LEGISLATIVE COUNCIL

Tuesday 27 October 2009

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:20 and read prayers.

STATUTES AMENDMENT (ELECTRICITY AND GAS—INFORMATION MANAGEMENT AND RETAILER OF LAST RESORT) BILL

His Excellency the Governor's Deputy assented to the bill.

NATIONAL GAS (SOUTH AUSTRALIA) (SHORT TERM TRADING MARKET) AMENDMENT BILL

His Excellency the Governor's Deputy assented to the bill.

PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL

His Excellency the Governor's Deputy assented to the bill.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor's Deputy assented to the bill.

PAPERS

The following papers were laid on the table:

By the Minister for Mineral Resources Development (Hon. P. Holloway)—

Reports, 2008-09—
- Anzac Day Commemorative Council
- Department of Water, Land and Biodiversity Conservation
- Fisheries Council of South Australia
- Legal Practitioners Education and Admission Council
- Office of the Commissioner for Equal Opportunity
- River Murray Act 2003
- South Australian Classification Council
- Surveyors Board of South Australia

Regulations under the following Acts—
- Courts Administration Act 1993—Participating Courts
- Electrical Products Act 2000—Labelling Standards

Water Amendment (Murray-Darling Basin Agreement) Regulations 2009—No. 1

By the Minister for Urban Development and Planning (Hon. P. Holloway)—

Proposal to establish a Bulk Handling Facility for Iron Ore at Brennans Jetty, Port Lincoln, pursuant to Section 49(15) of the Development Act 1993—Report

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

Reports, 2008-09—
- Activities associated with the Administration of the Retirement Villages Act 1987
- Administration of the State Records Act 1997
- Animal Welfare Advisory Committee
- Balaklava Riverton Health Advisory Council Inc.
- Bio Innovation SA
- Club One (SA) Ltd. Financial Report
- Country Health SA Board Health Advisory Council Inc.
- Dog and Cat Management Board
- Essential Services Commission of South Australia—South Australian Rail Regulation
- Essential Services Commission of South Australia—Tarcoola-Darwin Rail Regulation
- Eudunda Kapunda Health Advisory Council
- Gawler District Health Advisory Council Inc.
- Kangaroo Island Health Advisory Council Inc.

Kingston/Robe Health Advisory Council Inc.
Land Board
Leigh Creek Health Services Health Advisory Council
Lower North Health Advisory Council Inc.
Maralinga Lands Unnamed Conservation Park Board
Millicent and Districts Health Advisory Council Inc.
Mount Gambier and Districts Health Advisory Council Inc.
Naracoorte Area Health Advisory Council Inc.
Optometry Board of South Australia
Penola and Districts Health Advisory Council Inc.
Physiotherapy Board of South Australia
Playford Centre
Port Augusta, Roxby Downs, Woomera Health Advisory Council
Port Broughton District Hospital and Health Services Health Advisory Council Inc.
Port Lincoln Health Advisory Council
Privacy Committee of South Australia
SA Ambulance Service Volunteer Health Advisory Council
South Australian Heritage Council
South Coast Health Advisory Council Inc.
Southern Flinders Health Advisory Council
Upper South East Dryland Salinity and Flood Management Act 2002
Vulkathunha-Gammon Ranges National Park Co-management Board
Yorke Peninsula Health Advisory Council

Club One (SA) Ltd—Report on Distribution of Funds among Community, Sporting and Recreational Groups

Death of John Frederick Wanganeen—Report on Actions taken following the Coronial Inquiry, June 2009

Independent Gambling Authority—Inquiry into Barring Arrangements, 2009

Regulations under the following Act—
Gene Technology Act 2001—General

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. CARMEL ZOLLO (14:27): I lay upon the table the report of the committee on an inquiry into the Land Management Corporation.

Report received and ordered to be published.

BRIDGESTONE AUSTRALIA

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:28): I table a copy of a ministerial statement relating to the support package for Bridgestone workers made today by the Premier.

NORTHERN FLINDERS RANGES

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:28): I table a copy of a ministerial statement relating to balancing mining and conservation in the North Flinders made today by the Premier.

QUESTION TIME

ST CLAIR LAND SWAP

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:32): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question about the St Clair land swap.

Leave granted.

The Hon. D.W. RIDGWAY: I had the good fortune to attend a public rally at the St Clair reserve on Sunday 18 October. It was great to be there and see a lot of familiar faces from the Cheltenham public meetings that I have attended on a number of occasions. Interestingly, I was the only member of parliament there. I did not see any members opposite.

The PRESIDENT: I remind the honourable member to stick to his question.

The Hon. D.W. RIDGWAY: Thank you, Mr President. I was distracted by Andre Rieu over there. It is interesting to note the concern in the community about this land swap, and it was a pleasure to see the wonderful amenity and the 100 year old trees on that site that are to go. It is my understanding that submissions were made to the council last night and that a decision will be made by the council on 9 December possibly to refer the decision to the minister.

I am advised that 11 of the 15 councillors are members of the Labor Party and eight of the 11 work for current Labor members of parliament. Members would also be aware that the Victorian government recently passed legislation banning government advisers and staffers from being on councils. My questions are:

1. Is the minister confident that the recommendation that he will receive from the council will accurately reflect community wishes?

2. Does the minister support the Victorian Labor Party's legislation banning government advisers and staffers from serving on local councils?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:34): In relation to the first matter, I think I will wait until I receive official notification from the Charles Sturt council before I respond to questions. I do not need the Leader of the Opposition to be the postman or the conduit; I would rather reflect on the advice that I receive from the Charles Sturt council in relation to any request that it makes. As I understand it, there will be a number of issues—

The Hon. J.S.L. DAWKINS: I rise on a point of order, Mr President. There are some of us in the chamber who are actually interested in the answer, unlike the Hon. Mr Finnigan and—

The PRESIDENT: What is your point of order?

The Hon. J.S.L. DAWKINS: —his ministerial colleague.

The PRESIDENT: It is hardly a point of order, but the Hon. Mr Finnigan will come to order.

The Hon. P. HOLLOWAY: As I say, the St Clair land swap is a matter that has been before the Charles Sturt council. We have all been reading about the issue in the local media. If it comes to me then I will give it due consideration at the time, but I will not speculate on the decision while it is still before council.

In relation to the latter part of the question, it is up to individuals who run for local government. We have had an example just this morning from the Hon. Mr Winderlich, who seems to spend an inordinate amount of time before Burnside council; we get a running commentary. So, it appears that some members of this parliament are quite happy to spend most of their time on local government affairs. However, in my view it is important that we have the best possible people running for—

The Hon. D.W. Ridgway: You don't support the Victorian government's legislation?

The Hon. P. HOLLOWAY: The Victorian government can take whatever action it likes in relation to those matters; it is up to individuals. All I can say, with regard to people in my office, is that they are too busy to have other duties; there is plenty to do. However, if other staff members wish to be involved in their local community and they can contribute, why should we limit the gene pool? We have certainly seen enough examples in local government where the calibre of representation has left much to be desired. If people can assist their community by serving on local government I encourage them to do so.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Dawkins would like to hear the answer. The council will come to order.

HEALTH CLAIMS

The Hon. J.M.A. LENSINK (14:36): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question on the subject of potential scams advertised in our newspapers.

Leave granted.

The Hon. J.M.A. LENSINK: I have become aware of a miraculous book, for which full page advertisements have been published in the *Sunday Mail* from time to time. The advertisement is headed 'Natural Medicine: How ancient Chinese medicine can help you to drive illness from your body.' The author of the book is a Dr Stephen Chang, who 'shares the secrets of self-healing and of internal exercises which, with very little effort and in no time at all, can be used to drive illness away and keep it away.' The advertisement claims that high blood pressure, constipation, obesity, snoring, allergies, sinus inflammation and prostate problems are just a few of the conditions that can be prevented using these 'internal exercises'. There are endorsements from a number of people—who, curiously, all reside in Europe.

For the sum of $49.95 plus $9.95 postage and handling you not only receive this book but also a book entitled *Rub your Stomach Away* and one entitled *Flush Fat Right Out of your Arteries*. I must admit, the claim with which I have a conflict of interest is the one that asserts that you can do without your glasses simply by massaging the region around your eyes for a few minutes a day. My questions are:

1. Is the minister aware of any complaints her office may have received in relation to these advertisements?

2. Are there any remedies that her office can take, either directly through this organisation or through the local newspapers, which are clearly publishing rather fantastic information?

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) (14:39): I thank the honourable member for her question. If only it were that easy to address the wide range of problems that the member outlined with those quick, easy remedies.

The Office of Consumer and Business Affairs provides a wide range of warnings and advice. We have seen an endless list of scams, get-rich-quick schemes, and illegal pyramid schemes over past years. Warnings are usually published by media release, with specific information given at that time through telephone services. We also often do a radio program, where an officer goes on reasonably regularly and does talk-back radio with people phoning in and asking questions. Any current scams we bring to the attention of the public at that time. We publish a range of booklets and other literature as well.

During the 2008-09 reporting period I am advised that OCBA received 1,051 written complaints and reports about scams and received 2,889 counter and telephone inquiries. In relation to the particular advertising the honourable member has mentioned here today, I am not aware that we have had any complaints on that, but I am happy to check it if she gives me further details. I will follow it up and put out whatever notices in terms of warnings that we might have at our fingertips. The number of complaints and inquiries received has fallen by about 18 per cent compared with last year, which may indicate that people's understanding and awareness have improved and that they are more prepared to check out an offer before purchasing. We hope that that reflects the concerted education effort of our officers.

Greater use of email and SMS technology has been a real target for scams recently. Scam and scheme complaints are ongoing through the Office of Consumer and Business Affairs, which regularly works with the ACCC and the Australasian Consumer Fraud Task Force to identify and warn the public of such scams. On 22 September OCBA assisted the ACCC in a national internet sweep day. The exercise targeted promoters of scams aimed at those most vulnerable in tougher economic times. The scanning of internet scams picked up a number of these types of unrealistic offers, including some offering other health cures and benefits that were unfounded. The ACCC assesses that information collected and may delegate some matters to respective states for further investigation, if it believes it is warranted. OCBA continues to use its regular media appearances and its website to promote awareness and explore any initiative that might enhance delivery of the agency's objectives. We continue to receive calls and inquiries and will continue to make people aware.

It is impossible to completely wipe out scams because, as soon as we get on to one type of promotional opportunism and clamp down on it, the next thing we find is some other scam popping up elsewhere. There are limitless opportunities for scammers to take advantage of the public. We try to send out a general message to make people aware and to be cautious. If something looks too good to be true, it probably is. Before parting with one's money one should check on the

organisation to make sure it is reputable and that the offers are realistic. If anyone has concerns they should ring the Office of Consumer and Business Affairs straight away. Some of it is about general vigilance.

I was pleased to see the report from the Social Development Committee, which dealt with some bogus medical health claims. The committee compiled a very comprehensive report and made some recommendations. I have just recently responded to some of those recommendations that were specifically directed to the Office of Consumer Affairs. So, those responses are on the way.

30-YEAR PLAN FOR GREATER ADELAIDE

The Hon. S.G. WADE (14:45): I seek leave to make a brief explanation before asking the Minister for Urban Development and Planning a question relating to the draft 30-Year Plan for Greater Adelaide.

Leave granted.

The Hon. S.G. WADE: A BIS Shrapnel and AV Jennings report released earlier this month shows that new South Australian homes are smaller than homes interstate and that homes interstate are increasing while South Australian homes are getting smaller in size. According to the report, the average size of a new home in South Australia is 129.3 square metres compared to the national average of 253 square metres. The national average has increased by 12 per cent in the Past 10 years, while South Australian homes have reduced in size by 11 per cent.

In an *Advertiser* article on the report, the General Manager of AV Jennings Homes, South Australia attributes shrinking house sizes to the availability of land and the resulting decrease in block sizes. The government's draft 30-Year Plan for Greater Adelaide could promote the trend to smaller block sizes, particularly in areas of urban infill. However, smaller house sizes present unique challenges with regard to accessibility for both residents of and visitors to smaller homes. Houses can be made smaller by reducing door widths and transit spaces which are vital to accessibility.

In spite of our ageing population and the state having a relatively high proportion of people living with disability, the 30-year plan, as I can see, makes no reference to these planning and design issues. My questions to the minister are:

1. What steps is the government taking to engage the disability and ageing communities to understand the implications of the 30-year plan?

2. What action will the government take to ensure that planning laws require accessibility to be enhanced in spite of decreasing house sizes, given the increasing prevalence of both disability and ageing in our community?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:47): First, in relation to those statistics, I would like to check them to see whether or not, in fact, they give an accurate picture. Certainly, because South Australia has the oldest population in the country, it probably is likely that the average size of houses is more likely to decline here compared with other parts of the country, simply because we have a larger number of single person households and smaller family sizes, reflecting the older population that we have in this state. Whether, in fact, the average size of a house is half that nationally is something that, as I said, I would like to check before I actually concede that that is the case.

Regardless of what those figures are, the honourable member is correct: there would be a significant impact on the future growth of Adelaide because of the ageing of our population. In fact, the ageing factor, in particular, has been right at the heart of the 30-year plan. I have made the point in this parliament on a number of occasions when we have talked about planning issues and the 30-year plan, in particular, that the ageing of the population will have as big—and perhaps bigger—an impact as population growth itself.

Indeed, while the projection that we have for the next 30 years is an extra 560,000 or so people within this state, if one looks at the numbers on ageing, the number of people aged over 65 will grow much more rapidly than the increase in population overall, and that will have a huge impact on the demand for housing. I suggest that fits in very much with the 30-year plan; that is, we need to accommodate people in housing that is perhaps higher density because of the ageing population, obviously. I think the same will go for people with a disability. They will be less likely to

need the large gardens which have been there in the past. It would also be to the advantage of those two groups to be closer to public transport in walkable communities.

I believe that the needs of both the ageing population and the disability sector will generally align with the broad goals of the 30-year plan. Whist those needs have been taken into account broadly in the 30-year plan, obviously a lot more specific planning is needed for particular needs, and it is important that, in the final form of our 30-year plan, we ensure that all issues have been addressed—that is, that the changes in the make-up of our population are adequately catered for.

I do not think that anyone would suggest that the 30-year plan itself can get down to the level of detail the member suggests in relation to the individual design of dwellings, although that is an important part. To address the general issue raised by the honourable member, the average block size is declining; nonetheless, if we move to more medium density—that is, dwellings of more than one storey (and, perhaps in some of the transit oriented developments, they might be four or five storeys high)—the land taken up by dwellings will be less.

When we refer to medium density, we are talking about the population per square metre. We know that, in relation to the cities to which the honourable member referred (if it is, in fact, twice the size in Sydney, for example, than it is here), Sydney is a much denser city than Adelaide. In a sense, that answers the honourable member's question: if you move to a higher level of density—in other words, high-rise buildings—you can have larger individual dwellings within the same footprint. Clearly, that will be a factor in Adelaide's growth.

I make the point that the ageing population and the factors of ageing are at least as important as population growth (and maybe more so) in determining the make-up and type of housing that will be required over the next 30 years. Similarly, the disability sector is a factor that tends towards a different type of accommodation than we have had in the past.

I stress that they are key parts of the 30-year plan and, in relation to the general direction of the plan, the medium density plan and the proximity to public transport are all factors that take into account and are very compatible with the increased needs of the ageing and disabled populations.

ADELAIDE SHOWGROUND

The Hon. CARMEL ZOLLO (14:53): My question is to the Minister for Urban Development and Planning. Will the minister provide an update on the progress in rezoning the showground at Wayville?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (14:53): As members might recall, I informed them in April of the decision to initiate a rezoning for the Adelaide Showground site at Wayville. The Royal Adelaide Show has a long tradition in this state reaching back more than 150 years. The show is always held from the first Friday in September at the showground at Wayville, providing a wonderful opportunity to bring together the rural, regional and metropolitan communities of this state, showcasing the best in farming alongside local arts and crafts.

The Royal Agricultural and Horticultural Society has made significant progress in updating the facilities at the showground, including the new Goyder Pavilion. Situated near major public transport routes for road, rail and tram, the showground site has always offered vastly greater potential than has been harnessed recently by the focus on the annual show and exhibitions. That has been changing, but the impediment to greater adaptation has been the zoning.

In partnership with the Royal Agricultural and Horticultural Society of South Australia we feel that the zoning can be updated and readied for the 21st century. The development plan amendment currently out for community consultation has been driven largely by the progress the RAHS has already made in preparing a master plan for this site. The Royal Adelaide Show has been an important part of the social fabric of this state since it was established in 1839 and has been held at the current location since 1925, when the showground moved from North Terrace to Wayville.

In the more than 80 years that the Adelaide Showground has been at Wayville, the precinct has adapted to keep pace with changes in public demand while also embracing the traditions that have made it unquestionably the best show in Australia. We do not expect this important role that the show plays in South Australia to change, but there is no reason why the superb opportunities provided by the showground's potential cannot be further enhanced—no reason at all.

Against this backdrop of tradition and innovation, I have recently put out for public consultation a ministerial development plan amendment for the showground. Rather than limit the showground's use to exhibitions and the annual show, the proposed rezoning allows the land-holders to examine a broader range of uses for the 28 hectare site. This rezoning has also taken into account the heritage value of the buildings and other structures on the showground.

Our intent is to transform the Adelaide Showground into more than a venue for the annual Royal Adelaide Show and exhibitions. The changes on public consultation will provide the showground site with the rezoning needed to develop a modern exhibition and showground facility for South Australians. With close proximity to the city, public transport, the Parklands and other facilities, the revised planning policy unlocks the showground's superb location and vast potential.

The ideal location of the showground provides scope for additional uses more in keeping with the planning strategy for metropolitan Adelaide and draft the 30-Year Plan for Greater Adelaide. Members of the public, local councils, government agencies, community and industry groups have been invited to comment on the Adelaide Showground development plan amendment during the nine weeks of community consultation.

The proposed changes to the City of Unley development plan will create a new showground zone to include the following provisions that will create opportunities for:

- continued and enhanced entertainment and exhibition type activities;
- new commercial activities such as consulting rooms, offices, tourist accommodation, child-care centre and gymnasium on the Goodwood Road side of the showground;
- new mixed use development along Rose Terrace on the northern side of the showground and along Leader Street on the southern side of the showground.

Public submissions to the independent development policy advisory committee are invited until 5pm on Wednesday 23 December and will be available to the public. The draft Adelaide Showground development plan amendment is already available online on the Department of Planning and Local Government website. Hard copies of the proposed development plan amendment can be viewed during office hours by visiting the Unley council chambers on Unley Road or the Department of Planning and Local Government office at North Terrace in the city.

A public meeting if people request to speak further to their submissions is planned for the Mercure Grosvenor Hotel, in the city, at 7pm on 19 January next year. Copies of the public submissions will be uploaded to the Department of Planning and Local Government website between the close of submissions and the public meeting.

After the development policy advisory committee considers all submissions and prepares advice, I will be in a position to determine the final form of the amendments to the City of Unley Development Plan. I would strongly encourage members of the public, local government, industry and community groups and government agencies to obtain a copy of the draft development plan amendment and lodge their submissions by the 23 December deadline.

ADULT BOOKSHOPS

The Hon. A. BRESSINGTON (14:58): I seek leave to make a brief explanation before asking the minister representing the Minister for Police a question about the policing of adult bookstores.

Leave granted.

The Hon. A. BRESSINGTON: Recently a constituent rang me in a very distressed state. He had been informed that a local adult store was selling publications which depicted in fantasy stories incest and sexual intercourse with children. I have since been provided with a copy of this material and, from the little I have seen, I can assure the chamber that it is filth, and anyone who desires to read it is very disturbed. Needless to say, once I confirmed that the material did not have classification approval, despite the magazines displaying the R rating symbol, I surrendered the magazines to the appropriate authorities for further investigation.

Perplexed as to how an adult bookstore could so blatantly display and sell this material, I did a bit of research and discovered that the selling of unclassified and, hence, illegal magazines and DVDs is not uncommon but, in fact, the norm. I have learnt from one person in the industry that unclassified material is available at most outlets with the usual practice being a slight mark-up in price in case they are ever raided and prosecuted, although he did state that this was

comparatively rare. I was also informed that the fake R18+ symbol that featured on the publications that I received is also common in an attempt to give an impression of legitimacy.

Of course, not all unclassified publications are child pornography or depict incest, but they are illegal under the Classifications, Publications, Films and Computer Act 1955. However, if it is as common as this gentleman stated to me, the only reasonable assumption is that adult bookstores are not being policed and, as such, what is there to prevent them selling offensive material such as child pornography? My questions are:

1. Will the minister inform the chamber of what routine operations are undertaken to police adult bookstores, such as random inspections and undercover operations, and how frequently do they occur?

2. What branch of SAPOL is responsible for such operations and how many personnel are allocated for those operations?

3. How many charges have been laid and successful prosecutions secured in the past five years against adult bookshops for such breaches of the relevant provisions of the classification act or the Criminal Law Consolidation Act?

4. If selling this material is the scourge that has been reported to me, will the minister consider providing additional resources and undertaking additional measures to more closely scrutinise adult bookstores so that this offensive material is taken off the shelves?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:01): I thank the honourable member for her question and for bringing this matter to my attention. I am sure that if that sort of activity is taking place and it is drawn to the attention of the police they will respond accordingly. I will refer that question to the Minister for Police in another place and bring back a reply.

UNIVERSITY OF THE THIRD AGE

The Hon. C.V. SCHAEFER (15:02): I seek leave to make a brief explanation before asking the minister representing the Minister for Employment, Training and Further Education questions about the University of the Third Age.

Leave granted.

The Hon. C.V. SCHAEFER: If my memory serves me correctly, the University of the Third Age was established in South Australia by the Hon. Robert Lucas. It is a charitable education movement which is utilised by people in their post-retirement years. It is, and certainly has proven to be in the Mid North, a great social and community asset for older people, it has certainly added to their mental and physical health, and it is in great demand in that area.

It has come to my notice that classes in the Mid North and in many other areas take place at a TAFE campus; in this case, at the TAFE campus at Clare. It has also come to my notice that the minister has imposed, instead of free rental, full commercial cost recovery for community organisations using TAFE buildings. In the case of the University of the Third Age, he has now magnanimously said that it can have the space for 50 per cent of the commercial rent.

One of the aims of the University of the Third Age is for it to be made available to people on low incomes, particularly age pensioners, and, as such, the subs have been kept particularly low. Even at 50 per cent rental it will make it very difficult for this particular organisation to continue its valuable work. My questions are:

1. What are the costs savings that will be made from preventing community organisations such as this from using TAFE buildings and, indeed, what gains will there be from implementing full commercial rent?

2. Was a community impact statement prepared prior to this decision by cabinet?

3. Was the Social Inclusion Unit informed of this decision which is, indeed, discriminatory against aged people on low incomes?

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) (15:04): I thank the

honourable member for her questions and will refer them to the relevant minister in another place and bring back a response.

FLINDERS MEDICAL CENTRE

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) (15:05): I table a copy of a ministerial statement relating to the Flinders Medical Centre surgeon made in another place by the Hon. John Hill.

QUESTION TIME

ABORIGINAL AND TORRES STRAIT ISLANDER WOMEN'S GATHERING

The Hon. I.K. HUNTER (15:05): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the recent state Aboriginal women's gathering.

Leave granted.

The Hon. I.K. HUNTER: The annual state Aboriginal women's gathering was held between 21 and 23 October. The gatherings provide opportunities for Aboriginal women from across the state to come together to network and share experiences and formulate plans for future initiatives. Will the minister inform the council about initiatives discussed at this recent gathering of Aboriginal women?

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) (15:06): I thank the member for his most important question. It was my pleasure to attend the recent women's gathering. At the outset, I would like to say that there certainly could not be a more inspiring group of leaders than the Aboriginal and Torrens Strait Islander women, particularly some of the women who attended this year's and previous years' gatherings.

In relation to Aboriginal women, the South Australian government Office for Women has already done a lot of work around building a culture of leadership, from holding small development sessions, such as résumé writing workshops to recruiting more Aboriginal and Torres Strait Islander women to the Premier's Women's Directory and to South Australia's Women's Honour Roll.

As the gathering demonstrated, there are so many life journeys and stories that reflect the very positive contribution that Aboriginal and Torres Strait Islander women make to the community. With this in mind, I was pleased to launch the Sistas Yarnin' series of programs at the gathering this year. Sistas Yarnin' is a joint initiative between the Office for Women and Radio Adelaide, and it gathers together first-hand stories of the life journeys of our Aboriginal and Torres Strait Islander women.

For some of the women, Sistas Yarnin' is about highlighting their accomplishments through work and community service, and for others it is simply telling us about what life is like for them and their triumphs over adversity. Most importantly, these stories are told in these women's own way, using their own voices and their own words—they are their stories.

The rich tradition of storytelling and yarning is how cultural knowledge is and has been passed on to other generations of Aboriginal and also non-Aboriginal people. I was very pleased to present certificates at the gathering to four of the six Sistas Yarnin' participants who shared their stories—and we were able to listen to one of those stories. The participants involved were Pat Waria-Read, Frances Rigney, Delvine Cockatoo-Collins and Tiahna Wanganeen. Chris Egan and Christine Jacques were unable to attend, and their certificates will be sent to them.

Three other women who helped greatly were also acknowledged, and they are Marion Burns, who organised nine women from Nunkuwarrin Yunti Healing Camp to share their stories; Nikki Marcel, Program manager at Radio Adelaide; and Cathy Kenneally, Arts Producer at Radio Adelaide, who also did the recording of the stories.

I was also pleased to announce the second round of Anti-Violence Community Awareness grants at the gathering. The grants are an important part of the South Australian government's four year anti-violence community awareness campaign. I recently launched the media component of

the Don't Cross the Line campaign, which I have previously spoken about in this chamber. That campaign promotes respectful relationships and aims to increase awareness of the proposed new domestic violence laws and rape and sexual assault laws.

As part of the campaign, a community education grant fund was established, and that fund is aimed at informing and educating groups in the community who would not necessarily be targeted through the mainstream campaign. We are keen to make sure that our message reaches as wide an audience as possible. The second round of the Anti-Violence Community Education grants is targeted at young Aboriginal and Torres Strait Islander men and women aged 18 to 25 years in rural, regional and remote communities. Five grants of up to $15,000 each are available. Interested organisations need to submit an expression of interest, and successful organisations will be invited to work with the Office for Women to finalise their grant application. This process is proposed as a more supportive way to engage Aboriginal and Torres Strait Islander communities and achieve outcomes. The Office for Women will ensure that appropriate partnerships are developed with relevant agencies to facilitate outcomes.

We expect that the community organisations will develop specifically targeted programs, training or other initiatives, which could build on the campaign message and the targeted population group and ensure that they are suitable for the community that they propose to work with and, obviously, that they are culturally relevant. The community awareness grants will help us reach the widest possible audience with the message about respectable relationships and changes to laws.

BURNSIDE CITY COUNCIL

The Hon. DAVID WINDERLICH (15:11): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the Burnside city council.

Leave granted.

The Hon. DAVID WINDERLICH: Under section 273(b) and (c) of the Local Government Act, the minister has the power to give directions to a council if the minister receives a report from an investigator and considers that a council has contravened or failed to comply with the provisions of the Local Government Act or any another act, has failed to discharge a responsibility under the Local Government Act or any other act, or that an irregularity has occurred in the conduct of the affairs of council.

On 24 September and 14 October, I argued that, if the minister asked for an interim report from the investigator Mr MacPherson and had serious concerns as a result of that report, she would have the power under section 273 to order Burnside council to terminate the employment of Mr Neil Jacobs, and she did not challenge that interpretation in her answer to my questions.

The process of the reappointment of Mr Neil Jacobs to the position of chief executive officer clearly meets the criteria for giving directions to council for the following reasons. Mr Jacobs was reappointed as chief executive officer instead of being appointed as acting chief executive officer while the process of appointing a new CEO was undertaken by the council. That is a clear breach of section 98 of the Local Government Act. The council is now, arguably, without a duly appointed chief executive officer, and that breaches section 96(1), which requires each council to have an executive officer; and having a chief executive officer with an uncertain legal status over an extended period of time is clearly an irregularity.

On 24 September, the minister informed this council that approximately a week earlier the Office of State/Local Government Relations, at the request of the investigator, Mr Ken MacPherson, forwarded a request to Burnside council to consider his concerns about the process of appointing Mr Jacobs that was followed by the Burnside council. As of 27 October, more than six weeks later, the Burnside council has still not responded to the request to clarify the status of Mr Jacobs. My questions are:

1. Does the minister concede that having the office of chief executive officer occupied by a person whose legal authority is open to challenge is a matter of grave concern?

2. Is the minister concerned that the matter of the legal status of the Burnside chief executive officer is open to question and is still not resolved six weeks after her office asked council to consider it?

3. Given that the minister has ruled out seeking an interim report from the investigator, how does she propose to prevent or respond to serious breaches of the Local Government Act that have occurred, or may occur, after the appointment of the investigator but prior to receiving the investigator's final report in February 2010?

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) (15:13): I thank the member for his questions. It is truly like a burnt out old record. I have addressed all of these matters very clearly on the record in this chamber on more than one occasion previously. I do not know whether the honourable member thinks that if he keeps asking the same question eventually he will get the answer he wants.

The answer the member wants is for him to be judge and jury in this matter. He has made up his mind. He has second-guessed the outcome of an eminent investigator. He has made up his mind what the outcome is going to be and wants to pre-empt the outcome of that report. It is outrageous. On the one hand he is suggesting that somehow I should manipulate caretaker-type provisions throughout the investigation when, on the other hand, he himself would not support caretaker provisions in the recent Electoral Act legislation that passed through this place.

What an absolute hypocrite! It is outrageous hypocrisy. The act is quite clear about my powers, and I have put those on record before. The act does not allow me to put in caretaker-type provisions, that is, to limit the actions of council in relation to the way it carries out its duties. It does not allow me to do that, so not only would it be improper for me to intervene but it would also be illegal—and I have put that on the record.

I have put in place a rigorous process to be conducted by someone who is eminently qualified. No-one could doubt his diligence, thoroughness and expertise in this matter. I have put in a highly qualified expert to conduct an investigation, and the matters to which the honourable member refers are in the terms of reference for that investigation. So, these are matters that the investigator can determine within his investigation.

For me to take any further action, if that action is appropriate, I am required (as the member points out) to receive a report from the investigator. In this incredibly open and important process of investigation, is the honourable member seriously asking me to intervene in the due process of my own investigation to deliver a pre-emptive outcome? It is absolutely outrageous.

The investigator will do his job. I have given him the time he needs; I have extended the time of the reference, as he requested, to complete his investigation thoroughly. One of the reasons for increasing that time was the importance of ensuring that this particular investigation is open to the wider public, so that it is not just an investigation of council, councillors and their decisions but opened up to include any relevant evidence that might be taken from the general public. So, not unexpectedly, the investigation ended up requiring more time and resources than anticipated.

As I have said, this investigation needs to be done properly so that its decisions are fair, right, proper and just and cannot be legally challenged at the end of it, so that we do not have to spend another year back in court. As I have said, to suggest that I interfere with that process is outrageous. We have an appropriately qualified person, we have a process that has been given whatever time is needed to be properly carried out and for the correct due diligence to be done to the expected and required standard. Whatever it takes, the investigation will be able to do.

I have said time and again in this place that, if the investigator identifies any matter that he believes needs to be brought to my attention before the outcome of any interim or final report, he will do so. I have every confidence that he would do that, but to this point in time he has not—other than the matter previously raised in relation to the CEO's contract of employment, and I have already put all that detail on record. It is outrageous to suggest that I would interfere and pre-empt the outcome of a rigorous and thorough process.

BURNSIDE CITY COUNCIL

The Hon. S.G. WADE (15:20): By way of supplementary question, in relation to the CEO's contract, if the minister does not have a view on Burnside council's six-week delay in responding to the Office of State/Local Government Relations' concerns conveyed on 11 September, how long will the office and the minister wait?

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) (15:20): I have already put all these matters on the record. Clearly stated on the record are the events around any issues raised in relation to the CEO's appointment. The questions were raised and the council provided an opinion in relation to its legal advice that there was no impediment to the CEO's appointment. That legal advice has been passed back to the investigator, who has not raised any other concerns in relation to that position. I wait for the final report of the investigator. Under the act I am required to receive a report before, if appropriate, I can take further action. I will wait for that. As I have said time and again, I am absolutely confident that, if the investigator had any other matters of concern which he believed needed to be addressed prior to the outcome of this investigation, he would inform me immediately.

BURNSIDE CITY COUNCIL

The Hon. DAVID WINDERLICH (15:22): By way of supplementary question, does the minister believe she is powerless to act against a council that is breaching the Local Government Act if that council is under investigation?

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) (15:22): Is there a point of order about tedious repetition? I have answered this question more than once and I cannot add any further information at this point. I have fully and comprehensively answered this question. I cannot add anything further.

COURT DELAYS

The Hon. J.S.L. DAWKINS (15:22): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Attorney-General, and in his own right, a question about court delays.

Leave granted.

The Hon. J.S.L. DAWKINS: The government has announced certain initiatives to accommodate the express resolution of cases arising out of the Mullighan Inquiry into the Abuse of Children in State Care. The opposition recognises that is appropriate, but there is a direct consequence: that is, people who are awaiting the determination of not just other criminal cases but also civil cases are delayed. I have a female constituent with a pending de facto property action in the District Court, in which she is seeking relief to access settlement for her share of property with her former de facto partner. That includes her registered half interest in their former residence. She has now been advised that her case will not be heard until March or April next year, and that is after an already long time in the courts.

It is particularly difficult—and this is where it affects other portfolio areas—because there is a policy that states that if you are a registered owner of property you cannot access or even get on to the list of people seeking public housing through the South Australian Housing Trust. You have a situation where, because someone is a registered owner of property, even though they cannot live in it presently, access it, use the money from it or even borrow against it to secure other accommodation, the legal status means that they are excluded from being on a public housing list or having access to it, yet at the same time they face a significant delay in the resolution of civil proceedings in the court.

I raised this constituent's case with the housing minister by correspondence on two occasions. In addition, the situation has been brought to the attention of the Attorney-General by the member for Bragg in another place. It is also relevant to note that my constituent, who has been forced to live with relatives for many months, is continually frustrated by the presence of empty Housing Trust accommodation in the near vicinity of her temporary abode. Will the leader take a whole of government approach and work with the Attorney-General and the Minister for Housing to find a solution to the unacceptable dilemma in which this constituent finds herself?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:25): I have dealt with enough constituent issues down the years to know that each one of them is unique. From the honourable member's question, it certainly sounds as though a range of issues are involved here. Obviously, before one could attempt to deal with them, one would need to fully understand the

situation. What I suggest the honourable member does—if he has not already done so—is raise this matter with the appropriate minister. I am happy to refer the question on, but I suspect that, without the particularities of the case, it would be difficult for the minister—

The Hon. J.S.L. Dawkins: I will provide you with anything you need.

The Hon. P. HOLLOWAY: If the member provides me with the details, I am happy to pass them on to the other ministers. I am well aware that there are complex issues involving both the Housing Trust and, of course, the courts. It was not clear from the honourable member's question which particular court the matter was before.

The Hon. J.S.L. Dawkins: The District Court.

The Hon. P. HOLLOWAY: The District Court. It is my understanding that the Attorney has given the appropriate emphasis in relation to child protection issues. It is also my understanding that he has taken other measures to ensure that that would not unduly delay the courts, but I will leave that to the Attorney-General to respond to. As I said, if the honourable member gives me the relevant information, I will ask for the case to be investigated by my colleagues.

SMALL BUSINESS STATEMENT

The Hon. B.V. FINNIGAN (15:26): My question is to the Leader of the Government, as the Minister for Small Business. Can the Minister provide the chamber with further details of the South Australian government's recently launched Small Business Statement?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:26): I thank the honourable member for his important question.

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

The PRESIDENT: The Hon. Ms Lensink is out of her seat and interjecting. She is out of order.

The Hon. P. HOLLOWAY: And misinformed, Mr President. As I have previously informed honourable members, Wednesday 14 October marked the launch of the South Australian government's long-awaited Small Business Statement. Small business adds to the vibrancy and character of our communities, particularly in regional areas. With more than 140,000 small businesses across the state employing more than half of the private sector workforce, small business plays a vital role in the economy of South Australia. With that in mind, the Small Business Statement reaffirms this government's commitment to creating Australia's most supportive environment for small business.

Small businesses are more vulnerable to recessive economic influences, and they face obstacles and challenges specific to their operations. With that in mind, the Small Business Statement was developed under the guidance of the Business Development Council subcommittee formed specifically for this purpose, and I thank the Hon. Mrs Zollo for her work in relation to the Business Development Council. The statement includes initiatives undertaken by the Rann government to improve the environment in which small business operates. These initiatives include:

- further reduction of government red tape;
- reduced business costs and state government taxes;
- build capacity through workforce development and skills training;
- offer targeted services that support specific needs;
- provide a voice for small business in developing government policy;
- foster innovation and creativity;
- increase export capacity; and
- respond to challenging economic circumstances.

With many government programs spread across several agencies, the statement presented an opportunity to take stock of each of these various initiatives available to small businesses. As a

result, the Small Business Statement lists an extensive range of specific government programs and services available to provide assistance to small businesses.

The statement acknowledges that a viable small business sector will contribute to six objectives of the South Australian Strategic Plan: growing prosperity, improving wellbeing, attaining sustainability, fostering creativity, building communities and expanding opportunities.

It also records the South Australian government's commitment to nurturing and encouraging well planned start-up businesses; supporting the growth, employment and export capabilities of small businesses; integrating small businesses in the digital economy; and monitoring and reacting positively to the circumstances in which small businesses operate.

The Small Business Statement reinforces the government's commitment to maximise opportunities for small business in priority projects and to improve the flow of information between the government and small business. The statement sets out a potential vision for growth within the small business sector that will occur as a result of the government's continuing efforts to deliver on world-class infrastructure, encouraging innovative thinking and new technologies and providing facilities for up-to-date advice and skills development programs.

The government will continue to foster awareness of the opportunities provided by the digital economy, working closely with the Business Development Council, professional and industry bodies, as well as the general community, to advance the cause of small business. The Small Business Statement has been forwarded to business enterprise centres, regional development boards, members of parliament and industry associations. Copies of the statement can now be obtained by contacting the Department of Trade and Economic Development, through local BECs or regional development boards.

ADULT BOOKSHOPS

The Hon. D.G.E. HOOD (15:30): I seek leave to make a brief explanation before asking the minister representing the Minister for Police a question about adult bookshops.

Leave granted.

The Hon. D.G.E. HOOD: By coincidence, another member of the chamber earlier asked a similar question; mine is on a similar topic but contains different specifics. I was quite surprised to read an article in the *Leader Messenger* of 12 October this year, entitled 'Triple X marks the spot for Dernancourt porn thieves.' In part, it stated:

> A Dernancourt adult shop is struggling to survive after the theft of more than $32,000 worth of X-rated DVDs that could not legally be insured.
>
> Thieves broke into the Good Vibrations store on Lower North East Road overnight on Tuesday October 6, making off with some 650 DVDs with an average retail value of $50 each.
>
> Owner Karen Pearce said her store had been raided eight times over the past two years and the latest was by far the worst…Ms Pearce said it was 'crazy' that X-rated material could not be insured, since while it was technically illegal to sell in South Australia, the law was rarely, if ever, enforced.

In essence, we have a case of someone selling something that is illegal to sell in this state and complaining when it is stolen. The part of the article that concerns me most is where the adult store owner says that the laws regarding X-rated material are 'rarely, if ever, enforced'. Section 38 of the Classification (Publications, Films and Computer Games) Act 1995 clearly provides:

> A person must not sell—
>
> (a) an unclassified film that would, if classified, be classified RC or X18+; or
>
> (b) a film classified RC or X18+.
>
> Maximum penalty: $10,000.

My questions are:

1. Despite clear laws banning the sale of X-rated videos in this state, why are people in the adult video industry saying that those are 'rarely, if ever, enforced'?

2. If that is the case, will the minister ensure that the police investigate this instance?

The Hon. P. HOLLOWAY (Minister for Mineral Resources Development, Minister for Urban Development and Planning, Minister for Small Business) (15:33): I thank the Hon. Mr Hood for his question. In many ways, it complements that asked by the Hon. Ann Bressington earlier today. I did not read the article but, clearly, if the situation is as reported in the

paper, one cannot have too much sympathy for someone who cannot insure their goods because it is illegal to sell them. As I said, one would have very limited sympathy with the person concerned, not that that excuses the theft of any item.

Given the fact that this matter has been raised by two members, I hope that, if it reflects a growing problem in the community, the police would react to it. I will ensure that the two questions about this matter are drawn to the attention of the Minister for Police so that SAPOL can take the appropriate action in relation to what would appear to be, if the honourable members' reports are correct, a growing problem.

FAIR WORK (COMMONWEALTH POWERS) BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3491.)

The Hon. R.D. LAWSON (15:35): The Liberal Party does not support the passage of this legislation. We believe that South Australia ought to have the capacity—

The Hon. B.V. Finnigan interjecting:

The PRESIDENT: Order! The Hon. Mr Lawson has the call.

The Hon. R.D. LAWSON: —to provide for an industrial relations system for small enterprises to enable small enterprises in this state to thrive. It was the vision of Thomas Playford in the 1940s, 1950s and 1960s in this state, so often lauded by Premier Rann, which led to the industrial development of this state. He recognised that an industrial relations system and an economic environment in which business could thrive were important. He realised the necessity, in order to attract business to this state and to attract economic activity, of South Australia having a system which was adapted to this state, which provided an advantage to this state, which provided a difference between this state and other jurisdictions and which gave this state a competitive advantage.

This bill seeks to take away that competitive advantage from the state of South Australia. This bill will ultimately make it impossible for a South Australian small business to be conducted as efficiently and economically as is the case in other states. For example, it will mean that eventually award rates in, say, the retail industry after a transition period are the same here as they are in Sydney. There will be no capacity for differing award rates to apply in different jurisdictions. That means a small business in Sydney, for example, which is a higher cost environment, can charge higher purchase prices for its goods, its customers being used to paying higher charges as they pay higher rents because of the higher cost of living. That will enable that small business in Sydney to raise sufficient funds to meet its award obligations.

Of course, in South Australia, a retailer will not have the same capacity to increase charges because of the fact that in this state people are simply not prepared to pay those high charges. So, what it will mean is that small business in South Australia will be disadvantaged. We will be competitively disadvantaged. At the moment we accept that, as a result of the High Court's decision and the Howard government's poorly named work choices legislation, all corporations are currently covered by the federal act and will be caught in the federal jurisdiction.

That is fine for large businesses; we accept that will be the case, but in South Australia we believe there ought to be a residual capacity for the South Australian parliament and the South Australian Industrial Relations Commission to attend to the interests of those businesses which are not caught in the federal system. We do believe in cooperative federalism but, more importantly, we believe in competitive federalism. We understand that South Australia has to compete and, by removing the power of the Industrial Relations Commission in this state to have jurisdiction over certain enterprises, we are reducing our competitiveness. Ultimately, we think it is madness to allow a centralised wage figuring system to apply across the whole of Australia, given the different cost structures that apply in different jurisdictions.

So, we believe in that particular principle. However, we are also opposed to this legislation because it is half-baked and half-hearted. It purports to facilitate the establishment of a national system in which the federal body will have overarching power over all enterprises. However, we know, for example, that Western Australia has said that it does not propose to play any part in this particular system. So, South Australia is out of the system.

We also know that the New South Wales Labor government has been opposed to the introduction in that state of similar legislation. It does not want to refer all its powers to the

commonwealth, and it has not yet committed to do so. Frankly, until the New South Wales government is prepared to join in the system, I cannot see why South Australia should be one of the first to jump off the plank into these shark-infested waters.

It is true, of course, that in 1996 the Kennett Liberal government in Victoria transferred all of its industrial relations powers to the commonwealth—all of them; holus-bolus—and there are arguments for and against that. I think Victoria had good arguments for doing that—better than South Australia because, as I mentioned, for us to do so puts us at a competitive disadvantage.

However, this legislation is not like the legislation in 1996 whereby the Kennett government referred its powers holus-bolus, as it were. What we have here is a conditional form of referral which is, indeed, highly complex. I would have to say, as a legal practitioner, that this particular bill is full of complexity and exceptions, and it is not at all clear in its application. It is all very well to put into legislation of this kind a provision such as clause 4, relating to fundamental workplace relations principles, which are as follows:

- Strong, simple and enforceable safety net of minimum employment standards.
- Genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities.
- Collective bargaining at the enterprise level with no provision for individual statutory agreement.
- Fair and effective remedies through an independent umpire—

and so on. These are all motherhood statements of little practical or legal significance. However, when one gets into the more arcane areas of the reference we find, for example, in clause 5 the following convoluted language:

> …the matters to which the initial referred provisions relate—

these are the provisions to be referred to the commonwealth—

> but only to the extent of making of laws with respect to those matters by including the initial referred provisions in the commonwealth Fair Work Act as originally enacted and as subsequently amended by amendments enacted from time to time before this act commences in terms or substantially in terms set out in the scheduled text.

I might add that, in relation to the scheduled text, as I understand it the Fair Work Act of the commonwealth was introduced only on the first of this month. It comprises some 600 pages and here we are—without having had an opportunity to examine all of its provisions—being asked to, as it were, refer our powers in relation to it. I believe further legislation relevant to the issues presently before us was introduced either late last week or perhaps this week in the commonwealth parliament.

It is claimed in the minister's second reading explanation that this bill is the result of extensive consultation. Well, it certainly was not consultation at any sort of political or parliamentary level, and my understanding of the consultative process is that it was highly structured and that those on the Industrial Relations Advisory Council who were asked to comment were sworn to secrecy and could not consult their members about the effect of the provisions. So, the consultation was highly limited.

It was not until after the bill was introduced in this place—I think the night before the committee stage was due to be considered in another place in this parliament—that the government produced what is said to be a core document, namely, the intergovernmental agreement for a national workplace relations system for the private sector, an agreement of some eight pages. The copy supplied to the opposition is an unexecuted, undated copy, and I ask the minister, in his response, to inform the council of the date of that particular document and also confirm that it has, in fact, been signed by all of the states and territories that are referred to in it.

This agreement refers to three types of jurisdiction: those that are referring states—and this government proposes that South Australia be a referring state; those with mirroring jurisdictions, and I do not know who they are and I ask the minister to indicate who the mirroring jurisdictions might be; and it also refers to what are called cooperating jurisdictions. Presumably, these are jurisdictions which do not refer their powers but are cooperating jurisdictions. I suppose the question is: why ought we not be a cooperating jurisdiction rather than a referring jurisdiction,

because if, as I suspect, Western Australia and New South Wales are to be cooperating jurisdictions, which gives those states greater flexibility, we ought to opt for that type of status?

I have said that this is a half-hearted and half-baked scheme. It is also half-hearted in the sense that the government does not propose that all of the existing state jurisdiction be transferred to the commonwealth. Government employees in South Australia are excluded, so the public sector is excluded entirely, and local government, for some reason not explained, is also excluded in this state. So, in South Australia we are going to maintain an industrial relations system—I think its current cost is well over $20 million a year—for the purpose only of handling industrial matters in the public and local government sectors.

If one is really serious about referring to the commonwealth and ensuring national award rates for labour across the whole system, one would have referred the public sector and local government as well, but that is not what the government has done. The government is keen to maintain an industrial relations system, presumably as a place where it can put some of its mates out to pasture but with little valid purpose—really, a duplication of powers. So, we are concerned about that aspect of it, but we are more seriously concerned about the fact that this bill will put our state at a disadvantage.

There are a number of complex provisions which concern the way in which the reference can be altered after we have referred powers. There are complex issues about how the state of South Australia can, upon giving notice, be permitted to withdraw its referral. There is a mechanism under which the states and territories can vote in relation to certain matters, and both the states and territories are given equal voting rights. There are complex issues about why the territories, which actually do not have any non-commonwealth powers over industrial relations, should have any say in deliberations of that kind, other than to make up the numbers to get the two-thirds majority to override the wishes of any particular state.

There are some complexities in the current system; we recognise that. We recognise, for example, that there are some not-for-profit organisations about which there is some doubt as to whether or not they are covered by the commonwealth or state systems. There have been some judicial decisions to differing effect in relation to that matter, but the solution to that would be targeted specifically at that particular issue.

This solution is not targeted at resolving the status of not-for-profit corporations, clubs and the like. It is a scattergun approach which simply refers to the commonwealth all of our industrial relations powers in accordance with the text and retains for South Australia power over local government and public sector employees but does not create a national system.

It is for those reasons—principally reasons of principle—that we are opposed to this legislation. We believe in the states in this country. We believe that the states have something to offer and that state parliaments, state governments and state jurisdictions are important, and that Australia is a large enough place to have competing industrial relations systems. We have had competing industrial relations systems for 100 years. There is no reason why we should absolutely abandon that. We are not in favour of abandoning it, in general, and we are certainly not in favour of abandoning this system under this scheme.

The Hon. P. Holloway interjecting:

The Hon. R.D. LAWSON: The minister is suggesting that we did agree to it in relation to WorkChoices. We did not agree to it in relation to WorkChoices. What happened with WorkChoices is that the commonwealth passed laws, which the High Court subsequently upheld and which extended its industrial relations power over all corporations. Fair enough. That might be a substantial part of business enterprise at the moment. Whether it will be the same in the future, whether or not other business models will be developed to provider greater flexibility for enterprises, remains to be seen. This government is seeking to prevent the development of some other enterprise models which might flourish under a state system.

We are opposed to the passage of this bill. I look forward to the committee stage because there are complex provisions, the operation of which can best be explored by questioning the minister.

The Hon. D.G.E. HOOD (15:54): This bill sees much of South Australia's industrial relations power go to the commonwealth, as has been outlined by the honourable member. It is an important, far-reaching bill and Family First has a number of concerns with it, which I will outline. The first issue that is important to raise at this point is that this matter has come on very quickly. It

is a very significant bill, and we find ourselves seeking information on the detail of it, because it will significantly change the way we operate in South Australia.

If I may I will give a little bit of history, dating back to 1901 when, of course, federation brought together six individual British colonies. Using the United States partly as a model of federation, each colony agreed to cede some of its powers to a new commonwealth government, the powers now found in section 51 of the Commonwealth Constitution. During the first of the convention debates in 1891 Sir Samuel Griffith, who would later become the first chief justice of the High Court of Australia, said:

> We must not lose sight of the essential condition that this is to be a federation of states and not a single government of Australia. The separate states are to continue as autonomous bodies, surrendering only so much of their power as is necessary for the establishment of a general government to do for them collectively what they cannot do individually for themselves.

Despite the wishes of Sir Samuel Griffith, since that time we have seen a progressive shifting of power in favour of the commonwealth, to the detriment of the states on many occasions (although, of course, on some occasions there have also been advantages). This has partly been due to a series of High Court decisions in cases such as the famous Tasmanian dams case, and others, which have allowed the commonwealth to pass laws on almost any subject of international treaty as it sees fit. The corporations power has also been widely interpreted by the court, as have other heads of power contained in section 51.

One of the most significant controls the commonwealth has lies in commonwealth grants. The figure—a few years ago, at least—is something like 60 per cent of our state revenue, which comes from commonwealth grants, many of which have special conditions attached to them. This can lead to accountability problems; that the commonwealth raises the money but is not specifically responsible for the way in which it is spent, and, of course, the state government spends the money without being specifically responsible for the manner in which it is raised.

Through these various channels, and now in a number of the so-called COAG bills which are increasingly presented here, we are progressively reducing this state's influence over its own governance in favour of national schemes in order to reduce red tape. No longer can we even dare imagine that South Australia could out-compete its eastern neighbours; instead we take cover in various national schemes.

It has been said that capital—that is, business or money, however one likes to think of it—goes where it is made welcome and stays where it is looked after. State governments, of course, play a vital role in this, creating the right environment to attract and retain capital to the various states; but creating the right environment does not mean offering inducements as a sole means of doing so. Inducements may attract capital but they do not necessarily retain it. Further, they offend existing state-based businesses by transferring wealth from locals to those moving to that jurisdiction. Indeed, this was Thomas Playford's grand strategy: cheap land, lower housing costs, and lower input costs to build this state. This is basically what competitive federalism is all about. It should never be about states trying to out-buy each other, using other taxpayers' money to attract companies to set up in their particular jurisdiction.

In the opinion of Family First it should be about making our state more attractive than the others for a variety of reasons, and not just in the initial set-up phase. When Queensland abolished death duty some time ago all the other states quickly followed, and that showed the impact that one state's actions can have on another in order to maintain relative competitiveness. South Australia should be setting the trend, by having the lowest stamp duty and the lowest land tax rates in the country—an area in which we do not presently compare favourably, it must be said.

Some 25 years ago South Australia was home to 21 of Australia's top 100 companies, whose head offices were based here in this state. Fast forward 25 years to the present day, and there are only two of those top 100 companies remaining in South Australia: Argo and Santos. Of those, Santos is still here only because of an act of this parliament which prevents it from being relocated or swallowed up. In other words, we have only one left—and Argo is not even really a company in the usual sense of the word, being, in fact, a financial investments firm.

I understand that South Australia is one of only two states (Tasmania being the other) that receives more from the commonwealth in tax disbursements than it actually generates. This is not something of which we should necessarily be proud; since when has being reliant on others, rather than being self-reliant, been something to boast about?

Something like 70 per cent of South Australia's annual state budget now comes from the federal government. South Australia has been slowly losing its competitive edge for the past 25 years. As I said, 25 years ago 21 of the top 100 companies in Australia were based here. We used to offer a higher standard of living and quality of life, together with a lower cost of living, in exchange for slightly lower wages than Sydney, for example. South Australia will never be able to compete with the major metropolises in the Eastern States, in particular, Sydney. We cannot match the port facilities, the financial institutions, the manufacturing base or the sheer population scale of those centres.

If we are to overcome these natural disadvantages, we need flexibility in other areas, such as lower taxation, lower input costs, and so on. In short, we should not agree to cede our powers in some of these areas without considering the full ramifications, particularly in the area of IR, which is one of the few areas left where we can give ourselves a competitive advantage and stop ourselves becoming another commonwealth-reliant entity like Tasmania or one of the territories. The so-called benefits or advantages of reducing red tape across borders does not necessarily outweigh these disadvantages.

I also raise a constitutional concern. It has been put to me that the legislative measures in these bills give effect to an intergovernmental agreement that gives rights back to the states, so-called. However, our constitutional advice is that it is not that simple. The constitutional reality, so I am told, is different and the federal takeover using the corporations power is effective and permanent. I put on record some concerns we have as recorded in the briefings and retrace those briefly for members and also for our constituents.

It is pleasing to see that South Australia retains legislative power concerning outworkers. We have agreed to the regulations in this parliament and it would be a shame to see that important work for the protection of vulnerable workers lost in a handover to the federal government. However, the question to the minister is: will employers be able to escape the South Australian outworker regulations by incorporating?

Talking about outworkers, their exploitation and poor wages brings to mind our taxi drivers, who are in a similar regulatory limbo. The trouble we have in that industry is that many would be considered independent contractors. I can appreciate that the federal regime has provisions against so-called sham contracts designed to avoid workplace relation laws, but I am not at this stage convinced that there will be any time soon a reform of the taxi industry in relation to working conditions and wages for taxi drivers. I ask the minister for a commitment to look into the laws, should this bill pass, insofar as they relate to taxi drivers, to see what can be done to improve their shocking wages and conditions.

We are pleased to see that police officers are excluded and kept in the state jurisdiction. My office dealt with National Police Association representatives when the federal debate on Forward with Fairness was occurring, and they did not have kind things to say about the Victorian total handover experience, so thankfully jurisdiction in South Australia is retained for South Australian police, the most obvious reason being the special disciplinary tribunals for police that need to exist at a state level. Police officers would not fit well into a federal regime.

I want to talk briefly about the horticulture industry award as well. Family First has been working with local horticulture industry representatives—another of the industrial relations minister's portfolios—and has applied pressure on minister Gillard to review the horticulture industry award due to the devastating effect that it looked likely to have on our irrigators. The federal minister has made a commitment to review the award, and we will look closely at the results achieved on that.

Here, however, we have seen the demonstrated shortcomings of a one-size-fits-all approach to industrial relations, and I am pleased that the federal IR minister has seen her way to modify that award to recognise the unique conditions in that industry. I ask the minister whether any state awards are in place currently for the horticulture industry, how similar they are to the new federal horticulture industry award, and what is the time frame for any harmonisation of those awards.

I also note that TransAdelaide and SA Water employees, who might think of themselves as public servants, are not being kept in a state system under this proposal but will now be under the federal IR system should this bill pass. I have been provided with details of the critical times and the process that were not included in the minister's second reading explanation. We know that the whole private sector, be they incorporations, partnerships, private individuals, businesses or

otherwise, will all be transferred over to the federal system in their entirety on 1 January 2010, if this bill is passed and finalised before then.

However, I note in that in July 2009 some elements of the Forward with Fairness regime, including the unfair dismissal regime, came into force. On 1 January 2010 the rest comes into effect, except for the parallel award modernisation process, some of which comes into effect on 1 January 2010, and also others on 1 July 2010—changes such as those to minimum wages, loadings, penalties, shift allowances, and the like.

Furthermore, state awards will need to be converted into federal awards. Apparently, this needs to be completed on 1 January 2011 for conversion of those awards, but there will be transitional periods under the award modernisation process under these awards.

After the federal changes to the unfair dismissal guidelines, there was a lag period on the implementation of the changeover of unfair dismissal laws given that, if I recall rightly, the federal act had a honeymoon period on unfair dismissal where you were exempt if you had 15 full-time equivalent employees for an 18 month period. Then the unfair dismissal laws were broadened to all employers with 15 employees which, in fact, could be .1 employee; that is, work very little time, for instance.

As I understand it, those changes come into full effect with the 15 employees instead of the 15 FTEs from 1 January 2011. I seek clarification from the minister on whether the unfair dismissal definition still comes into effect on 1 January or some other time.

As I have outlined, Family First has a number of concerns with this bill. We are yet to decide our final position on the matter, but I would say with clarity at this point that the issues that I have raised today are very significant, and we would need to be satisfied that they could be addressed once and for all in order to gain our support for this legislation.

The Hon. R.P. WORTLEY (16:06): I am very pleased to rise today to add my voice to those already heard concerning the government's Fair Work (Commonwealth Powers) Bill 2009. This bill is part of a suite of legislation which refers powers to the commonwealth in order to facilitate our private sector's participation from 2010 in the new Australia-wide system of workplace relations.

The legislation forms an essential part of the federal scheme aimed at restoring honour, dignity and reliability to our industrial relations system. These qualities have been the foundation of our industrial relations system since the time of the Harvester decision in 1907. It was more than 100 years ago that the President of the Court of Conciliation and Arbitration, Sir Justice Higgins, set the first minimum weekly wage.

I take the opportunity to remind members of the terms of that decision. The Harvester judgment ensured that a worker received enough remuneration to provide decent food, shelter, water and frugal comforts for his family. In his decision, Sir Justice Higgins said that every Australian was entitled to every single one of these standards every day of their life and that if we, as a nation, did not endorse this concept, we could not claim to be a civilised society.

These entitlements which once epitomised a civil society here in Australia were cynically eroded by the previous federal government, driven by an obsession with market forces and nonchalant—I would say callous—disregard for the human components of their pitiless scheme.

Most Australians have no trouble remembering the long Howard incumbency, the sleight-of-hand introduction of WorkChoices, the widely publicised stories of the abused and the ripped off, and the national mobilisation of workers and their representatives prior to the last election.

The Hon. R.D. Lawson interjecting:

The Hon. R.P. WORTLEY: I note that the Hon. Mr Lawson has contributed to this debate. I have always had great regard for the legal knowledge of Mr Lawson, but I have always been fascinated by how so much knowledge can be squeezed into such a little head. Obviously, there was never enough room for any common sense. I think it is a very sad state of affairs for Mr Lawson, in particular.

Whatever their political persuasion, most will concede that WorkChoices loomed large in their thinking about the way the Howard government wanted our Australian society to function and about the qualities and the values they hold dear. In a clear repudiation of the Howard government's twisted vision of industrial relations, the majority endorsed Labor's Forward with Fairness policy: fairness for workers, employers, families, women and for disabled workers;

fairness for those for whom English is not a first language, who were often at a particular disadvantage when negotiating contracts of employment; fairness for young workers and for the traditional owners of this land; and fairness for workers in the city and workers in the regions.

Unlike the genesis of the draconian scheme imposed on Australians by the Howard government, in formulating its policy both nationally and on a state basis Labor has been intent on seeking the views of all relevant stakeholders.

If one casts one's mind back to when the federal Liberal government was looking at formulating WorkChoices, when it employed numerous very high paid lawyers from very conservative law firms (one would not have found too many Labor lawyers who wanted to work on the legislation that was developed), at no time was the trade union movement or any state government involved. When this very unpopular measure was introduced, the government was prepared to spend hundreds of millions of dollars on pushing the philosophy behind it.

This bill is indicative of Labor's consultative and inclusive approach, which contrasts so starkly with the way in which the previous federal government interacted, for want of a better word, with stakeholders and other interested parties. I am advised that there is widespread endorsement of our entry into the national system and for the text-based referral of power presently under discussion. The referral of power will be entirely advantageous to the private sector and to the general community in South Australia.

A consistent national industrial relations regime will mean fewer bureaucratic hurdles for companies and businesses, large and small, and enhanced management efficiencies due to a simpler system and procedures and the reduction of duplication. Businesses operating interstate will no longer have to deal with potentially expensive and invariably time-consuming differences and anomalies in the industrial relations system.

As my colleague the Minister for Small Business pointed out on the occasion of the introduction of this bill, a single cogent suite of industrial relations laws can only be beneficial for both employers and employees. One of the key features of this legislation is that it provides certainty for the worker and certainty for management.

Each party to an employment arrangement will be confident of his or her rights and, equally, assured of his or her responsibilities. As I have said, the referral of power will enable the commonwealth to make laws in regard to industrial relations in the private sector in South Australia. In this way, jurisdictional intricacies and the resulting uncertainty are dispensed with.

As my colleague said when introducing this bill, its terms provide for a text-based referral, an amendment reference and a subject matter transition to facilitate South Australia's participation in the national scheme of industrial relations for the private sector. Why is this amendment reference included? Because vigilance is always the key.

Since the last federal election, certain members of the coalition have indicated that they continue to yearn for the good old days of WorkChoices and that the reintroduction of their tattered and discredited imitation of an industrial relations system might be considered should they return to government. We must stand ready for the zealots and the diehards of the coalition who, as recently as last month, refused to rule out the reintroduction of individual workplace agreements should they return to government.

On 14 September, the acknowledged 'mad uncle' of the Liberal Party, Wilson Tuckey, even asserted that he was totally supportive of reviving stronger laws, including individual agreements. While he has been largely discredited, he is not alone by a long shot, and that is why we have ensured the presence of an amendment reference and the termination provisions of this draft legislation. My colleague discussed these in considerable detail when introducing the bill; suffice to say, these will operate only in the most immoderate of circumstances.

On a positive note, through this referral mechanism, South Australia will have a seat at the table should changes to industrial relations laws be mooted in the future. With the passing of this and the Statutes Amendment (National Industrial Relations System) Bill, South Australia will be party to a truly fair and truly national system.

Together with the commonwealth and other states and territories, we have been working to assist workers and business to move easily and smoothly to the new workplace relations system. From 1 January 2010, minimum wages and national employment standards will apply to all workers in the national system. These include workers who entered into instruments before the new system starts.

In a welcome departure from the callous WorkChoices regime which stripped workers of their pay, Labor's national employment standards ensure that all workers will be entitled to the minimum rate of pay set out in a modern award from 1 January 2010. I have great pleasure in commending the bill and urge its rapid passage to enable the commencement of this national scheme in a timely fashion.

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

STATUTES AMENDMENT (NATIONAL INDUSTRIAL RELATIONS SYSTEM) BILL

Adjourned debate on second reading.

(Continued from 13 October 2009. Page 3497.)

The Hon. R.D. LAWSON (16:15): Consistent with the attitude which my party has adopted to the Fair Work (Commonwealth Powers) Bill, we will also be opposing this bill, which is really consequential upon the passage of the fair work bill and the reference to the commonwealth of powers over industrial relations.

This bill amends 18 pieces of South Australian legislation to accommodate the new system. It contains some significant amendments to the South Australian Fair Work Act as well as amendments to many acts dealing with relevant matters. For example, there are amendments to the Local Government Act inserting a new provision relating to local government sector employees, and there are amendments, as one might expect, to the Long Service Leave Act, the Superannuation Act, the WorkCover Corporation Act and the Equal Opportunity Act. It is unnecessary, given the position we have taken in relation to this matter, to enlarge further upon those provisions.

I should have said in my earlier contribution in relation to the Fair Work (Commonwealth Powers) Bill that in another place the opposition spokesperson, the Hon. Iain Evans, outlined a number of examples of cases where South Australian businesses will be significantly disadvantaged by the referral of powers to the commonwealth. I commend to members the comments of the Hon. Mr Evans and urge members to read them.

The Hon. R.P. WORTLEY (16:18): I rise to offer my brief remarks on the Statutes Amendment (National Industrial Relations System) Bill. My remarks will be brief because I have already discussed in some detail the intention and terms of the government's Fair Work (Commonwealth Powers) Bill 2009. The bill presently before us is the second part of that suite of legislation which will, as I have said, refer powers to the commonwealth so that South Australia's private sector may participate in the new national industrial relations system from January 2010.

The Statutes Amendment (National Industrial Relations System) Bill looks towards certain transitional and consequential amendments to state legislation necessary to facilitate our participation. This bill provides for the facilitation of arrangements during the transition of employers and employees to the state system, changes to state laws as a consequence and the updating of terminology and references in our statutes in light of the fact that the commonwealth has changed its laws. Special arrangements have been made for our South Australian public sector and local government.

Also, this will ensure certainty for these sectors in relation to jurisdiction. These arrangements have been outlined, and I do not intend to reprise their details. I will say, however, that the aim and intention of this bill is to make the change to the new system for the relevant parties as simple and trouble free as possible. I say again, as I said in discussion on the earlier bill, that this is indicative of Labor's approach. Contrast our approach with the way the coalition imposed on employers and employees a highly complex scheme, WorkChoices, which caused confusion and uncertainty and often, as a result, bitter division right across the employment spectrum.

In the spirit of the agreement between the commonwealth government and the states, and in observance of the ethos of cooperative federalism, the bill before us also anticipates consequential amendments to our own Fair Work Act 1994.

A small selection of examples will suffice, including section 3, which will be amended to include an additional object; that is, the facilitation of the establishment and operation of a national industrial relations system through cooperative federalism. Section 4, the interpretation provision, will be amended to allow for new definitions and updated references. Section 29 will be amended so as to set out the requirements for the performance of functions and the exercise of powers by

the President of the Industrial Relations Commission. Section 215 will be amended so as to reflect the cooperation between the industrial authorities. Section 222, which relates to secondary boycotts, will be amended. Amendments to section 237 will allow the making of regulations for the purposes of the act, including saving and transitional matters.

Two new schedules are to be inserted in the Fair Work Act by way of this bill. These relate to the continuing of the industrial arrangement for government, business enterprises and the local government sector. The bill amends numerous other pieces of state legislation, including the Motor Accident Commission Act 1992, the Petroleum Submerged Lands Act 1982, the Stamp Duties Act 1923, the Rail Safety Act 2007, the South Australian Forestry Corporation Act 2002, and many others.

The changes we herald today clearly have a broad ambit and a wide impact. Of course, the amendments that I have outlined will ensure that all relevant statutes are entirely consistent with the Fair Work Act 2009, and the applicable fair work industrial instruments, so that no conflict, ambiguity or confusion arises.

In completing my remarks, I feel obliged to look back just one more time to a shabby chapter in our national story, that of WorkChoices. South Australian workers and their employers made it abundantly clear that they did not want an unfair, unbalanced and confusing industrial relations regime that treated people as economic units on a market-driven conveyor belt. We are so much better than that and, fortunately, we have moved on to a new chapter. We take our cue from the concept of the civilised society that Sir Justice Higgins espoused in the Harvester decision in 1907.

The Rudd Labor government was elected on the basis that WorkChoices should be dismantled. That government and its partner, the Rann Labor government, are determined to fulfil their mandates and will not be distracted. We will not be dissuaded from this objective. We will together set in place an industrial relations system that is based not on conflict and discord but on the facilitation of fair agreements that contribute to workplace productivity, and a system that will benefit us all.

As a community here in South Australia, we will participate in the great national industrial relations reform that this bill and the Fair Work (Commonwealth Powers) Bill represent. They are reforms underpinned by fairness and decency and reforms that will take us well into the 21st century. I commend the bill.

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

STATUTES AMENDMENT AND REPEAL (TRADE MEASUREMENT) BILL

In committee.

Clause 1.

The Hon. G.E. GAGO: There are some outstanding questions from the second reading debate which I intend to address under this clause. The commonwealth has the constitutional power for weights and measures under section 51(xv) of the constitution, which it utilised to establish the national system of units and standards of measurement throughout Australia. It is only the administration of weights and measures law in respect of transactions in trade and commerce that the commonwealth delegated to the states and territories.

In terms of the benefits of a national trade measurement system, under the current system changes to the uniform trade measurement legislation at different times in different jurisdictions have resulted in inconsistencies in trade measurement practices across the country. The Ministerial Council on Consumer Affairs recommended to COAG that commonwealth administration would be the best means of resolving the problems with the current administrative arrangements.

Central administration is expected to produce benefits for businesses, consumers and government. A single policy platform would allow government to provide a framework for consistent and timely adoption of a single set of technologies and processes for industry. Requiring compliance with a single set of requirements nationwide is likely to result in cost reductions and efficiency gains.

The national agreement involves the commonwealth using existing state and territory staff and infrastructure to continue performing trade measurement duties. In relation to some of the questions around staffing, I point out that 13 staff are currently employed in trade measurement in South Australia. Each staff member has received an offer of employment from the National

Measurement Institute (NMI) on the basis that they will be employed by the South Australian government up to 30 June 2010. At this stage, 11 staff have indicated they are likely to accept the NMI's offer of employment. However, this is considered only to be a statement of intent, as employees will not sign an employment contract until June 2010.

For those who formally accept the offer of employment, salary scales will be similar and the offer will be on the basis that there will be no disadvantage to them when they commence duties with the commonwealth on 1 July 2010. Other terms and conditions of employment will be in accordance with the NMI's collective bargaining agreement. The Attorney-General's Department will redeploy any staff who do not accept the offer.

In terms of questions around assets and equipment, under the COAG agreement, the commonwealth will fully fund the ongoing administration of trade measurement from 1 July 2010. The COAG decision also agreed that states and territories will transfer existing trade measurement testing and other scientific equipment to the commonwealth at no cost. The total depreciated book value of South Australian trade measurement testing and other scientific equipment is estimated to be approximately $971,000 as at 30 June 2009. The majority of the assets are specific to the trade measurement function and as such there would be a limited market for them.

Once the trade measurement function is transferred to the commonwealth, the state will have no use for the testing and other scientific equipment. If the state were to retain the equipment, it would incur maintenance and disposal costs. Some trade measurement assets of historical significance to the state—and there are some fabulous historical pieces—will not be transferred to the commonwealth, and the government is currently looking at ways in which these can be preserved.

Trade measurement functions currently operate out of the premises at Thebarton which are owned by the state. The general area where the property is located has been identified by the Chief Executives Planning Council as an area having priority for biotechnology development. The property is currently designated to the Minister for Consumer Affairs for use as a trade measurement depot until 30 June 2010. The NMI has indicated that it will lease the current premises at Thebarton for a maximum of three years. The lease will be on current market terms and will be between the Department for Transport, Energy and Infrastructure and the NMI. The NMI may relocate to new purpose-built premises in the future, but this will be at no cost to the state. The land and the premises at Thebarton will remain the property of the state, with possession reverting back to the state at the end of the lease.

In relation to issues of fees and licensing, for those traders that use measuring instruments in the course of their business there will be significant cost savings. Under the new regime, traders will no longer be charged to have their equipment tested by the NMI. The Department of Trade and Economic Development confirms that this will save business over $600,000 a year.

The commonwealth will take over the licensing function and has indicated that it will adopt a full cost recovery model for licensing. Instrument repairers and weighbridge operators who are holders of current South Australian licences will be grandfathered into the system and will not be required to pay a licence fee to the commonwealth until the licence is due for renewal. Those holding licences in more than one jurisdiction will be required to obtain a national licence at the expiry of the first state licence.

The current fee to renew a licence is $216 per annum, plus $59 per certifier employed by the licensee to certify measuring instruments. Under the national system, the fee to renew a licence will be $550 (that is compared to the $216 plus $59) per annum, which includes the operation of one certifier. Additional charges apply for additional certifiers.

The biggest difference in the fee structure under the national system will be the introduction of a $125 fee for the different classes of instrument that may be serviced under the licence. The rise in licence fees is inevitable because, whereas the state government currently subsidises trade measurement operations in South Australia, the commonwealth seeks to adopt a full cost recovery model. This may have an impact on approximately 50 licensed repairers in South Australia and approximately 50 licensed businesses that operate public weighbridges in South Australia. There will, however, be a benefit for those licensees who operate in more than one state or territory.

Under the new system there will be only one licence fee payable to the NMI, which will allow trading anywhere in the country, whereas previously licensees were required to obtain and pay for a licence in each jurisdiction. Our licensing records do not allow us to search for details

such as which licensees hold licences in other states, but our records show that nine interstate-based organisations are licensed to operate within South Australia.

In relation to budget savings, commencing in 2010-11, the impact on the state budget will be a loss of $566,000 in revenue that is currently collected by OCBA for trade measurement activities. This is offset by expenditure savings of $879,000, which represents the salaries and wages and goods and services expenditure that is expected to be saved. The result is a net saving to the state government of $313,000 per annum. This budget impact was included in the 2009-10 state budget as part of the business regulation savings initiatives and revenue offsets for the Attorney-General's Department.

In relation to inspections, there are no anticipated changes to the inspection regime under the commonwealth's administration of trade measurement. The inspection regime is expected to improve strategically, since testing will now be performed on a national basis.

In relation to service levels, the new national system is based on the trade measurement regulation currently administered by the states and territories under the uniform trade measurement legislation. The commonwealth has committed itself to ensure continuity of service and the maintenance of existing service standards provided by the states and territories. The NMI anticipates that it will investigate complaints in the same manner in which the state now deals with such complaints. On average, approximately 300 complaints are received each year.

In relation to transitional and consequential matters, whilst the bill repeals the trade measurement legislation, it also provides for certain transitional provisions, which are reasonable, appropriate and necessary for finalising any outstanding administrative or enforcement matters at the time of the transfer.

The bill also enables information associated with the administration of trade measurement to be provided to the commonwealth. This will allow the commonwealth to establish systems as soon as practicable so as to facilitate a seamless transition to a national regime with minimal, if any, adverse impacts on the community. On 1 July 2010, all state and territory trade measurement law will become redundant, once the new commonwealth law commences, and, as such, I seek support for this bill.

The Hon. T.J. STEPHENS: The minister spoke of benefits to business and then I think she went on to say that there are 50 licensed independent operators in this state and their fees are going to go from a couple of hundred dollars to about $500-plus, which will include one licensed operator, I think she said, and then extra fees for additional operators within that business. What offsets are there to those businesses that would make this new operation a benefit to business in this state?

The Hon. G.E. GAGO: The offsets pertain to those operators who operate their businesses in more than one state, or in more than one jurisdiction. As I have pointed out, currently, if your business operates across borders, these operators are required to have a licence in each separate state and have to pay fees accordingly. This national system will mean that only one fee is paid. However, those offsets will apply only to those that operate in more than one state.

The Hon. T.J. STEPHENS: Of those 50 businesses, how many actually operate businesses interstate and will receive that benefit?

The Hon. G.E. GAGO: As I have indicated, our current records cannot show how many are registered in more than one state. However, I believe I indicated that nine interstate organisations operate in South Australia at the moment.

The Hon. T.J. STEPHENS: So, basically, you are indicating that at least 40 of those 50 businesses will be disadvantaged by this transfer with extra fees. Is that right?

The Hon. G.E. GAGO: As I indicated, we do not have information showing how many South Australians are registered in more than one state.

The Hon. T.J. STEPHENS: Minister, you indicated that 11 of the 13 staff looked as if they would take up the offer. I assume that they are on similar salary conditions. Can you assure this committee that those people will not be disadvantaged in terms of such things as long service leave entitlements and leave entitlements?

The Hon. G.E. GAGO: I have already put on the record that there will be no disadvantage. Those people will be placed on similar salary scales, and it will be on the basis that there is no disadvantage to them commencing their duties with the commonwealth.

The Hon. T.J. STEPHENS: The minister stated that the South Australian property out of which we currently operate is not being given to the commonwealth government but that those premises will be leased to the commonwealth government and South Australia will retain ownership; is that correct?

The Hon. G.E. GAGO: Yes; we will lease that property for the first three years.

Clause passed.

Remaining clauses (2 to 6), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

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

In committee.

Clause 1.

The Hon. S.G. WADE: Given that this bill is based very much on the model for serious repeat adult offenders, in the six years since the adult law was introduced how many declarations have been made by courts that an adult is a serious repeat offender?

The Hon. P. HOLLOWAY: None, to date.

The Hon. S.G. WADE: Given that the minister has advised that there have been no declarations of adults as serious repeat offenders since 2003, I would like to quote a letter from the Attorney-General to Monsignor Cappo, as follows:

> You may be aware that the law has, since 2003, provided for adults to be declared serious repeat offenders. In the five years since, no adult has been so declared. The senior judge of the Youth Court tells me that he thinks the declaration of young offenders will also be a rare event. It is quite possible that no young persons, or only one or two, will have received declarations in the first 12 months of the new law.

Given that there have been no declarations of serious repeat adult offenders since 2003, on what basis does the government assert that there will be one or two young people declared recidivist young offenders in the first year of this bill?

The Hon. P. HOLLOWAY: The government cannot be expected to guess the number of declarations that may be made with respect to serious repeat offenders and recidivist young offenders. The making of declarations is the responsibility of the prosecution authorities who make application and, of course, the courts that make the declarations. The making of such declarations relies on the exercise of the court's discretion. The government expects that the courts would seriously consider their responsibilities in the making of such a declaration for offences committed after the introduction of the serious repeat offender provisions in the Criminal Law (Sentencing) Act and the recidivist young offender provision in the Young Offenders Act. I suppose one hopes that the courts will pay some attention to the laws parliament passes.

The Hon. S.G. WADE: On that basis, if we have had no declarations under the adult legislation and have no guarantee of declarations of young offenders under the new bill, why does the government hope there might be any impact on youth crime through this legislation?

The Hon. P. HOLLOWAY: Is the honourable member suggesting that we should not try? If the courts decide for whatever reason that there should not be any, does that mean there is no case for making it? Surely the issue here is whether we believe that there is behaviour that represents serious repeat offending and whether it should be dealt with. I believe there is, as does the government, and I think the public of South Australia believes there is. One can only hope that the courts will do as they should do and reflect the wishes of the elected representatives of this state as expressed through the parliament.

The Hon. S.G. WADE: In the summing up on the second reading of the bill in the House of Assembly on 10 September, the Attorney-General said:

> Remember that repeat juvenile offenders are few in number, representing about 15 or 16 offenders, as was estimated to be so in July 2008 by Lisa Perre, Youth Justice, Families SA. These are the 15 or 16 that meet the criteria of a recidivist young offender under the legislation.

That being the case, how long will it take for these 15 or 16 young offenders to be declared as recidivist young offenders in the government's anticipation of this bill being applied?

The Hon. P. HOLLOWAY: I repeat that it is really up to the courts as to whether they exercise that, as they have discretion: that would be part of the act. I have observed in my time in the parliament that the courts do tend, if somewhat slowly, to reflect the wishes of the parliament and the public in this regard and that, whatever their legal reticence might be in relation to exercising their discretion in legislation such as this, I would have thought that the overwhelming wishes of the public of this state—that something be done about such serious offending behaviour—would be reflected. Clearly the timing for that is up to the courts.

The Hon. S.G. WADE: Considering that it has taken six years, and the courts have not overcome their reticence to declare an adult a serious repeat offender, I suggest that the minister is being rather hopeful. Returning to the Attorney-General's comments in the House of Assembly, he indicated that Families SA estimated that 15 or 16 young offenders may qualify to be declared a serious youth offender under this legislation. Later in his comments he said:

> We are talking about roughly 16 offenders who are part of the so-called gang of 49.

Will the minister confirm that the 15 or 16 offenders identified by Families SA are all members of the so-called gang of 49, as suggested by the Attorney-General?

The Hon. P. HOLLOWAY: That is not a question that relates to the bill. It is something the honourable member should pursue through the appropriate avenues. Obviously I do not have the information with me as to whether or not these youths are members of the gang of 49. I am sure that everyone in this parliament would agree that the behaviour by many members of that gang of 49, and like-minded behaviour, is not tolerable by the community: on that we all do agree.

What difference does it make whether or not particular individuals are members of this so-called gang of 49? It has been pointed out often enough that the term 'gang of 49' was created more by the media than by anybody else. It is not necessarily a gang, nor is there at any one time exactly 49 members, but it has become a media convenience. The question really is whether particular people belong to a title that the media has created. If one really wants to pursue individual behaviour, I suggest that, first, it is not appropriate in committee on a bill: one would have to be much more prescriptive as to exactly what information one wants about particular individuals.

The Hon. S.G. WADE: I note the minister's reluctance to provide information: the Attorney-General was quite happy to provide it in another place. I remind the minister that in the House of Assembly the Attorney-General said that this legislation was relevant to the government's response to the so-called gang of 49.

The Hon. P. HOLLOWAY: It is, and it relates to the behaviour of individuals who are described as being members of the gang of 49 or are closely associated with them. When people have literally hundreds of offences at a very early age, I believe that is serious repeat offending, and any reasonable person who looks at it would have a similar view.

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

> Page 3, lines 3 and 4—Delete 'Recidivist Young Offenders and Youth Parole Board' and substitute 'Miscellaneous Criminal Procedural Matters'

This is one of the smaller amendments and I will treat it as a test clause for the whole cluster. It is important to balance two points here: first, will the government's legislation have any effect on crime? The minister has confirmed this afternoon that the adult equivalent legislation has led to no declarations, so why would we expect any under this bill? That being the case, I reiterate the opposition's view that we do not think it is helpful to establish a class of young offenders as recidivist, as this approach could stimulate criminal behaviour rather than suppress it. It is not a model used anywhere else in the world. There is no stakeholder, other than people on the government's payroll, who have supported this legislation in the consultation phase. Young offenders who repeatedly engage in criminal behaviour can already be treated as adults under the criminal law, which we believe is a much better approach.

Also, this bill needs to be seen in the context of the assertive intensive case management regime that the government promised under its response to the Cappo report. We believe that the government has been tardy in implementing that. They were the arguments that I put in my second reading speech, and they are the key points in the opposition's argument for rejecting the recidivist young offender label. We seek the support of the committee.

The Hon. P. HOLLOWAY: I think it is a rather curious argument that, when you are dealing with young offenders who at a very early age have literally hundreds of offences, calling them serious repeat offenders will somehow or other stimulate them to commit even more. I would

have thought that one thing that we might do is actually lock them up for longer periods and actually provide—perhaps for the first time—a long overdue bit of discipline. In some cases, it might actually work in reducing the crime rate. That might be something that does actually work. Perhaps in many cases it should have happened earlier, but that is another story.

The Hon. Mr Wade seeks to move a package of amendments that will remove references and provisions dealing with recidivist young offenders and the youth parole board. The effect of the amendments is to remove the distinction in the treatment of recidivist young offenders from other young offenders. These amendments will remove the court's power to make declarations as well as remove the powers of the Training Centre Review Board to sit as a youth parole board so that it may effectively monitor the progress of repeat offenders in detention, give appropriate consideration for their release and impose appropriate conditions additional to those that may be imposed on less serious offenders.

The amendments will effectively emasculate the reforms central to the government's legislation in dealing appropriately with a group of hard-core repeat young offenders who have not responded to past leniency, and there have been many cases of past leniency. The amendments will remove the centrepiece of the legislation and the government's reforms to tackle youth crime. Indeed, these amendments are virtually identical to the amendments that the member for Bragg attempted to pass in the House of Assembly after voicing her vociferous opposition to the bill. I find it odd that the honourable member should profess his support for the bill and then seek to move substantially the same amendments. His stance in relation to the bill is inconsistent. You cannot both support the bill and move and support these amendments at the same time. The positions are mutually inconsistent.

These amendments in emasculating the bill are hopelessly inadequate because they fail to protect the public from repeat offending, particularly in the aftermath of a crime. The public needs protection from these young offenders who constantly cycle in and out of detention, irrespective of the rehabilitation measures that they may have previously been exposed to. The government opposes the amendments.

Since the Hon. Mr Wade referred to Monsignor Cappo's recommendations, I should point out that recommendation 2 of his report states:

> The objects of the Young 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.

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 community safety when sentencing serious repeat young offenders.

Specifically, the Criminal Law (Sentencing) Act has been amended to allow for the declaration of recidivist young offenders who can expect to be sentenced to no less than a custodial term in the event of having committed no less than three serious offences or two sexual offences against children under the age of 14. The custodial term has been increased from a minimum non-parole period of two-thirds of the sentence for young offenders to four-fifths of the sentence for recidivist young offenders.

Amendments to the Young Offenders Act will also allow for the creation of a youth parole board, which will assess the progress of a young offender prior to release as well as oversee the conditional release of recidivist young offenders. The assessment criteria to be considered by the court prior to releasing a recidivist young offender are more rigorous than those that apply to ordinary young offenders and include assessment of behaviour in detention as well as during any previous release from detention, the likelihood of reoffending and the likelihood of complying with conditions following release.

A victim's register will be set up similar to that which is set up under the Correctional Services Act to allow victims to receive information concerning a young offender and to allow victims to make submissions at parole hearings. Finally, the court will retain unfettered powers to impose the most stringent conditions upon a parolee as it sees fit to meet the circumstances of that offender and the protection of the community.

In relation to the provisions regarding community safety, when I was the police minister, these issues came up. If memory serves me correctly, this was one of the principal recommendations of the Commissioner of Police in the Cappo report. When I was police minister,

the Commissioner of Police stressed to me very strongly that this was one of the areas in the law that need strengthening.

The Hon. DAVID WINDERLICH: I would like to speak in support of the amendment. I think the whole premise of the bill is based on the notion that longer sentences will make a difference. The government has not presented any evidence that that is the case. There is a lot of evidence from criminologists. I spoke to a criminologist last night who said that that is not, in fact, the issue, that it is about policing, detection and arrest rates; that is what makes the difference.

I am also concerned that the bill occurs in a vacuum without any focus by the government on issues such as crime prevention and restorative justice. In fact, the government has deliberately opposed or run down both those programs. I understand that we are now down to one person in the Attorney-General's Department who handles crime prevention.

I am concerned by the fact that the premise of juvenile detention has been on rehabilitation. Perhaps that needs to change, because we have a very small but nonetheless dangerous class of children. Perhaps for those children this does not apply any more, but I think changing that premise and that aim needs more consideration than we have seen here.

In fact, I think what we have is a feel good, feel tough bill. There is no actual guarantee or evidence that it will do anything, but it makes it look as though the government and parliament are doing something. Irvin Waller, a criminologist from the United States who came to South Australia last year, coined the phrase 'less law more order'.

I think that this sort of bill, in the context of a lack of attention to things like crime prevention, early intervention and restorative justice, is a recipe for more law and less order. We pass laws because it is what we can do and because it gets headlines, not because there is any real evidence that they will make any difference.

The Hon. P. HOLLOWAY: It would be a nice world if everyone could be rehabilitated. The sad fact is that we know that there are some individuals who, particularly in a certain phase of their life, do not respond to rehabilitation. We know that some of the offenders we talked about earlier committed offences literally within hours of being released from incarceration, even though they might have been in detention numerous times before, and that is the sad reality.

It is not that the government is giving up on rehabilitation. You will often hear middle-aged people who have a history of crime come to the conclusion at a later stage in their life that various things happened in their life. However, while they are out there committing quite serious crimes and, in some cases, potentially life-threatening crimes within hours of release, we have to deal with them accordingly. The Hon. Mr Winderlich can pretend that it does not happen, but the sad reality is that it does.

Since these issues were raised, I think it is important that I put on the record some information about the intervention and rehabilitation programs that deal with youth offending. Families SA provides intensive case management for young offenders, especially repeat offenders. Serious and repeat offenders receive a more intensive level of supervision and case management than low-level offenders.

In 2009, Families SA (as per the Cappo report recommendations) established the Intensive Case Management Service, which includes capacity for a pilot outreach home detention surveillance service in Port Augusta. The supervision element of this service provided by the ICMS has the following key features:

- rigorous assessment of the young person's background, behaviour and needs; and
- a minimum requirement that the youth attend 25 hours of structured programs each week—for example, education, training and offender programs, and work attendance as appropriate—with compliance supported during evenings and weekends.

Core elements cover:

- education and training and emphasis on basic literacy and numeracy;
- interventions to impact offending behaviour;
- restitution to victims;
- assistance in developing interpersonal skills;

- family/carer support;
- support to access services to address individual problems—for example, homelessness, drug misuse or mental health problems; and
- through care for youth transitioning from detention into the community, including family/carer liaison, setting up transitional plans, especially education, training and employment opportunities and accommodation post release.

Supervision occurs in the context in which case goals are developed by the young person, case manager, family and support services; communication plans are established; documentation is prepared for court, review/Parole Board and the Community Protection Panel; and formal review and monitoring of case goal achievement occurs.

Further, the member sought information about what the government is doing to prevent children from becoming young offenders in the first place. Families SA's Youth Justice Directorate is generally not involved in pre-crime prevention activity. The directorate deals primarily with youth placed on an order by the courts, that is, community and custodial supervision.

Some youth support services are provided by the Department for Families and Communities. For example, non-government organisations across South Australia are funded to provide youth services through the Family and Community Development Fund. These services target young people at risk, including young people at risk of offending, young people at risk of homelessness, early school leaving and young refugees.

The Kumangka Aboriginal Youth Service is funded through the Department for Families and Communities, the Community Connect branch, to provide individual support, group work and the Streetwork Service for Aboriginal young people at risk of offending. The Streetwork Service is a joint initiative with Families SA's Metropolitan Aboriginal Youth and Family Services (MAYFS) that operates on Friday and Saturday nights in the Hindley Street region.

Streetwork teams collect vulnerable Aboriginal children and young people at risk and take them home. Follow-up work occurs with families in order to stop these vulnerable young people from frequenting the inner city at night. They might bump into the Leader of the Opposition from this place if they were out there!

The Panyappi program is a mentoring program offered through the Metropolitan Aboriginal Youth and Family Services for Aboriginal children and young people at risk. Young people at risk of offending—for example, those frequenting the inner city late at night or with lack of family support or older siblings already in the justice system—are targeted and paired up with a positive mentoring role model.

Families SA at Port Augusta provides the Port Augusta Youth Support Strategy (PAYSS), utilising a Streetwork model. It aims to reconnect children and young people with their family; focus on the prevention of offending and at-risk behaviours; ensure that the young person is transported to safe accommodation; link young people to accommodation, health and support services; and assist young people to become involved in community-based recreation activities.

Of course, there are many things we do as a government to engage and support young people in the community generally, and these are often targeted not at avoiding crime but at promoting positive communities. However, of significance is the Crime Prevention Grants Program, through the Attorney-General's Department, which includes funding for programs that have involved young people.

In an earlier contribution, if not today, the honourable member asked what interventions occur with young offenders and their family before the child moves from disruptive to dangerous. Poor parenting, lack of parental authority and guidance, risk-taking behaviours and even low-level antisocial behaviour on the part of children and young people do not necessarily result in engagement in criminal activity. Intervention with families is based on the intention of ensuring the protection of vulnerable children and young people and strengthening the resilience and capacity of families to care for children and engage them positively in the community.

The Department for Families and Communities funds non-government organisations across South Australia to provide families with children services through the Family and Community Development Fund. Funded programs include 34 Families with Children programs, five special family support grants programs and 14 Stronger Families Safer Children programs.

These programs include counselling and group programs to support families to develop skills in order to deal with risky behaviours. Families SA supports vulnerable families through case management utilising a family holistic assessment framework. When youth offending or risk of youth offending is identified as an issue for a family, Families SA social workers support the family to put strategies in place and to access appropriate support and programs.

As I say, the Hon. Mr Winderlich implied that in some ways the government is not dealing with rehabilitation issues. We are, but the fact is that there is a small number of serious repeat youth offenders within this state who have shown total contempt for the law. Their behaviour is becoming increasingly more dangerous, and I suggest it is up to this parliament to take some action so that that serious repeat offending problem can be dealt with.

The Hon. DAVID WINDERLICH: Will the minister outline the resources allocated to crime prevention in the Attorney-General's Department and schools?

The Hon. P. HOLLOWAY: In the context of this bill, as I said, what we are talking about is dealing with the most serious of those young offenders. I have provided some information more generally, and we can go on talking about that all day, but that is not really the purpose of this bill. Members opposite chuckle. The Hon. Mr Wade seems to think you can rehabilitate everybody.

The Hon. S.G. Wade interjecting:

The Hon. P. HOLLOWAY: He says, no; he does not say that.

The Hon. S.G. Wade: I'd say you never close the door to anyone.

The Hon. P. HOLLOWAY: This government is not suggesting we close the door, but at the same time what the honourable member opposite seems to be suggesting is that we should open the door and let people out, even though they commit crimes within an hour or two of getting out of gaol. They almost pinch the first car when they get out of the door. That is the reality. The honourable member can close his eyes to it, but this government will not; this government will respond to community needs. As I said, the strong argument that has been put to this government is that the issue of community safety needs to be given more prominence in relation to the laws as they affect young offenders in this state. That is what this government is doing.

The Hon. A. BRESSINGTON: I have one question. The minister mentioned that Families SA is there to respond to some of the issues. Will the minister outline what agencies and services Families SA is making available to people who are going through these problems with youth. Certainly, the evidence that I have seen is pretty scant.

The Hon. P. HOLLOWAY: Before the honourable member came in, I did outline in detail a number of programs. If there is family breakdown in our community for a range of reasons and the number of people is growing, obviously, that will put a lot more pressure on the system. I think everyone in here would understand that. Nevertheless, if you look at the budget that has gone into that area in recent years, you will see that it has increased significantly. Whether we can address every problem in the area is another matter. If you look at it over the 7½ years, there have been significant increases in the family area. Unfortunately, demand for the range of services offered by that department has also grown dramatically.

Amendment negatived; clause passed.

The Hon. S.G. WADE: My further amendments are consequential, but I will be moving an amendment in relation to the review.

Clauses 2 to 5 passed.

Clause 6.

The Hon. DAVID WINDERLICH: I have a question that relates to a number of clauses, so I probably need to ask it only once. I am still not clear what is meant by a serious offence. Will the minister give examples of a serious offence? In his earlier comments the minister mentioned hundreds of offences, so there seems to be a quantitative as well as qualitative idea. What makes it a serious offence? Is it the type of offence, or do we come to a point where a number of minor offences become a serious offence because there have been a lot of them?

The Hon. P. HOLLOWAY: The definition under the bill is that a serious offence is one which would attract a penalty of up to five years imprisonment. My advice is that that is the definition that is used in the bill.

The Hon. DAVID WINDERLICH: Does that include any property offences, for example, or are these all offences against the person? I think a few examples would be useful.

The Hon. P. HOLLOWAY: I refer the honourable member to the definition clause of the Criminal Law (Sentencing) Act 1998. The definition clause is 20A, interpretation, which provides that 'serious offence' means:

(a) a serious drug offence; or

(b) one of the following offences:

(i) an offence against the person under Part 3 of the Criminal Law Consolidation Act 1935—

which is assault or that type of offence—

(ii) an offence of robbery or aggravated robbery;

(iii) home invasion;

(iv) an offence of damage to property by fire or explosives;

(v) an offence of causing a bushfire;

(vi) a conspiracy to commit, or attempt to commit, an offence referred to in subparagraph (i), (ii), (iii), (iv) or (v)—

in other words, it is those offences above, so if it is a conspiracy to commit or attempt to commit the above offences—

(c) an offence that is committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or the purpose of escaping from the scene of the offence.

Clause passed.

Clauses 7 to 23 passed.

Clause 24.

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

Page 18, lines 16 to 23—Delete the clause and substitute:

24—Social Development Committee to inquire into and report on operation of Act

The Social Development Committee of the parliament must, within three years after the commencement of Parts 3 and 4 of the Statutes Amendment (Recidivist Young Offenders and Youth Parole Board) Act 2009, in consultation with the Attorney-General, inquire into, consider and report on the operation of the act (including any effect the operation of the act has had on the criminal justice system in South Australia).

This amendment relates to the government's proposal to have a review. The government's proposal is that it be the Attorney-General and the Commissioner for Social Inclusion who do the review. It is the opposition's view that considering that this bill, according to the government, comes out of the Cappo recommendations and the Attorney-General is responsible for this area of government administration, it would be helpful to have a more independent review of the bill and its impact. To put it in layman's terms, at the moment it is a case of Caesar judging Caesar.

This amendment proposes that the Social Development Committee of the parliament should be involved in the review. In that sense, it reflects the historical role of the parliament in relation to juvenile justice. The other place had a select committee on juvenile justice which I think reported in 2005. Monsignor Cappo indicated that that report was extremely helpful to him in preparing the *To Break the Cycle* report, and we believe that the Social Development Committee could make a valuable contribution.

First, I seek the government's agreement because the bill is as the government wanted. This is just a review element and we urge the government and other members to see the wisdom of this amendment and accept it.

The Hon. P. HOLLOWAY: The Hon. Mr Wade proposes an amendment for parliamentary review of parts 3 and 4 of the act by the Social Development Committee of the parliament within three years of its commencement. Parts 3 and 4 of the bill substantively amend the Criminal Law Sentencing Act and the Youth Offenders Act by introducing a similar legislative scheme for

recidivist young offenders as adult repeat offenders, together with the creation of a Youth Parole Board to deal with the same.

This legislation was drafted in response to recommendations by the Commissioner for Social Inclusion in his *To Break the Cycle* report to the government. I refer to recommendation 2 of the report which states:

> That the objects of the Young 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.

This bill strengthens the Young Offenders Act without undermining the diversionary mechanisms of that act to assist with the rehabilitation of young offenders. Given that, this bill seeks to implement the recommendations of the Commissioner for Social Inclusion. The government believes it is only appropriate that the Commissioner for Social Inclusion reviews the act and, therefore, the government opposes the amendment.

My own view is that I believe that the Social Development Committee can if it wishes at any time in the future, after the operation of this act, look at these sorts of matters. Given that the social inclusion commissioner was so involved with it, it is the government's view that it is only appropriate that the commissioner should review the act. As I said, I would not have thought that would have necessarily stopped parliament from having its own review of these issues at the time if it so wished.

The Hon. S.G. WADE: In response to the minister's comments, I make the point that one can play tautological games but, just as the Social Development Committee (on its own motion) can review the legislation, so can the Commissioner for Social Inclusion. This is a statutory time frame for a review of the act authorised by this parliament. The Social Development Committee has a majority of government members and it may not be convenient for the government of the time to allow the Social Development Committee to do a review of its own motion. We believe that it is appropriate for this council, which has continued to maintain principles of accountability for more than 150 years, to support accountability in this context by charging the Social Development Committee with the responsibility of the review.

The committee divided on the amendment:

AYES (14)

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

NOES (7)

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

Majority of 7 for the ayes.

Amendment thus carried; clause as amended passed.

Title passed.

Bill reported with an amendment.

Bill read a third time and passed.

HYDROPONICS INDUSTRY CONTROL BILL

In committee.

Clause 1.

The Hon. P. HOLLOWAY: When I was completing the debate on the second reading, the Hon. Mr Brokenshire indicated that he had wished to speak but did not have an opportunity to do so. So, rather than hold up the bill, I indicated to the Hon. Mr Brokenshire that he would be able to make some comments on clause 1. The government is happy to give the honourable member some indulgence in relation to that if the rest of the committee agrees.

An honourable member interjecting:

The Hon. P. HOLLOWAY: Yes, that's quite right.

The Hon. R.L. BROKENSHIRE: I will be brief, bearing in mind the workload of the council. I thank the committee for allowing me to make a contribution on clause 1. Whilst I will be brief, I do not speak in a light manner when it comes to this particular subject matter. In fact, I advise the committee that I support this bill. I have one amendment tabled. The only thing I would say, frankly, is that it is eight years too late.

The Hon. A. Bressington interjecting:

The Hon. R.L. BROKENSHIRE: That is right, 28 years too late. Interestingly enough, in the documentation that I have here is all the work that was actually done and was virtually completed on the eve of the election in 2002. I have all the documentation here. That was work that I was very well aware of. The sad part is that that documentation has taken eight years to get to where it is actually going into legislation. So, whilst I commend the government for this, the question that I want to put on the public record is: why did it take eight years—and we are now on the eve of another election—before that documentation became law?

The only other points I would make is that all the evidence that I saw in the local electorate or as police minister was that cannabis is a gateway drug in that it is not to be taken lightly, and we need to jump from the greatest height possible to do whatever we can to combat cannabis production in South Australia. Clearly, we know that, whilst some people legitimately grow tomatoes, cucumbers and lettuces, the sad reality is that the majority of hydroponic equipment is used for the growing of cannabis.

I have seen the international documentation and it is not a pretty sight to see that South Australia has the largest cannabis leaf—this is identified by international policing and law security work across the world; the size of the leaf depends on how much cannabis comes from a particular region—of anywhere in the southern hemisphere. That is something that we cannot be proud of, because it is damaging a lot of people. I commend the bill to the parliament.

The Hon. P. HOLLOWAY: I take this opportunity, on clause 1, to answer some questions asked by the Hon. Mr Ridgway, which I do not think I placed on the record when we last addressed this bill. The honourable member has again inquired as to why the minister is able to give directions to the commissioner. I explained the reasons when the bill was last debated and believe it needs no further explanation.

The honourable member asked how the application and annual licence fees were arrived at. In a licensing regime it is not unusual for application fees and ongoing annual fees to be charged. As members would appreciate, there are costs associated with the licensing process, including the taking of fingerprints, probity checks and the production of identification cards. In addition to this, I am advised that a number of ongoing services will be provided to proprietors, including advice on consumer and retailer rights, education and awareness advice and campaigns, as well as technical support. These services are similar to those provided by OCBA in the administration of other licensing schemes, including, as the honourable member quite rightly asserted, that which is used in the security industry. I have provided a schedule of fees charged by OCBA for the licensing of the security industry. Members will note that they are very similar to those that were alluded to by the leader in his speech. It should be noted that the final fee schedule is yet to be determined and will be contained in the regulations when they are developed.

The honourable member sought my assurance that SAPOL will have sufficient resources to evaluate all licensing applications in the transitional period. I have been advised by SAPOL that it is, in fact, now establishing processes to work with the industry to ensure that business owners who seek to become a licence holder will have their application processed during the three month transitional period. I commend SAPOL for taking the initiative to ensure that no business owner is disadvantaged.

The Hon. Mr Ridgway sought clarification as to the process by which the commissioner can assess the propriety of an applicant for a dealer's licence. Subject to clause 11 of the bill, the

commissioner may, on application by a person, issue or renew a hydroponic dealer's licence. The commissioner must refuse to issue the licence if the applicant has been found guilty of a prescribed offence within a five year period immediately preceding the application, or is the subject of a control order issued under the Serious and Organised Crime (Control) Act 2008, or if it appears to the commissioner that it would be contrary to the public interest, or any other reason declared by regulations. While the prescribed offences are yet to be determined, it is likely that they will relate to drug offences.

In determining whether to issue a licence, the commissioner may have regard to the reputation, honesty and integrity of the applicant, and the reputation, honesty and integrity of people with whom the applicant associates or has associated with. Matters which may be taken into account include the totality of a person's criminal history, which would include offences for which the person has been convicted outside the five year period.

The honourable member indicated that the Retail Traders Association expressed concern regarding the transitional provisions and online transaction process. I can advise the leader that the Minister for Police and representatives of SAPOL have met with the Retail Traders Association to address these concerns. However, in explanation, the transitional provisions ensure that SAPOL process the applications for a dealer's licence in a timely manner. It should be noted that only persons who wish to trade in the prescribed items need apply for a licence.

As I have already advised, SAPOL is currently preparing a transition plan with the intention of communicating with industry members at the earliest opportunity prior to the commencement of the legislations. SAPOL has advised me that it will have sufficient resources in place to ensure that businesses are licensed within the transition period. It should, however, be noted that business cooperation is required, with those who choose to apply late in the transition period facing the prospect of having to cease trade until their licence application is processed. In other words, get the application in early, I believe, is the message.

Pursuant to clause 23, licence holders are required to keep records of prescribed transactions. The records may be required to be transferred to SAPOL electronically. While much of the detail is yet to be determined as it will be contained in the regulations, I can advise that information, including the business details of the retailer, the name of the approved industry employee conducting the transaction, the time, date and location of the transaction, the details of the purchaser and a description of the prescribed items purchased, will probably be required. The information will need to be transmitted electronically to SAPOL in a reasonable time frame, possibly within three days of the transaction.

SAPOL is still developing the system by which the information will be transmitted, and may require an interim process. However, SAPOL has advised me that it will work closely with the industry to ensure compliance and to assist with any transitional periods. I referred earlier to a table of OCBA fees, and I now table that document.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. DAVID WINDERLICH: I move:

Page 3, lines 13 to 17 [clause 3, definition of 'criminal intelligence']—Delete the definition

This is the first of several amendments that relate to criminal intelligence. It proposes to delete 'criminal intelligence' from this and several other clauses.

My objections to criminal intelligence are well known. Criminal intelligence is essentially secret evidence that cannot be challenged or scrutinised by the person who may be the subject of it, so the actual effect could be that someone may be denied a licence to operate or a person may be denied employment in the industry on the basis of evidence that they cannot challenge because neither they nor their lawyer can see it. This removes a basic right that has been enshrined in our system until quite recently.

Let us reflect on how we have slid down this slope. These sorts of powers started on the basis that we had to protect ourselves from terrorism and the prospect of thousands of deaths. They moved to bikies and organised crime, and now this idea of criminal intelligence, or secret evidence, undermining a fairly fundamental premise of our justice system, is turning up in

hydroponics—some of which includes drugs, some of which could include Bunnings! Later this year we will be dealing with the application of these sorts of ideas to second-hand goods dealers.

An honourable member interjecting:

The Hon. DAVID WINDERLICH: Yes; the Second-hand Goods Bill has criminal intelligence provisions in it as well. The point made at the very start of this process, in the debates around terrorism, was that we are on a slippery slope and we are sliding down that slope; we are applying these ideas, which were once argued to be exceptions to deal with great threats to health and safety, into standard law and order tools. The maxims that power corrupts, and that things done in secret, or powers that are exercised in secret, are likely to be abused, apply here. Yet again, we turn criminal intelligence into a standard crime-fighting tool.

There is no doubt at all that there is a criminal element in this industry; there is probably a criminal element in the second-hand goods industry. The question is: what price do you pay to fight crime? What price do you pay to make yourself safe? If it comes down to undermining basic rights in one area, and watching that undermining of rights spread to other areas, then we are in fact diminishing all our rights and safety. One of the lessons of history is that we need government and we need police to protect ourselves from crime, but another lesson is that we also need to protect ourselves from government. When we move to a default position of handing over great powers to governments and police to enable them to exercise great powers in secret, without scrutiny or challenge, I believe that we are on dangerous ground.

As I said, this is a test case for several other amendments. I think the fundamental idea of criminal intelligence is objectionable. There was a point, having this argument, about how we would prevent future twin towers, about the risk to thousands of lives; that is perhaps the sort of ground on which it is worth having this argument. We are now down to hydroponics; later on we will be down to second-hand goods. Where will this end? We are not starting on a slippery slope, we are well down one, and honourable members will see that throughout the rest of this year, as the idea of criminal intelligence is rolled into more and more legislation and becomes just an everyday practice in law enforcement.

The Hon. P. HOLLOWAY: I would have thought that criminal ignorance would be a much greater threat to the future of society than dealing with criminal intelligence. This is the first in a series of amendments filed by the Hon. Mr Winderlich that remove the prohibition against disclosing information classified as 'criminal intelligence' that is submitted by the commissioner in the course of making consideration to grant a hydroponic equipment dealer's licence, approval of a hydroponic industry employee, or providing advice to the minister for applications for exemptions to the requirements of the act.

The Hon. Mr Winderlich suggested that this should be a test amendment. It deletes the definition of 'criminal intelligence' from clause 3 of the bill. This definition is crucial to the provisions that prohibit disclosure of criminal intelligence, and for this reason the amendment is opposed. 'Criminal intelligence' is defined in clause 3 of the bill to mean:

> information relating to actual or suspected criminal activity (whether in this state or elsewhere) the disclosure of which could reasonably be expected to produce criminal investigations, to enable the discovery of the existence or identity of a confidential source of information relevant to law enforcement or to endanger a person's life or physical safety;

For obvious reasons, intelligence cannot be disclosed to the criminals to whom it relates. Criminal intelligence may take the form of information from police informants or undercover officers, from covert surveillance (including electronic surveillance), or from victims of crime and other witnesses. What is important is that the information, whatever its source, satisfies the definition in clause 3 of the bill. If it does not, it is not criminal intelligence and it is not protected from disclosure.

Criminal intelligence is protected from disclosure by clauses 7 and 20 of the bill. Clause 7 describes how information that has been classified as 'criminal intelligence' by the Commissioner of Police may be used or disclosed in regard to the refusal of an application for a licence or an approval for a renewal, or varies or revokes a condition or imposes a new condition of a licence or approval, or revokes or proposes to revoke a licence or approval under the act. Where proceedings relating to a licence or approval are being determined by the court, the court must, on application by the Commissioner of Police, take steps to maintain confidentiality of information classified by the commissioner as 'criminal intelligence'.

Clause 20 provides for a person to appeal to the District Court if he or she is dissatisfied with a decision of the Commissioner of Police. The commissioner is required to provide in writing

the reasons for his or her decision, unless that decision is based on information which has been classified as 'criminal intelligence'. These clauses are by no means unique. Information in the nature of criminal intelligence, as defined in the bill that is relevant to administrative decisions and determinations, or that is tendered as evidence in court proceedings, is protected from disclosure under a number of South Australian acts, including acts that contain licensing regimes similar to that proposed in this bill. Examples are the Liquor Licensing Act and the Security and Investigation Agents Act. Nor is South Australia alone in recognising the need to protect highly sensitive information from disclosure in court proceedings. Section 76(2) of the Western Australian Crime and Corruption Commission Act 2003, for example, protects from disclosure criminal intelligence tendered in review proceedings under that state's anti-fortification provisions.

Members may also be aware that claims for public interest immunity against disclosure of information of the kind that would meet the definition of criminal intelligence have been a feature of our legal system for some time. Criminal intelligence provisions, including provisions that are substantially the same as those the Hon. Mr Winderlich seeks to delete from this bill, have been found to be constitutional by the High Court. These provisions are important. Without them, information relevant to applications for a licence by a hydroponics equipment dealer, applications for approval as a hydroponics industry employee, or any court appeals of the decisions of the Commissioner of Police will be unable to be put before the Commissioner of Police or the District Court, as to do so would risk disclosure of the information to the criminals about whom it relates.

I stress again that the only information that will come within the definition is information the disclosure of which could reasonably be expected to prejudice criminal investigations, enable the discovery of a confidential source of information or endanger a person's life or physical safety. The government's position is that information that could prejudice criminal investigations, disclose a confidential source of information or place a person's life or physical safety at risk should not be disclosed to the criminals about whom it relates. For this reason the government opposes this amendment and any other that seeks to remove the protection from disclosure afforded to criminal intelligence.

The Hon. D.W. RIDGWAY: The opposition will oppose the Hon. Mr Winderlich's amendments. We understand a little of what he is trying to achieve, but I questioned assistant commissioner Harrison about this provision when we had a briefing on this bill. While the Hon. Mr Winderlich talks of criminal intelligence also being a factor in the Second-hand Goods Bill, we are dealing here with cannabis and the scourge of drugs and, while it is still an illegal activity in the Second-hand Goods Bill, it does not affect, as drugs do, the lives of other people. With those few words, the opposition will not support the Hon. Mr Winderlich's amendments.

The Hon. A. BRESSINGTON: I also indicate that I will not support the Hon. David Winderlich's amendments. To go back very briefly to 2006, when I introduced the drug using paraphernalia bill, and I had a hydroponics bill tacked on to the back of it, I referred to the findings of the royal commission conducted by the Hon. Justice Athol Moffitt on the link between drugs and organised crime. In the preface of that book he reminded us, in 1976 or 1978 (I am not sure from memory), of the link between organised crime and the drug trade and stated that if we did not act very soon it would be very difficult to wind back the influence that organised crime was having throughout this country because of its connection with the drug trade. What he wrote in his preface has turned out to be quite an accurate prediction of the predicament in which we find ourselves, specifically in South Australia.

To now have to rely on criminal intelligence is a sign of the times. As I have said many times in regard to drugs, we have taken our hand off the wheel and have gone to sleep. It is now at a point where the drug and cannabis trade is significant, to say the least. Now we have to put in place these kinds of laws that rely on criminal intelligence because way back then, when the warning signs were out, royal commissions were being undertaken and reports were being written, no government took notice. So now it is tough that we have to hand over these extra powers to the government and the police, but that is what happens when we do not act and intervene at the very beginning with the early signs of such things becoming a problem.

Amendment negatived; clause passed.

Clauses 4 and 5 passed.

Clause 6.

The Hon. DAVID WINDERLICH: My next amendment is consequential, so I will not move it.

Clause passed.

Clauses 7 to 10 passed.

Clause 11.

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

Page 7—

After line 5—Insert:

(ia) if the person has expiated a simple cannabis offence (within the meaning of section 45A of the Controlled Substances Act 1984) within the 5 years immediately preceding the application; or

(ib) if the person has been referred to a drug assessment service in relation to a simple possession offence (within the meaning of the Controlled Substances Act 1984) within the 5 years immediately preceding the application; or

After line 10—Insert:

(ia) if any director of the applicant has expiated a simple cannabis offence (within the meaning of section 45A of the Controlled Substances Act 1984) within the 5 years immediately preceding the application; or

(ib) if any director of the applicant has been referred to a drug assessment service in relation to a simple possession offence (within the meaning of the Controlled Substances Act 1984) within the 5 years immediately preceding the application; or

These amendments are tough, I acknowledge. They require the commissioner to refuse to issue a licence to a person to deal or work in hydroponics if they have, first, expiated even a simple cannabis offence in the past five years or, secondly, if they have taken a diversion for a simple possession offence of any other illicit drug. My first amendment deals with licences to deal, the second deals with directors of companies who want to deal, and the third deals with hydroponics industry employees. In all three cases there are two limbs: first, the cannabis expiation offences and, secondly, the drug diversions for illicit drug possession.

I do not apologise for being tough on this. The clawback period is five years and, if people are absolutely genuine about wanting to be in the hydroponics industry, I believe they are not persons who have not gone anywhere near illicit drugs, including cannabis, in the previous five years. It is not our fault that the laws have been slack in relation to drug possession. If the committee does not want to support these amendments and they are lost, I would certainly ask the government to look at the submissions made in the past. As I have said, I have all the stuff here, and I know that the government has it, too. I would ask that the government also look at what has recently been received by SAPOL concerning persons who have expiated offences for the cultivation of cannabis in the past, perhaps back even further than five years.

We have to ensure that people who got away with cultivating cannabis under soft laws in the past cannot hide from their criminal history when considered for their participation in the hydroponics industry. The evidence is absolutely overwhelming about the backdoor drug dealing and all the illegal activities that go on in nearly all of these hydroponics shops. We have to jump on it from the greatest possible height for the long-term interests of our future generations.

The Hon. P. HOLLOWAY: These amendments are the first in a series filed by the Hon. Mr Brokenshire that would broaden the circumstances under which the Commissioner of Police must refuse the application for a licence. I suggest that we should use this as a test amendment.

Clause 11 sets out how a person can obtain a hydroponics dealer's licence. The clause requires the commissioner to be satisfied that the applicant, or each director of the applicant, is a fit and proper person to hold a licence. The clause also sets out circumstances in which the commissioner must refuse a licence. The commissioner must refuse to issue a licence if the person concerned has been found guilty of a prescribed offence within five years immediately preceding the application, if the person is the subject of a control order within the meaning of the Serious and Organised Crime (Control) Act 2008, if it would be contrary to the public interest, or any other reason prescribed by regulations.

The amendments propose to require the commissioner to refuse a natural person or director a licence if, in the preceding five years, they have been issued an expiation notice for a simple cannabis offence or referred to a drug assessment panel in relation to a simple possession offence. The expiation of an offence does not constitute an admission of guilt or civil liability, nor is

it regarded as evidence tending to establish guilt, and therefore cannot be used for the purposes of sentencing for any relevant offence.

Both the expiation and diversion schemes are designed for the purpose of rehabilitation rather than prosecution. The introduction of such an amendment would not be beneficial to the overall strategy to reduce drug use and it would clog courts with unnecessary hearings. For these reasons, the government opposes the amendment, although we can certainly understand why the honourable member would seek to deal with it. I suggest that, given that the expiation offence does not constitute an admission of guilt or civil liability, it would be unwise to use that as the basis to knock back a licence.

The Hon. D.W. RIDGWAY: I indicate that the opposition will not be supporting the Hon. Robert Brokenshire's amendments. A little like the minister, I understand where the Hon. Robert Brokenshire is coming from. However, if we look at the clause to which he is seeking to add a line—'if a person has been found guilty of a prescribed offence within five years immediately preceding the application'—my assumption is that any particular offences that SAPOL believes to be worthy of being classified as a prescribed offence (whatever they happen to be at the time) will be where the commissioner can exercise his or her judgment, obviously with advice from their officers that an offence now needs to be a prescribed offence.

Certainly, as the minister pointed out, it could be a simple expiation notice or somebody being referred to some sort of drug diversion course or rehabilitation. While I understand what the Hon. Robert Brokenshire is trying to toughen up, the opposition's view is that, in the very early stages, those people probably deserve to have an opportunity to clean up their act. Having said that, we think that the bill leaves it at the discretion of the commissioner if intelligence says that those offences need to become prescribed offences. So, with those comments, I indicate that we will not be supporting the amendments.

Amendments negatived; clause passed.

Clauses 12 to 15 passed.

Clause 16.

The Hon. DAVID WINDERLICH: I move:

Page 9, line 20 [clause 16c]—Delete ', (b)'

As we have determined, this is, in effect, a test case for three amendments that are linked to control orders. I will speak generally about the application of control orders. I have two major difficulties with control orders, and one is that you need not have been convicted of an offence to be subject to a control order: you need simply either to be a member of a declared organisation or subject to a control order by virtue of a past offence.

I think there is a problem with determining someone's basic ability to conduct a certain line of business based on the fact that they may never have committed an offence that is related to that minor business. They may never have committed a drug offence, or it may have been a long time ago. I think that is a great difficulty with the idea of control orders in this context and using them as a general trigger to deal with a very specific problem.

As a number of members have indicated, the problem we are trying to address is the role of organised crime in the drug trade. It seems to me that, when determining the rights of an individual person, that person should have committed either some offence that is linked to drugs or at least some offence because, as I said, they may not have committed an offence at all, or they may have been in a situation in which, at the age of 20 or 40, you committed a drug offence. I think that is a real problem in the use of control orders in making these kinds of determinations.

Amendments Nos 5 and 6 are consequential, but I think that amendment No. 11 may need to be dealt with separately because it is also about control orders but proposes a specific amendment, whereas amendments Nos 5 and 6 delete a section. I think that my amendment No. 4 to clause 11 will still need to be recommitted.

The Hon. P. HOLLOWAY: I will talk to all the amendments moved by the Hon. Mr Winderlich in this series, that is, to clauses 11, 16 and other clauses. The series of amendments filed by the Hon. Mr Winderlich removes the ability of the Commissioner of Police, when making a decision on whether to grant a hydroponics equipment dealer's licence, or approve a person as a hydroponics industry employee, from taking into consideration whether the person is the subject of a control order within the meaning of the Serious and Organised Crime (Control) Act 2008.

Clause 11 sets out how a person can obtain a hydroponics dealer's licence. The clause requires the Commissioner of Police to be satisfied that the applicant is a fit and proper person to hold a licence. It also provides for circumstances in which the commissioner may refuse a licence application. Subclauses (4)(a) and (4)(b) indicate that the commissioner must refuse to issue a licence to a natural person or body corporate if the person has been found guilty of a prescribed offence within the five years immediately preceding the application or if the person is subject to a control order within the meaning of the Serious and Organised Crime (Control) Act 2008.

The Hon. Mr Winderlich's amendment seeks to delete from subclauses (4)(a) and (4)(b) that the commissioner must refuse a licence application if the person or director of a body corporate is subject to a control order within the meaning of the Serious and Organised Crime (Control) Act. Clause 16 enables a person who has lodged an application for approval as a hydroponics industry and employee to carry out prescribed duties prior to approval.

However, the temporary approval does not apply if the person has been previously refused approval, has had the approval revoked or has been refused on public interest grounds, which include being the subject of a control order within the meaning of the Serious and Organised Crime (Control) Act. The Hon. Mr Winderlich's amendment seeks to delete from clause 16C the ability to prevent a person from a temporary approval if they are the subject of a control order within the meaning of the Serious and Organised Crime (Control) Act.

Clause 17 sets out how a person can obtain approval as a hydroponics industry employee. The clause sets out circumstances in which the Commissioner of Police must refuse an approval application, which are the same grounds as an application for a licence and include the non-approval if the applicant is the subject of a control order within the meaning of the Serious and Organised Crime (Control) Act.

The Hon. Mr Winderlich's amendment seeks to delete from clause 17(4)(b) the ability to prevent a person from approval to work in the industry if they are the subject of a control order within the meaning of the Serious and Organised Crime (Control) Act. The control order may be issued only against a person who is a member of a declared organisation or who engages or has engaged in serious criminal activity. The purpose of the bill is to prevent infiltration of the hydroponics industry by criminals or criminal groups.

SAPOL has already identified organised criminal syndicates involved in the hydroponics industry, including the cultivation of cannabis for commercial purposes. The government opposes all these amendments as it can see no reason why a person who, by the issuing of a control order, has demonstrated their involvement in serious criminal activity should participate in the hydroponics industry.

The Hon. D.W. RIDGWAY: I indicate that the opposition will not be supporting the Hon. Mr Winderlich's amendments. The minister clearly outlined the link between organised crime, the cultivation of hydroponic cannabis and the distribution and manufacture of a whole range of other illicit substances, as well.

We had some extensive briefings with assistant commissioner Harrison. When reading this amendment, there really does not seem to be any benefit at all; it does not enhance the bill. Certainly the opposition wants SAPOL to have every tool at its disposal to have the biggest impact on this industry.

SAPOL acknowledges that this will not control every avenue for the sale of these goods and the prescribed goods mentioned in this bill. However, it certainly will frustrate the industry and make it more difficult for the cultivation of hydroponic cannabis. With those few words, I indicate that we will not be supporting these amendments.

Amendment negatived; clause passed.

Clauses 17 to 35 passed.

Clause 36.

The Hon. DAVID WINDERLICH: I move:

Page 16, lines 1 to 14—Delete the clause

This amendment deletes clause 36(2). Subclause (2) in the bill provides that in any legal proceedings a document apparently certified by the commissioner to be a licence, approval or other document issued under this act or to be a copy of such a licence, approval or other document

will be accepted as such in the absence of proof to the contrary. This effectively means that the commissioner does not need to prove his case. The commissioner's determination is taken as a fact that the person is operating without a licence. The commissioner does not need to furnish a copy of the relevant documentation; their word is deemed to be enough. My amendment to delete this clause would simply mean that the commissioner must prove their case and supply evidence for their determination.

The Hon. P. HOLLOWAY: This amendment deletes clause 36 evidentiary provisions. Clause 36 provides that certain allegations in the complaint for an offence against this act will be taken to be proved in the absence of proof to the contrary. The clause is designed to prevent the court from being subject to the expense and time of litigation on matters which can easily be proved by the prosecution. This clause is by no means unique and can be found in other legislation, including the Firearms Act 1977 and the Controlled Substances Act 1984. If a person wishes to dispute the evidence, provisions exist for this to occur during normal court proceedings. The government opposes the amendment.

Amendment negatived; clause passed.

Remaining clauses (37 and 38), schedule and title passed.

Bill reported without amendment.

Bill read a third time and passed.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Second reading.

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) (18:13): 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 Correctional Services Act dates back to 1982. Since that time it has been regularly amended to reflect changes in Government policy, and correctional practice and to address community concerns.

The changes to the Act proposed in this Bill are wide ranging and considered necessary for the effective management of prisoners and offenders.

Many of the changes proposed in this Bill remove impediments that impact on effective custodial management. Others streamline existing processes to maximise the use of the Department for Correctional Services' resources.

The changes proposed will make prisoners more accountable for their actions whilst, at the same time, providing correctional authorities with more efficient prisoner management tools.

Removal of the Community Service Advisory Committee and the various Community Service Committees

These Committees were introduced many years ago when there was concern that Community Service offenders may take paid jobs from members of the community. Additionally, at the time that the Committees were established, departmental Community Services Centres were managed by officers at the lower to middle management levels.

Whilst the Committees have done extremely valuable work over the years, it is the general view that they are no longer necessary. Community Service has now gained a significant level of community acceptance. Furthermore, restructuring within the Department for Correctional Services has seen responsibility for Community Services transferred to senior Regional Managers.

Allow persons of good standing to be appointed as Visiting Inspectors

The Correctional Services Act requires prisons to be regularly inspected. This is an important accountability measure, ensuring independent scrutiny of prisoner management and prison operation.

Under the Act, Visiting Inspectors currently are required to be Justices of the Peace, retired judicial or magisterial officers or legal practitioners.

The requirement is onerous and prevents otherwise suitable and qualified members of the community from becoming Visiting Inspectors. Regularly there has also been a suggestion that the current legislative provisions prevent many Aboriginal people from qualifying as Visiting Inspectors.

The amendments included in this Bill will expand the existing groups from which Visiting Inspectors may be chosen to include respected members of the community. This is an important amendment to strengthen the scrutiny of our prison system.

The establishment of multiple committees to assist the Chief Executive assess prisoner classifications

The present Act allows the Minister to establish a committee to assist the Chief Executive to carry out prisoner assessments. Best practice suggests that better assessments are achieved by drawing together prison staff and prisoner Case Managers who work with prisoners every day, to decide the assessment priorities. This requires the establishment of committees in each prison, which has occurred on an informal basis.

The Department has on numerous occasions been questioned about the legislative base for these committees and the legality of their recommendations given that the Act only provides for a single committee.

Whilst it is recognised that the *Acts Interpretation Act, 1915* legislates that words in the singular are to be construed as plural, it is considered necessary to clarify this section to put the meaning beyond doubt.

Ensure that, where appropriate, conditions of parole apply to prisoners who are given early release

The Chief Executive has the authority under the Act to approve prisoner release from prison up to 30 days prior to their release date.

Recent advice has indicated that if a prisoner is released on parole prior to his or her original release date, the conditions of parole will only be enforceable as from the original release date.

Whilst the early release provision is only sparingly used, it is necessary to ensure that prisoners who are subject to parole, are subject to parole conditions as soon as they are released.

This Bill rectifies this situation by ensuring that where early release is approved, a prisoner's parole conditions will apply from the date of actual release.

Additional exception to automatic release on parole requiring prisoners to apply to Parole Board for release on parole

The current Act provides for the automatic release on parole of prisoners who are liable to serve a total period of imprisonment of less than five years and in relation to whom a non-parole period has been fixed (see section 66).

The Act provides for exceptions to automatic release in relation to some prisoners serving less than 5 years. Such prisoners must apply to the Board for release on parole and the Board must assess the application against the criteria provided in the Act.

The exceptions currently provided for are prisoners sentenced to imprisonment in relation to a sexual offence and those prescribed by regulation. The regulations prescribe a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of an offence against section 99I of the *Summary Procedure Act 1921* arising out of a breach of a paedophile restraining order.

This clause proposes an additional exception to automatic release on parole being a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of an *offence of personal violence*.

An *offence of personal violence* is defined as any of the following:

(a) an offence against the person under Part 3 of the *Criminal Law Consolidation Act 1935*;

(b) a home invasion;

(c) an offence of robbery or aggravated robbery;

(d) a conspiracy to commit, or an attempt to commit, an offence referred to in paragraph (a), (b) or (c);

(e) an offence that is committed in circumstances in which the offender uses violence or a threat of violence for the purpose of committing the offence, in the course of committing the offence, or for the purpose of escaping from the scene of the offence.

Enable the Chief Executive of the Department for Correctional Services to approve short term prisoner separations. Longer term separations to remain the responsibility of the Minister

Every day there are about 10 prisoners who need to be separated for a range of reasons, mainly relating to the safe and secure operation of the prison. Most of these separations are short term, often less than 2 or 3 days.

The current Act requires the Minister to consider all separations. The Minister may review or revoke the decision.

Given the short time frame of most separations and the time necessary to complete the normal administrative processes involved, very few reports reach and are reviewed by the Minister before the separation order expires.

Under the Bill, only separation orders expected to exceed, or having exceeded, 5 days will require consideration by the Minister. All other orders would be approved by the Chief Executive or his or her delegate.

Amend the regulation making power to reflect current practices regarding the amount of property that a prisoner may have and provide flexibility in the management of that property

Under the current regulations, a prisoner may keep personal effects to the value of $200, and property that will fit into a clothes protector and container/locker area measuring 45cm x 41cm x 29cm.

The regulations regarding these matters are out of date and do not reflect modern prison practice.

Amendments proposed in this Bill will allow regulations to be made to provide more flexibility for the management of prisoner's property without necessarily increasing the amount of property a prisoner may have.

Amendments to the Act to increase penalties for persons who breach the Act and/or regulations

Many of the penalties that exist under the Act and regulations have not been amended since 1994. As a consequence, they do not adequately reflect contemporary good practice.

As part of this Bill, amendments are proposed to ensure that the behaviour of prisoners who breach prison rules can be adequately dealt with.

For administrative purposes, remove from the Act duplicated sections that prescribe a class of prisoner who may not be released from prison on Home Detention

There are several similar sections of the Act that relate to the release of prisoners on Home Detention.

Administrative amendments are proposed in this Bill to remove the unnecessary duplicate sections.

Remove the requirements that make it necessary for the Governor to appoint and revoke private service provider staff as 'officers of the Crown' for the purpose of providing the services for the contracts of Prisoner Movement and In-Court Management Services and the Management of the Mount Gambier Prison

Presently, the appointment and revocation of any private service provider staff member (G4S) as an officer of the Crown must be ratified by the Governor in Executive Council pursuant to section 68 of the *Constitution Act 1934*.

This process must occur each time a new employee commences or ceases work under the contracts and is necessary to provide G4S staff with the same powers and authority as Correctional Officers.

This process is administratively cumbersome.

The amendments included in the Bill transfer the authority to designate and revoke the designation of G4S staff members to the Minister for Correctional Services.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These provisions are formal.

Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of section 4—Interpretation

This clause inserts a definition of *officer of the Department* for the purposes of the Act.

5—Insertion of section 4A

Currently employees of a contractor undertaking duties and responsibilities under the *Correctional Services Act 1982* (and other Acts) pursuant to a contract between the Crown and the contractor are required to be appointed as officers of the department by the Governor with notice of each appointment published in the Gazette. This is to enable such persons to exercise appropriate powers given to employees of the Department. This clause provides for the Minister to designate a person to whom this new section applies as a person who is to be taken to be an officer of the Department for the purposes of this Act and certain other Acts.

6—Repeal of sections 17B and 17C

This clause removes the sections of the Act that relate to the community service advisory committee and the community service committees. These committees will no longer exist. The functions of those committees, having been required in the initial stages of the community service programs, are now largely unnecessary and any required functions are now performed by senior Departmental staff.

7—Amendment of section 20—Correctional institutions must be inspected on regular basis

Under section 20 of the Act prisons are required to be inspected regularly to maintain standards. Currently, under section 20(2a), a person is not eligible for appointment as an inspector of prisons unless he or she is a person who has retired from judicial or magisterial office, is a legal practitioner or is a justice of the peace. In some instances there is a lack of local persons eligible to be inspectors. This clause removes the requirements of the current section

20(2a) and provides for the Minister to appoint any person who is considered a suitable person as an inspector of prisons for the purposes of section 20.

8—Amendment of section 23—Initial and periodic assessment of prisoners

Currently section 23(2) of the Act provides for the Minister to establish a committee to assist the Chief Executive Officer in carrying out prisoner assessments under section 23. In practice it is desirable that there are additional committees, for example at each prison, to enable prisoners to be individually and carefully assessed. While section 26(b) of the *Acts Interpretation Act 1915* provides that a reference to 'committee' includes 'committees', this clause clarifies that the Minister may establish more than 1 committee to assist the Chief Executive Officer in carrying out prisoner assessments.

9—Amendment of section 24—Chief Executive Officer has custody of prisoners

The proposed amendments to this section will clarify that a regime for the management of a prisoner may be varied and that any such variation does not constitute a penalty for the purposes of the principal Act.

10—Amendment of section 36—Power to keep prisoner apart from other prisoners

Under section 36 the Chief Executive Officer may direct that a prisoner is to be kept separately and apart from the other prisoners for a specified period. On such a direction being made, section 36 currently requires the Minister to be provided with a report on the direction and the circumstances of it being made as soon as is practicable after it is made. This clause provides for reports to be provided to the Minister only in respect of directions made to keep a prisoner separately and apart for a period exceeding 5 days, or any direction that will result in a prisoner being kept separately and apart for a period exceeding either 5 consecutive days, or an aggregate of 5 days within any 10 day period. For example, a report to the Minister will be required when 2 directions, each for a period of 3 days, are made resulting in a prisoner being kept separately and apart for those 6 with a 3 day break in between the separations.

11—Amendment of section 37A—Release on home detention

Currently powers with respect to the release of a prisoner on Home Detention are referred to in both section 37A and section 89(2)(d). This measure proposes for this question to be dealt with under section 37A only by deleting the specific regulation making power in section 89(2)(d). As a consequence, it is necessary to delete the reference to the regulations in this section.

12—Amendment of section 37B—Authorised officers

This clause proposes to increase the maximum penalty for the offence of hindering an authorised officer, or failing to answer truthfully a question put by an authorised officer, in respect of the powers under this section. The maximum penalty is currently a fine of $2,500 which is proposed to be increased to $5,000.

13—Amendment of section 38—Release of prisoner from prison or home detention

Under section 38(2) the Chief Executive Officer may release a prisoner from prison or home detention 30 days earlier than the prisoner's due release date. In many cases, a prisoner's due release date is a date fixed by the Parole Board for the prisoner's conditional release on parole. This proposed clause clarifies that a prisoner, who is due for release on parole and is released early under section 38(2), will be subject to parole and the conditions of parole fixed by the Parole Board from the date of actual release.

14—Amendment of section 41—Powers of Visiting Tribunals

Section 41 currently provides a maximum penalty of $5,000 or imprisonment for 3 months for offences with respect to Visiting Tribunals. This clause proposes to increase the pecuniary maximum penalty to $7,500, while the maximum penalty of imprisonment will remain unchanged.

15—Amendment of section 42A—Minor breaches of prison regulations

Section 42A provides maximum penalties that apply on a prisoner breaching prison regulations to which the section applies. The current penalties provided for are forfeiture of any specified amenities or privileges for a specified period not exceeding 7 days, or exclusion from any work that is performed in association with other prisoners for a specified period not exceeding 7 days. This clause proposes to increase the maximum time period allowed for each of those penalties from 7 days to 10 days.

16—Amendment of section 43—Manager may deal with breaches of prison regulations

This clause proposes to increase 2 of the maximum penalties available upon a breach of general prison regulations—

- 1 maximum penalty currently available (under section 43(2)(b)) is that a prisoner may forfeit any specified amenities or privileges for a period not exceeding 28 days. It is proposed to increase that maximum period to 35 days;
- Another maximum penalty currently available (under section 43(2)(c)) is that a prisoner may be excluded from working with other prisoners for a period not exceeding 14 days. It is proposed to increase that maximum period to 21 days.

17—Amendment of section 66—Automatic release on parole for certain prisoners

Section 66 provides for the automatic release on parole of prisoners who are liable to serve a total period of imprisonment of less than five years and in relation to whom a non-parole period has been fixed. Exceptions to

automatic release are prisoners sentenced to imprisonment in relation to a sexual offence and those prescribed by regulation (currently a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of a sentence arising out of a breach of a paedophile restraining order). This clause proposes an additional exception to automatic release on parole being a prisoner if any part of the imprisonment for which the prisoner was sentenced is in respect of an *offence of personal violence* (which is defined in proposed new subclause 66(3)).

18—Amendment of section 86—Prison officers may use reasonable force in certain cases

The phrase 'or employee' is to be inserted after 'officer'.

19—Repeal of section 86A

Section 86A is to be repealed. Section 74 of the *Public Sector Act 2009* will apply to employees of the Department making section 86A otiose.

20—Amendment of section 89—Regulations

The amendments proposed to the regulation making power in section 89 are as follows:

- Consistently with the amendment proposed by clause 11, it is proposed to delete paragraph (d) of section 89(2) (referring to the release of a class of prisoners on home detention). Under section 37A, the Chief Executive Officer is given an absolute discretion to release a prisoner from prison on home detention conditions;
- The phrase 'or employees' is to be inserted after 'officers' wherever occurring in subsection (2)(h) and (i);
- The deletion of the reference to personal property from paragraph (j) of section 89(2) is in anticipation of the proposed new paragraph (ja) to be inserted in section 89(2) that will refer to personal property of prisoners;
- Paragraph (ja) to be inserted in section 89(2) will provide for power to make regulations with respect to the acquisition and retention of personal property of prisoners (including the transfer, storage or disposal of such property). This clarifies how a prisoner's property may be dealt with by prison officials and is important in particular instances where prisoners accumulate additional property in excess of the restricted amount of property they had on admission;
- An increase in the maximum penalty which may be imposed for offences against the regulations from $2,500 to $5,000.

Schedule 1—Related amendment of *Young Offenders Act 1993*

1—Amendment of section 4—Interpretation

This clause will amend the *Young Offenders Act 1993* to mirror the amendments proposed to the *Correctional Services Act 1982* relating to the designation of employees of a contractor undertaking duties and responsibilities under the Act as persons who are to be taken to be officers of the Department of Families and Communities for certain purposes.

Schedule 2—Transitional provision

1—Transitional provision

This clause provides a transitional provision in relation to the amendments to section 66 of the *Correctional Services Act 1982*.

Debate adjourned on motion of Hon. D.W. Ridgway.

At 18:14 the council adjourned until Wednesday 28 October 2009 at 11:00.