *First Home Owner Grant Act 2000*

4—Amendment of section 12—Criterion 5—Residence requirement

Section 12 is amended by this clause to make it clear that the Commissioner may, if he or she considers that there are good reasons for doing so, vary the residence requirement in respect of a particular applicant. Under section 12(1), an applicant for a first home owner grant must occupy the home to which the application relates as his or her principal place of residence for a continuous period of at least 6 months. That period of residence is to commence within 12 months after completion of the eligible transaction. Under proposed subsection (3), the Commissioner will be able to vary the residence requirement at any time by approving a shorter residence period or a longer completion period. A residence requirement that is so varied is to be taken to have been to applicant's residence requirement from the date of the determination of his or her application.

5—Substitution of section 13A

This clause deletes the provision of the Act relating to special eligible transactions and substitutes a new section.

13A—Special eligible transactions

Under proposed section 13A, the following are special eligible transactions:

- an eligible transaction that is a contact for the purchase of a home made between 14 October 2008 and 31 December 2009 (this does not include a contract for an 'off the plan' purchase of a new home);
- an eligible transaction that is a comprehensive home building contract for a new home if it is made between 14 October 2008 and 31 December 2009 and the building work commences within 26 weeks of the contract being made and the contract states that the eligible transaction must be completed with 18 months following commencement (or the eligible transaction is so completed);
- an eligible transaction that is the building of a new home by an owner-builder if the commencement date is between 14 October 2008 and 31 December 2009 and the transaction is completed within 18 months following the commencement of the building work;
- an eligible transaction that is a contract for an 'off-the-plan' purchase of a new home if the contract is made between 14 October 2008 and 31 December 2009 and the contract states that the eligible transaction must be completed on or before 31 December 2010, 31 March 2011 or 30 June 2011 (the applicable date being determined by reference to the date on which the contract was entered into) (or the eligible transaction is completed on or before that date).

However, a contract is not a special eligible transaction if the Commissioner is satisfied that it replaces a contract for the purchase of the same home, or a comprehensive home building contract to build the same or a substantially similar home, made before 14 October 2008.

Various terms used in section 13A, including *contract for an 'off-the-plan' purchase*, *new home* and *substantially renovated home* are defined in subsection (8). Subsection (9) provides that the Governor may, by regulation, alter a date or period specified in the section, or determine some other transaction to be

a special eligible transaction. Any such alteration or determination must be consistent with the Commonwealth/State scheme for the payment of grants under the Act.

6—Amendment of section 18—Amount of grant

Section 18, which specifies the amount of the first home owner grant, is amended by incorporating some of the provisions of section 18A, which is to be repealed, in an amended form.

As amended, section 18 will provide that if an eligible transaction is a special eligible transaction, the amount of the first home owner grant will be increased by an additional payment as follows:

- if the transaction is a contract for the purchase of a home that is not a new home and the commencement date of the transaction is between 14 October 2008 and 30 September 2009, the additional payment will be $7,000;
- if the transaction is a contract for the purchase of a home that is not a new home and the commencement date of the transaction is between 1 October 2009 and 31 December 2009, the additional payment will be $3,500;
- if the transaction is some other type of special eligible transaction and the commencement date of the transaction is between 14 October 2008 and 30 September 2009, the additional payment will be $14,000;
- if the transaction is some other type of special eligible transaction and the commencement date of the transaction is between 1 October 2009 and 31 December 2009, the additional payment will be $7,000.

7—Repeal of section 18A

Section 18A is repealed by this clause. That section relates to earlier special eligible transactions. Provisions relating to current transactions are to be incorporated into section 18.

8—Amendment of section 18B—Bonus grant

Section 18B(3) is deleted. The subsection is no longer required because of the insertion of section 18C by clause 9.

9—Insertion of section 18C

This clause inserts a new section.

18C—Amount of grant must not exceed consideration

Proposed section 18C has the effect of preventing the total payment made to an applicant for a first home owner grant from exceeding the consideration for the eligible transaction.

10—Amendment of section 20—Payment in anticipation of compliance with residence requirement

This amendment is consequential on the amendment made to section 12 by clause 4. The amendment is necessary because the Commissioner may, under section 12 as amended, revise an applicant's residence requirement. Under section 20 as amended, an applicant who fails to meet the original residence requirement will not be committing an offence if he or she fails, in relation to that original requirement, to fulfil the conditions specified in section 20(2).

11—Amendment of section 40—Power to recover amount paid in error etc

Section 40(6) currently provides that the Commissioner may write off the whole or part of a liability to pay an amount to which section 40 applies. The Commissioner must be satisfied that action to recover the amount outstanding is impracticable or unwarranted. The amendment made by this clause makes it clear that the Commissioner may write off a liability on application or on his or her own initiative. The Commissioner is under no obligation to consider whether to act under subsection (6) unless or until an application is made or it otherwise appears necessary for him or her to do so.

12—Insertion of section 40A

This clause inserts a new section.

40A—Extensions of time

Proposed section 40A provides that if the Commissioner is authorised to extend a time limit, or to shorten a minimum period, under the Act, he or she may extend the time limit or shorten the period even if it has already expired (but only if to do so is consistent with the provisions of the Act).

13—Amendment of section 46—Regulations

This consequential amendment removes a reference to section 18A, which is to be repealed, and substitutes a reference to section 18.

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

STATUTES AMENDMENT (RECIDIVIST YOUNG OFFENDERS AND YOUTH PAROLE BOARD) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3574.)

The Hon. DAVID WINDERLICH (16:27): In 2002, when the Rann government came to power and Michael Atkinson became Attorney-General, most of the so-called gang of 49 were 12, 11, 10, eight, or even seven years old. They were children, almost certainly troubled and disruptive, but not yet dangerous. They became dangerous on the watch of this government and this parliament. It is not as though we had no warning: there are forests of reports and speeches about youth offending.

Back in 2004, the Social Inclusion Unit conducted in inquiry on young offenders called 'Young offenders—breaking the cycle,' yet, here we are today, not breaking the cycle, but repeating it. So, while I am open to some of the changes proposed in this bill and certainly willing to acknowledge that genuinely dangerous young people may need to be detained for long periods, I am not at all convinced that this bill really is a serious attempt to deal with these issues or whether it is just another attempt to look tough. I am not sure whether this bill and the government's strategy is about catching criminals or about creating demons that can then be used to inspire more fear and draconian legislation. So, I will take the bill clause by clause and listen to all the arguments.

I think we need to be careful about calling young people evil or even referring to them as irredeemably dangerous. As a youth worker 20 years ago, I saw a couple of boys vandalise several properties, incite a riot, steal and crash several cars and tie up several police squads, all in the course of one night, so I know how much damage they can do. Those boys were doing dangerous things, but they were a long way from evil.

I recently spoke to a young Vietnamese woman who has two brothers in Yatala. She told me that the gang in Sydney inspiring the same sort of fear that the of gang of 49 is here in Adelaide is a Vietnamese gang called the 5T gang, and they create mayhem and terror. Apparently, 5T—when you look at the original Vietnamese—means something like 'the boys who lack love'. That does not change the terror and the fear that they may have created, but it does give a different perspective, and it highlights the need to actually understand what it is we are dealing with when we approach the issue of youth crime.

One of the things that undermines any confidence I have that the government knows what it is dealing with is the notion of sending messages with the things that we say here and the laws we pass here. The people to whom we are sending those messages, if we are speaking of the people in the gang of 49, do not spend much time reading papers or paying any attention to parliament. They are not receiving the messages. Generally, their lives are lurching from one crisis to another, taking one impulsive action after another, coping with one threat after another. There is not much room for rational calculation about the future, the prospects of getting caught, or even much awareness of any sort of penalty for the offences they are committing. It is not nearly that rational.

My position on this bill will depend on the government's answers to two sets of questions. I have two questions about the bill that need to be discussed. What is a serious offence? Given that public safety is supposed to be paramount, is a serious offence one that involves a threat to safety or does it include issues such as property offences?

My second major question about the bill itself relates to the release of information about detainees to a victim. The category of victim and offender are not nearly so black and white as we might imagine. People can be both victims and offenders. Someone could be a victim of an assault but be in a rival gang, for example, to the offender. Therefore, should that information be released to people in rival gangs or people involved in longstanding feuds? The category of victim and offender is not nearly as neat as we might think, particularly when we are talking about severely disadvantaged people, often clustered in distinct geographical areas.

My second set of questions relates to the context in which the bill operates. Dealing with youth offending and youth crime is not a simple matter of just passing laws: it is about the interaction between the various laws we pass and the programs and services we provide. I have several questions in this regard to which I would need answers before I could be convinced that the government is serious about addressing these problems.

The first question relates to what the government might be doing to rehabilitate young offenders. The recent crime wave raises questions about our approach to policing and detaining young people; and some of those questions are being responded to with this legislation. It also raises questions about our approach to rehabilitation, some of which the Hon. Stephen Wade has discussed.

How seriously do we take this issue? Has the government provided enough of the right sorts of rehabilitation programs and post-release support programs to stop young offenders from moving into more serious offending? What is the government doing to intervene with young offenders and their families before they move from disruptive to dangerous? Does the government have a systematic approach in our schools, community centres and hospitals to identify children at the point at which they begin to offend? What is the government doing to prevent children from becoming young offenders in the first place?

Kate Lennon—the former head of the Department for Families and Communities—once said that she believed that the majority of problems in the indigenous community were caused by 100 families and, if those families could be targeted and intensely worked with, enormous gains could be made across a range of areas, including crime reduction. Does the government have any programs that provide this sort of intensive targeting of potential problems before they become worse? Is the government looking at the full cost of detaining young people as opposed to further prevention and rehabilitation?

Last night government members gave the Hon. Robert Brokenshire an absolute grilling about the costs of an ICAC, but no figures are provided with this bill. What will it cost to lock up young people for longer? Will it be new money or will the government just cannibalise community-based prevention programs? Finally, is the government thinking ahead?

As I said at the outset, in 2002 when the Rann government came to power and Michael Atkinson became Attorney-General most of the so-called gang of 49 were children—disruptive and troubled but, generally, not yet dangerous. I accept that we need to detain genuinely dangerous people, but I suspect that the gang of 49 exists for two reasons; first, because of years of policy failure. The government and this parliament—we all have to share responsibility in this—have not paid enough attention to prevention, early intervention and rehabilitation.

The second is because of the relentless media hype and hysteria which have been systematically fuelled by the government. I have no doubt that we would be facing problems with juvenile crime carried out by smaller, more isolated groups if the government had not fed the media frenzy around the gang of 49, but it is the media label and the government hysteria that are causing this group to coalesce around the gang of 49. The government has actually created a group that young offenders can identify with.

But what does this mean for 2014? Is there another group of 10 year olds out there watching and learning from the gang of 49? Is the government going to ramp up prevention and early intervention programs to head off future gangs? If it is not, then the crime waves of 2014 can be laid fairly and squarely at the feet of Rann and Atkinson. If they have not learnt from this experience, then the gangs of 2014 will be Rann's gangs and Atkinson's outcasts—so much so that they might as well declare the next generation of gangs a government project, put on their hard hats and launch them.

The Hon. R.L. BROKENSHIRE (16:36): At the beginning I should say that I concur with the Hon. Mr David Winderlich on the gang of 49 because, clearly, if real effort had been put in it could have been nipped in the bud. In fact, if you look at the history of it, the government tried to dismiss it as a significant issue for quite a period of time, which played in favour of the gang of 49. Even now we need to be careful with copycat behaviour, but the sad fact is that many of those people are right off the rails now because of neglect and not getting in there with enough focus, support and initiative, and let us hope that governments now and in the future learn from that.

This bill comes at a time when media attention is fairly and squarely on the gang of 49 crime gang and a spate of recent violent crimes perpetrated in Adelaide. This bill is not about the gang of 49, but some of the gang members might well feel its impact. It mirrors the serious repeat offender provisions brought in for adult offenders. Family First supports the creation of a youth panel board, but I ask the government whether it is confident that it will not end up at war with the people it has appointed, as it has with the current Parole Board.

I want to speak about some other issues that tie in with this and, whilst we will be listening to the debate and watching members' amendments closely, Family First does intend to support the government on the basic principle of this, because I hope that this is a positive attempt that will have some genuinely pro-active outcomes in the future. I want to talk about an operation that I have raised in other forums, and that is operation challenge. I was one of the ministers responsible for that operation, and that was an excellent program that ran right through the time I was correctional services minister.

The sad part about it was that, soon after coming into government, in less than 12 months the government cancelled that program. That program had gone through a significant review in the university. I had actually visited that program and been right through it and in fact was at a graduation of incarcerated adults who did have a future after that. I think that if the government of the day were to look at the review from the university it would find that it probably had a better outcome in stopping most people from reoffending than any other program.

I remember the Governor going up there on one occasion. It was, in a sense, a quasi-boot camp, but it worked. These people had never been subjected to discipline or community at all before, and in fact some of them had terrible problems with literacy and numeracy; they did not know about health and hygiene or any of those things. It was a comprehensive program.

The government talks about rack 'em, pack 'em and stack 'em, but at the end of the day we have seen the results of that with some of the gang of 49, where in fact they were racked, stacked and packed and, as soon as they were unpacked and sent out into the community, guess what? They were there committing crime again. It was no different to the unfortunate and sad situations that occurred when I was minister.

Something that hurt me a lot was trying to keep drugs out of the damn prison system; it is hard. One person got out of the prison system and unfortunately overdosed on heroin within 48 hours of getting out. We failed then and we are failing now. This operation did work, will work, can work and can be modified for juveniles. That is what I am calling on the government to do. It is one thing to make legislation but another to put in proper resources. What is happening at the moment is horrendous—it is dangerous, unsafe and scary for those people faced with these violent criminals but, on the other hand, we have to ensure that when these people go in they come out better people.

The Hon. A. Bressington: Less law, more order.

The Hon. R.L. BROKENSHIRE: Exactly, as the honourable member says, less law and more order. I strongly encourage the government to say, 'We're a bit naive; we'd just come into government, we hadn't been here long and we wanted to put our mark on things. We cut correctional services and operation challenge, but it was wrong.' I had an email only yesterday from a senior Aboriginal gentleman who strongly supports an initiative like operation challenge for these people. He told me that, whilst he was upset about it at this point, some of those gang members are related to him. He alleges that in 2007 he contacted the Premier's office advocating something like operation challenge. He has not had a response, and now we have this situation occurring, which is why I support what the Hon. David Winderlich said.

I also touch on what Frances Nelson QC from the Parole Board said today in an interview on 891. The government does not always appreciate the forthright, honest, intelligent and sensible approach of Frances Nelson. However, I put on the public record that David Bevan asked her what she thought about the operation challenge program I had talked about. She said that she did not specifically know about operation challenge, which is fair enough, and she talked a bit about operation flinders.

She then went on to talk about an example where, during the dreadful bushfires on Eyre Peninsula, prisoners in Port Lincoln went out on work camps and restored fences, helped farmers and the community, learnt skills and learnt to deal appropriately with other people. She said that in a bizarre way a great spin-off from those fires was teaching people work and social skills in order to ensure they did not reoffend. She tracked one of those prisoners who went out and said:

> As far as I am aware that prisoner completed his parole for the very first time, got a job and has been offence free, so there are examples. If you have nothing to do all day of course you get into trouble, especially if you're an adolescent male.

She was asked specifically about an issue like operation challenge, which I point out is not like the situation involving gang boot camps in America. In New Zealand they have one and they have been doing more work with that, and they have them in America. I do not support some of the draconian American methods, but they have them in Canada. Frances Nelson also said:

> Any program like that, and...whether it's called a boot camp or some operation is irrelevant—

That is true, the name is irrelevant. I do not mind if they badge it the 'Rann Labor Government operation challenge', as long as they put in resources and support. This type of person, like those members of the gang of 49 and others, cannot be simply integrated into mainstream prison, as they

will not immediately integrate. You have to have a program, and I want the government to reinstate the program. She says that whatever you call it is irrelevant. Her key point was:

> but something which actually teaches people a work ethic and teaches them some skills and teaches them some self-discipline I really think is worth while, whether they're juveniles or adults.

That statement comes from a learned person—and the government can learn. The government does not know everything. It would get whole-hearted support, I am sure, going by the head nodding of my colleagues, if it was to do something like this. We would probably all come out with a joint press release saying, 'Well done, Mr Rann.' So, there is an opportunity here.

I conclude by coming back to the bill. I thank the Law Society of South Australia for its submission on the bill, which was the only submission that Family First received. Whilst we are perhaps on closer ground on issues such as WorkCover, I think its submission follows a largely ideological line in regard to policy and resource issues and how you incarcerate and rehabilitate offenders. As I indicated with respect to operation challenge, our focus is more on discipline and rehabilitation rather than a cuddle and rehabilitation.

We support the creation of a victims' register in consultation with victims of juvenile offending before consideration of release on parole. I have had numerous people contact me concerned about potential parolees, and those people feel powerless. Several times, we have written to the Parole Board on behalf of those constituents. So, from that point of view, I think this is good reform. It does not give those victims absolute power but rather allows their views to be considered. The Youth Parole Board or Training Centre Review Board can opt to not take those considerations into account; but I hope, if this bill passes, in light of those recent cases, they will give a considered hearing to the concerns of former victims.

In closing, as I said, in principle, Family First supports the second reading and is looking to the government and, indeed, the opposition and our crossbench colleagues to contribute. If they feel inclined to raise issues with the government on an idea like operation challenge, I would encourage them to do that, because everyone loses at the moment. It costs $90,000 per prisoner. Prisoners are being released and people are scared and not able to go about their normal duties, and there are a lot of wasted resources. Surely we have learnt something in this day and age, so let us get proactive rather than reactive.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (16:47): I thank honourable members for their contributions to this bill. I thank the Hon. Mr Wade for his expression of support for the bill, although I think it is rather a pity that his expression of support did not extend to his speech or his proposed amendments, which I would have thought do not necessarily indicate support for the bill. The Hon. Mr Wade asked a number of questions and I will attempt to answer a few of those today and make sure that, when parliament comes back in a week, if there are any matters that I have left out, we can pick those up. However, at least I will begin the process today.

I inform Mr Wade that the Community Protection Panel was established as a result of a recommendation by Monsignor David Cappo's report To Break the Cycle. The aims of the Community Protection Panel are to reduce the seriousness and frequency of reoffending by repeat offenders and to enhance community safety; and oversee the identification, assessment and intensive case management of serious repeat offenders. The panel was established and first met in January 2009. It is made up of nine members, including two community members, and is chaired by Anne Gale from the Office of Consumer and Business Affairs.

The state government has allocated $5.6 million to this process over four years. In May 2008 the state government announced $5.6 million to the Community Protection Panel. The total budget for 2008-09 was $1.321 million, for 2009-10 it is $1.367 million, for 2010-11 it is $1.415 million, and for 2011-12 it is $1.465 million. In 2008-09, $911,147 was expended on intensive case management. The remaining funds are expected to be expended on the operations of the panel in intensive service provision in the coming years.

Thirty seven young offenders, including operation mandrake offenders, have been identified by Families SA as presenting a risk to public safety and are receiving intensive service provision funded by the Community Protection Panel program. Eight offenders have been specifically reviewed by the Community Protection Panel and multi-agency case planning has been implemented for seven young offenders. One offender on review did not meet the Community Protection Panel referral criteria and was referred out of the program. Of those seven, I am told four are considered operation mandrake offenders and they are all currently in custody. None of

the Community Protection Panel offenders have been released and the majority are not scheduled for release in the near future.

In relation to some other questions asked by the Hon. Mr Wade, I am advised that Families SA is currently case managing nine young people identified as of interest to operation mandrake. Eight of the nine are in custody and the youth in the communities are currently complying with supervision. I am also informed that Families SA is never involved by SAPOL in investigation processes.

My advice is that the 17 year old youth arrested as part of the recent operation was not under supervision. He was under supervision from 1 June until he returned to custody on 12 August. He went into remand from 17 August to 6 September and was then released on supervision on 7 September. On 24 September he was then remanded into custody where he was arrested for the April event.

That is just some very quick information that has been provided in relation to questions today. Obviously, we will check all that and collate the information, and I will provide that when we resume debate on this bill in the committee stage in a week. Listening to Mr Winderlich's contribution, I just want to make the point that the young offenders, at whom these measures are aimed, are beyond the question of what makes a person a young offender in the first place.

The Hon. S.G. Wade: 'Pure evil'.

The Hon. P. HOLLOWAY: Well, I am happy to call them that.

The Hon. S.G. Wade: That is what the government calls them.

The Hon. P. HOLLOWAY: Yes, I am quite happy. This group of young offenders which the Hon. Mr Wade appears to be apologising for—apparently, he is tolerant of their behaviour but I am not. I am not tolerant of their behaviour. The Hon. Mr Wade can apologise for it if he likes but I will not.

This group of offenders—and we are talking about 12 to 16 of them—will have gone through the proper diversionary and rehabilitative mechanisms designed to deal with the offending of most young people. They have been through this, probably many times in some cases. They are, by definition, a very small group which the public rightly demands protection from. We are talking about violent, armed robbers who put the public in fear. This is beyond any sort of diversions, cautions and ordinary rehabilitation. So, let us get this bill into perspective. We are talking about very serious recidivist offenders. This government is not going to tolerate nor apologise in any way for their behaviour.

Again, I thank honourable members for their contributions. I have provided some information which has been hurriedly collated, but if any matters have been left out we will have a fuller response when we resume debate on this bill in the following week.

Bill read a second time.

SERIOUS AND ORGANISED CRIME (UNEXPLAINED WEALTH) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3613.)

The Hon. D.G.E. HOOD (16:55): I rise briefly to indicate Family First's support for this bill dealing with unexplained wealth. I think that too many of us are sick of apparently unemployed people, or people who do not appear to have a normal source of income, living in a mansion, with a boat on the front lawn and the latest BMW in the driveway. The police know they are drug dealers, their neighbours know what they do and so does the community, but catching them in the act or proving that the assets come from the proceeds of crime is difficult and, in many cases, simply cannot be done.

The minister has indicated that one of the most effective ways in which to counter serious criminal offending is to confiscate the proceeds of crime. Family First agrees. I have some confidence that elements of the criminal underworld will decide that South Australia is just too difficult a place to conduct their business and may actually leave and decide to live in another state or jurisdiction as a result of this bill being passed, and certainly that would be a very positive outcome and one which I would welcome.

Opponents of the bill will state that the Criminal Assets Confiscation Act 2005 already allows for the proceeds or instruments of crime to be forfeited to the state. However, the provisions in that act come into effect only where it can be shown that the person has been convicted of a serious offence or that the person is suspected on reasonable grounds of having committed a serious offence, and the relevant property is either proceeds or an instrument of that crime. The need to prove all of these elements on the balance of probabilities, even when it is apparent that there can be no lawful reasons why a person was in possession of the assets in question, limits the effectiveness of that provision.

Under the proposed legislation, the provisions will authorise the Crown to apply to a court for a declaration that a person or, indeed, a corporation has unexplained wealth, meaning that the value of their calculated wealth exceeds their lawfully obtained wealth. Any wealth the defendant cannot explain will be assessed as a civil debt due from the defendant to the Crown.

I note with interest a similar commonwealth bill, the Crimes Legislation Amendment (Serious and Organised Crime) Bill, which does something similar. The federal Attorney-General discussed the commonwealth moves in a *Sydney Morning Herald* article of 25 June, giving some interesting statistics. The article states:

> Organised crime costs Australia at least $15 billion a year and inflicts substantial harm on the community, business and government. But in many cases, people who arrange crimes and profited from them were able to avoid prosecution. Mr McClelland said that unlike existing confiscation orders, new 'unexplained wealth orders' would not require proof of a link to a specific crime.

There are legitimate civil liberty concerns with such measures. This is a far-reaching and heavy handed response, but organised crime is also heavy-handed and causes tremendous hardship to South Australian families. I have little doubt that this law in particular will bring about a far more effective result than any other we have debated in the past year or so in terms of dealing with crime itself and also in seeing organised crime networks broken up. Indeed, as I alluded to earlier, it may actually force some of them out of the state, and that certainly would be a very positive outcome as far as Family First is concerned.

We see this as a positive bill. I think some legitimate concerns have been raised by other members, but I will not go over that ground again. Unfortunately, we operate in a world where such strong measures are a requirement in order to deal with organised crime in particular in a head-on way. This bill is supported by Family First. We are aware that there are a number of amendments, which we will consider in due course, but this bill certainly has our support.

The Hon. R.P. WORTLEY (16:59): I rise today to address the Serious and Organised Crime (Unexplained Wealth) Bill. I recall that, when speaking last year about the Firearms (Firearms Prohibition Orders) Amendment Bill and the Serious and Organised Crime (Control) Bill, I reflected on the government's strategic program of ongoing reform in particular areas of our justice system and the criminal law.

The bill we are presently considering represents yet another element in the government's armoury of targeted responses to issues touching on criminal activity, having particular reference to organised crime and the activities of outlaw motorcycle gangs. Speaking in March 2008 about the Serious and Organised Crime (Control) Bill, I alluded to the fact that organised crime has many faces but only one crucial motivation—financial gain. I noted that its arms are extraordinarily long and reach into many places—some obvious and some more surprising. I referred to its sophisticated planning, methods and techniques and its ever-expanding ambit, this being dependent on two factors: the current focus of law enforcement authorities and the market fluctuations—that is, supply and demand.

I outlined the ways in which groups of people involved in organised crime enterprises note and adapt to changes in our laws. The result is the diversification of activity to exploit new criminal opportunities. The government is determined to deal with these criminals and to hit them where it hurts most—in the wallet. As my colleague the Minister for Mineral Resources Development recently said concisely during his second reading explanation:

> An important means of attack on the profits of organised crime, including the activities of outlaw-motor-cycle gangs, lies in the introduction of unexplained wealth orders. In general terms these provisions will authorise the Crown to apply to a court for a declaration that a person (including an incorporated body) has 'unexplained wealth'. A person has 'unexplained wealth' if the value of their proven wealth, calculated in accordance with the legislation, exceeds their lawfully obtained wealth. Any wealth the defendant cannot explain will be assessed and form the basis of a civil judgment debt due from the defendant to the government.

For the purposes of this legislation, wealth is defined as everything a person has ever owned or effectively controlled, and this applies both before and after the act comes into force. The legislation represents a valuable adjunct to the existing Criminal Assets Confiscation Act 2005 which, although effective, is limited by the requirement to prove the commission of a serious offence on the part of the defendant or other person. The Attorney-General has confirmed that the bill before us today targets people who have managed to evade authorities. He commented recently:

> The police and the public look at [these people] and think, 'How on earth did a bloke who appears to do no work or no legitimate work acquire hundreds of thousands of dollars worth of cars or millions of dollars worth of real estate? The answer is almost certainly drug dealing and extortion.'

In plain language, that is why this legislation is needed. The law will stop members of the underworld from living the high life they have often so conspicuously enjoyed through their ill-gotten gains. It will also target those senior criminal identities who use others to do their dirty work but manage to evade direct links with the commission of crimes.

There has been some discussion about the fact that the bill contains no requirement to show that the property or funds in question are crime-derived or crime-related. I would like to stress that ordinary law-abiding citizens have nothing whatsoever to fear. As well, safeguards are built into the bill to ensure that the lawful interests of a person in property or funds are protected. I will return to that matter in a moment when I turn to the provisions of the bill but, in the meantime, I point to no less an authority than the Interpol General Assembly which, as long ago as 1997, recognised the following:

> ...unexplained wealth is a legitimate subject of inquiry for law enforcement institutions in their efforts to detect criminal activity and that, subject to the fundamental principles of each country's domestic law, legislators should reverse the burden of proof (that is, use of the concept of reverse onus) in respect of unexplained wealth.

Many jurisdictions have seen the merit in this approach and have legislated accordingly. Now it is time for our parliament to do likewise. The bill before us authorises the Crown Solicitor to seek from a court a declaration that a 'person' (as defined earlier) has unexplained wealth. The initiating act will be an application on the part of the police commissioner for a restraining order which, essentially, will set out the property covered.

The order will have a duration of 21 days unless an application for an unexplained wealth order is made, in which case the order will (under normal circumstances) continue until the end of proceedings. The safeguards here include the fact that the court may decline to issue a restraining order if the Crown does not appropriately undertake to pay damages or costs should the property in question be found to be legitimately obtained.

As well, the Crown must advise any persons owning or having an interest in the property subject to the application, so that those persons may apply to have their lawful interests excluded. Senior police have extensive investigative powers under the proposed legislation. They may, through appropriate and specific avenues, require reporting or financial information from a deposit holder, require the giving of evidence and execute warrants authorising search and seizure. Again, safeguards apply. These powers may be exercised only against:

- persons convicted for, or found liable, to supervision for a serious offence;
- persons subject to a control order under the Serious and Organised Crime (Control) Act 2008; or
- persons whom the Crown Solicitor has reasonable grounds to suspect have engaged in serious criminal activity, associated with persons who so engage, are members of the declared criminal organisation, or who are the beneficiaries of the estate of such a person.

The decision of the Crown Solicitor on these matters will be final and not subject to review. The elements of procedural fairness will not be applied. The Crown Solicitor will exercise his discretion on an entirely independent basis.

The criminal threshold of proof will not apply when an application for a full unexplained wealth order is made. There will be no onus on the Crown to prove or even to allege that a person is engaged in any sort of criminal activity. Once the application is made, the person's private wealth in toto is essentially deemed to have been unlawfully acquired.

The onus of proving that the property has been unlawfully acquired now reverts to the respondent. The Crown need only prove that he, she or it owns or effectively controls wealth.

Should a declaration be made, the court will order the payment of an amount of money as a judgment debt, enforceable under the Enforcement of Judgments Act 1991. Commonwealth legislation applies in the case of the enforcement of interstate judgments. Therein lies the effectiveness of the provisions.

My last point is that proceeds will be directed to the Victims Of Crime Fund. This is undoubtedly a suitable and appropriate avenue for the property of those who instigate, direct, carry out and profit from criminal activity. As I have said on other occasions in this place, the government is determined to deal with those who willingly participate in criminal enterprises. The government considers that these provisions are proportionate to such enterprises and are appropriate in ambit. I support the bill and commend it to honourable members.

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (17:07): I thank honourable members for their contribution to the debate. The Hon. Mr Winderlich has indicated that he is opposed to the bill. I think it is fair to say that he does so on the basis that, in a number of ways, it undermines concepts of civil rights and civil liberties. The government respects that position but does not agree with it. The reasons why that is so appear in the second reading explanation and need no further recitation here. The government agrees that the bill is tough, as it is meant to be. The government thinks there is a good reason for that.

I also thank the Hon. Mr Lawson for his thoughtful contribution to the debate. I want to convey to the council the confidence of the government that the bill will survive constitutional challenge. As the honourable member points out, the High Court upheld the validity of these very criminal intelligence provisions in the K-Generation case. In section 14.1, considered in the Totani case—that was the Serious and Organised Crime Bill—involving a member of a bikie gang who challenged that particular control order, the making of an unexplained wealth order is discretionary. So, we need to note that section 14.1 in the Totani case differs from the situation here. The making of an unexplained wealth order is discretionary. The court is informed that it should make the order but it retains a discretion not to do so. This is the very significant distinguishing point.

I also thank the honourable member for the content of his speech, which was very informative, making the case for unexplained wealth laws, particularly getting at individuals within organisations who direct crime and profit by it. In the same vein, I also thank the Hon. Mr Hood and the Hon. Mr Wortley for their contributions. Most members of this parliament—perhaps with the exception of the Hon. Mr Winderlich—accept that those people who are involved heavily in crime of one sort or another and have visible wealth but do not work or appear to make any contribution towards it should not be able to get away with it forever, as perhaps they have done in the past. I thank all members who have made that point.

In relation to the Hon. Mr Lawson's comments, while thanking him I return the compliment by informing the honourable member (who clearly has an interest in the matter) that the commonwealth government recently introduced a bill for its own unexplained wealth laws. Again, members in this council would welcome that development.

It is true that some of the investigative powers, such as restraining orders, can be taken in any court. The reason for this is that it is not necessary, only possible, that the application proceedings will be taken with the investigating proceedings; they may or may not. Normally, as in the confiscation act, the restraining orders and the like would be taken in the Magistrates Court, but there is no sense in splitting proceedings if an application is underway already in the District Court. So far as the Crown Solicitor is concerned, the government has explained why it has taken that position, and the honourable member has quoted and understood it, even if he does not agree with it.

In another matter it is true that section 14(1) control orders have been declared invalid but, first, section 14(2) control orders are available and valid. Secondly, the government is confident that its appeal will be successful.

Finally, the Hon. Mr Lawson did point out a mistake in a reference in the bill to the Solicitor-General. Of course, it should be the Crown Solicitor. Indeed, I have already circulated an amendment to correct that error within the bill; so I thank the honourable member for pointing that out. I thank other members for their indications of support and I look forward to the committee stage of this bill when the parliament next meets.

Bill read a second time.

STATUTES AMENDMENT (CHILDREN'S PROTECTION) BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (17:14): 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 amends the *Summary Procedure Act 1921* and the *Child Protection Act 1993* and makes consequential amendments to the *Criminal Law (Sentencing) Act 1988* to establish measures to prevent and punish the exploitation of runaway children.

I introduce the Bill as part of the Government's response to Recommendation 47 of Commissioner Ted Mullighan's report of the *Inquiry into Children in State Care*, presented to this Parliament on 1 April, 2008. The Government shares his concern about the situation of young people who have run away from home or from a care institution and who take shelter with an adult who supplies money, shelter, food, alcohol or drugs in return for sexual services or for selling drugs.

These young people are often unwilling to incriminate the exploitative adult for fear that this will cut off their supply of money, drugs or alcohol. Their experience of State intervention has not always been a happy one. Their very resistance to professional help makes these children all the more vulnerable to harm.

The options now available to separate these young people from exploitative adults are not effective because they depend on the young person's co-operation or because they are limited in their scope or application.

In his report, Commissioner Mullighan explained the shortcomings of the current law this way in Chapter 4: State Response, Part 4.2: *Children in State care who run away: Stopping the perpetrators*:

- Section 76 of the *Family and Community Services Act 1972*...makes it an offence to unlawfully take a child from his or her placement, or to harbour or conceal a child. It is rarely used. Proof of the charge generally requires evidence from the child that he or she was 'induced' or provided with a 'refuge'. A child who absconds from a residential care facility to obtain benefits for sexual favours and/or leaves to go to a 'refuge' is not likely to be willing to give evidence against the person who gave those benefits and/or provided that refuge.
- Section 80 of the *Criminal Law Consolidation Act 1935*...makes it an offence to abduct a child under 16. However, it requires proof that the child was taken or enticed away by 'force or fraud'; or that the child was harboured by someone who knows the child was taken or enticed away in those circumstances. A youth support worker who took a 15-year-old child under the guardianship of the Minister interstate was recently convicted of an offence against section 80(1a). Generally, however, it is not well suited to deal with the situation where a child in State care runs to the paedophile because proof of 'force or fraud' would require the child to both report and give evidence against the offender.
- Section 99 of the *Summary Procedure Act 1921*...provides for a court to make a general restraint order against a person. However, it requires proof that a person has been behaving in an 'intimidating or offensive manner' on two or more separate occasions. Such proof in court would generally require the evidence of the child. Failure to comply with a restraining order is an offence punishable by imprisonment, although proof of non-compliance may require evidence from the child.
- Section 99A of the *Summary Procedure Act 1921*...provides for the making of paedophile restraint orders. It does not rely on the evidence of the child or children, and the application can be made by a police officer. An order may be made restraining a person from loitering near children in any circumstances, or it can restrain the person from being near children at specified places or in specified circumstances. The court must first be satisfied that the person has been found loitering near children on at least two occasions and there is reason to think the person will do so again unless restrained. 'Loitering near children' means the person loiters, without reasonable excuse, at or in the vicinity of a school, public toilet or place at which children are regularly present; and children are present at the school, toilet or place at the time of the loitering. Again, its applicability to children in State care who run away and are sexually exploited is very limited.
- Section 38 of the *Children's Protection Act 1993*...permits the Youth Court to make an order that a person not have contact with a child. However, this applies only to someone who is a party to an application for a care and protection order relating to the child; usually a parent, guardian or custodian. It is evident that the current legislative provisions are not generally suited to addressing this particular issue and/or would require evidence from the child.

Investigating and prosecuting sexual or drug offending by the adult is also difficult if the young person, as the alleged victim or primary witness, won't co-operate.

This Bill introduces additional measures that target the exploiting adult, rather than the child, and in a way that does not depend on the cooperation or evidence of the child.

Child-protection restraining order

The Bill introduces a child-protection restraining order that will restrain an adult person from having contact with a child under the age of 17 years if the person, not being the child's guardian, resides with that child somewhere other than the home of the guardian. To make such an order, the court must be satisfied that this living arrangement may expose the child to sexual abuse or drug offending, and thinks that, in the circumstances, the making of the order is appropriate.

For these purposes, the child's guardian is a parent of the child, a person who is the legal guardian of the child or has the legal custody of the child or any other person who stands *in loco parentis* to the child and has done so for a significant length of time.

There are three circumstances in which a court may make a child-protection restraining order against an adult living with a child in this way:

1. when the adult or any other person who lives at or frequents the premises where the child and the adult live or have lived has, within the past 10 years, been convicted of a prescribed offence;

2. when the adult or any other person who lives at or frequents the place where the child and the adult live or have lived is or has ever been subject to a child-protection restraining order; or

3. when the court is satisfied that, as a consequence of the child's contact or residence with the adult, the child is at risk of sexual abuse or of engaging in or being exposed to conduct that is an offence against Part 5 of the *Controlled Substances Act 1984*.

A prescribed offence is a child sexual offence or an offence against Part 5 of the *Controlled Substances Act 1984*. Child sexual offence' is defined to mean any one of a number of listed offences committed against or in relation to a child under 16 years of age. The list of offences includes rape, indecent assault, incest and offences involving unlawful sexual intercourse, acts of gross indecency or child prostitution.

One of the grounds for making a child-protection restraining order against a person is that, having satisfied itself of other relevant factors, the court is satisfied that the child's contact or residence with that person places the child at risk of sexual abuse and that the making of the order is appropriate in the circumstances. For these purposes a child is sexually abused not only if a child sexual offence is committed against or in relation to the child but also if the child is exposed to the commission of a child sexual offence against or in relation to another child.

A court can make a child-protection restraining order even if the defendant him or herself has not committed a sexual offence or even if the defendant is not the person allegedly sexually abusing the child, as long as it is satisfied that the risk of sexual abuse is a consequence of the child's contact or residence with the defendant, and the order is appropriate in the circumstances.

Being a civil application, the court must satisfy itself of the risk of sexual abuse on the balance of probabilities.

The other ground for making a child-protection restraining order against a person is that, having satisfied itself of other relevant factors, the court is satisfied that the child's contact or residence with that person places the child at risk of engaging in, or being exposed to conduct that is an offence under Part 5 of the *Controlled Substances Act 1984* and that the making of the order is appropriate in the circumstances.

A feature of the living arrangements at which these orders are aimed is the exploitation of the child's drug or substance abuse habit or addiction. If the court is satisfied (again on the balance of probabilities) that the adult is supplying the child with money to buy drugs or involving the child in some aspect of drug consumption, trade or manufacture, then, even though the adult has not been convicted of a prescribed offence, it may find that the child is at risk of engaging in or being exposed to conduct that is an offence under Part 5 of the *Controlled Substances Act 1984*.

The court will not make an order unless satisfied that it is appropriate to make it. In determining this, the primary consideration is the best interests of the child. In considering the best interest of the child, the court must have regard to anything it thinks relevant, including:

- the degree of control or influence the adult exerts over the child;
- the adult's prior criminal record (if any);
- any apparent pattern in the adult's behaviour towards this child or other children and any apparent justification for that behaviour; and
- the views of the child and the child's guardian to the extent that they are made known to the court. Of course, the child might not wish to attend, and nor, for that matter might the child's guardian. It is not compulsory for them to do so. So that they have the opportunity to put their views to the court, the Bill permits the court to require personal service of the complaint on the child or the child's guardian and to make any orders it thinks are necessary to give the child or guardian that opportunity.

When it makes a child-protection restraining order, the court may impose such restraints on the adult as are necessary or desirable to protect the child from any apprehended risk.

A child-protection restraining order may also provide for the temporary placement of the child (pending, if necessary, proceedings before the Family Court or the Youth Court) into the custody of a guardian or such person as the court directs or into the custody of the Minister to whom the administration of the *Children's Protection*

Act 1993 is committed and the care of such person as the Chief Executive or nominee directs. An order of this kind is subject to any current proceedings before, or orders of, the Family Court or the Youth Court.

A child-protection restraining order will expire when the child reaches the age of 17 years, or at such earlier time as the court directs.

The way child-protection restraining orders are sought, varied and revoked is the same as for other restraining orders under the *Summary Procedure Act*. It is likely that police will bring most complaints, acting on the advice of Families S.A., or on the advice of the child's parents or guardian, or both.

Proceedings for child-protection restraining orders, although directed at an adult, will inevitably identify the child and details of that child's relationship with the adult respondent and others. Because the purpose of the proceedings is to protect the child, the Bill restricts the people who may be present for these proceedings in the same terms as for child-protection proceedings in the Youth Court and prohibits publication of any information that might identify the child.

Section 19A of the *Criminal Law (Sentencing) Act 1988* extends the power to make restraining orders beyond the Magistrates Court to any court that finds a person guilty of an offence or sentences a person for an offence. The Bill amends s19A to ensure that when a court exercises the authority given by s19A to make a child-protection restraining order, the same special restrictions on publication and on who may be present in court apply to those proceedings in that court as to child-protection restraining order proceedings before the Magistrates Court.

Most child-protection restraining orders will be made by the Magistrates Court or by a court sentencing an adult for an offence and exercising the powers of a Magistrates Court by operation of s19A of the *Criminal Law (Sentencing) Act 1988*.

The Youth Court, however, even though not a court that sentences people for offences committed as an adult, may also make child-protection restraining orders by operation of section 7(c) of the *Youth Court Act 1993*. Section 7(c) gives the Youth Court the same jurisdiction as the Magistrates Court to make, vary or revoke a restraining order under the *Summary Procedure Act 1921* where the person for or against whom protection is sought is a child or youth.

These provisions are not directed at the victim of child exploitation but at the exploiter. A feature of exploitation is the dependence of the victim on the exploiter. Sadly, exploited children are only too likely to try to return to the exploitative adult even when the adult has been restrained from further contact with the child. It would, however, be counter productive for a restraint process designed to protect children to make the exploited child liable to an offence for conduct that is a product of that exploitation. The Bill provides that a child cannot be convicted of an offence of aiding and abetting, counselling or procuring a breach of or failure to comply with a restraining order.

The penalty for breach of a child-protection restraining order will be the same as for a breach of any other restraining order: a Division 5 penalty (a maximum penalty of two years imprisonment).

As they may for other kinds of restraining order, police may arrest or detain a person without warrant if they have reason to suspect the person has breached a child-protection restraining order.

Restraining the exploitative adult is only one part of the solution to this difficult problem. The other is moving the child to a safe home and arranging for counselling or other help that the child might need. As already mentioned, the child may often want to stay with the exploitative adult and may return to, or refuse to move out of, the adult's home after a child-protection restraining order has been made against that adult.

To help police and child-protection officers deal with these situations, the Bill makes a related amendment to s16 of the *Children's Protection Act 1993* to say that if a child-protection restraining order prevents a person from residing with a child and the child resides with the person during the operation of that order, the child will be taken to be in a situation of serious danger from which these officers are authorised to remove the child under section 16.

This amendment leaves no doubt that the officers have authority to remove the child forcibly if the child will not leave voluntarily.

Section 16 requires an officer who has removed a child in this way, if possible, to return the child to the child's home unless the child is a child who is under the guardianship, or in the custody, of the Minister or the officer is of the opinion that it would not be in the best interests of the child to return home, in which case the officer must deliver the child into departmental care.

Arrangements for the future care of the child are not the subject of this Bill.

Direction not to harbour, conceal or communicate with child

The Bill amends the *Children's Protection Act 1993* to authorise the Chief Executive to direct a person by written notice not to communicate with or harbour or conceal a named child who is under the guardianship or in the custody of the Minister. The direction will also refer to attempts to communicate or to harbour or conceal and assisting another person to harbour or conceal.

These directions are aimed to protect vulnerable children who are in State care from the kinds of exploitation referred to by Commissioner Mullighan in his report.

The Chief Executive may issue such a notice if he or she believes this is reasonably necessary to avert a risk that the child will be abused or neglected or that the child will be exposed to the abuse or neglect of another child, or to avert a risk that the child will be engaged in or exposed to illegal drug activity, or if the issue of the notice is reasonably necessary to otherwise prevent harm to the child.

The Act already defines abuse and neglect of a child as sexual abuse and also as physical or emotional abuse or neglect such that the child suffers or is likely to suffer physical or psychological injury detrimental to the child's wellbeing or such that the child's physical or psychological development is put in jeopardy.

The Bill makes it an offence for a person, without reasonable excuse, to contravene or fail to comply with such a direction. For non-compliance with a direction not to communicate with the child, the maximum penalty is $4,000 or imprisonment for one year. For non-compliance with a direction not to harbour or conceal the child, the maximum penalty is $15,000 or imprisonment for four years.

Offence of harbouring or concealing a child etc

In addition to giving the Chief Executive these powers to protect children who are under the guardianship or in the custody of the Minister, the Bill also makes it an offence to harbour or conceal such children or to prevent such a child's return to State placement knowing that the child is absent from that placement without lawful authority. The offence extends to assisting others to do these things. It carries a maximum penalty of $12,000 or imprisonment for one year.

For the purposes of the offence, a State care placement means placement of the child in the care of a person or in a place by the Minister exercising his powers in relation to children under his care and protection pursuant to s51(1) of the Act.

For each offence the maximum penalty is a fine of $12,000 and imprisonment for 1 year.

Neither offence requires proof that the person induced or enticed the child away or knew the circumstances of the child's absence from the State placement. All the prosecution need prove is that the person knew the child was absent from a State care placement without lawful authority at the time the person committed the prohibited act (that is, harbouring or concealing the child or preventing the child's return to the State care placement, or assisting another to do these things).

This does not entirely overcome the difficulty pointed out by Commissioner Mullighan in relation to an offence against s76 of the Act:

A child who absconds from a residential care facility to obtain benefits for sexual favours and/or leaves to go to a 'refuge' is not likely to be willing to give evidence against the person who gave those benefits and/or provided that refuge.

It is, however, an improvement, and will help stop the gap in cases where the exploitation of the child has already occurred before the Chief Executive has issued a direction or before a child protection restraining order has been made, or that occurs in spite of those actions.

Summary

This Bill cannot resolve the difficulties that Families S.A. and the courts may have in arranging the future care of a child who has been exploited in the ways I have identified.

It will, however, give State authorities and parents options to help separate vulnerable children from exploitative adults and by so doing, protect them from harm.

When a child runs away from State care and the Department knows who the child is staying with, the Chief Executive can give a written notice directing that person not to harbour or communicate with the child.

The Chief Executive can also give such a direction in a less extreme situation, when the child is still living in State care or placement but is spending a lot of time at another place with a person who is believed to be exploiting the child, or is frequently communicating with the child.

A person who does not comply with such a notice commits an offence.

There is also an offence of harbouring or concealing or preventing the return of a child to State placement or assisting another to do these things. It can be charged whenever there is proof that the person knew the child was absent from State placement without lawful authority, but will be particularly useful when the person cannot be charged with the offence of failing to comply with a notice (for example, for a person, not notified him or herself, who assists a notified person).

The proposed child-protection restraining order may be used for *any* child who runs away, whether from State care or from parents, and who by living with the person sought to be restrained is in danger of exposure to sexual abuse or drug offending. The order can impose whatever restraints the court thinks necessary to protect the child from apprehended risk, including restraint on *any* form of contact or proximity or on being in a particular place. It ensures judicial scrutiny is given to the restrictions sought to be placed on the alleged exploiter.

For children who are not in State care, the only option, other than asking police to exercise their power to remove children from situations of serious danger, will be the proposed child-protection restraining order. The parents or guardians of the child can make the complaint themselves under the proposal for a child-protection restraining order, without having to go through police or the Department, although the more usual course would be to go through police.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that operation of the measure will commence on a day to be fixed by proclamation. Section 7(5) of the *Acts Interpretation Act 1915* will not apply to the amending Act (in case it is necessary to delay the commencement of certain amendments beyond the second anniversary of assent).

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Children's Protection Act 1993*

4—Amendment of section 16—Power to remove children from dangerous situations

Under section 16 of the *Children's Protection Act 1993*, an officer who believes on reasonable grounds that a child is in a situation of serious danger from which it is necessary to remove the child in order to protect him or her from harm is authorised to remove the child from any premises or place. The officer is authorised to use such force as is reasonably necessary for the purpose. An *officer*, for the purposes of the section, is a police officer, or an employee of the Department for Families and Communities authorised by the Minister to exercise the powers of the section.

New subsection (1a), to be inserted by this clause, provides that if a restraining order has been made under section 99AAC of the *Summary Procedure Act 1921* preventing a person from residing with a child, and the child is residing with the person during the operation of the order, the child will be taken to be in a situation of serious danger from which an officer is authorised to remove him or her.

5—Insertion of heading to Part 7 Division 1

New provisions relating to harbouring children in the care of the Minister are to be inserted into Part 7 of the *Children's Protection Act 1993*. That Part is therefore to be separated into two Divisions. This clause inserts a heading to Division 1.

6—Insertion of Part 7 Division 2

This clause inserts Division 2 of Part 7 of the *Children's Protection Act 1993*.

Division 2—Offences relating to children under Minister's care and protection

52AA—Definition

This section provides that a reference to a child in Part 7 Division 2 is a reference to a child who is under the guardianship, or in the custody, of the Minister.

52AAB—Direction not to harbour, conceal or communicate with child

This section provides that the Chief Executive of the Department for Families and Communities may, by written notice, direct a person not to communicate, or attempt to communicate, with a specified child during a specified period. The Chief Executive may also direct a person by written notice not to harbour or conceal, or attempt to harbour or conceal, or assist another person to harbour or conceal, a specified child during a specified period.

The Chief Executive may only issue such a notice if he or she believes that it is reasonably necessary to do so to avert a risk of a type specified in the provision or to otherwise prevent harm to the child. The specified types of risk are as follows:

- that the child will be abused or neglected, or be exposed to the abuse or neglect of another child;
- that the child will engage in, or be exposed to, conduct that is an offence against Part 5 of the *Controlled Substances Act 1984*.

The maximum penalty for contravening or failing to comply with a direction of the Chief Executive is a fine of $4,000 or imprisonment for one year.

52AAC—Offence of harbouring or concealing a child etc

Section 52AAC prohibits a person from doing the following in relation to a child if the person knows that the child is absent from a State care placement without lawful authority:

- harbouring or concealing the child;
- assisting another person to harbour or conceal the child;
- preventing the return of the child to the State care placement;
- assisting another person to prevent the return of the child to the State care placement.

A State care placement is a placement of a child in the care of a person, or in a place, by the Minister pursuant to section 51(1) of the Act.

Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*

7—Amendment of section 19A—Restraining orders may be issued on finding of guilt or sentencing

Section 19A of the *Criminal Law (Sentencing) Act 1988* authorises a sentencing court to exercise the powers of the Magistrates Court to issue a restraining order under the *Summary Procedure Act 1921* against a person when sentencing the person for an offence.

New subsection (1b), inserted by this clause, provides that section 99KA of the *Summary Procedure Act 1921* applies to any proceedings of a court relating to a restraining order made by the court under section 99AAC of that Act.

Part 4—Amendment of *Summary Procedure Act 1921*

8—Amendment of section 4—Interpretation

This clause makes a consequential amendment to the definition of *restraining order* in section 4 of the Act.

9—Amendment of section 99—Restraining orders

This amendment is consequential on the repeal of section 99A. The Act will no longer include a general provision specifying the persons who can apply for restraining orders. Instead, each section under which application can be made for a restraining order is to specify who can make a complaint. A complaint may be made under section 99 by a police officer or a person against whom, or against whose property, the behaviour that forms the subject matter of the complaint has been, or may be, directed.

10—Amendment of section 99AA—Paedophile restraining orders

Section 99AA provides for the making of paedophile restraining orders. New subsection (a1) provides that a complaint may be made under the section by a police officer.

11—Amendment of section 99AAB—Power to conduct routine inspection of computer etc

Section 99AAB(2) currently includes a divisional penalty. This clause amends the section by making the form of the penalty consistent with other penalties in the *Summary Procedure Act 1921*. The maximum penalty, imprisonment for two years, remains the same.

12—Insertion of section 99AAC

This clause inserts a new section into Part 4 Division 7 of the *Summary Procedure Act 1921*. The provisions of Division 7 provide for the making of restraining orders by the Magistrates Court.

Under proposed new section 99AAC, a complaint may be made by a police officer or a child, or the guardian of a child, for the protection of whom a restraining order is sought under the section. The Magistrates Court may make a restraining order against an adult defendant for the purpose of protecting a child if—

- the defendant (who is not a guardian of the child) and the child are, or have been, residing together at premises where no guardian of the child also resides; and
- the defendant or some other person who resides at, or frequents, premises at which the defendant and the child reside or have resided—
- has been convicted within the previous ten years of a child sexual offence or an offence under Part 5 of the *Controlled Substances Act 1984*; or
- is or has been subject to a restraining order under section 99AAC; and
- the Court is satisfied that as a consequence of the child's contact or residence with the defendant, the child is at risk of sexual abuse (as defined in subsection (5)) or engaging in, or being exposed to, conduct that is an offence under Part 5 of the *Controlled Substances Act 1984*.

The court must also be satisfied that the making of the order is appropriate in the circumstances.

Under subsection (2), the Court's primary consideration when determining whether or not to make a child protection restraining order, and in considering the terms of the order, must be the best interests of the child. In determining the best interests of the child, the Court must have regard to—

- the degree of control or influence exerted by the defendant over the child; and
- the defendant's prior criminal record; and
- any apparent pattern in the defendant's behaviour towards the child or other children; and
- the views of the child and any guardian of the child; and
- any other matter that the Court considers relevant.

The Court may require that a copy of the complaint be served on the child or the child's guardian. The Court may also issue orders to ensure that the child, or a guardian of the child, is given an opportunity to be heard in relation to the complaint.

A restraining order made by the Magistrates Court under section 99AAC may do the following:

- it may impose restraints on the defendant that are necessary or desirable to protect the child from any apprehended risk;
- it may provide for the temporary placement of the child into the custody of a guardian of the child or another person as directed by the Court, or into the custody of the Minister for Families and Communities and the care of the Chief Executive of the Department for Families and Communities;
- it may include any consequential or ancillary orders.

A restraining order under section 99AAC expires when the child reaches the age of 17 years or at an earlier time specified in the order.

Certain restrictions, specified in subsection (6), apply if the complainant is not a police officer. For example, the Court must not issue a summons for the appearance of the defendant and must dismiss the complaint unless it is supported by oral evidence.

13—Repeal of section 99A

Section 99A specifies the persons who can make a complaint under Division 7. This clause repeals the section because, as a consequence of related amendments, each section under which a restraint order can be made is to specify who can make a complaint.

14—Amendment of section 99C—Issue of restraining order in absence of defendant

This amendment is consequential. Subsection (3a) of section 99C is not required because it is clear from the terms of section 99CA(2) that the provisions of that subsection apply despite any other provisions of the Act.

15—Amendment of section 99F—Variation or revocation of restraining order

Section 99F provides that the Court may vary or revoke a restraining order on application by a police officer or certain other persons. The section as amended by this clause will allow for the variation or revocation of a restraining order made under section 99AAC on application by a parent or guardian of the child for the protection of whom the order was made.

16—Amendment of section 99I—Offence to contravene or fail to comply with restraining order

Under section 99I, a person who contravenes or fails to comply with a restraining order is guilty of an offence. New subsection (5), to be inserted by this clause, provides that a child for the protection of whom a restraining order has been made under section 99AAC cannot be convicted of aiding, abetting, counselling or procuring an offence against section 99I relating to a contravention of, or failure to comply with, the restraining order.

17—Insertion of section 99KA

This clause inserts a new section. Proposed section 99KA prohibits the publication of any report of proceedings under section 99AB or proceedings under section 99F to vary or revoke a restraining order made under section 99AB if publication of such a report is prohibited by the Court or the report identifies the child for the protection of whom the restraining order is sought or has been made or reveals certain information relating to the child. The maximum penalty for a breach of this prohibition is a fine of $10,000.

Section 99KA also provides that no person may be present in the Court during proceedings for the issue or variation of a child protection restraining order. The following are excepted from this prohibition (but may be excluded by the Court):

- officers of the Court;
- officers of the administrative unit of the Public Service charged with the administration of the *Children's Protection Act 1993*;
- parties to the proceedings and their legal representatives;
- witnesses while giving evidence or permitted by the Court to remain in the Court;
- any guardian of the child for the protection of whom the restraining order is sought;
- any other persons authorised by the Court to be present.

18—Amendment of section 104—Preliminary examination of charges of indictable offences

Section 104(6) currently includes a divisional penalty. This clause amends the section by making the form of the penalty consistent with other penalties in the *Summary Procedure Act 1921*. The maximum penalty, imprisonment for two years, remains the same.

19—Further amendments

This clause updates the *Summary Procedure Act 1921* by substituting 'police officer' for 'member of the police force'.

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

CHILDREN'S PROTECTION (IMPLEMENTATION OF REPORT RECOMMENDATIONS) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for State/Local Government Relations, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister Assisting the Minister for Transport, Infrastructure and Energy) (17:15): 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.

On 17 June 2008, the South Australian Government tabled in this Parliament its initial response to the *Children in State Care Commission of Inquiry* report. Its response to the *Children on APY Lands Commission of Inquiry* report was subsequently tabled on 24 July 2008. In responding to both reports, the Government advised the Parliament that it had accepted the majority of the Commission's recommendations. The Government committed to a comprehensive implementation plan for the Mullighan recommendations, including: a package of legislation; a public apology to victims; an extra $2.24 million to prosecute child abuse cases arising from the Mullighan Inquiry; more police and social workers posted to the communities on the APY Lands; and a further $190.6 million over four years into the child protection system, including the introduction of reforms in keeping with Commissioner Mullighan's recommendations.

A number of the recommendations of the *Children in State Care Commission of Inquiry* along with recommendation 21 of the *Children on APY Lands Commission of Inquiry* suggested new or strengthened statutory provisions. The Government accepted all but one of these 'legislative' recommendations, as explained to Parliament in some detail on 17 June 2008 and 24 July 2008.

I now introduce a Bill, which amends the *Children's Protection Act 1993* and the *Health and Community Services Complaints Commission Act 2004,* as recommended by Commissioner Mullighan and to keep faith with the Government's commitments to this Parliament.

The Government is also introducing a Bill to address recommendation 47 of the Children in State Care Commission of Inquiry. These 2 Bills make up the 'package of legislation' committed to by this Government.

As recommended by Commissioner Mullighan, the amendments proposed in this Bill include:

- Enhanced provisions to promote child safe environments, including requiring a broader range of organisations to have criminal history checks for personnel working with children;
- Additional protection for mandatory notifiers;
- Provisions to ensure appropriate mechanisms are available to respond when a young person makes a disclosure of sexual abuse;
- Provisions to clarify and strengthen the role and powers of the Guardian for Children and Young People and Health and Community Services Complaints Commissioner; and
- Mechanisms to promote the participation of children and young people in government decision-making.

This Bill is a key part of the South Australian Government's overall response to the recommendations of the Commission of Inquiry. It will strengthen the robust legislative framework already enacted in South Australia to keep children safe from harm and will reinforce the principle that keeping children safe from harm is the responsibility of the whole community.

It is also the Government's intention to introduce supporting regulations following passage of the Bill. The proposed regulations are described in the supporting material available on the Service SA Mullighan Inquiry website. The proposed regulations should be considered in conjunction with this Bill.

Child Safe Environments

There is a growing community expectation that organisations engaged in the provision of services to children should take appropriate measures to promote their safety and well-being. For this reason in 2005, the Government amended the *Children's Protection Act 1993* to require all Government, local government and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, childcare or residential services wholly or partly for children, to establish appropriate policies and procedures to maintain child safe environments. At that time, the Act was also amended to require all Government organisations and non-government schools to conduct a criminal history check on persons occupying or acting in 'prescribed positions'.

I note that at that time, a number of non-government organisations that were not legally obliged to conduct criminal history checks of staff and volunteers working with children, did so as part of their commitment to making children safe and because they saw this as 'good organisational practice'. I recognise in particular a number of our churches, sporting bodies and service organisations that undertook this positive step of their own initiative.

This type of support for the protection of children receiving services from organisations is important. The Commission of Inquiry observed that '*in order to achieve long-overdue reform to the protection of children in State*

care, there must be commitment from the whole-of-government, as well as non-government organisations and the community'.

This Government believes that the 'child safe environment' framework in the *Children's Protection Act 1993* is fundamental to ensuring consistent child protection standards across the Government and community sectors. This Bill proposes to strengthen the framework in 2 ways. First, it introduces a new requirement for organisations to lodge a statement setting out details of their child safe environment policies and procedures with the Chief Executive of the Department for Families and Communities and second, it obliges those organisations already required to have 'child safe environment' policies and procedures to also undertake criminal history checks on persons working in prescribed positions in their organisations.

As I have noted above, those organisations outlined in section 8C of the *Children's Protection Act 1993* are already required to have in place policies and procedures that establish and maintain child safe environments. This Bill will require these organisations to lodge a statement of the details of their policies and procedures with the Chief Executive of the Department for Families and Communities as evidence that the organisation is engaged in making their organisation a safer place for children. The Chief Executive will be empowered to seek further information from sectors or organisations relating to their compliance with the child safe environment requirements.

The obligation to conduct criminal history assessments is extended to this same group. The group includes organisations providing health, welfare, education, sporting or recreational, religious or spiritual, childcare or residential services wholly or partly for children. This obligation applies to any business, service provider or group organised for some purpose or undertaking, whether incorporated or unincorporated. The requirement for criminal history assessments extends to all employees, volunteers, agents and sub-contractors working in a prescribed position in a relevant organisation.

The definition of 'prescribed functions' under section 8B(8) will be amended to provide greater clarity for organisations and to exclude certain 'low risk' functions. Up until now, a 'prescribed function' included regular contact with children or working in close proximity to children on a regular basis; supervising or managing personnel working with or around children on a regular basis; or accessing records about children. It is proposed that in situations where a person is under direct supervision and observation at all times by appropriate personnel, there is no need to have a criminal history check. For example, a specialist sports coach who is at all times supervised by a PE teacher with an appropriate criminal history check, would not need to have a check themselves. The requirement that all persons with access to records relating to children obtain a check also lead to some confusion. The definition of a record is enormously wide in scope. It encompasses commonly held records such as name, address and date of birth, or indeed a photograph. These types of common records may be handled by a large range of personnel in an organisation. In order to achieve a better balance between protection and practicality, it is now proposed that only personnel accessing the more sensitive type of personal records (the details of which will be set out in regulations) will require a criminal history check.

The Act currently requires organisations to obtain criminal history checks 'from the Commissioner of Police or some other prescribed source'. The Bill will now amend this obligation and instead require an organisation to 'cause an assessment of a person's criminal history to be undertaken in accordance with the regulations'. This amendment will have no immediate impact on an organisation's obligation to conduct criminal history checks but will accommodate any future requirements arising from the work being undertaken at a national level to establish a framework for improved inter-jurisdictional exchange of criminal history information for screening of people working with children.

These amendments contribute to the safety and well-being of all children in South Australia and provide much stronger protections for children and young people who access services in the community. As I have noted, many organisations already conduct criminal history checks for employees and volunteers as part of their policies and procedures to maintain child safe environments. Extending the requirement will assist organisations to manage the risks associated with engaging people to work in positions of trust with children and ensure that consistently high standards are established for many of the key organisations that provide services to children.

Most Australian jurisdictions outside South Australia have introduced 'working with children' checks in recent years or are moving to introduce such checks. Jurisdictions which have such systems are New South Wales, Victoria, Queensland, Western Australia and the Northern Territory. These proposed amendments have been drafted with the benefit of experience in other jurisdictions as well as our own. They will also bring South Australia more in line with other Australian States and Territories.

As announced in this Parliament on 17 June 2008, an exemption scheme will also be established by regulations under the *Children's Protection Act 1993*. These will exempt organisations, positions and functions from the requirement to undertake criminal history checks in certain circumstances.

Exemptions will not be available for activities potentially posing a high-level of risk to the child, such as commercial child care, residential care, family day care, juvenile justice, child protection and the provision of services specifically to children with disabilities. Also, the scheme will not override the prohibition preventing registrable offenders from engaging in child-related work set out in section 65 of the *Child Sex Offenders Registration Act 2006*.

A consultation paper setting out the elements of the exemption scheme is available on the Service SA Mullighan Inquiry website.

An exemption scheme is considered necessary because the potential range of organisations which will be required to conduct criminal history checks on personnel is quite broad and we recognise that not all situations pose a tangible risk to children. In considering which situations might attract an exemption, the Government had to balance the potential levels of protection and risk—considering all the elements in the environment—with the cost to

organisations and individuals. A balance needs to be struck between ensuring that the best child protection mechanisms are applied and a sensible, workable approach is taken to the application of these new obligations.

It is therefore proposed that the following organisations, persons and positions will be exempt from the application of section 8B:

(1) A person who volunteers in their children's activities;

(2) A volunteer less than 18 years of age;

(3) A person who works or volunteers in a prescribed position for a period of not more than 10 consecutive days in a calendar year or for no more than 1 day in any month;

(4) A position in which all work involving children takes place in the presence of the children's parents or guardians and in which there is ordinarily no physical contact with the children;

(5) A person who undertakes, or a position that only involves, work that is not for the exclusive benefit of children and is not provided on an individual basis;

(6) An organisation that provides equipment, food or venues for children's parties or events but does not provide any other services;

(7) A person who has regular contact with a child as part of an employment relationship;

(8) A person who is appointed as a police officer;

(9) A person who is a registered teacher.

It is the Government's intention to delay the implementation of the new child safe environment provisions for one year, to provide the necessary lead-time to enable affected organisations to establish appropriate policies and procedures to comply with the new requirements. The requirement to conduct criminal history checks on persons working in prescribed positions will then be phased in over a three year period, commencing with those organisations and sectors identified as high risk. The timing of the 'phase in' period will be outlined in the regulations.

Notification of Abuse and Neglect

The mandatory reporting of suspected child abuse is the first step in stopping abuse and protecting children from further harm. As noted by the Inquiry, if Families SA is not alerted to potential incidences of abuse or neglect through mandatory reporting, the abuse or neglect of the child is likely to continue. It is therefore extremely important that the law not only protects the confidentiality of people who make reports under the Act, but also protects people from intimidation or unfavourable treatment when reporting.

In order to ensure that strong protections are in place to protect mandated notifiers when discharging their duty under the Act, it will be an offence to threaten or intimidate, or cause damage, loss or disadvantage to a person discharging or attempting to discharge the obligation of mandatory reporting. Providing additional protection to people subject to mandatory notification requirements will help ensure that notifiers are confident to provide Families SA with the necessary information to make an appropriate response in cases of suspected child abuse or neglect without fear of intimidation or unfavourable treatment.

Guardian for Children and Young Persons

The Guardian for Children and Young Persons plays a vital role in representing and advocating for the rights and interests of children and young people in care and as a monitor of that care.

In recognition of this important role, the Government has already provided funding to the Guardian to establish two new specialist positions to ensure that individual and systemic advocacy is provided for children with disabilities in care and Aboriginal children and young people in care.

This Bill strengthens the powers and functions of the Guardian in order to ensure that the legislative framework exists to enable the Guardian to continue providing a high level of support and advocacy to children and young people in care. In many cases, the amendments operate to formalise what is already occurring in practice and ensure that there is no doubt regarding the Guardian's role as an independent and impartial advocate for children and young people in care.

The independence of the Guardian is expressly recognised. The Guardian's functions and powers are also amended to make it clear that the Guardian is to act as an advocate for a child or young person in State care who has made a disclosure of sexual abuse. This amendment will provide greater clarity for children and young people who make a disclosure of sexual abuse whilst in care and for the organisations that support them.

The Guardian will be required to establish a Youth Advisory Committee. The purpose of the committee will be primarily to assist the Guardian in the performance of the Guardian's functions by ensuring that the Guardian is aware of the experiences of, and receives advice from, children who are, or have been, under the guardianship, or in the custody, of the Minister.

The Guardian will be able to prepare a report to the Minister on any matter arising from the exercise of the Guardian's functions under the Act. The content of the report is immune from any ministerial direction and the report must be promptly brought to the attention of Parliament.

Government and non-government organisations involved in the provision of services to children are already required to comply with a request for information from the Guardian in connection with the Guardian's functions under the Act. However, as identified by the Inquiry, situations could exist where the Guardian might quite properly

need information from an organisation that does not provide services to children and might need the support of the law in obtaining that information. To address this issue, this Bill makes clear the Guardian's powers relating to obtaining and using information. It allows the Guardian to obtain information from any person in connection with the Guardian's functions under the Act and establishes a maximum penalty of $5000 for non-compliance with a lawful request for information from the Guardian.

Charter of Rights for Children and Young People in Care

A *Charter of Rights for Children and Young People in Care* was developed during 2005-06 by the Guardian for Children and Young Persons, following extensive consultation with stakeholders, including children and young people in care. This Charter is a valuable resource for children and young people in care and articulates their rights in easily-understood language.

In accordance with the Inquiry's recommendation, this Bill establishes a legislative requirement that the *Charter of Rights for Children and Young People in Care* exists. This will ensure that the Charter will continue to be available to children and young people in care and to the carers and organisations that support them. The Charter will be subject to review at least once every 5 years to ensure that its content remains relevant and it is a useful resource for this vulnerable group.

Health and Community Services Complaints Commissioner

This Bill amends the *Health and Community Services Complaints Act 2004* to clarify the provisions of the Act in the child protection jurisdiction.

At present, the *Health and Community Services Complaints Act* implicitly allows the Commissioner to receive complaints from children and young people on a case-by-case basis. The Commissioner may also extend the time-frame in which a complaint needs to be lodged in certain circumstances, such as where the complaint arises from circumstances since the launch of the *Keeping Them Safe* reform agenda in May 2004. However, as noted by the Inquiry, the Commissioner's powers in relation to these issues are not expressly stated in the Act.

As recommended by the Inquiry, the Act is amended to expressly state the right of children and young people to complain directly to the Commissioner. This will ensure that there is no actual or perceived impediment for children or young people who wish to make a complaint themselves. The Act is also amended to provide that a relevant consideration for extending the 2 year limit on the child protection jurisdiction is that the complaint arises from circumstances since the launch of the *Keeping Them Safe* reform agenda in May 2004.

These amendments will ensure that appropriate complaints mechanisms are available to children and young people in South Australia and that these mechanisms are confidential, impartial and protected. These amendments will allow the Commissioner to better target information to this important and vulnerable group of service users.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure is to commence on a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Children's Protection Act 1993*

4—Amendment of section 4—Fundamental principles

This clause amends a reference in section 4 of the *Children's Protection Act 1993* to the Aboriginal Child Placement Principle so that reference is also made to Torres Strait Islander children.

5—Amendment of section 6—Interpretation

The terms *government organisation* and *non-government organisation* are currently used several times in the Act but are only defined for the purposes of section 8B. This clause inserts definitions of those terms into the interpretation provision of the Act. The definition of *Aboriginal Child Placement Principle* is replaced with a definition of *Aboriginal and Torres Strait Islander Child Placement Principle*.

A new subsection makes it clear that an organisation may consist of 1 person.

6—Amendment of section 8—General functions of Minister

The amendments made by this clause have the effect of requiring the Minister to consult with groups representing or comprised of children and other persons who are or have been under the guardianship, or in the custody, of the Minister. This consultation is to take place so as to ensure that the Minister receives advice from, and is made aware of the experiences of, such persons.

7—Amendment of section 8B—Powers and obligations of responsible authority in respect of criminal history

This clause amends section 8B of the Act to make some adjustments to the requirement that certain organisations must ensure that a criminal history assessment is undertaken in relation to persons employed by the organisation who undertake functions involving contact with children or access to records relating to children.

Under the section as amended, the responsible authority for an organisation to which section 8B applies must ensure that, before a person is appointed to, or engaged to act in, a prescribed position in the organisation, an assessment of the person's criminal history is undertaken in accordance with the regulations. A prescribed position is a position in an organisation that requires or involves contact with children, supervision of persons in positions with regular contact with children or access to records relating to children.

The section currently applies to government organisations and non-government organisations to which its operation is extended by regulation. As a consequence of the amendment made by this clause to section 8B(6), the operation of the section in respect of non-government organisations will be extended so that it applies to all non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children. This means that section 8B will apply to the same non-government organisations that section 8C applies to.

Section 8B as amended will also provide for the making of regulations under the section—

- prescribing the manner in which an assessment of a person's criminal history may be undertaken; and
- making provision in relation to the use of information relating to a person's criminal history received from another jurisdiction; and
- making provision in relation to confidentiality of information relating to a person's criminal history; and
- prescribing penalties, not exceeding $10,000, for offences against the regulations.

8—Amendment of section 8C—Obligations of certain organisations

Section 8C requires organisations to which the section applies to establish appropriate policies and procedures for ensuring that appropriate reports of abuse or neglect are made under Part 4 of the Act and that child safe environments are established and maintained within the organisations. As amended, the section will require that the policies and procedures comply with any requirements prescribed by regulation.

Under section 8C as amended, organisations to which the section applies will be required to lodge a statement setting out the organisation's policies and procedures with the Chief Executive of the Department for Families and Communities. The organisations will also be required to respond, as soon as reasonably practicable (and in any case within 10 business days), to any written request by the Chief Executive for information relating to the organisation's compliance with the requirements of the section.

Subsection (3) of section 8C, which specifies the organisations to which the section applies, is replaced with a new subsection. This is because of the definitions of *government organisation* and *non-government organisation* that are inserted into the interpretation provision of the Act by clause 5. This change to section 8C is not substantive. The section will continue to apply to all government and non-government organisations that provide health, welfare, education, sporting or recreational, religious or spiritual, child care or residential services wholly or partly for children.

9—Insertion of section 8D

Proposed section 8D provides for the regulations to exempt organisations, persons and positions, or particular classes of organisations, persons and positions, from the application of Division 3 of Part 2 or from specified provisions of the Division. It also allows regulations to be made for transitional purposes which, by providing temporary exemptions or modifications, would allow a phasing in of provisions of the Division.

10—Amendment of section 11—Notification of abuse or neglect

The first amendment made to section 11 by this clause is consequential on the insertion of definitions of government organisation and non-government organisation that apply for the purposes of the whole Act.

The second amendment inserts a new subsection. Under the proposed subsection, it is an offence for a person to threaten or intimidate, or cause damage, loss or disadvantage to, a person to whom section 11 applies because the person has discharged, or proposes to discharge, his or her duty under subsection (1) to notify the Department for Families and Communities of a reasonable suspicion that a child has been or is being abused or neglected. The maximum penalty is a fine of $10,000.

11—Amendment of section 16—Power to remove children from dangerous situations

This clause proposes an amendment to section 16 that will make it clear that the section, which authorises the removal of children from dangerous situations, is in addition to, and does not derogate from, the powers of authorised police officers under section 51(4) of the Act. Section 51(4) provides authorised police officers with certain powers in relation to the enforcement of orders of the Youth Court.

12—Substitution of heading to Part 7A

This clause substitutes a new heading to Part 7A to reflect the fact that the Part is now to deal with the Youth Advisory Committee and the Charter of Rights for Children and Young People in Care. Part 7A will now also include a number of offences in Division 4.

13—Amendment of section 52A—The Guardian

Section 52A is amended by this clause to expand the list of circumstances in which the office of the Guardian for Children and Young Persons becomes vacant. The section as amended will also provide that the Governor may remove the Guardian from office on the presentation of an address from both Houses of Parliament seeking the Guardian's removal. It will also provide that the Governor may suspend the Guardian from office on the ground of incompetence or misbehaviour.

14—Insertion of section 52AB

This clause inserts a new section.

52AB—Independence

Proposed section 52AB provides that the Guardian is to act independently, impartially and in the public interest in performing and exercising his or her functions and powers under the Act. The Minister cannot control how the Guardian is to exercise the statutory functions and powers and cannot give direction with respect to the content of any report prepared by the Guardian.

15—Amendment of section 52C—The Guardian's functions and powers

One of the Guardian's functions is to act as an advocate for the interests of children under the guardianship, or in the custody, of the Minister. This amendment makes it clear that the Guardian is to act as advocate, in particular, for any such child who has suffered, or is alleged to have suffered, sexual abuse.

16—Insertion of section 52CA

This clause inserts a new section dealing with the use and obtaining of information.

52CA—Use and obtaining of information

The proposed section requires any government or non-government organisation that is involved in the provision of services to children to, at the Guardian's request, provide the Guardian with information relevant to the performance of the Guardian's functions. If the Guardian has reason to believe that a person is capable of providing information or producing a document relevant to the performance of his or her functions, the Guardian may, by notice in writing provided to the person, require the person to do 1 or more of the following:

- to provide that information to the Guardian in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
- to produce the document to the Guardian;
- to attend before a person specified in the notice and answer relevant questions or produce relevant documents.

17—Insertion of section 52DA

This clause inserts a new section.

52DA—Other reports

Under proposed section 52DA, the Guardian may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Guardian's functions. The Minister is required to have copies of the report laid before both Houses of Parliament.

18—Insertion of Part 7A Divisions 2 to 4

This clause inserts 3 new Divisions into Part 7A.

Division 2—Youth Advisory Committee

52EA—Youth Advisory Committee

This section provides for the establishment and maintenance of a Youth Advisory Committee. The primary function of the Committee is to assist the Guardian by ensuring that the Guardian is aware of the experiences of, and receives advice from, children who are, or have been, under the guardianship, or in the custody, of the Minister. The Guardian may consult the committee, or members of the committee, as the Guardian thinks fit.

Division 3—Charter of Rights for Children and Young People in Care

52EB—Development of Charter

Section 52EB provides for the development of a draft Charter of Rights for Children and Young People in Care.

52EC—Review of Charter

This section provides that the Guardian may review the Charter at any time. The Charter must be reviewed at least every 5 years.

52ED—Consultation

In developing or reviewing the Charter, the Guardian must invite submissions from, and consult with, interested persons (including persons who are, or have been, under the guardianship, or in the custody, of the Minister).

52EE—Approval of Charter

On the receipt of a draft Charter or a variation of the Charter from the Guardian, the Minister may approve the Charter, or the variation to the Charter; or the Minister may require an alteration to the Charter or the variation, after consultation with the Guardian. The Minister may approve the Charter or variation as altered. A copy of the Charter or variation is to be laid before both Houses of Parliament.

52EF—Obligations of persons involved with children in care

This section applies to persons exercising functions or powers under the *Children's Protection Act 1993*, the *Family and Community Services Act 1972* or a law relating to the detention of a youth in a training centre. Such persons must, in any dealings with, or in relation to, a child who is under the guardianship, or in the custody, of the Minister, have regard to, and seek to implement to the fullest extent possible, the terms of the Charter. The section makes it clear that the Charter cannot create legally enforceable rights or entitlements.

Division 4—Offences

52EG—Offence relating to intimidation

This clause makes it an offence for a person to persuade or attempt to persuade by threat or intimidation another person—

- to fail to cooperate with the Guardian; or
- to fail to provide information or a document to the Guardian as authorised or required under the Act; or
- to provide to the Guardian information or a document that is false or misleading in a material particular, or to provide information or a document in a manner that will make the information or document false or misleading in a material particular.

The maximum penalty is a fine of $10,000.

52EH—Offence relating to reprisals

Section 52EH provides that a person must not treat another person unfavourably—

- on the ground that a person has cooperated with the Guardian in the performance or exercise of powers or functions under the Act; or
- on the ground that a person has provided information or documents to the Guardian as authorised or required under the Act; or
- on the ground that he or she knows that a person intends to do either of these things, or suspects that a person has done, or intends to do, either of these things.

The maximum penalty is a fine of $10,000.

52EI—Offence relating to obstruction etc

Section 52EI provides that a person must not, without reasonable excuse, obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Guardian in the performance or exercise of a function or power under the Act.

The maximum penalty is a fine of $10,000.

52EJ—Offence relating to the provision of information

Under section 52EJ, a person must not—

- provide to the Guardian information that the person knows is false or misleading in a material particular; or
- refuse or fail to include in information provided to the Guardian other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

The maximum penalty is a fine of $10,000.

19—Amendment of section 63—Regulations

This clause amends the regulation making power of the Act so that the regulations may—

- be of general application or limited application; and

- make different provision according to the matters or circumstances to which they are expressed to apply; and
- provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Chief Executive (or a delegate of the Chief Executive); and
- refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed person or body, either as in force at the time the regulations are made or as in force from time to time.

20—Insertion of Schedule 1

Schedule 1 inserts a transitional provision that applies to organisations that will be subject to section 8B after commencement of the measure but were not previously subject to the section. The provision requires the responsible authority for such an organisation to ensure that criminal history assessments are undertaken, in accordance with the regulations, in relation to certain existing employees. The transitional provision is required because section 8B, as amended, will require criminal history assessments to be undertaken only in relation to new employees.

Schedule 1—Related amendments

Part 1—Amendment of *Health and Community Services Complaints Act 2004*

1—Amendment of section 24—Who may complain

This clause amends section 24 of the *Health and Community Services Complaints Act 2004* to make it clear that a child who is a health or community service user may make a complaint to the Health and Community Services Complaints Commissioner about a health or community service.

2—Amendment of section 27—Time within which complaint may be made

Section 27(1) provides that a complaint under the Act must be made within 2 years from the day on which the complainant first has notice of the circumstances giving rise to the complaint. Subsection (2) authorises the Commissioner to extend the 2 year period in a particular case if satisfied that is appropriate to do so after taking into account various listed factors. Under the section as amended, the Commissioner will be able to extend the period if the complaint relates to the provision of a health or community service to a child and the complainant first had notice of the circumstances giving rise to the complaint after May 2004 (which is when the *Keeping Them Safe* reform agenda was launched).

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

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

At 17:57 the council adjourned until Tuesday 27 October 2009 at 14:15.