LEGISLATIVE COUNCIL

Tuesday 26 July 2011

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:18 and read prayers.

CONTROLLED SUBSTANCES ACT (OFFENCES RELATING TO INSTRUCTIONS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (LAND HOLDING ENTITIES AND TAX AVOIDANCE SCHEMES) BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (DE FACTO RELATIONSHIPS) BILL

His Excellency the Governor assented to the bill.

ELECTRONIC TRANSACTIONS (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:20): By leave, I move:

That the sitting of the council be not suspended during the continuation of the conference on the Summary Offences (Prescribed Motor Vehicles) Amendment Bill.

Motion carried.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the following written answer to a question on notice be distributed and printed in *Hansard*.

APY LANDS, SCHOOLS

192 The Hon. T.A. FRANKS (9 February 2011). Can the Minister for Education advise—

1. What was the combined attendance rate for all of the schools located in the Aboriginal Lands District for the years—

   (a) 2008;

   (b) 2009; and

   (c) 2010?

2. What was the attendance rate at each of the following sites—

   (a) Amata Anangu School;

   (b) Ernabella Anangu School;

   (c) Fregon Anangu School;

   (d) Indulkana Anangu School;

   (e) Kenmore Park Anangu School;

   (f) Mimili Anangu School;

   (g) Murputja Anangu School;

   (h) Oak Valley Aboriginal School;

   (i) Pipalyatjara Anangu School;

   (j) Watarru Anangu School;

(k) Wiltja Program; and

(l) Yalata Anangu School—

in the years—

i. 2008;

ii. 2009; and

iii. 2010?

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

The tables below provide attendance data for all schools located in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands for the years 2008, 2009 and 2010.

Figures for the individual attendance rate table have also been provided for Oak Valley Aboriginal School and Yalata Anangu School although they are not located on the APY Lands. In addition, the Wiltja Program is not a school located in the APY Lands, but rather a program located in metropolitan schools for students from the APY Lands.

Attendance statistics from 2008 are not directly comparable with statistics from 2009 and 2010 as there was a change in reporting methodology introduced in 2009 to align attendance statistics with national reporting requirements.

In 2008, attendance rates were calculated based on full time students who were enrolled in only one school for the entire term, and who were attending school at the time of the term 3 census. Therefore, for the 2008 data set, the attendance rate includes students who only attended school for a portion of a day and does not include students who changed school.

The 2008 data is sourced from Term 2 Absence Data Collected in the Term 3 DECS School Enrolment Census.

Aggregated attendance rate	2008
APY Lands	70%

Schools included in the above aggregated attendance rate table are: Amata Anangu School, Ernabella Anangu School, Fregon Anangu School, Indulkana Anangu School, Kenmore Park Anangu School, Mimili Anangu School, Murputja Anangu School, Pipalyatjara Anangu School, Watarru Anangu School.

Individual attendance rates	2008
Amata Anangu School	63%
Ernabella Anangu School	72%
Fregon Anangu School	68%
Indulkana Anangu School	68%
Kenmore Park Anangu School	87%
Mimili Anangu School	78%
Murputja Anangu School	87%
Oak Valley Aboriginal School	65%
Pipalyatjara Anangu School	52%
Watarru Anangu School	77%
Wiltja Program	74%
Yalata Anangu School	68%

From 2009, changes to national reporting requirements resulted in different attendance measures being used, which mean that the attendance rates in 2008 and prior are not comparable to attendance rates post-2008. These attendance rates were calculated so that students who changed schools were counted for the first time, and that half-day absentees were included in absence calculations.

The 2009 and 2010 data is sourced from Semester 1 Absence Data Collected in the Term 3 DECS School Enrolment Census.

Aggregated attendance rate	2009	2010
APY Lands	63%	65%

Schools included in the above aggregated attendance rate table are: Amata Anangu School, Ernabella Anangu School, Fregon Anangu School, Indulkana Anangu School, Kenmore Park Anangu School, Mimili Anangu School, Murputja Anangu School, Pipalyatjara Anangu School, Watarru Anangu School.

Individual attendance rates	2009	2010
Amata Anangu School	60%	59%
Ernabella Anangu School	63%	64%
Fregon Anangu School	55%	68%
Indulkana Anangu School	54%	65%
Kenmore Park Anangu School	75%	77%
Mimili Anangu School	76%	71%
Murputja Anangu School	71%	70%
Oak Valley Aboriginal School	50%	65%
Pipalyatjara Anangu School	66%	58%
Watarru Anangu School	48%	71%
Wiltja Program	75%	78%
Yalata Anangu School	67%	70%

PAPERS

The following papers were laid on the table:

By the President—

Report—OmbudsmanSA—Investigation of Complaint against City of Adelaide re Expiation Notices

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

Reports, 2010—
- University of South Australia
- University of South Australia Financial Statements

Regulations under the following Acts—
- Harbors and Navigations Act 1993—Restricted Areas—Port Stanvac
- Motor Vehicles Act 1959—
  - Road Trains
  - Safer Driver Agreement
- Road Traffic Act 1961—
  - Heavy Vehicle Speeding Compliance—Speed Limiters
  - Miscellaneous—Road Trains
  - Road Rules Ancillary and Miscellaneous Provisions—Road Trains

Appointments to the Minister's personal staff under the Public Sector Act 2009

Schedule of Amendments being made to the Environmental Authorisation which forms Schedule 3 to the Whyalla Steel Works Act 1958

WorkCover Corporation Charter, 2010-11

WorkCover Corporation Charter, 2011-12

By the Minister for Consumer Affairs (Hon. G.E. Gago)—

Regulations under the following Act—
- Liquor Licensing Act 1997—Dry Areas—Long Term—
  - Hallett Cove 2011
  - Port Pirie

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

Regulations under the following Act—
- Gaming Machines Act 1992—Approved Trading System

By the Minister for Industrial Relations (Hon. R.P. Wortley)—

Rules under Acts—
Road Traffic Act 1961—Australian Road Rules—Level Crossing

By the Minister for State/Local Government Relations (Hon. R.P. Wortley)—

District Council By-laws—
Port Augusta—
No. 2—Moveable Signs

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. CARMEL ZOLLO (14:23): I lay upon the table the report of the committee on its inquiry into the Teachers Registration Board.

Report received and ordered to be published.

QUESTION TIME

BURNSIDE COUNCIL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:28): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about Burnside council.

Leave granted.

The Hon. D.W. RIDGWAY: On radio last week, the Premier, Mike Rann, said:

My view is that the report should now be given to the Police Commissioner, to the Anti-Corruption Branch and to the Director of Public Prosecutions.

In light of the Premier's comments, I ask the minister: have all allegations, including the draft MacPherson investigation report and the associated material, gone to the Anti-Corruption Branch, and on which date did they go?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:29): I received an invitation from the Commissioner of Police inviting me to refer the draft report to him.

The Hon. D.W. Ridgway: Invitation? What sort of invitation?

The Hon. R.P. WORTLEY: An invitation.

The Hon. D.W. Ridgway: Not a request?

The Hon. R.P. WORTLEY: Let me make one thing clear: I received an invitation from the Commissioner of Police inviting me to refer the report to him. I have done so, after considering his request—and that has been sent off.

The Hon. D.W. RIDGWAY: When?

The Hon. R.P. WORTLEY: When? It has been sent off.

BURNSIDE COUNCIL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:29): I have a supplementary question. On what date did you send that material to the police commissioner?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:30): Can I make it quite clear to the honourable member that, as minister, I make decisions, and I'm not going to be pressured into making decisions quickly. I made the decision to refer it to the commissioner after he invited me to refer a draft report to him. I have done so and it has been sent off.

BURNSIDE COUNCIL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): Further supplementary: on what day did you receive the invitation from the police commissioner and on what day did you respond?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:30): This is an investigation which has been going—

The PRESIDENT: The honourable minister, before you answer that, on which day you received the invitation was an additional question but the supplementary part of it is: which day did you respond?

The Hon. R.P. WORTLEY: I responded on—I signed the letter only recently to send it off.

The Hon. D.W. Ridgway: Which day? It can't be that hard!

The Hon. R.P. WORTLEY: This investigation is entering its third year. I have taken control of this whole issue after—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wade has a supplementary question.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:31): I have a supplementary question. In the material that the minister referred to the police commissioner, did he include any other papers which relate to changes in the report?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:31): I have sent the commissioner a copy of the draft report.

The Hon. T.J. STEPHENS: I have a supplementary question.

The PRESIDENT: I think that answers that question.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:31): I have a further supplementary question. Why did the minister choose to ignore the request of the police commissioner to forward any other papers which relate to changes in the report?

The PRESIDENT: Nobody mentioned that there were further requests.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:32): The commissioner invited me to send a copy of the report; I have sent him a copy of the draft report, and that's it.

BURNSIDE COUNCIL

The Hon. T.J. STEPHENS (14:32): I have a supplementary question. Minister, was it actually Friday that you responded—last Friday?

The PRESIDENT: The minister has answered that.

Members interjecting:

The PRESIDENT: Order!

BURNSIDE COUNCIL

The Hon. T.J. STEPHENS (14:32): Will the minister confirm that he forwarded the report to the police commissioner last Friday?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:32): I actually did an interview with Simon Royal in which I made it quite clear that I had received an invitation to send a copy of the draft report, and it would have been Friday of last week. I know that is a big issue for these people. The issue to me is all about the people of Burnside. The recent Supreme Court decision that ruled that a number of the terms of reference were invalid has created a whole range of legal impediments to finishing that report.

In wanting to make sure that the people of Burnside have peace of mind regarding any criminal allegations that may be contained in that report the Crown Solicitor's Office has been instructed to go through all the material and if there is any evidence of criminal activity it will be referred to the DPP. In addition to that, I have been invited by the police commissioner to refer a copy of the report to him, which I have done.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:34): I have a supplementary question. Why did the minister choose to refer the report to the police commissioner when the police commissioner has made it clear that he cannot refer it to the ACB and invited you to refer it to the ACB?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:34): The commissioner invited me to refer a copy of the report to the Commissioner of Police. That is the only request I had and, after consideration, I forwarded a copy to the Commissioner of Police.

BURNSIDE COUNCIL

The Hon. A. BRESSINGTON (14:35): Why did the minister forward another copy of the report to the police commissioner when in his letter dated 19 July to me he stated that he had already requested that a copy of the report be forwarded to the Anti-Corruption Branch, after he had read it already?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:35): I have already stated that the commissioner has sent me an invitation, inviting me to forward a copy of the draft report, which I have done.

BURNSIDE COUNCIL

The Hon. J.M.A. LENSINK (14:35): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question about the Burnside council.

Leave granted.

The Hon. J.M.A. LENSINK: In response to a question from the Hon. John Darley on 6 July the minister stated:

> I would like to make clear that all allegations of corruption have been referred to the South Australia Police Anti-Corruption Branch, even prior to this investigation.

A letter from the police commissioner to the Hon. Ann Bressington dated 19 July makes clear that the draft report and related material have not been referred to the Anti-Corruption Branch. My question to the minister is:

1. Does the minister stand by his statement of 6 July 'that all allegations of corruption have been referred to the South Australia Police Anti-Corruption Branch', given the advice of the police commissioner that the ACB did not have the material on 19 July 2011?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:36): The statements I referred to with regard to allegations going to the Anti-Corruption Branch were in regard to allegations made prior to the investigation. Allegations had been referred prior to the investigation, and the Anti-Corruption Branch found no evidence of criminality and did not take it any further.

BURNSIDE COUNCIL

The Hon. S.G. WADE (14:37): I seek leave to make a brief explanation before asking a question of the Minister for State/Local Government Relations relating to Burnside council.

Leave granted.

The Hon. S.G. WADE: The Attorney-General has commissioned advice from the Solicitor-General on the draft MacPherson investigation report. I ask the minister:

1. When did he receive a copy of the Solicitor-General's advice?

2. Did the minister consult with the Attorney-General before referring the report to the Crown Solicitor's Office?

3. Is the government's decision to refer the report to the Crown Solicitor in the face of the Solicitor-General's advice a reflection on the Solicitor-General's advice?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:38): I am not privy to any discussions between the Solicitor-General and the Attorney-General. I would say you take that question up with the Attorney-General.

WOMEN'S INFORMATION SERVICE

The Hon. CARMEL ZOLLO (14:38): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the Women's Information Service.

Leave granted.

The Hon. CARMEL ZOLLO: I have heard the minister speak with great fondness of the Women's Information Service. Honourable members may know that the Women's Information Service has provided important information and referral services to South Australian women for a number of years. I ask the minister: how is the government assisting communities to plan for this development in terms of the Women's Information Switchboard?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:38): I thank the honourable member for her most timely question. I am very delighted to announce today that the Women's Information Service (WIS) is undergoing something of a transformation. As members know, for more than three decades WIS has provided access to information and knowledge to empower South Australian women to make informed decisions about all aspects of their lives. This important work will continue, but WIS staff and volunteers will now be getting out to where women actually live and be spending more time in both suburban and regional areas.

They will also be engaging with women online to bring the service more directly into their everyday lives. One of the key aspects of the changes planned for WIS is about online communication, and at the moment WIS does not have an interactive online presence, yet we know that many women use the internet as their major source of information. I am very pleased to advise that WIS is planning on becoming very active online, and it will have a presence on Facebook and other interactive forums.

We know, of course, that there are groups of women who do not use the internet; for example, particularly older women and women from culturally-diverse backgrounds prefer face-to-face information and contact. The Women's Information Service will continue to provide referrals and information at the Grenfell Street shopfront but will also have a greater presence in our communities, for example, at children's centres.

Another exciting new development for WIS is that, from early August, Wednesdays will see a new feature of the service being introduced. There will now be an ongoing series of information seminars covering topics that will have emerged as current issues for women, such as concessions for seniors, paid parental leave, multicultural youth services and such like.

A further key component of the changes at WIS are the connections being built with other service providers. Whilst the fundamental purpose of the service has not shifted over the years, these changes will ensure that the service continues to be relevant and accessible to South Australian women of all ages and lifestyles.

Partnerships with other service providers will mean that the Women's Information Service can provide an efficient gateway service, which will direct women to appropriate services and information. Through these partnerships, WIS breaks down barriers for women, including those from culturally and linguistically diverse groups or, for instance, women with disabilities, to access appropriate services to enable them to meet their needs.

Of course, knowledgeable volunteers and staff will continue to engage with women to provide information, referrals and advice both face-to-face at the shopfront and in the community, as well as via WIS phone services; and I have already talked about the online services. The Women's Information Service information line will be accessible from nine till five Monday to Friday, which is in line with the Office for Women's opening hours. I am very pleased with the excellent work that the staff and volunteers of WIS have done to date. I am confident that WIS will remain relevant and modern and, obviously, very important for South Australian women.

BURNSIDE COUNCIL

The Hon. J.A. DARLEY (14:42): I seek leave to ask the Minister for State/Local Government Relations questions in relation to Burnside council, which I now refer to as the 'Burnsidegate affair'.

The PRESIDENT: Order! You sought leave to ask questions; did you want to make an explanation?

The Hon. J.A. DARLEY: Yes, sir.

Leave granted.

The Hon. J.A. DARLEY: On 6 July I asked the minister whether the police commissioner received a draft copy of the MacPherson report and, if so, whether the minister could advise what action if any the commissioner took based on the information contained in that report. In his response the minister did not answer the question whether the commissioner had received a copy of the draft MacPherson report but instead stated that all allegations of corruption had been referred to the South Australia Police Anti-Corruption Branch, even prior to this investigation, and that there has never been evidence presented to the Anti-Corruption Branch that warranted further investigation. My questions to the minister are:

1. Does the minister now know whether the commissioner had received a draft copy or part of a draft copy of the report?

2. If the minister does not know can he undertake to find out and report back to parliament, with a response by tomorrow?

3. If the minister is unable to respond to the question of what action, if any, the police commissioner took based on the information contained in the report, can the minister undertake to refer this part of my question to the Minister for Police?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:44): I note that the commissioner's office chose to issue a statement last Friday which completely undermined the wild accusations that were forwarded by the Hon. Stephen Wade. I will quote from that statement:

> The commissioner has never had access to the full draft report, therefore the commissioner cannot determine whether it is appropriate for the draft report to be referred to SAPOL's Anti-Corruption Branch.

This is in contrast to what Stephen Wade said. The police commissioner has read the report and considers the allegations so substantial that they should be referred to the Anti-Corruption Branch. This is the misinformation and the preparedness of the Hon. Mr Wade to misrepresent the commissioner to score some cheap political points. I received an invitation from the police to refer the draft report to him, and I have done so.

WORKPLACE INJURIES

The Hon. I.K. HUNTER (14:45): I direct my question to the Minister for Industrial Relations. What is the government doing to reduce the number and the cost of workplace injuries in the South Australian public sector?

Members interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:46): The government is committed to improving safety performance through the implementation by chief executives of the Safety and Wellbeing in the Public Sector 2010-15 strategy in all public sector agencies. This strategy builds on the success of previous strategies and sets targets for safety performance within a framework which focuses on public sector safety practices. This focus has led to further reductions in incidence costs and time lost to preventable injury and illness in the public sector.

Substantial reductions in work injuries were achieved in the public sector from June 2006 to June 2010: new workers compensation claims fell by 15 per cent and the rate for more serious lost-time injuries fell by 16 per cent. By June 2009, the South Australian public sector had already achieved a 40 per cent reduction in the injury rate, required by 2012 under South Australia's Strategic Plan, Target 2.11, Greater Safety at Work.

The fully integrated Self Insurance Management System consists of the hazard and incident reporting module and the workers compensation database. This enables ongoing comprehensive monitoring and reporting of workers compensation and safety performances across the public sector. To assist safety performance and continuous improvement in workplace safety, nationally accredited qualifications in Occupational Health and Safety and Injury Management have been delivered to 90 public sector injury prevention and 100 injury management practitioners who, since 2005, have attained specialised qualifications at certificate IV, diploma and advanced diploma levels.

Whilst I would like to acknowledge the efforts and achievements of the staff of Public Sector Workforce Relations, the chief executives and public sector employees, workplace safety in the public sector is an ongoing priority that requires attention every day by everyone.

WIND ENERGY DEVELOPMENT

The Hon. M. PARNELL (14:48): My question is to the Minister for Regional Development about wind energy development. As Minister for Regional Development, what is the minister doing to ensure that wind energy development can occur in regional areas with the support of regional communities?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:48): I thank the honourable member for his most important question and, indeed, for highlighting the very important contribution that the Rann Labor government has made to alternative energy sources, in terms of both solar and wind. I think South Australia is one of the states leading the way in terms of its developments.

It is most important that we work with communities in developing these alternative energy sources. We know how important this is to the future of our planet in terms of CO_2 emissions and the problems that that is causing for the long-term security of our planet. It is critical that we develop alternate energy sources, and, of course, wind energy plays a very important role in that. As I said, I am very pleased that the honourable member has drawn attention to the fact that the Rann Labor government has led the way.

I think the statistics are that there was not one wind turbine, or certainly not a major wind turbine, existing prior to the Rann Labor government coming to power. Since then, a number have been built and, of course, are now making a significant contribution to our energy source. We have seen a recent case where the court has determined some issues of concern relating to wind turbines. The government will work with those decisions, in terms of future developments.

It is important to have the processes in place to ensure that scrutiny is available and, where there are public concerns, that there is a process for those to be heard in an independent way and for independent decisions to be handed down. That is what has occurred, and the Rann government will, as I said, work with all future developments with the result of those decisions in mind.

WIND ENERGY DEVELOPMENT

The Hon. M. PARNELL (14:51): What role can the minister play, as Minister for Regional Development, in helping to reconcile regional communities in relation to the often divisive topic of wind farms?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:51): It is encouraging people to engage. It is not just my responsibility as Minister for Regional Development: each and every member of the government is out there, continually, providing information to people and encouraging citizens to engage.

These are never straightforward matters. There is some level of controversy around wind turbines. However, it is critical to this planet—and as a member of the Greens I am sure that the honourable member will agree—that we develop and invest in alternative sources of energy. We would have our head in the sand if we were to say that the alternatives are not going to create challenges for us in some way, shape or form. Life is never that easy.

So, irrespective of future developments, even geothermal and solar, there are issues which the government and other appropriate regulatory bodies and agencies have to deal with. The work is fairly new. We are evolving and developing as we roll these things out. We are learning as we roll out these schemes and continue to develop. As I have said, we would have our head in the sand if we believed that there were not issues and challenges with any energy resource that we might want to develop.

Wind is providing a very important alternative source. The courts have determined an issue of concern. We will work with that. What I encourage everyone to do, not just those who have issues of concern but also those who are supportive of these developments, is to engage in the public processes and forums that are available to them.

BURNSIDE COUNCIL

The Hon. T.J. STEPHENS (14:53): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question regarding the Burnside council.

Leave granted.

The Hon. T.J. STEPHENS: On Thursday 7 July, in response to a question from the Hon. Robert Lucas regarding the Burnside council, the minister undertook to check whether any of the officers in his ministerial office had any communication with Labor lobbyist John Quirke, husband of former Burnside councillor Davina Quirke, about the inquiry by Mr MacPherson into the Burnside council. Accordingly, I ask: has the minister, or any officers in his ministerial office, had any communication with Labor lobbyist John Quirke, husband of former Burnside councillor Davina Quirke, about the inquiry by Mr MacPherson into the Burnside council?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:54): I think it is important that we put this whole issue into a bit of perspective. As we all know, from 2006 there were complaints into the Burnside Council. There were also all sorts of allegations, many of which were referred to the Anti-Corruption Branch. The Anti-Corruption Branch went through these allegations and found no substance to them.

It was well known that the Burnside council was dysfunctional because of the actions of some of the councillors—not all, but some of the councillors. What happened in 2009 when the chief executive resigned—

The Hon. T.J. Stephens: It was a pretty simple question that I asked.

The Hon. R.P. WORTLEY: The minister then launched an investigation into the council. This council——

Members interjecting:

The Hon. R.P. WORTLEY: You will get your answer, but I think we ought to put it in perspective, this whole issue.

The Hon. R.I. Lucas: Is this worth $500 an hour?

The Hon. T.J. Stephens: Didn't Mr Aiston tell you to address the microphone?

The Hon. R.I. Lucas: We want our money back!

The PRESIDENT: Order! The Hon. Mr Lucas should go back and read some of his answers in *Hansard* when he was the treasurer.

The Hon. R.P. WORTLEY: What happened was that an inquiry that was to take 12 weeks is now entering its third year.

The Hon. R.I. Lucas interjecting:

The Hon. R.P. WORTLEY: Mr President, I am quite happy to talk for 32 minutes. I am quite happy to do that, and I will if I have to.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY: Recently I became Minister for State/Local Government Relations and I was confronted with a Supreme Court judgement which determined that a number of the terms of reference were ruled invalid. What that meant was that it created quite a number of legal impediments to completing the report. I considered that I was not prepared to spend millions of dollars of taxpayers' money on a report that could take years to complete (if it ever was completed), so I made the decision to terminate the investigation.

I also wanted to assure the residents of Burnside that no allegations were going to be swept under the carpet, so I instructed the Crown Solicitor's Office to go through all the material and if there was any evidence of criminal activity to refer it to the DPP, bearing in mind that the DPP is an independent body; they can do whatever they want.

This is the course of action which is in the best interests of the ratepayers of Burnside and the taxpayers of South Australia. I, as minister, was not prepared to allow millions more dollars to be thrown down a black hole on an investigation that because of a legal—

Members interjecting:

The Hon. R.P. WORTLEY: I will get to Quirky in a minute, but I will finish what I have to say.

Members interjecting:

The Hon. R.P. WORTLEY: We now have a situation where the residents of Burnside can feel assured that if there are any allegations of criminality they will be referred to the DPP, an independent body which can then make a decision as to whether it wants to send any evidence off to the investigative body or not. In regard to John Quirke, I can assure you that neither myself nor my staff have had any contact with John Quirke over the Burnside issue.

The Hon. R.I. Lucas: Why didn't you say that in the first place?

The Hon. R.P. WORTLEY: I wanted to lead up to a climax; I wanted to get to a climax!

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Well, we have wasted a few more minutes of your question time; over to you.

Members interjecting:

The PRESIDENT: The honourable minister—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: The honourable minister Wortley has obviously been reading some of the Hon. Mr Lucas' old answers to questions, I think. The honourable minister.

ARKAROOLA WILDERNESS SANCTUARY

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:00): I table a copy of a ministerial statement relating to Arkaroola Wilderness Sanctuary made earlier today in another place by my colleague the Hon. Mike Rann.

EVANS, MR C.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:00): I table a copy of a ministerial statement relating to Cadel Evans made earlier today in another place by my colleague the Hon. Mike Rann.

QUESTION TIME

KANGAROO ISLAND DEVELOPMENT

The Hon. P. HOLLOWAY (15:00): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about Kangaroo Island.

Leave granted.

The Hon. P. HOLLOWAY: South Australia is fortunate to have places that are so remarkable that they are world renowned. One of those, of course, is Kangaroo Island, one of the icons of Australia, and a place that has become a favourite destination for honeymooners and travellers from Europe especially.

Members interjecting:

The PRESIDENT: Order!

The Hon. T.J. Stephens interjecting:

The PRESIDENT: Has the Hon. Mr Stephens finished?

The Hon. T.J. Stephens: Certainly, sir.

The PRESIDENT: The Hon. Mr Holloway.

The Hon. P. HOLLOWAY: Isn't it amazing, Mr President—

The PRESIDENT: You might want to start again.

The Hon. P. HOLLOWAY: —that in the British parliament over 600 members can listen in silence, but here 22 can't. South Australia is fortunate to have places that are so remarkable that they are well renowned, and one of those is, of course, Kangaroo Island, one of the icons of Australia, and a place which has become a favourite destination for honeymooners and travellers from Europe especially.

It also has a long history as the first place that immigrants settled in South Australia. The 175th anniversary of that first settlement on the island has been celebrated over the past few days. My question to the minister is: will she inform this council how the government has assisted Kangaroo Island recently? Perhaps she could also address some of those rather misleading comments form Mr Stephens while she is at it, too.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:02): I thank the honourable member for his important question. Indeed, like other members of cabinet, I was very pleased to be able to visit the island to mark the 175th anniversary of its formal settlement by the South Australia Company. Of course, while its first brush with European explorers was when it was discovered and named in 1802 by Matthew Flinders during his circumnavigation of Australia, its history is much longer than that.

Today, while it is no longer a whaling centre, it has a thriving agricultural industry and has been developing a niche market using its special geography and isolation to advantage and working to develop knowledge of the unique advantages of the island to market the produce of the island. Yesterday, it was a great pleasure to be able to visit the Island Pure Sheep Dairy and to see this business in operation. Milking sheep is not a very common thing in Australia, but I understand it does in fact have a long history in Europe.

This business has certainly carved out a niche in our culinary produce in South Australia. It produces not only sheep's milk cheese but also yoghurt products. It was fascinating to see the machinery used and the production facilities, and it was certainly a very interesting and enjoyable visit.

Of course, another one of the island's great strengths, as we know, is the distinction of the Ligurian bees. I was able to see the purpose-built premises at KI Honey, which is processing honey from its own hives as well as from other beekeepers on the island. I understand that it is also certified as organic, which gives it an additional market advantage.

Members would be aware that I have been visiting various regions throughout the state. This was the first occasion I have visited KI since becoming Minister for Regional Development, although I have visited Kangaroo Island several times in the past. It was a great opportunity to catch up with members of the RDA Committee, that is, the Adelaide Hills, Fleurieu and KI RDA. I was also able to sit down with the Mayor, Jane Bates, to discuss issues of concern to her about how she sees the island developing.

The Mayor and council have worked very positively with the state government, and that engagement has, I believe, resulted in some excellent results. I know that the release of the report by the Economic Development Board, 'Paradise Girt by Sea', and support for its recommendations have also been welcomed.

The board study noted the island's distinct advantages and the challenges arising, particularly from its geography; it is both close to large population centres and yet it is still quite wild. It obviously has an incredibly unique beauty and the potential to become Australia's fourth tourism icon.

The government has committed to assist the island to capitalise on its opportunities to strengthen its tourism market and its economic base in a multifaceted approach. Support has been announced for a series of initiatives which provide for better tourist experiences and infrastructure to support more tourism.

The state government will establish a single authority, supported by a board, led by the EDB Chairman, Raymond Spencer, to coordinate development on the island over the next five

years. Additional significant funds have also been committed, including $8 million over four years to improve key roads; $5 million towards the development of a trail for a five-day walk passing through some of the island's beautiful national reserves; $1.7 million for stage 2 of the Seal Bay boardwalk upgrade; $500,000 for two feasibility studies for renewable energy solutions to the power generation challenges; $500,000, through the Premier's Renewable Energy Fund, to provide solar power to a redeveloped airport; and $400,000 for a new landing point at Penneshaw jetty for tender vessels to move passengers between large cruise ships anchored offshore and the island.

I am very pleased that I have been able to announce a grant of $1.2 million, from the Regional Development Infrastructure Fund, to support the development of the ferry terminal at the wharf at Penneshaw, by KI SeaLink Pty Limited. This $3 million development will create a new passenger terminal, with public facilities and a visitor information centre, cafe and passenger lounge, etc. As a new gateway for the island, it will help support the planned increase in visitor numbers and provide a warmer welcome to both visitors and island residents.

I am advised that the development application for the new facilities has already been submitted to the council. The new two-storey building, which will have a covered air bridge, was expected to be completed by June 2011. As members would know, the RDIF supports critical regional infrastructure developments and allows eligible applicants to seek up to 50 per cent of a project's cost. I look forward to seeing the results of the investment in this unique part of South Australia. As I have said, I very much enjoyed the hospitality of the islanders.

KANGAROO ISLAND DEVELOPMENT

The Hon. R.L. BROKENSHIRE (15:09): I have a supplementary question. Whilst the minister was on the island, was the matter raised regarding the major problem for Kangaroo Island, namely, water gap, and what commitment, if it was raised, did the Minister for Regional Development make to fix this enormous problem and disadvantage to the island?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:09): I met with a number of people—as I said, RDA board members, the mayor and a number of industry people and members of the public—and I have to say that, during that visit, not one person raised with me the issue of water gap, to the best of my recollection.

FINES PAYMENT UNIT

The Hon. D.G.E. HOOD (15:09): I seek leave to make a brief explanation before asking the minister representing the Attorney-General a question about the Fines Payment Unit.

Leave granted.

The Hon. D.G.E. HOOD: Early this year I made an FOI request of the Courts Administration Authority asking for information on the total current debts owed by offenders to the Fines Payment Unit. The response, in a letter dated 25 February, indicated the total outstanding debt owed to the state amounted to some $199 million. Subsequent to that, on the Leon Byner radio program on 28 February this year, the Attorney-General promised a complete review of the Fines Payment Unit, and the Attorney noted (and I quote directly from the interview):

> It's...a matter that has concerned me for some time...what I've done is actually start off looking at the present system...we've got Kevin Osborne from the Economic Development Board, former Director of the Bendigo and Adelaide Bank. He's going to be sitting with my departmental officers and the Courts Admin people to work out a completely new structure for this. Here's what's on the table, though...should the Courts Admin Authority or indeed the courts be dealing with this matter at all as the main collection agency? I suspect not but I'll be interested in hearing what they say.

My questions to the minister are:

1. What has been the outcome of the review carried out by Mr Osborne?

2. What is the current fines total currently outstanding?

3. What immediate steps can the Attorney-General take to rein in this ever-increasing debt?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:11): I thank the honourable member for

his important questions and will refer them to the Attorney-General in another place and bring back a response.

BURNSIDE COUNCIL

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

Leave granted.

The Hon. R.I. LUCAS: The minister's handling of the Burnside Council issue has attracted some comment and considerable criticism. We are aware now that the taxpayers of South Australia are paying Channel 10 sports reporter Mark Aiston's company (mediainsider) $500 per hour to provide media training to minister Wortley. In an interview with the *Eastern Courier* Messenger on 8 July the minister was asked, 'Have you read the MacPherson report? Are you legally allowed to read it?' Minister Wortley's response was:

> I haven't read the report and I can't because there's a suppression order. It allows me to have a much more objective view and I can't take anyone's side.

In response to a series of further questions from media outlets too numerous to mention he was asked about this issue of reading the report. He stated the following to a number of media outlets as to why he could not read the report:

> Once you read the report you then have information in your own head which during these interviews I could let out and which would have me in breach of the suppression orders,

As I said, he repeated that explanation, believe it or not, to a number of media outlets. My questions to the minister are:

1. Who advised him that he was not legally allowed to read the report due to the suppression order?

2. When the minister told the media, and I quote again:

> Once you read the report you then have information in your own head which during these interviews I could let out and which would have me in breach of the suppression orders,

did Mr Mark Aiston provide him with that gem to use in media interviews, or was that all the minister's own work?

3. What has been the total cost of the media training provided by Mr Aiston's company (mediainsider) thus far?

4. Is the minister scheduled for further remedial media training by Mr Aiston's company in the future?

The PRESIDENT: Will the honourable minister respond to that funny sort of question?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:14): That deserves a response, and I actually thank the member for giving me the opportunity to respond. I do not think there would be a person in this room who has made statements that, in hindsight, if they had their time over again, they would not have made. I came out of the 5AA studio to a pack of media (a media pack) and I was in a jovial mood. If you look at it I was laughing and smiling. Just off the cuff I said, 'I haven't read the report because I might let something out that I don't know.' I made that comment. If I had my time over again—but you live and learn.

I have learnt from that mistake, and it will definitely not happen again. You can laugh about it all you want, that's fine, the joke's on me. I have had media training. I booked the media training on 5 July. I will read a quote from the Leader of the Opposition today, when she was asked what she thought of members of parliament having media training. She said:

> From the point of view of members of parliament, though I think it's appropriate that we do get some training, I've had to learn a lot on the job as I go through life, but learning where to look when you have cameras from different angles pointing at you and those sorts of things is not natural.

Even the opposition leader understands the need for media training. I would like to make the position quite clear right now. In many years as a union official I negotiated very many training courses for our members in the industry. I never once in 20 years had an employer say to me that they would not fund the training for their people to do their job.

I am up-front and honest about this. I have had the media training. I advise any person who becomes a minister or anyone who becomes a member of parliament to undertake media training. With regard to the cost, I will take it on notice and forward that in the near future.

BURNSIDE COUNCIL

The Hon. R.I. LUCAS (15:17): By way of supplementary question arising out of the minister's answer: why has the minister refused to answer the question as to who advised him that he was not legally allowed to read the report due to the suppression order?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:17): I am permitted, as the owner of that report and as the minister, to read that report. However, it is illegal under this suppression order to make any account of that in parliament. This is why I have been very careful not to make statements regarding any information. That is one reason I did not read it.

Members interjecting:

The Hon. R.P. WORTLEY: What comes as a surprise to these clowns over here: the reason I didn't read that report is, because of the court's ruling, where a number of the terms of reference were ruled invalid, a lot of the information gathered in accordance with those terms of reference is unlawful.

I have instructed the Crown Solicitor's Office to go through the material and to refer any evidence that suggests criminality to the DPP. One thing that stirs me about this whole debate is the fact that I seem to be the only one who respects the suppression orders handed out by the court. I would like to read out—

Members interjecting:

The Hon. R.P. WORTLEY: If you make any account of what is in that report it is a breach of the suppression orders. You can laugh, scream or call me a bitch if you wish. The reality is that there are a number of members in this chamber, including the Hon. Ms Bressington, the Hon. Mr Wade and the Hon. Mr Ridgway, who have all made accounts of that report and who are all in breach of the suppression order.

The Hon. A. Bressington: I have not read that report.

Members interjecting:

The Hon. A. BRESSINGTON: On a point of order, Mr President, I want the minister to withdraw that statement. I have not read the MacPherson report and I don't want that on the record.

The PRESIDENT: He didn't say you'd read it.

Members interjecting:

The Hon. A. Bressington: Did so.

Members interjecting:

The PRESIDENT: He didn't say you had read the report.

The Hon. R.P. WORTLEY: If the Hon. Ms Bressington would clear her ears and listen to what I say, we would not have half the problems we have got. I never said that she had read the report. I said that she has made accounts of what was in the report. That is a fact of life: you are in breach of the suppression orders. You ought to be ashamed of yourself. You have no respect for the courts of this land. You are so discredited. You spend far too much time with Lord Monckton; that's your problem! Far too much time with Lord Monckton!

The Hon. A. Bressington: You are full of shit!

The Hon. R.P. WORTLEY: Oh, oh, you are in breach of the suppression order.

The PRESIDENT: Order! The honourable minister.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order, the minister! The honourable Mr Hunter.

The Hon. I.K. HUNTER: Point of order, Mr President: I am not across the standing orders as much as I probably should be, but I understand that across-chamber interjections like that and responses are out of order.

The PRESIDENT: They certainly are, and the honourable Ms Bressington will withdraw that comment. Sit down!

The Hon. A. Bressington: Which one?

The PRESIDENT: The Hon. Ms Bressington will withdraw the words—

The Hon. A. Bressington: Mr President, I recall a time in this chamber—

The PRESIDENT: Order!

The Hon. A. Bressington: —when the Hon. Russell Wortley said—

The PRESIDENT: Order!

The Hon. A. Bressington: —'The Hon. Ann Bressington doesn't know jack shit about this particular situation.' So, good for him: good for me.

BRESSINGTON, HON. A., NAMING

The PRESIDENT: Order! The Hon. Ms Bressington will withdraw. I name the Hon. Ms Bressington.

The Hon. A. Bressington: What does that mean?

The PRESIDENT: I am not going to put up with this behaviour in here.

BRESSINGTON, HON. A., SUSPENSION

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:21): I move:

That the Hon. Ann Bressington be suspended from the service of the council.

The PRESIDENT: Is that seconded?

The Hon. J.M. GAZZOLA: Seconded.

The PRESIDENT: I put it: all in favour say—

The Hon. R.I. LUCAS: Is that motion able to be debated at all, Mr President?

The PRESIDENT: No; I am putting it.

The Hon. R.I. LUCAS: No. There are standing orders. I am seeking your guidance on the standing orders as to whether members are permitted to speak. This is not a normal set of circumstances, Mr President—

The PRESIDENT: No; it does not happen here very often.

The Hon. R.I. LUCAS: Indeed. For what is a relatively, in my judgement, minor indiscretion for a member to be named, I am seeking your guidance as to what the standing orders allow in relation to members being able to address the issues. Certainly, in the House of Assembly, Mr President—

The Hon. I.K. HUNTER: Point of order, Mr President.

The PRESIDENT: Point of order.

The Hon. I.K. HUNTER: The Hon. Mr Lucas is debating the question that he has directed to you.

The PRESIDENT: It has been put without discussion and been determined. It has been seconded. I put it: all in favour say aye, against say no. I think the ayes have it.

Motion carried.

The PRESIDENT: The Hon. Ms Bressington is suspended for the rest of the sitting.

The Hon. R.P. WORTLEY: Can I finish my answer?

The PRESIDENT: Wait until the member leaves.

The Hon. Ms Bressington having withdrawn from the chamber:

The Hon. R.I. LUCAS: Point of order, Mr President.

The PRESIDENT: The Hon. Mr Lucas has a point of order.

The Hon. R.I. LUCAS: Why did you indicate that she was suspended for the rest of the sitting as opposed to the rest of the sitting day?

The PRESIDENT: The rest of the sitting?

The Hon. R.I. LUCAS: You said 'the rest of the sitting', which is four sitting days. Why did you say that—

The PRESIDENT: No, I didn't. I did not say that.

The Hon. R.I. LUCAS: —when it should be 'the rest of the sitting day'?

The PRESIDENT: Day.

The Hon. R.I. LUCAS: Well, it is a big difference, Mr President.

The PRESIDENT: Is it? It is only a day.

The Hon. R.I. LUCAS: Well, it is three days' difference.

The PRESIDENT: No, I did not say 'days', I said 'day'.

The Hon. R.I. LUCAS: You said 'rest of the sitting'.

The PRESIDENT: I said 'rest of the sitting day'.

The Hon. R.I. LUCAS: You said 'rest of the sitting'.

The PRESIDENT: The sitting means the day.

The Hon. R.I. LUCAS: The *Hansard* will indicate what you said, Mr President.

The PRESIDENT: Be careful, or you will be next.

The Hon. R.I. LUCAS: You can't change the *Hansard.*

The PRESIDENT: The Hon. Mr Wortley.

QUESTION TIME

BURNSIDE COUNCIL

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:23): As we are all aware, the Supreme Court has put a suppression order over this whole issue, over this report, and it is actually in breach of the suppression order to make an account of what is in the report. I would just like to read out some statements from various members here. The Hon. Ms Bressington, in a question to the minister (me) in question time on 7 July, said:

> Given the seriousness of the alleged criminal conduct and corruption found by Mr MacPherson, will the minister refer the draft report to the Anti-Corruption Branch post haste so that those who did engage in corruption and offended against their positions can be held accountable for their conduct?

That is clearly making reference to what she is purporting is in the report. That is in breach of the suppression order. Then, the Hon. Mr Wade on radio on Tuesday 14, said:

> There have certainly been reports to me from people who have read the report that there are draft recommendations that suggest criminal charges. It has been suggested to me there are eight people who have suggested criminal charges to be laid against them.

This is clearly in breach of the suppression order, and you want—

The Hon. P. Holloway interjecting:

The Hon. R.P. WORTLEY: That is exactly right. This is the man who wants to be Attorney-General, and he has absolutely no regard for the decision of the court. You are supposed

to be representing the people of this state. Anyway, we will go on. On 7 July, during question time, the Hon. Mr Ridgway said:

> Is it not the case that Mr MacPherson's draft report included a range of draft findings, including that charges be laid against a number of persons, and that those draft findings have not been considered and rejected by the Anti-Corruption Branch?

This is another clear breach of the suppression order. All I can say to everyone in this chamber is: let us respect the decision of the court; there is a suppression order. Like myself, honour those suppression orders.

BURNSIDE COUNCIL

The Hon. S.G. WADE (15:25): I ask the minister: does the fact that the minister can remember the day he booked his media training as 5 July (three weeks ago) but cannot remember the date he forwarded the draft MacPherson report to the police commissioner (last week) show that he has more regard for his media adviser than the police commissioner?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:26): My main concern is that the police had written to me, inviting me to send them a copy of the draft, and I did so.

BURNSIDE COUNCIL

The Hon. R.I. LUCAS (15:26): A question arising out of the answer. Given the minister's response, does he also therefore believe that, when Mr Atkinson said on ABC radio that the report was unremarkable and included reference to one prominent Labor figure, under his rules and interpretation, he also breached a suppression order?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:26): I cannot speak for Michael Atkinson. If the member wants to find out, go and speak to him yourself or get someone in the lower house to ask him.

BURNSIDE COUNCIL

The Hon. R.I. LUCAS (15:26): I have a supplementary question arising out of the minister's answer. Given the minister was prepared to make comment and assertions about statements made by the Hon. Ms Bressington, the Hon. Mr Wade and the Hon. Mr Ridgway, why is he not prepared to make the same judgements about the member for Croydon, Mr Atkinson?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:27): It is not my role to ask Mr Atkinson anything. I am in this chamber. I have people who are responsible in the opposition for handling this issue, and I brought to the attention of this chamber the fact that he has breached the suppression orders, as with a number of others.

SAFE WORK AWARDS

The Hon. J.M. GAZZOLA (15:27): My question is to the Minister for Industrial Relations. Will the minister please provide the chamber with details of nominations for the 2011 Safe Work Awards?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:27): I thank the member for his very important question. As you know, the Labor Party is all about keeping workplaces safe. It is my great pleasure to inform the house that a record 80 nominations have been received for this year's Safe Work Awards in South Australia, a 25 per cent increase on the previous best.

Since 1999, the Safe Work Awards have sought to highlight the fine achievements of South Australians in occupational health, safety and welfare. The awards have grown dramatically in stature since then as community expectations of workplace safety have risen and employers realise that a commitment to safe work reaps benefits in productivity, morale and status as an employer of choice. This new record of 80 nominations can well be seen as a major endorsement of the value of the awards.

It was always intended that the Safe Work Awards be recognised as a pinnacle of achievement in workplace safety, and the judging process as a means of benchmarking safety performance. One previous winner and a major player in the resources industry said in 2008 that it was a better company for the experience of entering the Safe Work Awards. This outstanding

number of nominations shows how seriously South Australian workplaces regard their safety performance and how keen they are to put themselves to the test.

All businesses large and small have great demands on their time and resources, so the fact that so many entrants made the time and effort to enter the Safe Work Awards is a testament to their commitment to South Australia's Strategic Plan target of safer workplaces. As has been the case in previous years, the category of Best Solution to an Identified Workplace Health and Safety Issue is the most popular, attracting 37 nominations. This category highlights the innovative and collaborative solutions applied in South Australian workplaces to safety issues.

There are 20 nominations for Best Individual Contribution to Workplace Health and Safety, and this figure illustrates how some individuals are leading workplace safety. Thirteen of this year's entrants are from regional areas of the state, and I applaud their initiative in stepping up to the challenge. The judging panel, consisting of representatives from SafeWork SA, WorkCover SA, SA Unions and Business SA, will evaluate the finalists, which will include site visits and performance checks through SafeWork SA and WorkCover records.

The finalists and winners will then be announced at the awards event at the Adelaide Convention Centre on Friday 28 October, and I look forward to meeting as many of the entrants as possible on that occasion. The South Australian winners are automatically nominated for the national Safe Work Australia Awards the following April. This year we had one national winner, the South Australian Courts Administration Authority, in the category of Best Workplace Health and Safety Management System, Public Sector.

Two other South Australian finalists earned high commendations: Saints Tyre and Auto of Salisbury Plain was highly commended in the category of Best Workplace Health and Safety Practice in Small Business, and Frank Naso was highly commended in the category of Best Individual Contribution to Workplace Health and Safety. Needless to say, we look forward to seeing if the successful entrants from this year's awards can join a growing and illustrious list of South Australian national award winners.

KANGAROO ISLAND DEVELOPMENT

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:31): I seek leave to make a personal explanation.

Leave granted.

The Hon. G.E. GAGO: In answer to a supplementary question of the Hon. Robert Brokenshire during question time, I stated that, to the best of my knowledge, the issue of water gap had not been raised with me during my recent Kangaroo Island visit. However, I now wish to put on the record that I have been reminded that I met and spoke with many different individuals during a two-hour public forum, and the issue of water gap was raised by one person.

The discussion focused on the Economic Development Board's report, which has looked at this issue and put forward recommendations to increase the number of people coming to the island, thereby helping to strengthen transport options. It was only a very brief reference that was made but, nonetheless, I have been reminded that the issue was raised, albeit briefly, and therefore I would like to set the record straight.

KLEMZIG GROUNDWATER TESTING

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:32): I table a copy of a ministerial statement relating to Klemzig groundwater testing made earlier today in another place by my colleague the Hon. Paul Caica.

SITTINGS AND BUSINESS

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:33): I move:

That Orders of the Day: Government Business Nos 1 to 7 inclusive be adjourned until the next day of sitting and that Orders of the Day: Government Business Nos 7, 8 and 9 be considered after Orders of the Day: Government Business No. 10.

The PRESIDENT: I think the minister said—

The Hon. R.I. LUCAS: I rise on a point of order. The minister moved that 1 to 7 be—I think she has got it wrong again. It is probably meant to be 1 to 6, I think.

The Hon. G.E. GAGO: I thank the honourable member for drawing my error to my attention.

The Hon. R.I. Lucas: Thank God we're helping you. You can't do it yourself.

The Hon. G.E. GAGO: Oh to be so perfect as the Hon. Robert Lucas, failed former treasurer!

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Failed former treasurer, who was never able to bring one budget into surplus.

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order, the Hon. Mr Lucas! Either sit in your place or leave the chamber.

The Hon. G.E. GAGO: Not one budget: all deficit budgets. I wish I could be as perfect as the former failed treasurer. But anyway, I do thank him: at least he knows the figure 7. I move:

That Orders of the Day: Government Business Nos 1 through to 6 inclusive be adjourned until the next day of sitting and that Orders of the Day: Government Business Nos 7, 8 and 9 be considered after Orders of the Day: Government Business No. 10.

Motion carried.

STATUTES AMENDMENT (BUDGET 2011) BILL

Adjourned debate on second reading.

(Continued from 6 July 2011.)

The Hon. T.A. FRANKS (15:34): I rise very briefly to address the Statutes Amendment (Budget 2011) Bill. I leave the commentary of the Greens on the changes to court enforcement fees to my honourable colleague who holds the attorney-general portfolio; however, I wish to congratulate the government on their turnaround from their treatment of public sector workers in this state budget.

As we know, in the previous budget the then treasurer Mr Foley waged an attack on our public sector that was unprecedented by a Labor government and, of course, that has been seen as a role for the current New South Wales Liberal government to adopt. Both former treasurer Foley and the O'Farrell government in New South Wales have found that public support for valuable public sector workers is high in Australia, a country which values the valuable work that our nurses, our firefighters, our teachers, our health professionals and our child protection workers, among so many others, do for our social capital in this country.

I welcome the backdown by Treasurer Snelling to ensure that some legal entitlements are reinstated. I hope that is one step towards a more productive way of working with the public sector in this state from this Labor government, although I am concerned that there are several hundred more jobs to go and that certainly the 'no forced redundancies' policy which the Rann government took to the last election has been put on the table for the 2014 election by Treasurer Snelling.

We know that at every election issues are fought and won on the value that people judge what the different political parties put forward, but the idea of having a bash at the public sector as some sort of fat cat institution when we know that, in fact, those cuts have hit 44 workers in the poverty unit of the Social Inclusion Unit and those 44 financial counsellors are now no longer able to help the poorest of the poor in our state, yet nobody is there to pick up the pieces, because it is rightly the work of the public sector. The reason we have public services and the reason we have government is that we do not have a society that leaves people behind in Australia.

With those words I say that it is at their own peril that a future premier would take a similar tactic in the treatment of public sector workers and, in terms of a Labor government or opposition, it is the party of the workers, so taking things out of the realm of the Industrial Relations Commission is an act that it takes at its own peril; it is almost white-anting its own party from the very core of what it should stand up for.

As I say, however, the Labor Party is no Robinson Crusoe in its approach to public sector workers and the New South Wales O'Farrell government will also learn at its peril that to take such a step is not something that is, in the long term, popular with people. While they might like the idea of some budget cuts, they do not like the idea of service cuts.

With that, I commend the step forward by the current Treasurer Snelling and I commend the bill, with the exception that we will address the court costs issue as we further debate the bill in our second and third reading.

The Hon. J.A. DARLEY (15:39): I rise briefly to speak on the Statutes Amendment (Budget 2011) Bill and to add my support to some of the comments made by other honourable members including the Hon. Stephen Wade, the Hon. David Ridgway, the Hon. Ann Bressington, the Hon. Mark Parnell, the Hon. Kelly Vincent and the Hon. Tammy Franks. As we all know, the bill proposes four main changes.

The first is the phasing out of the First Homeowner's Grant, the second is the introduction of new fees for holders of liquor licenses, the third is the reversal of arrangements to public servants' recreation leave loading entitlements announced in 2010, and the fourth is the introduction of a cap on court-awarded costs against the police through chances to the Summary Procedures Act.

Like many of my colleagues, I welcome measures in relation to public servants' recreation leave loading entitlements; however, I too am opposed to changes to the Summary Procedures Act with respect to the issue of cost, and in particular clause 189A of the bill.

The President of the Law Society, Mr Ralph Bönig, and the South Australian President of the Australian Lawyers Alliance, Mr Tony Kerin, have been extremely vocal about this matter, and I share the concerns they have raised with members of parliament through their written submissions.

The Hon. Stephen Wade has already placed on the record much of the detail in those submissions, and I will not repeat what has already been said, other than to refer to one quote by Mr Kerin which I think sums up the reason for opposing these measures. In his submission, Mr Kerin states:

> The ability to claim costs holds the police prosecutions accountable. Firstly because it is taxpayers' funds that launch the prosecution and carry it through, and secondly because costs are a deterrent to prosecutions that should not be brought. It is also an essential tool in the administration of justice. Matters resolve because of a threat of costs on both sides. To remove it from one will cause significant imbalance to the ability to resolve matters at that level in an expeditious, fair and just manner.

It is a sad state of affairs that this government should consider it fair and just to attempt to erode the rights of South Australians in the name of savings, and to undermine the justice system in such a blatant and impalpable manner. I indicate that I will be supporting the proposed amendments of the Hon. Stephen Wade on this issue, and I commend him for his efforts.

Lastly, and although not dealt directly related to this bill, I might also make mention of my opposition to the government's proposal to license SA Lotteries to a private operator. Not only does this budget measure have the potential to lead to an increase in gambling addiction through more aggressive marketing and promotions of gambling but it also threatens to destroy the economic viability of South Australian newsagents.

My office has received numerous complaints from newsagents who are concerned about the damaging effects that this measure would have on their businesses, particularly given that so many are already struggling to survive. I will certainly be raising this issue further on their behalf, and opposing any government proposal to license SA Lotteries. With that, I support the Budget Bill.

The Hon. J.M.A. LENSINK (15:42): I will make a few remarks in relation to the liquor licensing aspect of this particular bill (it being the companion to the Appropriation Bill which we are debating at the same time). I just point out to honourable members and readers of *Hansard* that this initiative, if it can be called that, is really just another way for the government to put a tax on licensees, and was rather sneakily put into this particular bill, rather than have it as part of other liquor licensing 'reforms'. The government, being aware that the opposition has honoured the convention that it does not block budgetary measures, has therefore placed it into this particular piece of legislation.

I would like to have the government provide to us an update on what the status of that is, and whether they have an indicative level of what the different fees are. We have been advised that there will be different levels of fees for licensees, and that smaller licensees will have fairly minimal

fees which, to me, indicates that, given the government is raising some quantum of several million dollars from this measure, larger licensees will therefore have larger annual fees. So, I would like a reasonable thorough update on what the status is in terms of timing of how those negotiations are going, and if we can get some indication of what those fees are for the different licence classes.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:45): There being no further second reading contributions, I take this opportunity to thank honourable members for their contribution to the second reading debate of this bill. It is clear that the chief area of controversy relates to clause 18, the proposal to amend the cost provisions of the Summary Procedure Act. Several members have expressed the view that costs should ordinarily be awarded to a successful defendant in a police prosecution.

I point out that South Australia is not the first state to propose legislation along these lines. The amendments proposed here are similar to the law in three other states. As members would realise, the provisions in this bill are modelled on the Queensland Justices Act 1886. A comparable provision exists in New South Wales under the Criminal Procedure Act, and in Tasmania under the Costs in Criminal Cases Act.

Consideration of whether the accused was acquitted on a technicality, to which some members objected, occurs under the Queensland provisions. Similarly, the Tasmanian law takes notice of whether or not the accused established that he was not guilty of the offence. It is also a statutory consideration in the Northern Territory whether, despite evidence of guilt, the defendant was entitled to acquittal because of a minor procedural irregularity.

Although it is fair to say that different law reform bodies have reached different conclusions on this question, I point out that the Western Australian Law Reform Commission, in 1999, published a report in which it recommended that Western Australian law should be amended to stop the awarding of costs in summary prosecutions.

The commission noted that, at common law, the state, in criminal matters, neither pays nor receives costs and that this position is altered only by legislation. The commission found that the distinction between costs in summary matters and in the higher courts was artificial and could not be justified. The commission said:

> Our reference to this Report was to make recommendations which would assist in making the justice system comprehensible, certain and reasonably expeditious, while not sacrificing fairness nor justice, nor overlooking the special considerations which need to be brought to bear in criminal matters...We are now of the view that these ends are best achieved by making all criminal jurisdiction 'no cost'.

I feel sure that no law reform commissioner in Australia would have been recommending a change to the law that would, as some members sought to suggest, cut down the presumption of innocence, or any other fundamental right, of an accused person. Although the legal profession in this state raises the alarm, its colleagues in three other states are already working with comparable systems. The proposals are defensible, as the WA Law Reform Commission report shows.

Again, I thank honourable members for their contribution. If there are any questions which have been raised to which I have not responded at this point in time, I assure members that I am happy to do that through the committee stage of the bill.

Bill read a second time.

In committee.

Clauses 1 to 17 passed.

Clause 18.

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

Page 9, lines 14 to 37 and page 10, lines 1 to 32 [clause 18, inserted section 189A]—

Delete inserted section 189A

I do not intend to speak for long. I explained the opposition's position in great detail at the second reading stage. However, I think it is appropriate to remind members of the basic tenet of the opposition's argument, which is that this provision is an inappropriate amendment of the proceedings for summary proceedings in our criminal jurisdiction. I remind members of the very

strong arguments put by the Law Society and the Australian Lawyers Alliance, and I remind honourable members to reflect on the advocacy of those bodies.

It is not unusual for members to receive representations and for them then to be left to lie, but I have been impressed with the passion of the law stakeholders and in particular I acknowledge the advocacy of Mr Ralph Bönig, the President of the Law Society, and Mr Tony Kerin of the Australian Lawyers Alliance. Far from sending out a letter and waiting to see what *Hansard* showed some months later, these two individuals, plus a range of legal stakeholder bodies, have been vociferous in their advocacy, alerting us at any point where they feared that there were concerns in relation to the progress of this discussion.

We are doubly convinced that the points that the Law Society and the Australian Lawyers Alliance made are valid. I took the liberty of quoting their letters at length in my second reading contribution, and for the minister on behalf of the Attorney-General to remind us that a law reform body 13 years ago thought that it was a good idea and that some other jurisdictions have comparable legislation—whatever that means; it was a fairly late briefing, I thought—is hardly a convincing rebuttal of the substantive points that the legal stakeholders have made.

I remind the council that we believe it is not only a significant infringement on the legal rights of South Australians but it also risks what I would call cost-shifting within the public sector. In my view, considering that a significant number of defendants in the criminal jurisdiction are represented by lawyers appointed and funded by the Legal Services Commission, there is a risk of the police, if you like, making a saving at the expense of the Legal Services Commission. I draw the attention of honourable members to the *Hansard* of the estimates committee where an opposition member raised this very point and the Attorney-General was not able to answer.

We also believe that it is not in the interests of the police for this reform to be made because we believe it undermines the incentives towards quality prosecution services. As the Law Society highlighted in its correspondence, it undermines a number of fundamental rights, including the right to silence, and there is the risk—I do not know if the Law Society made this point but I understand that there is also an increased risk of civil actions against SAPOL from lawyers seeking costs. I speak briefly just to remind members of the substantial arguments that have been put before us by legal stakeholders, to thank them on our behalf for their representations and to urge honourable members, in the light of the wisdom of those bodies, to support the amendment that I have moved.

The Hon. G.E. GAGO: The government rises to oppose this amendment. This amendment would delete proposed new section 189A, being the provision that would reduce the courts' present discretion to award legal costs to a successful defendant. The government intends that costs should no longer simply follow the event in summary prosecutions and, instead, costs should only be awarded where the court is satisfied that it is proper to make an order, having regard to all relevant circumstances including those listed in proposed new section 189A(2).

Further, where proper reasons do exist, costs should normally be limited to the applicable scale of costs only. This is not an unreasonable proposal; it is similar to the law already operating in Queensland and comparable with provisions in New South Wales and Tasmania, as I have already put on the record. It is consistent with the practice in our higher courts, where costs are normally awarded in criminal cases, and the government's proposal is something that SAPOL supports. That is because it supports an equitable cost regime within the inferior and superior courts, so SAPOL is in support of the government's position. With those few words, the government opposes the amendment.

The Hon. M. PARNELL: The Greens are supporting the amendment for all the reasons I set out in my second reading contribution.

The Hon. J.A. DARLEY: I will be supporting the amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:57): I move:

That this bill be now read a third time.

Bill read a third time and passed.

APPROPRIATION BILL

Adjourned debate on second reading.

(Continued from 7 July 2011.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:59): I rise to speak to the Appropriation Bill 2011. The state budget before us today is a surrender document. Robert E. Lee signed his surrender at Appomattox. The Japanese foreign minister and the chief of the army put their signatures on the instrument of surrender aboard the *USS Missouri* in Tokyo Bay. The Labor government of South Australia surrendered the last of its economic credibility in Parliament House on 9 June, when Treasurer Jack Snelling delivered his budget speech.

But the fault is not Mr Snelling's alone. The seeds of defeat were sown by the worst treasurer this state has ever seen—a man with limited talent and even less economic credibility; a man who has driven this state over a cliff and who has the temerity to boast about the wreckage he has caused. Of course, I am speaking about the Hon. Kevin Foley.

Now, it must be said that holding that position of treasurer—in fact, any portfolio—continuously for nine years is quite an achievement in modern Australian politics, and, Mr Foley should be congratulated for that. He should also thank his right wing Labor heavies who tolerated him for so long and who helped to keep in him that position. But who else could ring up a $22,000 personal mobile phone bill and simultaneously tell South Australians to pay it, while slashing and burning the public sector, racking up state taxes and charges and saying that taxpayers needed a horror budget to save money.

Who else would spend more than $80,000 on a junket to the United States this year, one of the more than 30 taxpayer-funded overseas trips? He stayed at the Waldorf Astoria, but, of course, nothing but the best for Mr Foley, when he is asking his electors of Port Adelaide to cough up for the tab.

From Port Adelaide to Ramsey, Cheltenham, Croydon, Enfield and Taylor, in each of the state's 47 electorates—but mostly in Labor electorates—Labor's economic vandalism is leaving a legacy of social dislocation, missed opportunities, higher taxes, fewer services and crippling the people who can least afford to pay. It is a truism that state or federal treasurers have less control over their income than they do over their expenditure.

Income is limited by the taxation base and its level of taxation. In this respect, of course, the Labor government has squeezed blood from a stone. Under Kevin Foley South Australia has become the highest-taxed state in the country, and this budget—the one in front of us today—makes it even worse. Rises in taxes and charges, and in utilities, will cost the average household about $750 extra this year while services will actually be cut.

But the underlying problem with Mr Foley's mismanagement is in his expenditure. As my grandfather once told me, it is not how much money you earn that makes you rich it is how much you save, and, in fact, it is how much you do not spend—but Kevin Foley has been spending, not saving. Jack Snelling is continuing in that same vein, and they have both been spending like there is no tomorrow, and for him, of course, that is, Kevin Foley, there is no tomorrow. The ex-treasurer has been hunting for a job in the private sector, but so far without success.

Less than 12 months ago he was there at the Press Club boasting that he had found a new lease of political life and that he intended to stay in parliament until the 2018 election. 'I am trying to be the best Treasurer I can,' he said. Well, he tried. He is, as we know, very trying, but the best he could do was to fail. In 2009 the Auditor-General found:

> ...over the past six years the state has received large amounts of unbudgeted revenues that enabled net operating surpluses.

The year before the Auditor-General said:

> The state may have developed a culture of expecting growing revenues to continue to support increasing expenses.

And in the year before that, in 2007-08, here is what the Auditor-General said:

> The state has received very large amounts of unbudgeted revenues.

Couple that with the warning from the 2005-06 Auditor-General's Report, which said:

> Given the forecast expectation that such a revenue growth may not be sustained, control of expenses will be important. The state has benefited from sustained strength in both the local and national economy which resulted in unbudgeted revenue gains covering expenditure increases...The government has benefited from substantial windfall property taxation revenue and from higher than budgeted commonwealth current grants, particularly from the GST revenues.

Really, what does that mean, and what does that mean in language that even the Hon. Kevin Foley can understand? It means that, in the many consecutive years, the state had higher than expected revenues. These revenues had to cover growing expenses, and expenses were growing out of control.

It was not just Mr Foley's phone bill or his lavish rooms in Washington and New York while he enjoyed the nightclubs and the nightlife, over $1.5 million of hard-earned South Australian taxpayers' money has been spent by Kevin Foley on overseas trips. That did not help, but the real problem was the runaway bills. In nine out of 10 budgets actual spending exceeded the budgeted spending. In other words, in nine out of 10 years, he was unable to control his spending. In fact, I blame all the ministers of the Rann Labor government during that whole period. They all need to be held to account for being in control of our economy, our state spending and our state taxes. In nine out of the 10 budgets, they managed to blow the bank every year.

Some examples are: the $1.7 billion hospital, which now becomes a $3.32 billion hospital; the Adelaide Oval, at $450 million—not a penny more—then got up to $535 million, and rising; and the state debt also keeps rising. Kevin Foley spent nine years sending this state deeper and deeper into debt. So, what is the government's response? They sell the very things that make us money, things like the income producing forests in the South-East, for example. More than a century of forward rotations are to be sold. This is the worst possible time to be engaged in this sort of foolishness.

The forestry industry employs 3,500 people directly and double that number indirectly, and it accounts for almost 50 per cent of employment in the Lower South-East. It earns money for the South-East, for the South Australian taxpayers, and it also pays a dividend to the state government. We will not make any money from the long-term sale; it will cost us millions—tens of millions.

The hardware industry warned that new homes will cost 30 per cent more to build if the rotations were sold overseas. Mount Gambier mayor, Mr Steve Perryman, District Council of Grant mayor, Richard Sage, and Wattle Range Council mayor, Mr Peter Gandolfi, say the sale puts the jobs of 600 timber industries and 3,000 contractors—and many more—at risk. Meanwhile, the sale of the forest harvesting rights could strip the state of one of its best bushfire protections.

The timber industry said that South Australia would be left exposed to increased fire dangers. The industry warns that firefighting resource cutbacks, the abolishment of volunteer cleanups from community forests and a plan to convert the Adelaide forests into residential precincts will lead to dramatically increased bushfire risks.

ForestrySA currently funds its own fire protection services, training and monitoring, which could all be lost through the forward sale of three rotations. If it disappears through lack of funding, the community could well be at risk. ForestrySA has teams of trained firefighters manning a fleet of 12 of the state's most capable firefighting trucks. With fire dangers, the trucks and crews are stationed in the field as a first response strike force against bushfires.

Mayor Perryman is concerned—and so is the community—that lives and property will not be properly protected on catastrophic fire days, which brings me to the former the member for Mount Gambier, Rory McEwen. I read in *The Border Watch*—a very good paper, I might add—that Mr McEwen is now saying that forests should not be forward sold. Well, he is a little late. The decision to sell the forests was forecast in 2008, when Mr McEwen was a cabinet minister; in fact, he was the minister for forests.

I have gone to the Parliamentary Library just down the corridor and asked them to find everything that Mr McEwen had said in support of ForestrySA and the jobs from the Mid-Year Budget Review until the 2010 election. They searched the library's newspapers, radio, TV clips and databases, did a Google search of news and a search of *The Border Watch.* They found one article—only one. Do you know what it said? It reported that, in February last year, the Treasurer Kevin Foley said investigations were continuing after the government decided in 2008—when Rory was the minister—to consider selling two to three timber cycles up-front instead of continuing short-term contracts.

In January, of course, Rory said he was wrong to have agreed to the investigation when he was minister for forests. Yes, he was wrong then and he is wrong now. By his complicity and his silence, and by not fighting this crazy plan from the outset, he has betrayed his electorate and the people of South Australia. He has surrendered the forests of the people, and the people of Mount Gambier, to Kevin Foley's budget axe. Then, of course, he left parliament while Kevin Foley ringbarked the South-East.

Earlier this year, just as he was being dumped as treasurer and deputy premier, the *Advertiser* editorialised about Kevin Foley as follows:

> Mr Foley has won admirers and detractors in his long stint, but he has been a good Treasurer. He will be remembered as a man who restored public faith in Labor's ability to manage the economy after the State Bank debacle.

Well, *The Advertiser* is wrong. Kevin Foley has been a bad treasurer, an appalling treasurer, who has sent this state backwards. He will be remembered as a man who lost the public's faith over Labor's inability to manage the economy. He will be remembered as a man who sold South Australia short and the man who gave up. A man defeated by the rigours of the job, a man who ruined and squandered every opportunity. This is a shameful budget, a legacy of a man who surrendered to his own inadequacies.

The Hon. CARMEL ZOLLO (16:11): I am certain that all will ignore the tosh placed on the record by the Hon. David Ridgway in relation to the former treasurer, the Hon. Kevin Foley, in the other place. I suspect that those opposite begrudgingly respect the Hon. Kevin Foley's commitment to see the state's AAA credit rating retained. Indeed, it is interesting that those opposite even disagree with *The Advertiser*. I suspect that does not happen too often.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

The Hon. CARMEL ZOLLO: I am sure those words do not come out of your mouth.

The ACTING PRESIDENT: I suggest the Hon. Ms Zollo stick to her text.

The Hon. CARMEL ZOLLO: I do not think I appreciate that, Mr Acting President. I am allowed to make comments in relation to what I am speaking about.

The ACTING PRESIDENT: The Hon. Ms Zollo should not respond to interjections; that was the point I was making.

The Hon. CARMEL ZOLLO: I was actually responding to what the Hon. David Ridgway had to say in his speech.

The ACTING PRESIDENT: Well, you should proceed.

The Hon. CARMEL ZOLLO: Thank you, Mr Acting President. I rise in support of the Appropriation Bill before us. As the Treasurer has alluded to in the other place, we are still operating in challenging economic times, with some sectors severely impacted, especially by the high Australian dollar and reduction in consumer spending. This has meant that the state revenue has been reduced by approximately $650 million on previous forward estimates and as a result the government has had to make hard decisions to ensure that the budget returns to surplus in 2012-13.

While this budget shows the government's commitment to strong fiscal discipline, it also emphasises the Labor government's commitment to invest in South Australia's future. The savings measures have been well publicised, namely, that the public sector will be reduced by 400 full-time equivalent public sector employees over the next two years. This will result in a saving of approximately $31 million per year.

It is the government's intention that the $8,000 First Home Bonus Grant will be scaled back to $4,000, ending in 2013-14. This will enable—

The Hon. D.W. Ridgway interjecting:

The Hon. CARMEL ZOLLO: Yes, I appreciate that. I actually made these notes the other week. This is going to enable cost savings of about $20 million over four years; however, the First Home Bonus Grant will still apply. As Treasurer Snelling has pointed out, the government believed it did not really have the desired effect.

The savings will also extend to major infrastructure projects. This will be achieved by delaying projects such as: the plenary building, Adelaide Convention Centre, a saving of $107.8 million over the next four years; the Outer Harbour rail electrification delayed until 2015-16, $192 million over four years; the Queen Elizabeth Hospital stage 3A will now start in 2013-14, a reduction of $30 million; and the Noarlunga health service redevelopment will now begin in 2013-14, resulting in savings of $24 million over the next four years.

In relation to infrastructure, before the Rann government came to office in 2002 South Australia was a state that was quickly being left behind. The investment this government has made to improve the infrastructure of the state will allow it to prosper well into the 21st century and will allow future generations of South Australians to reap the rewards of this investment.

The government's commitment to this vision has continued in this budget. The Treasurer has detailed some $9 billion worth of infrastructure spending over the next four years. This includes spending on: electrification of the Gawler rail line, $125 million; the South Road Superway, $843 million; the Seaford rail extension, $291 million; the Police Academy redevelopment, $53 million; and the Adelaide water interconnection system (which will allow all of Adelaide to access water from the desalination plant), $403 million. These upgrades also include rectifying the mistakes of the previous Liberal government by duplicating the Southern Expressway to allow traffic to flow both ways—certainly a novel idea—enabling economic benefits to flow to southern Adelaide.

This is all on top of the building of the new Royal Adelaide Hospital which will revolutionise health care in this state. In relation to health spending, one of the defining achievements of this budget will be the improvements to be made to the already high standard of health care that is currently enjoyed by South Australians—in particular, of course, the building of the Royal Adelaide Hospital which, with its proposed state-of-the-art facilities, will provide some of the most advanced medical care that Australia has to offer.

I would like to run through some of the benefits that the new RAH will deliver, as outlined by Treasurer Snelling: an increase in total bed numbers from 680 to 800, including beds that will be used for intensive care and high-dependency patients; 40 operating and procedural rooms with 65 square metres of space, compared to 35 square metres on the current site (which did not have the same capacity); 181 recovery spaces, compared to the current 74; an automated supply system throughout the hospital; and enough space for five MRIs, seven CT scanners and six linear accelerators.

I think one does get the picture: it is an extremely positive healthcare investment that the government is undertaking. It is something that I believe those opposite sometimes do not feel South Australians should enjoy, with their belief that the government should keep the asbestos-ridden, rundown site which the RAH currently occupies.

While the RAH is certainly an important advancement, the government has shown a commitment to those living in country South Australia, to improve access to advanced medical care. As outlined in the 2011-12 budget, the Labor government will be making significant upgrades to country hospitals located in Ceduna, Berri, Port Lincoln, Whyalla and Mount Gambier. In addition, extra funding will be provided to allow the Whyalla Regional Cancer Centre to upgrade its facilities, as well as the development of a five-chair dental clinic in Wallaroo. These funding commitments will allow country patients to access a high level of medical care in their own area, reducing the need for visits to major metropolitan facilities (which often places a great strain on families).

The government is also making a significant investment in women's health with the upgrading of breast cancer detection services. There is no doubt that breast cancer is an ever-present concern for women, especially those in the 50 to 70-year-old age group. The state government, in partnership with the federal government, will upgrade existing BreastScreen SA mobile units which will mean that breast screening units, as announced previously by minister Hill, will make the transition from analogue to digital technology, improving the chances of early detection and therefore improving survival rates amongst those who have breast cancer. As a woman I feel it is an extremely important initiative as it has the potential to reduce the impact of this terrible illness on sufferers and their families.

In relation to mental health, the Labor government believes it is an issue not to be taken lightly, especially in a modern society where the stresses placed on individuals can leave them

particularly vulnerable to mental illness. Figures released by the ABS indicate that approximately 45 per cent of Australians will have some kind of mental illness in their lifetime.

This is why the government has contributed $54 million in this year's budget to help build the new 129-bed hospital at Glenside, which will include a 15-bed intermediate care facility and a new supported accommodation facility. The design of the new development, as minister Hill has previously announced, has already received awards at the Design and Health Academy Awards.

Along with the increased investment in mental health, the state government has also made the commitment to help ease the burden on those people with a disability, as well as their carers, providing extra resources to families and their carers which will total $37 million, as well as the $10.8 million which will be spent on providing disability equipment to ease current waiting times.

The government is also providing $56.1 million for disability support services, aimed at providing assistance to new patients, as well as those already in the system who require increased assistance. In a further effort to improve quality of life for those in long-term care, the government will be providing $7.7 million to help 32 residents of the Strathmont Centre move into supported community-based accommodation.

In relation to families, there is no doubt that raising a family can be at times very stressful, especially with all the pressures of modern life. Even the strongest of families can be tested from time to time. Often, this stress can lead to family breakdowns. The government, as the Treasurer has made mention in the other place, has recognised the need to help those families through this difficult time and provide a chance for them to get back on their feet.

The government will provide $19 million over the next four years to fund vital services to increase the rates of family reunification. These services will include better support for parents seeking to have their children returned to them, as well as providing additional support to the families after they have been reunited.

An extra $8.4 million will be provided to build six new residential homes to allow children in state care to be able to stay with their siblings instead of being separated. This will help improve the chances of a successful reunification of the children with their parents. In addition to this, and to help provide the proper care that these children require, the government will also provide an additional $41.7 million over the next four years.

In relation to education, the government has again shown it is committed to improving the quality of education for children in this state. New measures will include the relocation of preschools to primary school sites; facility upgrades for all schools, including Eastern Fleurieu R-12, Cleve Area School, Keith Area School, and the Eden Hills Area School; and the building of $125 million Sustainable Industries Education facility at Tonsley park, which will allow for improved training facilities for those undertaking trades training. There will also be $16.6 million over five years to help schools in South Australia manage increased electricity costs.

The safety of transport users in this state remains one of the Labor government's key concerns, and the measures included in the state budget certainly back this up. In addition to the major infrastructure projects I have already mentioned, the Labor government has set aside funding for improvements to rail safety. This will include the installation of a computerised train protection system to reduce the risk of train derailments and collisions.

It also includes upgrading works on regional freight routes to allow for the projected increase in freight transport well into the future, the placement of road safety cameras at various school pedestrian crossings across the state, as well as the purchase of seven new buses, and the increasing of services by 2014-15.

Along with these important road safety projects, the government has also made a commitment to improve public transport services for those living out in the north-eastern suburbs, especially those who make the daily commute to the city for work. As the Treasurer announced in this year's budget, $17.1 million will be invested in improving O-Bahn interchanges along the O-Bahn route at Tea Tree Plaza and Klemzig. The park-and-ride facilities will be significantly expanded at both locations, with car parking at Tea Tree Plaza to increase from 400 to 720, and Klemzig's parking facilities will increase from 215 to 435.

These measures show the government's continued commitment to building a first-class public transport network in South Australia, something this state, to its detriment, has long been without and something which will be critical going forward, as Australia embraces a clean, green future. As a former minister for emergency services, I feel it is important that I draw the chamber's

attention to the investment the Labor government is making in regard to bushfire preparedness. There is no doubt that the Victorian bushfires of 2009 further highlighted the tragic results that can occur when a proper system of bushfire prevention is not in place or goes wrong.

Following on from previous budget commitments, the government will provide $23 million over the next four years to allow an extensive back-burning program to be carried out in areas prone to bushfires, including the Mount Lofty Ranges. In addition to this, a total of 56 ongoing and seasonal firefighting positions will be funded, as well as the purchase of new firefighting appliances and bulk water carriers. These measures will give our firefighters much greater ability to contain fires before they become a major threat to the life and property of residents living in high-risk bushfire areas.

As the Treasurer mentioned in his budget speech back on 9 June, there is no doubt that, when Labor came to office in 2002, South Australia was on track to becoming the backwater state of Australia, and this was due to the previous Liberal government's lack of vision. This budget, like the previous nine budgets handed down, shows the Labor government's commitment to turning around the fortunes of the state and providing a prosperous future for future generations of South Australians.

You do not have to look too far to find evidence of the success of this government's policies. We saw recent ABS figures showing an employment growth rate of 19.4 per cent since 2002 and the highest export figures ever recorded in South Australia, climbing to $11 billion in the last year. This certainly does show that South Australia is now a great place for companies to invest and to grow their business, as the government, in this budget, continues to invest in the future of South Australia, including building the RAH, the Southern Expressway duplication and the Adelaide desal plant, as well as significant investments in rural and regional services. I have no doubt that this positive trend will continue well into the future. Again, I add my support to the Appropriation Bill before us.

The Hon. K.L. VINCENT (16:28): I would like to begin by saying that it is interesting having a job which is both blessed with and burdened by convention and tradition. This becomes particularly evident when one is trying to explain how things work to people in the world outside of this job. I understand, of course, that it is presently the done thing to pass the Appropriation Bill. I know that we need to do so in order for the state to keep on keeping on, so that all of our public servants can be paid and services can be delivered.

But it is strange to me and, I think, to most people who are not already entirely absorbed by the routines and the slightly odd, if I may say so, practices of this building and others governed by the Westminster system.

The strange thing is that there is no real mechanism by which to disagree with the budget. The budget is the piece of governance each year which, I believe, has the greatest effect of any on South Australians.

Yet the only direct critique the government gets on it is the whingeing, whining and, of course, the carping of we non-government members when making speeches and appearances in the media on particular issues of interest. Otherwise, the government of the day is essentially free to enshrine whatever it likes in this legislation, which we duly pass, only, later in the year, to be forced to repeatedly speak up against some of the stupider budget measures in the hope that they might be repealed. I am not saying that I plan to break with tradition and vote against the Appropriation Bill—

An honourable member: Go on!

The Hon. K.L. VINCENT: We have already had tradition broken today with the Hon. Ann Bressington; I don't think we need any more.

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

The Hon. K.L. VINCENT: Because that would be terribly bad manners, Michelle Lensink, and a totally useless gesture. We need the budget to be enacted so that we can get on with life in SA, of course, but I wanted to point out that the lack of accountability that the government faces when preparing the budget is truly alarming to me. In that context I would like to take advantage of the fact that I am one of the privileged few who have the amazing opportunity to offer criticism of the budget and briefly offer my critique.

I will be brief, because I have already stated publicly through various avenues my thoughts on this budget. I have made no secret that I think it is a pretty insufficient budget not just because of a few measures here and there but because of the whole attitude of our government towards budgeting. I believe that the priorities of this government are truly upside-down, and so does much of my constituency.

The really clear thing about this budget is the government's spin on it. From hour one of the budget's release, Treasurer Jack Snelling hit out hard on the line that, while there was not much spending going on, all the spending that was occurring was directed towards the 'most vulnerable' in our society. In the days and weeks which followed budget day we saw Mr Snelling posed with his own family surrounded by babies, elderly people, people with disabilities and other cute so-called vulnerable types.

The budget papers themselves were full of smiling nurses holding brand-new babies and other social justice symbolism. This imagery happily accompanied Mr Snelling's spin that the disability sector was 'the big winner' of this year's budget. You have probably heard this one before, because I have certainly said it before, but it bears repeating: we certainly do not feel like the big winners right now, Mr Snelling. Fortunately, we are not really feeling like idiots either, so all that happy, cuddly spin about what was supposedly a happy, cuddly budget for our 'most vulnerable' did not fool us.

In fact, when you look at the budget properly it seems like the government was playing a game of opposites. The government had decided to tell South Australians that it was doing the opposite of what it actually did. The government said that it was spending big on disability with an extra $56 million poured into this area of the budget. The reality is that that money is a forward spend and that this financial year we are only being awarded an extra $6 million for disability services and equipment. While everyone in this sector appreciates the extra money, we do not appreciate being told that it is going to solve all our problems, because it simply will not.

An extra $6 million this year will make a small dent in the waiting lists currently clogging the disability services sector, but it will hardly touch the people who are bound to present for the first time in the coming 11 months. So, while Mr Snelling can tell us that he is spending big on disability, we know that what is really happening is a proliferation of the unacceptable waiting list system which ruins the lives of many South Australians with disabilities and those who care for them—and all this while hundreds of millions of dollars are spent on a sports stadium—again, a point which bears repeating, I think.

This is just one example of the back-to-front way that this government has decided to budget for the coming year. There are plenty of others. There is money for a film hub built literally on top of a mental health hospital instead of money for mental health. There is money to keep the spin doctors at work in the Department of Premier and Cabinet instead of money to pay the 44 workers in the Anti-Poverty Unit who have lost their jobs—and on and on and on.

This may be a conservative budget, it may in some sense be a responsible budget, but it is as sure as hell not a budget to help the truly vulnerable people in South Australia, and no amount of government spin is going to change that plain fact. I have spoken with Mr Snelling (both before and after the budget) and during those conversations I was heartened I must say, if only very slightly, to see that he does seem to be somewhat more receptive to the need for a holistic and radical change in the disability sector than some of his parliamentary ancestors have been. However, what Mr Snelling says is one thing and what he does may well be another.

As I said before, this job is steeped in tradition and, unfortunately, cynicism forms a large part of that tradition. Part of me suspects that this budget's supposed focus on the needy in our society was created for Mr Snelling to give a good first impression with his first budget as our state Treasurer. A part of me suspects that this will be nothing but a means to a professional end for Mr Snelling and that this theoretical interest in caring for those in our society who need help most will turn out to be nothing more than the same kind of rhetoric that people with disabilities have been force fed for years. I hope that these suspicions are in fact not true, and I pray that, come time for me to deliver my speech to next year's Appropriation Bill, I may delight in having my cynicism quashed and being proven wrong.

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

BURNSIDE COUNCIL

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:36): I seek leave to make a personal explanation.

Leave granted.

The Hon. R.P. WORTLEY: I rise to clarify an answer provided to questions about Burnside council asked by the Hon. Mr Ridgway and the Hon. Mr Stephens during question time. I wish to place on record that I made the decision to refer the draft provisional report to the police commissioner last Friday. I subsequently instructed my department to make arrangements for the report to be sent to the police commissioner at the earliest opportunity. I then signed the letter yesterday addressed to the commissioner, informing him of my decision, and my office has since made arrangements for the department to make available to him a copy of that report.

ELECTRICAL PRODUCTS (ENERGY PRODUCTS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 7 July 2011.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:37): I rise on behalf of the opposition to speak to the bill. This bill introduces minimum energy performance standards and labelling for gas products. It will amend and rename the Electrical Products Act and the Gas Act. The Electrical Products Act relates to safety, performance, energy efficiency and labelling of electrical products. Therefore, minimum energy performance standards are already used for other electrical products and this bill will ensure that similar standards now apply to gas products and in the future other energy products as they become more prevalent in the market.

Accordingly, the act will be renamed the Energy Products (Safety and Efficiency) Act. The Governor will be able to proclaim an extended range of products and also declare certification bodies to issue certificates of compliance under certain standards. Other aspects of the act will be brought up to date to include the broader range of energy products to include the following:

- The ability of the technical regulator to issue public warnings on unsafe products and installation practices;
- The obligation of traders to sell properly labelled products, in compliance with applicable energy performance standards, and accompany some of them with certain general product information.

The bill will also allow authorised officers to be appointed by the minister and to have a number of purposes, which will include:

- Being able to examine certain energy products in a trader's possession;
- Gather information from traders regarding the purchase or acquisition of energy products; and,
- To purchase certain products back from a trader.

They are also granted powers to enter and inspect vehicles and places, take footage, take a person's personal details, seize and retain energy products, and other things.

From early on the opposition was concerned with some of the authorised officers' provisions and, in particular, the changes to self-incrimination privileges. In fact, I might add that, in my time in this place, the Hon. Graham Gunn had always been vocal about authorised officers' powers and the provisions under which they operated, and I think that is something that we should always be mindful of when we are dealing with any legislation.

The Hon. Ann Bressington has tabled some amendments, which we will be supporting. Sadly, she will not be here for the rest of this debate, and so we will not be able to conclude the debate tonight. The government has sought to remove the privilege against self-incrimination in a range of legislation—the Natural Resources Management (Review) Amendment Bill and the Safe Drinking Water Bill.

The Hon. Mitch Williams in another place questioned the need to remove privilege in this case, and we were dissatisfied with the response. The Hon. Ann Bressington's amendment will delete the proposed amendments which would compel people to give information or produce documents to an authorised officer if the officer had reasonable suspicion of them.

The removal of the privilege against self-incrimination may be justifiable where there is an imminent threat to public safety; however, this bill would remove the legal right in the investigation of any product quality assurance issues, and it is not justified on public interest grounds. Therefore, I indicate that the opposition will support the bill's main intent of aligning the gas and electricity safety and performance provisions but will not be supporting the removal of the self-incrimination privileges. I commend the bill to the house.

Debate adjourned on motion of Hon. I. Hunter.

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT BILL

In committee.

(Continued from 22 June 2011.)

Clauses 2 and 3 passed.

Clause 4.

The Hon. G.E. GAGO: I move:

Page 3, lines 13 to 22 [clause 4(2)]—Delete all words in subclause (2) after 'delete the definition'

Essentially, this amendment deletes the definition of 'extended trade'. It is proposed instead to set out the trading hours available for each class of licence in the relevant sections—sections 33 through to 36 and 40. This is achieved in amendment No. 7. This is designed to make the rules about the hours simply easier to comprehend, so it is a minor administrative amendment.

The Hon. J.M.A. LENSINK: Minister, is this amendment in relation to reviews of management plans or is this rewrites of clauses?

The Hon. G.E. GAGO: No; this is the definition of 'extended trade'; setting out the trading hours, sections 32 to 36.

The Hon. J.M.A. LENSINK: Mr Chairman, if you will excuse all honourable members in the proceedings of this legislation, because we have minister's amendments, my amendments to the minister's amendments and my amendments to the act, and we have had redrafts. If we do not get confused, I shall be very surprised. I understand that these amendments to the government's redraft of existing clauses within the Liquor Licensing Act are contained within different sections, therefore they will restructure it such that it is much easier to follow, so we will be supporting these particular amendments.

Amendment carried.

The Hon. G.E. GAGO: I move:

Page 3, after line 22—After subclause (2) insert:

(2a) Section 4, definition of extended trading authorisation—delete 'means a condition of a licence specifically authorising extended trade in liquor' and substitute:

See section 44

This amendment amends the definition of extended trading authorisation by referring to a new section, which is the subject of a later government amendment, amendment No. 11 [Gago-4]. Similar to the previous amendment, due to the revised way that we have given effect to extended trade, this section now needs to be deleted.

The Hon. J.M.A. LENSINK: I understand that this amendment is consequential. I note that the existing definitions of extended trade in liquor apply between midnight and 4am on any day and that there are standard trading hours which apply from 7am to midnight. This is how the act has been drafted, which, for the novice, can be very confusing indeed. However, I note that this particular amendment is part of a suite that will help to simplify that, therefore we are supporting it.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 3, lines 23 and 24 [clause 4(3)]—Delete subclause (3).

This is the first reference in the bill to management plans, and it will be a test clause for a number of other amendments in this regard. The concept of management plans is not something that we

oppose per se. One of the big concerns in relation to a number of the amendments that the government has to the Liquor Licensing Act and the liquor licensing bill is that management plans will be used as a means of enforcing certain conditions on the licensees.

The greatest offence in this regard is that there is no right of appeal for licensees for management plans which are imposed by the commissioner. So, a number of amendments which I have had drafted refer to management plans and delete all those references, and a number will be consequential; however, I will treat this as a test clause.

The Hon. G.E. GAGO: The government opposes this amendment. This amendment removes the definition of management plans. Currently the Office of the Liquor and Gambling Commissioner (OLGC) participates with a number of councils, police and licensees in the development of liquor licensing accords and precinct management groups. The aim of these groups is to develop initiatives that promote the responsible service and consumption of alcohol in a specific area.

These groups facilitate a forum in which issues relating to the responsible sale and supply of liquor can be discussed. The difficulty the commissioner has, however, is that these accords and precinct management groups are only goodwill, or voluntary, agreements. Participation in them is not mandatory and the membership in them does not require adherence to a consistent set of licence conditions.

From time to time, there may be instances where the commissioner becomes aware of serious issues relating to the sale and supply of liquor in a particular precinct or area that is putting the safety and wellbeing of the community at risk. The concept of the commissioner's management plan is the government's answer to that problem.

These plans would be a mechanism by which a group of premises in a particular area could be subject to a consistent set of licence conditions in a bid to having a real impact on public order or safety issues in that area, in particular through measures designed to reduce alcohol-related crime and, obviously, antisocial behaviour, which is the whole point of this bill.

The management plan could contemplate the imposition of a range of conditions under section 43 of the act; for example, a requirement to use polycarbonate glass, implement a lockout or maintain CCTV equipment. We saw the problem with lockouts, the failure to implement lockouts in the Hindley Street precinct, because one licensee refused to participate and, of course, if one refused to participate then it brought the whole thing undone.

Yet, we know that lockouts have been very effective in managing problems on a street in other jurisdictions, even in South Australia. I think we have had some success where there has been that cooperation, but at the moment it relies on voluntary cooperation. We are not able to require licensees to participate in lockouts and, as I said, if it is not all in then it does not work.

So, a plan may be applied to a specific licence type, such as, for instance, late trading venues or specified licences in a particular geographical area, precinct or community. As distinct from accords, management plans could be enforced through the imposition of licence conditions and thus compliance with these plans' conditions would be mandatory and any breach of conditions would then result in disciplinary action that could be taken against the licensee.

The proper checks and balances are being allowed for the bill, relating to plans. In the development of a plan, the commissioner would be required to consult with affected licensees, and interested persons are to be given reasonable opportunity to make written submissions in relation to the plan. The plans would be kept available for inspection, free of charge, on a website and at a principal office of the commissioner during normal office hours. Management plans would be kept under review by the commissioner.

Management plans are an important component of a suite of measures that the government is seeking to put forward in an attempt to improve public order and safety in and around our licensed venues. Not going forward with these management plans in the bill would mean that the commissioner would be less equipped to manage the long-term alcohol-related crime and antisocial behaviour in an area or precinct.

The Hon. T.A. FRANKS: I indicate that the Greens will be supporting this amendment. In support of that position, I would say that accords are very good things. In fact, management plans are also very good things, but the ability not to be able to appeal against a management plan being implemented not only goes against natural justice, it also goes far beyond anything that would be effective in terms of working with this industry.

The commissioner already has quite significant powers and we have heard in the second reading debate of this bill that they are not currently used. We have other measures coming up, such as expiation fees for offensive and disorderly conduct and so on, which we hope will be quite effective in addressing some of the alcohol-related harm and violence that obviously is the concern of this original clause.

However, what I would say is that the Strathmore should not be treated the same as, say, the former Mile High Club or the Black Rose. Although they are in the same precinct and they have similar licences, they are very different venues. This approach of a blanket management plan does not recognise that and it does not reward the good venues; it simply punishes all venues for the behaviour of the worst venues.

The Hon. G.E. GAGO: I need to correct the Hon. Tammy Franks. The management plans are appealable. They are inserted into section 43 and are appealable to the Licensing Court, so natural justice is afforded to licensees. As the Hon. Tammy Franks has rightly pointed out, the same condition should not necessarily apply to every single venue. The commissioner is aware of that and if he does get that wrong it is appealable—the Strathmore or whatever can appeal to the Licensing Court to have that decision reviewed.

The Hon. Tammy Franks says that there are other mechanisms available. There is a suite of provisions that we have put forward but none that deal with the ability to coordinate a collective response in relation to a specific issue in a particular area, so this is a very highly effective and efficient way to do that. For instance, in some regional areas we have seen accords dealing with half-strength alcohol and the serving of non-resident Aboriginal members. Again, that is a completely ineffective strategy if one licensed venue decides it does not want to cooperate and sells alcohol outside of that accord.

Again, these strategies are put in place to manage very specific problems that local communities have. It is absolutely about the commissioner working with local communities and key stakeholders in the same way that he does with the accords, but currently the accords are voluntary and it only takes one licensee to not cooperate to bring the whole thing undone—and then the whole thing is worthless.

This gives strength to that. I have satisfied the honourable member about the natural justice on an appeal, so I am sure the honourable member will now reconsider and support management plans.

The Hon. T.A. FRANKS: I indicate that the honourable member has some questions but is not convinced. In terms of appealing to the Licensing Court, what would be the typical time frames and the typical costs to a licensee for that?

The Hon. G.E. GAGO: In terms of costs, we would have to take that on notice; we do not have those figures available. In terms of timing, that is variable—it varies from a matter of days to a matter of months, as I have been advised. I am also advised there is the capacity for an injunction order to be put in place so that, for instance, the plan not be applicable whilst the matter is before the court. Again, there are a number of natural justice measures that are available to ensure that the interests of licensees and other relevant stakeholders are protected.

The Hon. J.M.A. LENSINK: I would just like to endorse the remarks of the Hon. Tammy Franks, particularly in relation to support for accords. I think they are very useful mechanisms to get all stakeholders together in the same room. I think the concern of a lot of licensees is that it is a bit of a one-way street, and suggestions that they might have where either local or state government could improve some of the conditions are not always reciprocated. Yet, the enforcement powers rest with the state government to impose conditions on them, and I think that is somewhat unbalanced.

The minister has referred to the issue of licensees having an appeal mechanism. That is all well and good, but I think in practicality, and certainly from some of the examples that the Australian Hotels Association has provided to me, some of these licensees do spend considerable time fighting fairly vexatious matters that have been brought on them by the OLGC.

I think some of the information that the OLGC and the minister have is incorrect, and if I can just refer to a letter from the Australian Hotels Association that they wrote in June in relation correcting some of the comments in second reading speeches. The letter states:

The minister's repeated emphasis on six venues being impacted by the compulsory shutdown between 4 and 6am is just plain wrong. Even a cursory check of the OLGC website shows that there are in excess of

30 venues in Hindley Street that trade either pursuant to Hotel License, Special Circumstances License or Entertainment Venue License that can trade during that time.

So, I think it is important that the government does get its facts right and that, in the meantime, the vast majority of licensees who are law-abiding and do seek to obey the codes of practice, any of the statutes and any of the conditions of their license do so, rather than being at the whim of conditions that the commissioner may impose on them. Correspondence from the AHA further states that they are concerned that:

> ...the proposal is silent on how the Commissioner proposes to give notice of the intention to develop a management plan, and how licensees and interested persons would be notified of the intention to develop a management plan.

I think, in theory, the management plans sound like they might be reasonable, but I think that in a practical experience—and certainly given the experience of a number of licensees—they will just add another layer of bureaucracy which is unnecessary.

The Hon. G.E. GAGO: I want to respond to a number of issues that have been raised. I just want to remind honourable members that, in relation to the Licensing Court, a licensee is not required, necessarily, to have legal representation, so that does help reduce costs for simple matters. In relation to some of the comments of the Hon. Michelle Lensink, I would ask her to put on record the examples that she has received of vexatious issues pursued by the Licensing Court. I have been engaged in extensive consultation with a wide range of industry stakeholders.

To the best of my memory, I am not aware of vexatious issues being pursued by the Licensing Court. I know that the AHA has expressed that it has had some issues with the Licensing Enforcement Branch of SAPOL but not with OLGC nor with the Licensing Court that I am aware of. Again, I ask the Hon. Michelle Lensink to put on the record the examples she referred to in relation to vexatious issues pursued by the Licensing Court or OLGC.

The Hon. J.M.A. LENSINK: I did not refer to the Licensing Court making vexatious claims, because it is the appeal body, so that would not make sense. In relation to the OLGC, I have certainly heard of licensees being fined for people who may be standing on the footpath, or what may form part of a footpath. For instance, if you go to The Gov or any licensed premises—

The Hon. T.A. Franks: The Metro.

The Hon. J.M.A. LENSINK: The Metro; thank you—which has a footpath, you can see distinctive signs. I remember having a few beers at The Gov with my husband and some of his mates last year. They were laughing at this sign, which said that you were not allowed to be out there with a drink unless you were seated at a table. So, you have to make sure that there are enough chairs for everyone. If there are five of you and there are only four chairs available, you either have to go inside or one of you has to be Nigel No-friends and go inside.

There are other issues with licensees being pinged for people not having their badges the right way round or, I think, list of lodges is another one that is regularly cited. There is one particular case, which I will endeavour to ask the AHA whether it will provide for me, which is a real monte and which I understand is before the Licensing Court at the moment. They are just some of the examples where I think it is unreasonable.

The difficulty that licensees have is that they are always the ones who are always held responsible, yet it is the behaviour of their patrons, and sometimes the unknowing behaviour of their patrons, not knowing what the laws are. There may have been some kernel of sensible reason for laws being in place, but I think they should be enforced reasonably.

The Hon. G.E. GAGO: I think the honourable member is confused. We need to stick to the point, and the point is about the appeal rights to the Licensing Court in relation to management plans and the innuendo that somehow the Licensing Court may pursue vexatious claims.

The Hon. J.M.A. Lensink: I never mentioned the court.

The Hon. G.E. GAGO: That is what we are talking about. We are talking about the appeal rights of licensees in relation to management plans. That is the issue.

The Hon. J.M.A. Lensink: No; it was more than just that issue.

The Hon. G.E. GAGO: That is what this amendment is about, and we need to stick to the issue, because that is what is before us. Just to tidy up, in relation to the footpath issue the honourable member talks about—the fines for people on footpaths—I am advised that that is a

result of SAPOL issuing expiations for breach of licence conditions put on licensees, in consultation with council, for the safety of users of the footpath.

Again, I am aware of issues around SAPOL, but the issue we are dealing with is the appeal rights of licensed venues in relation to management plans. There is nothing before us to suggest that the current appeal mechanisms do not provide clear natural justice to those available to receive those protections. I have put on record before, so I have been quite clear about this. Again, as a point of clarification, in relation to the number of venues, many liquor licensees across the state have authorisation to extend their trade beyond the standard hours, for example, after midnight.

The OLGC is unable to determine—and I have put this on the record before—how many venues actually trade between the hours of 4am and 7am because individual venues determine themselves the extent to which they utilise this authorisation. For example, some may never use it; some may use it only once a week; and some may only use it, for instance, during the summer months. This information can only be obtained from the individual businesses themselves. They are not required to report on it, I am advised, and are not required to make public that information.

I have been quite clear that, in fact, that information is not available. However, the OLGC is aware of six venues in the Hindley Street area, including West Terrace, that are authorised to trade for 24 hours. The OLGC is also aware of approximately 40 venues statewide that operate gaming operations between 4am and 7am. Again, I can only clarify that I have put that on the record before and I still stand by that information.

The Hon. T.A. FRANKS: There were several concerns that I expressed, not simply the natural justice that licensees can avail themselves of. However, your response that licensees are not required to have representation during these procedures does not give me great comfort. Do you have the percentage of cases where a licensee with representation is actually successful compared to where a licensee is without representation? In those cases where the licensee does have to take representation are court cases in fact awarded in terms of the amount of money that they have to go and pay to get that representation? Are considerations taken into account of a licensee having to give up time working in their venue in terms of preparation of the case?

You also say that should a venue wish to appeal one of these management plans that, in fact, the management plan could not be implemented until an injunction order could take place. What time frame would the minister imagine might be involved there? The other example you gave in your first response that does concern me—and I think you were probably referring to the Port Augusta region, although I could be wrong—is that, for example, the management plan might contain the provision to only serve half-strength or light alcohol to Aboriginal people. Does the minister imagine that this might be a standard feature of management plans across the state or is that simply an example erroneously clutched at?

Finally, another example of management plans might be polycarbonate cups. Of course, that would work in some venues but it certainly would not work in a venue, as I say, on Hindley Street that had a high-end market clientele that was buying fine wines. How would that work if a polycarbonate cup was part of the management plan for evening trading hours—say, The Apothecary as compared to Red Square?

The Hon. G.E. GAGO: In terms of the questions around specific numbers, obviously we do not have that level of detailed information here at present. I am happy to take them on notice. Those sort of cases where licensees choose not to be represented are obviously very minor cases where they—

The Hon. T.A. Franks: Okay, so that's not a plus, is it?

The Hon. G.E. GAGO: Pardon?

The Hon. T.A. Franks: That is then not a very good defence of your original argument.

The Hon. G.E. GAGO: I am just answering the question. Licensees can choose whether they have representation or not and can choose whether they believe they need it or not—it is their choice. It is a system that has worked very well in the past. I think the honourable member has really made up her mind and she has been caught out. She thought she had the big guns blazing with the fact that there were no appeal rights, and now we have shot that down, so now we see this plethora of quite minor distracting questions. We need to move on. It is obvious the honourable member has been caught out. She does not support management plans and has no intention of

supporting them. Appeal rights have got nothing to do with it. She has made up her mind, and we just need to move on.

The Hon. J.A. DARLEY: I will support the opposition's amendment.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 3, after line 24—Before subclause (4) insert:

(3a) Section 4—after the definition of meal insert:

offensive or disorderly—without limiting the conduct that may constitute behaving in an offensive or disorderly manner, the conduct may be constituted of offensive language;

This amendment is to include within the definition section of the act that 'offensive or disorderly' includes offensive language, which we think is an important addition to include people mouthing off, which can actually be quite provocative. The issue that a number of people would be concerned about—and this applies to the expiation amendment which we are supporting—is that mouthing off or swearing at people can be a precursor to the outbreak of violence, and therefore we think it ought to be part of the definitions, so if that behaviour is exhibited it can attract an expiation.

The Hon. G.E. GAGO: The government supports this amendment, which makes explicit that conduct that is offensive and disorderly may involve offensive language. Fundamentally we do not think that this amendment is actually necessary because we think it is obvious that offensive and disorderly conduct includes the use of offensive language. It seems odd to pick out this one particular behaviour to be included in the definition when a whole raft of different behaviours can be covered. We find it odd that this one is picked up. Nevertheless, although I am advised this amendment is unnecessary, I do not think that it either adds or detracts from our provision, so therefore we will not oppose it.

The Hon. J.M.A. LENSINK: In the Summary Offences Act, section 7, there is a fine and imprisonment term of three months relating to the use of language, so it harmonises with what exists already in other statutes.

Amendment carried; clause as amended passed.

Clause 5.

The Hon. G.E. GAGO: The government maintains its position to exempt the Casino—other than, of course, North restaurant—from the mandatory break in trade. This is going to be addressed in a later government amendment, therefore we believe it is dealt with elsewhere.

The Hon. J.M.A. LENSINK: We are supporting the government. I have indicated to interested parties that we are not supporting the Green's amendment. We think that the four to seven closure is bad policy for everyone. We do not think that the Casino should be included in the regime.

Clause negatived.

Clause 6.

The Hon. J.M.A. LENSINK: I move:

Page 4, after line 17 [clause 6]—Insert before the present contents of clause 6 (to be designated as subclause (2)):

(1) Section 11A(2)—after paragraph (f) insert:

(fa) to impose special requirements for the sale of liquor for consumption on licensed premises between 4 am and 7 am on any day for the purpose of reducing alcohol-related crime and anti-social behaviour;

Examples—

- Measures prohibiting the supply of liquor for consumption on any part of the licensed premises comprised of a footpath or other outdoor area.
- Measures requiring security to be provided by means of closed circuit television or similar electronic surveillance and the retention of recorded images.

- Measures requiring the presence of an authorised person performing the duty of promoting responsible attitudes in relation to the sale, supply and consumption of liquor as his or her principal duty.
- Measures prohibiting the sale of liquor in a form that may encourage rapid or excessive consumption of liquor.
- Measures prohibiting the sale of liquor in glass containers in circumstances of high risk.
- Measures requiring incidents to be recorded in a register that will be made available for inspection by authorised persons.

This clause takes a concept, which is in the government amendment No. 12, proposed section 44A(3) and outlines a number of potential measures which may be included as conditions of trade between 4am till 7am as codes of practice.

I advise honourable members that we are vehemently opposed to the government's clause 12. This is an alternative to provide that a similar set of conditions can actually be in codes of practice. We believe that codes of practice are a more appropriate place for these conditions because, first of all, if you have these conditions in an act of parliament, it does not allow for rapid changes to be made. Codes of practice are updated on a regular basis. They are a disallowable instrument and they are made in consultation with industry; therefore, we believe they are the most appropriate place to be located.

The Hon. G.E. GAGO: The government supports this amendment; however, it is qualified support. It is clear through second reading contributions and discussions I have had with my colleagues here in the chamber that we do not have support for the mandatory break in trade between four and 7am, so we understand that, when we get to that section, that will be lost.

We believe that providing some additional conditions on licensees who do trade between those hours is sort of a second-best option. It at least affords some increased protections to the general public in enabling there to be additional requirements or additional standards and protections put in place. So, we certainly support that notion.

We are disappointed that the honourable member seeks to do it through the code of practice. Obviously, the government would like to see it have much greater powers than that. The government's preferred position is that it be put into the act, not the code of practice, because the code of practice is something that the commissioner may have, and the conditions may or may not apply. Also, these matters can be disallowed as well. So, it means that there is a potential for these protections to be watered down considerably.

The government's preferred position is obviously for a mandatory break in trade; however, given that that appears to be lost, we would prefer these additional conditions to be placed within the act so that the act will require the commissioner to place conditions on those licensees operating between four and seven. There would then be discretion about which conditions may or may not apply. We clearly do not have support for that. Again, I have had discussions with a number of honourable members, and I will place on the record that we do not have support for that. So, rather than waste the time of this chamber by putting up further amendments which would fail, I think this position is probably the strongest that we are going to be able to deliver. Having said that, I still believe that it provides considerable protections.

I might add that I was very pleased that the Hon. Michelle Lensink took up the government's idea of placing additional conditions on licensed premises that operate between four and seven. It was the government's idea, so we were pleased that the honourable member took us up on that. As I said, we were planning to put this forward, but in a much stronger form. Nevertheless, I think it is something that adds considerably to the bill, and I think it will afford considerable improved protections to those people enjoying a night out in a licensed venue. With those comments, the government will be supporting this amendment.

The Hon. J.M.A. LENSINK: I would like to challenge the minister's assertion that it is stronger if it is in the act than if it is in a disallowable instrument such as a regulation or code of practice. Regulations are quite useful in areas where things change quickly.

The Hon. Ms Franks and I were discussing, some time today, the merits of glass versus polycarbonate. Polycarbonate has been seen in a number of jurisdictions as some great saviour of people being injured through glassing incidents and so forth, but with rapid technological advancements there are some glasses which are superior to polycarbonate and certainly, as the

Hon. Ms Franks was referring to, a more enjoyable experience. I do not know about any other honourable members but I would rather have a cold beer on a hot day from a cold glass than out of plastic. That is my personal preference.

If safety is not the issue then I think acts of parliament can take some time to change. A review of this act may be some time away and so to codify issues like that within the statutes does not make it stronger, it just makes it harder to change and is not necessarily relevant to whether it is a stronger measure or not.

Amendment carried; clause as amended passed.

Clause 7.

The ACTING CHAIR (Hon. J.S.L. Dawkins): I am advised that on clause 7 we have two amendments in the name of the honourable minister and then a further amendment in the name of the Hon. Ms Lensink.

The Hon. G.E. GAGO: I understand it is consequential. It is to do with management plans. Given that management plans have been removed, I will be withdrawing this amendment.

The ACTING CHAIR: We are now left with amendment No. 2 [Lensink-1].

The Hon. J.M.A. LENSINK: I move:

Page 4, line 25 to page 5, line 1—Delete the clause

This is consequential. It relates to management plans.

Clause negatived.

New clause 7A.

The Hon. G.E. GAGO: I move:

Page 9, after line 22—After clause 29 insert:

29A—Insertion of Part 7A

After Part 7 insert:

Part 7A—Offensive or disorderly conduct

117A—Offensive or disorderly conduct

(1) A person must not behave in an offensive or disorderly manner in licensed premises or in the vicinity of licensed premises.

Maximum penalty: $1,250.

Expiation fee: $160.

(2) This section does not apply to any behaviour involving violence or a threat of violence.

These amendments address administrative matters relating to the licensing court. Clause 7A provides for the use of a seal of the court. 7B provides for an acting licensing court judge for delegation by the licensing court judge to another judge, and for immunity. Clause 7C provides for rules of court. Clause 7D provides for sittings, adjournments and hearings in public or private. Clause 7E allows the court to require a person in custody to be brought before the court, and provides an offence for misbehaviour in the face of the court. Clause 7F provides power for the court to enter and inspect a property.

These amendments arose after I was contacted by Judge Jennings, in his capacity as a member of the Liquor Licensing Court, expressing concern that the licensing court currently lacks the usual express rule-making power conferred upon inferior courts in this state. In addition, His Honour advised me that the act does not currently contain provisions found in similar acts relating to the administration of the court.

The Crown Solicitor has provided advice on these matters and supports the views expressed by Judge Jennings, advising that it is appropriate for amendments to be made to the act to resolve these issues. Provisions similar in effect to those contained in this amendment already appear in similar legislation under which courts occupying a similar place in the judicial hierarchy to the Liquor Licensing Court had been created: for example, the Environment, Resources and Development Court, the Industrial Relations Court and the Youth Court.

These amendments are basically of an administrative nature and we believe they will improve the way the court operates.

The Hon. J.M.A. LENSINK: The opposition supports these amendments as we believe they update the provisions and better reflect the way the Liquor Licensing Court operates.

New clause inserted.

New clauses 7B to 7F inserted.

Clause 8.

The Hon. J.M.A. LENSINK: I move:

Page 5, lines 2 to 11 [clause 8]—Delete the clause.

We seek to delete proposed clause 8 which relates to criminal intelligence, and that is consistent with the position that has been expressed by our legal affairs spokesman, the Hon. Stephen Wade.

In my second reading speech I spoke about how liquor licensees have to jump through a number of hoops and that those standards have increased over time. We believe that criminal intelligence should only be used to target serious and organised crime and that the normal rules of evidence should apply in other instances. That is why we have had this particular amendment drafted.

The Hon. T.A. FRANKS: Mr Acting Chairman, I am happy to indicate that the Greens will be supporting this amendment.

The ACTING CHAIR (Hon. J.S.L. Dawkins): The Hon. Mr Darley.

The Hon. J.A. DARLEY: I will be supporting this amendment.

The ACTING CHAIR: Minister, do you wish to speak?

The Hon. G.E. GAGO: I am on my feet; if I get the call, I will.

The ACTING CHAIR: You have the call.

The Hon. G.E. GAGO: The government opposes this amendment. It removes the clause relating to criminal intelligence and is designed to protect informants. Division 6 of the act already contains provisions relating to criminal intelligence. The act already provides:

(1) No information provided by the Commissioner of Police to the Commissioner may be disclosed to any person (except the Minister, a court or a person to whom the Commissioner of Police authorises its disclosure) if the information is classified by the Commissioner of Police as criminal intelligence.

Specifically, the act already says:

(2) If a licensing authority—

(a) refuses an application for a licence, the transfer of a licence or an approval, or takes disciplinary action against a person, or revokes or proposes to revoke an approval under Part 4 Division 10A; and

(b) the decision to do so is made because of information that is classified by the Commissioner of Police as criminal intelligence,

the licensing authority is not required to provide any grounds or reasons for the decision other than that to grant the application would be contrary to the public interest, or that it would be contrary to the public interest if the person were to be or continue to be licensed or approved, or that it would be contrary to the public interest if the approval were to continue in force.

The bill simply makes it clear that if the commissioner issues a public order and safety notice based on information that is classified as criminal intelligence, the commissioner is not required to provide any grounds or reasons for the decision other than that it would be contrary to the public interest if the condition were not imposed or the notice were not issued. The clause is consistent with clauses that already exist in the act, as well as with clauses contained in other acts of parliament, including the Gaming Machines Act 1992 and the Casino Act 1997.

The provision simply ensures that any information which is classified as criminal intelligence and which is provided to the Liquor and Gambling Commissioner by the Commissioner of Police remains confidential. This type of information may form the basis of the Liquor and Gambling Commissioner imposing a license condition to improve public order and safety or issuing a public order and safety notice in respect of a license.

Clause negatived.

Clause 9.

The Hon. J.M.A. LENSINK: I move:

Page 5, lines 12 to 16 [clause 9]—Delete the clause.

This is the first of a number of amendments which delete the increase in subsequent penalties in the bill, whereby the penalty for a first offence is $20,000 and for second and subsequent offences, $40,000. I think that, as a statutory concept, is a nonsense. My understanding of the way in which the courts operate is that there is an offence that is set and the courts refer to that offence. It appears to me to be playing politics by having an increased penalty for a second and subsequent offence. I would have thought that the courts, if they were looking at a subsequent offence, would say, for instance, hypothetically, it may be $5,000. They may take that into consideration for a subsequent offence.

It is one of the many measures within this piece of legislation which is aimed at penalising licence holders without looking at all of the other many, many factors. Principally, the one that has been raised is an individual's behaviour and how that leads to safety issues, and also the issue of having more police on the beat. Therefore, we are seeking not to have that included in the legislation.

The Hon. G.E. GAGO: The government rises to oppose this amendment. This amendment removes the provision that proposes to double the maximum penalty for a second or subsequent offence for the selling of liquor without being licensed to do so. It is a serious offence if someone sells liquor without a licence to do so. It is an additional mechanism to deal more strictly with repeat, serious offending against the act and licence conditions.

A number of offences were identified in the act where it would be suitable to increase the maximum penalties for subsequent offending—and, again, these are serious offences—and this is the first of those. It is really a test, I guess, for the others. Increasing the maximum available penalty for subsequent offences obviously will act as an increased deterrent for licensees not to offend against liquor licensing laws.

It is really clear where opposition members are coming from. They are prepared to protect repeat, serious offenders at the expense of members of the public who are easily exploited. We can see where opposition members are coming from. I cannot believe that the Hon. Michelle Lensink can stand in this place and propose to protect repeat, serious offenders. I think it is disgraceful and shameful. As I said, these are serious repeat offences, and I cannot believe that members in this place do not have the guts or the courage to stand up and put forward strong measures to stop serious, repeat offenders. For goodness sake! As I said, it is disgraceful.

The Hon. J.M.A. LENSINK: I ask the minister: if it is such an issue, why has the government not sought that the first offence should be $40,000, rather than having this regime of a first offence and a second or subsequent offence?

The Hon. G.E. GAGO: This is to deter repeat offenders. We know that people err; we believe that the first offence is significant—it is no small measure—but we want to send a clear message that repeat offending is simply not on. I think this absolutely smacks of gutlessness: fancy coming into this place, standing up in here and being prepared to protect repeat serious offenders. It is a disgrace.

The Hon. J.M.A. LENSINK: Notwithstanding that I find the minister's mock outrage somewhat nauseating, could she perhaps outline the cases in which the repeat offenders have been a problem? Does she have cases that she can cite; how many; where has it taken place; what sort of people have been hurt by this apparent offence?

The Hon. G.E. GAGO: I think this is pathetic, absolutely pathetic. I am happy to bring back details, and I will take that on notice. However, I cannot believe that the honourable member is suggesting that she is prepared to support coming down hard on repeat serious offenders only if I can list case examples and the number of examples of the problem. We know that there are repeat offenders. I can certainly say that there are repeat offenders, and I put that on the record.

However, in terms of the numbers I cannot give you those, but I can absolutely assure members in this place that there are repeat offenders and it is a problem. I am happy to bring back the numbers. I think it is pathetic that the honourable member is suggesting that she is not

prepared to be tough on repeat serious offenders because I cannot cite the number of cases that occur here in South Australia. It is pathetic and gutless.

The Hon. J.M.A. LENSINK: I am not quite sure how the minister's vitriol is improving the debate at all. I put it that she is the one who is pathetic. This is absolute classic Rann playing politics. If you want to put a penalty in a statute, put the penalty that you think ought to be there. Make it $40,000 and not $20,000. The courts, if there are subsequent offences, will choose—based on the evidence and the case law and all those sorts of things—which offence it ought to be.

As I said in my hypothetical, it might be $5,000 for the first offence and $10,000 thereafter. If it is such a big problem make it $40,000 but it is always, 'We're so tough on these guys. We are going to make this subsequent for other offences. We are going to make it higher because we're going to be in some bidding war.' I mean, I could come in here and say, 'Look, this isn't good enough. Go and make it $80,000.' Woohoo, big deal!

My subsequent question for the minister is: is this an indication (if she is directing the courts that they should have a second or subsequent offence which is higher than the original offence) that she has absolutely no confidence in the courts?

The Hon. J.A. DARLEY: I will be supporting the opposition's amendment.

The Hon. D.G.E. HOOD: I am sure the Hon. Ms Lensink is not moving this in any attempt to make the offence easier or to disregard the seriousness of the offence that is being committed here, so I do not think the minister is quite right in that. I think the Hon. Ms Lensink moves it because—I cannot speak for her, but I am guessing she thinks the penalty is too harsh, which is completely legitimate and fair enough.

The Hon. J.M.A. Lensink: No, that's not quite right. If you want a penalty you put the penalty.

The Hon. D.G.E. HOOD: Fair enough, but for whatever reason we will not support the amendment.

The Hon. J.M.A. Lensink: It's stupid, absolutely stupid.

The PRESIDENT: Order!

The Hon. T.A. FRANKS: The Greens will also not be supporting the amendment, but we certainly do not support this government's huff and bluster about law and order and coming down hard on mythical crimes. We believe that the minister is here just practising her press conference for tomorrow on the great success of increased law and order in the state of South Australia that will be brought about by this unnecessary amendment.

The Hon. G.E. GAGO: Are you supporting or opposing?

The Hon. T.A. FRANKS: I am opposing, so I was taking the argument on its merits rather than on the rhetoric.

Amendment negatived; clause passed.

Clause 10 passed.

The Hon. G.E. GAGO: Given that there are some administrative matters that need to be sorted, this might be a suitable time to move that progress be reported.

Progress reported; committee to sit again.

[Sitting suspended from 17:58 to 19:49]

Clauses 11 to 15.

The CHAIR: The last time the committee met it made some progress. There are a number of amendments to clause 11. The minister has—

The Hon. G.E. GAGO: I am withdrawing.

The CHAIR: Then it is the Hon. Ms Lensink's amendments to clauses 11 to 15.

The Hon. J.M.A. LENSINK: I move:

Page 5, line 20 to page 6, line 34—Delete the clauses and substitute:

11—Amendment of section 32—Hotel licence

Section 32(1)—delete subsection (1) and substitute:

(1) A hotel licence authorises the licensee—

(a) to sell liquor on the licensed premises for consumption on or off the licensed premises—

(i) on any day (except a Sunday, Good Friday and Christmas Day) between 5 am and midnight; and

(ii) on a Sunday (not being Christmas Day or New Year's Eve) between 11 am and 8 pm; and

(iii) if New Year's Eve is on a Sunday, on that Sunday between 11 am and midnight; and

(iv) on Christmas Day between 9 am and 11 am; and

(v) on New Year's Day between midnight and 2 am; and

(b) if an extended trading authorisation is in force, to sell liquor on the licensed premises for consumption on the licensed premises during the whole or any part of the following hours as is specified in the authorisation:

(i) on any day (except a Sunday, Good Friday, the day after Good Friday, Christmas Day and the day after Christmas Day) between midnight and 5 am;

(ii) on a Sunday (not being Christmas Day or the day after Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight;

(iii) if the day after Christmas Day is a Sunday, on that Sunday between 8 am and 11 am and between 8 pm and midnight;

(iv) on Good Friday between midnight and 2 am;

(v) on Christmas Day between midnight and 2 am; and

(c) if an extended trading authorisation is in force, to sell liquor on the licensed premises for consumption off the licensed premises during the whole or any part of the hours between 8 am and 11 am, and between 8 pm and 9 pm, on a Sunday (not being Christmas Day) as is specified in the authorisation; and

(d) to sell liquor at any time on the licensed premises to a lodger for consumption on or off the licensed premises; and

(e) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and

(f) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area; and

(g) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only during the hours that the licensee is authorised to sell liquor on the licensed premises to a person other than an lodger for consumption off the licensed premises).

12—Amendment of section 33—Residential licence

Section 33(1)(b)—delete paragraph (b) and substitute:

(b) if the conditions of the licence so provide—authorises the licensee to sell liquor at any time for consumption on the licensed premises by persons attending a function at which food is provided or seated at a table, except—

(i) not—

(A) on Good Friday between 2 am and midnight; or

(B) on the day after Good Friday between midnight and 5 am; or

(C) on Christmas Day between 2 am and midnight; or

(D) on the day after Christmas Day between midnight and 5 am; and

(ii) only—

(A) between midnight and 5 am on any day (other than Good Friday, Christmas Day or a Sunday); and

(B) between midnight and 2 am on Good Friday; and

(C) between midnight and 2 am on Christmas Day; and

(D) on a Sunday (not being Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight,

to the extent that those hours are specified in an extended trading authorisation that is in force.

13—Amendment of section 34—Restaurant licence

Section 34(1)(c)—delete paragraph (c) and substitute:

(c) if the conditions of the licence so provide—authorises the licensee to sell liquor at any time for consumption on the licensed premises by persons attending a function at which food is provided or seated at a table except—

(i) not—

(A) on Good Friday between 2 am and midnight; or

(B) on the day after Good Friday between midnight and 5 am; or

(C) on Christmas Day between 2 am and midnight; or

(D) on the day after Christmas Day between midnight and 5 am; and

(ii) only—

(A) between midnight and 5 am on any day (other than Good Friday, Christmas Day or a Sunday); and

(B) between midnight and 2 am on Good Friday; and

(C) between midnight and 2 am on Christmas Day; and

(D) on a Sunday (not being Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight,

to the extent that those hours are specified in an extended trading authorisation that is in force.

14—Amendment of section 35—Entertainment venue licence

Section 35(1)—delete subsection (1) and substitute:

(1) An entertainment venue licence authorises the licensee—

(a) to sell liquor at any time for consumption on the licensed premises, in a designated dining area, with or ancillary to a meal provided by the licensee; and

(b) to sell liquor on the licensed premises for consumption on the licensed premises at a time when live entertainment is provided on the licensed premises between 9 pm on one day and 5 am on the next except—

(i) not—

(A) on Good Friday between 2 am and 5 am; or

(B) between 9 pm on Good Friday and 5 am on the day after Good Friday; or

(C) between 9 pm on Christmas Day and 5 am on the day after Christmas Day; and

(ii) only between midnight and 2 am on Good Friday to the extent that those hours are specified in an extended trading authorisation that is in force; and

(c) if the conditions of the licence so provide—authorises the licensee to sell liquor at any time for consumption on the licensed premises by persons attending a function at which food is provided or seated at a table except—

(i) not—

(A) on Good Friday between 2 am and midnight; or

(B) on the day after Good Friday between midnight and 5 am; or

(C) on Christmas Day between 2 am and midnight; or

(D) on the day after Christmas Day between midnight and 5 am; and

(ii) only—

(A) between midnight and 5 am on any day (other than Good Friday, Christmas Day or a Sunday); and

(B) between midnight and 2 am on Good Friday; and

(C) between midnight and 2 am on Christmas Day; and

(D) on a Sunday (not being Christmas Day) between midnight and 11 am and between 8 pm and midnight,

to the extent that those hours are specified in an extended trading authorisation that is in force.

15—Amendment of section 36—Club licence

(1) Section 36(1)—delete subsection (1) and substitute:

(1) A club licence authorises the licensee—

(a) to sell liquor on the licensed premises for consumption on the licensed premises—

(i) on any day (except a Sunday, Good Friday and Christmas Day) between 5 am and midnight; and

(ii) on a Sunday (not being Christmas Day or New Year's Eve) between 11 am and 8 pm; and

(iii) if New Year's Eve is on a Sunday, on that Sunday between 11 am and midnight; and

(iv) on Christmas Day between 9 am and 11 am; and

(v) on New Year's Day between midnight and 2 am; and

(b) if an extended trading authorisation is in force, to sell liquor on the licensed premises for consumption on the licensed premises during the whole or any part of the following hours as is specified in the authorisation:

(i) on any day (except a Sunday, Good Friday, the day after Good Friday, Christmas Day and the day after Christmas Day) between midnight and 5 am;

(ii) on a Sunday (not being Christmas Day or the day after Christmas Day) between midnight and 5 am and between 8 am and 11 am and between 8 pm and midnight;

(iii) if the day after Christmas Day is a Sunday, on that Sunday between 8 am and 11 am and between 8 pm and midnight;

(iv) on Good Friday between midnight and 2 am;

(v) on Christmas Day between midnight and 2 am; and

(c) to sell liquor at any time on the licensed premises to a lodger for consumption on or off the licensed premises; and

(d) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and

(e) to sell liquor at any time in a designated reception area to a person attending a reception for consumption in that area; and

(f) if the licensing authority is satisfied that members of the club cannot, without great inconvenience, obtain supplies of packaged liquor from a source other than the club and includes in the licence a condition authorising the sale of liquor under this paragraph—

(i) to sell liquor on the licensed premises to a member of the club for consumption off the licensed premises on any day (except Good

Friday and Christmas Day) during the hours that the licensee is authorised to sell liquor on the licensed premises to a person other than a lodger for consumption on the licensed premises; and

(ii) to sell liquor at any time through direct sales transactions to members of the club (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8 am and 9 pm and not on Good Friday or Christmas Day).

(2) Section 36(2)—delete subsection (2)

If I could explain to honourable members, I cannot take credit it for all the text that is in this; obviously, parliamentary counsel has drafted it. It is a consolidation of the minister's amendments and my amendments to the minister's amendments. The minister's amendment No. 7, which deals with sections 32 to 36 of the Liquor Licensing Act, is consequential. There are some consolidations of the various licence classes within the act, which is a significant rewrite and which makes it easier to understand. In addition, these amendments include my amendments which would have prevented the 4am to 7am break in trade.

The Hon. G.E. GAGO: The government rises to support this amendment. It is basically an administrative matter, given that we have conceded that the mandatory break in trade is not going to be supported. I just would like to acknowledge the remarkable work of parliamentary counsel and the amazing work that they have done to assist us in a wide range of very complex sets of amendments. They have certainly made all our lives much easier through their efforts.

The CHAIR: They are different clauses, but if there is agreement on them all, it will fast track matters.

Amendments carried; clauses as amended passed.

Clause 16 passed.

Clause 17.

The Hon. J.M.A. LENSINK: I move:

Page 7, lines 1 to 8—Delete subclauses (1) and (2) and substitute:

(1) Section 40(1)—delete subsection (1) and substitute:

(1) A special circumstances licence authorises the licensee in accordance with the terms and conditions of the licence—

(a) to sell liquor for consumption on or off the licensed premises—

(i) on any day (other than a Sunday) between 5 am and midnight; and

(ii) on a Sunday between 11 am and 8 pm; and

(b) if an extended trading authorisation is in force, to sell liquor for consumption on or off the licensed premises during the whole or any part of the following hours as is specified in the authorisation:

(i) on any day (other than a Sunday, Good Friday, the day after Good Friday, Christmas Day or the day after Christmas Day) between midnight and 5 am;

(ii) on a Sunday (not being Christmas Day or the day after Christmas Day) between midnight and 11 am and between 8 pm and midnight;

(iii) on Good Friday between midnight and 2 am;

(iv) on Christmas Day between midnight and 2 am;

(v) if Christmas Day or the day after Christmas Day is a Sunday, on that Sunday between 8 pm and midnight; and

(c) to sell liquor at any time in a designated dining area to a diner for consumption in that area with or ancillary to a meal provided by the licensee in that area; and

(d) to sell liquor at any time to a lodger for consumption on or off the licensed premises.

This is consequential and applies, from what I understand, to special circumstances licensing.

Amendment carried.

The Hon. J.M.A. LENSINK: I move:

Page 7, line 12 [inserted subsection (5)]—Delete: 'or management plans' and substitute:

'(and that classification may be varied by the Commissioner from time to time)'

This is consequential to previous amendments to delete references to management plans.

Amendment carried; clause as amended passed.

Clause 18.

The Hon. J.M.A. LENSINK: I move:

Page 7, line 17 [inserted subsection (6)]—Delete 'or management plans' and substitute:

'(and that classification may be varied by the Commissioner from time to time)'

This is consequential.

Amendment carried; clause as amended passed.

Clause 19 passed.

Clause 20.

The Hon. J.M.A. LENSINK: I move:

Page 7, lines 22 to 29 [clause 20(1) and (2)]—Delete subclauses (1) and (2)

This is consequential.

Amendment carried; clause as amended passed.

Clause 21.

The Hon. G.E. GAGO: I move:

Lines 36 to 38 [clause 21]—Delete clause 21 and substitute:

21—Amendment of section 44—Extended trading authorisation

(1) Section 44(1)—delete 'authorising extended trade in liquor' and substitute:

extending the hours during which the licence authorises trade in liquor

(2) Section 44(4)—delete subsection (4)

This amendment is consequential on the deletion of the definition of extended trade. It also deleted extending trading hour provisions that were the subject of a previous amendment which included such hours under the individual licence section.

As I have said previously, under the current act, to properly determine the hours that each specific licence class is authorised to trade, you must go to the section of the act relevant to that particular licence class, then to the definition of the ETA in section 4, and then to section 44, which deals with extended trading authorisations.

To simplify this—and I am sure that that is what we are all trying to do—and make this process simpler and clearer, a previous amendment sought to group all this information together under the heading of 'Each licence class'. This amendment is consequential to that previous amendment. So, it is fundamentally an administrative matter that we have previously dealt with and agreed to.

The Hon. J.M.A. LENSINK: It is consequential.

Amendment carried; clause as amended passed.

Clauses 22 to 29 passed.

New clause 29A.

The Hon. G.E. GAGO: I move:

Page 9, after line 22 [clause 29A]—After clause 29 insert:

29A—Insertion of Part 7A

After Part 7 insert:

Part 7A—Offensive or disorderly conduct

117A—Offensive or disorderly conduct

(1) A person must not behave in an offensive or disorderly manner in licensed premises or in the vicinity of licensed premises.

Maximum penalty: $1 250.

Expiation fee: $160.

(2) This section does not apply to any behaviour involving violence or a threat of violence.

This amendment creates a new expiable offence for offensive or disorderly conduct in or in the vicinity of a licensed premises. The maximum penalty is $1,250; expiation fee, $160. This section does not apply to any behaviour involving violence.

This amendment came to be after ongoing discussions with the Attorney-General about making section 7 of the Summary Offences Act—Disorderly or offensive conduct or language, an expiable offence. It was suggested that, if this offence is made expiable, it would assist in improving the enforcement of appropriate behaviour in and around licensed premises. The aim of this proposal is to give police a practical response to loutish behaviour that results from public intoxication, without the expense of prosecution where it is not necessary. This proposal will assist in managing persons leaving licensed premises or moving between licensed premises in the early hours of the morning, or who cause public annoyance.

Discussions on this issue have been continuing and have culminated in the Attorney-General advising that these aims can appropriately be achieved by a government amendment to the bill that is now before parliament. The current amendment gives effect to this advice and adds a clause to the act, creating a new offence of engaging in disorderly or offensive behaviour in or in the vicinity of a licensed premises. Such a provision is consistent with concepts already in the act. For instance, a person engaging in such behaviour in a licensed premises can be removed and commits an offence if they return within 24 hours; that is section 124. The bill makes the maximum penalty $1,250, with an expiable fee of $160. This section does not apply to any behaviour involving violence.

The Hon. J.M.A. LENSINK: I am pleased that the government has been dragged—I will not say kicking and screaming, but it has certainly been very resistant to this concept for some time and it is something that a number of people have called for, including the Hotels Association, a number of licensed premises and, indeed, Leon Byner, I think, might have pinned the minister down on radio into committing to this.

It is something that our police spokesman, the Hon. David Ridgway, has for some time advocated for as a means of a lesser penalty, if you like, for bad behaviour, which, as I indicated in a previous amendment, can often escalate into violence and, therefore, it is appropriate to penalise people at that point. If they get a nasty sting for misbehaving then, hopefully, they are less likely to do that again in future. So, we do support this amendment.

The Hon. D.G.E. HOOD: Just briefly, I would like to add Family First's support to the amendment. It is a sensible measure which, I understand, is in use in other jurisdictions in Australia. We certainly think it is a move in the right direction and we support the amendment.

The Hon. T.A. FRANKS: The Greens also support this amendment. It is a much more useful way of curbing alcohol-related violence and offensive and disorderly conduct than some of the previous measures that used to be contained in this bill.

New clause inserted.

Clause 30 passed.

Clause 31.

The Hon. G.E. GAGO: I move:

Page 10, after line 12 [clause 31(1)]—After inserted subsection (4) insert:

(4a) If—

(a) the Court finds that there is proper cause for taking disciplinary action against a licensee for an incident involving the commission of an offence against this Act on licensed premises during the hours between 4 am and 7 am on any day; and

(b) the finding follows a conviction of the licensee for such an offence committed within the previous 2 years or previous disciplinary action for an incident involving the commission of such an offence within the previous 2 years,

the Court must alter the conditions of the licence so that the licence no longer authorises trade during the hours between 4 am and 7 am on any day unless the licensee shows cause why that action should not be taken.

This amendment provides guidance to the court relating to appropriate disciplinary action against a licensee who has received an exemption to the mandatory break in trade in circumstances involving a second instance of a conviction or disciplinary action for incidents occurring during 4am to 7am. This amendment requires that the court revoke the exemption, unless a licensee shows cause why trade between 4am and 7am should be allowed to continue.

This amendment reflects the significance of being granted the privilege of a special trading authorisation that authorises trade between 4am and 7am and the seriousness attached to any breach of licence condition or the act that occur during this particular time. The government wants to ensure that any premises afforded the privilege to trade between 4am and 7am is adhering to exemplary standards of operation.

The Hon. J.M.A. LENSINK: The Liberal Party supports this amendment.

The Hon. D.G.E. HOOD: For the record, I would like to add that Family First does as well.

Amendment carried; clause as amended passed.

Clauses 32 to 35 passed.

The CHAIR: The next indicated amendment is in the name of the honourable minister, new clause 35A.

The Hon. G.E. GAGO: I will not be proceeding with this amendment. Given that the mandatory break in trading hours has not been supported, we need to keep this consistent with other licensed premises.

The Hon. T.A. FRANKS: I would ask the minister, had it been moved, and given that there is still the opportunity for somebody to move this, how it would have been implemented?

The CHAIR: I think that is irrelevant. It has been withdrawn. She did not move it, so we do not ask a question on something that is not going to be legislated. You might ask the minister in the corridor or in the bar. The honourable minister.

The Hon. G.E. GAGO: We want consistency, do we not, sir?

The CHAIR: We certainly do.

The Hon. G.E. GAGO: I am sure every honourable member here wants consistency. Given that I will be doing everything on my watch as leader of this house to make sure that we will not ever need to avail ourselves of those services because we will not be ever sitting during those most unhealthy hours, I will be doing my bit to make sure that it will be a moot point.

Given the need to ensure that the transition arrangements reflect the complex number of amendments that have been put, we need some time to ensure that they are accurate and reflect all the changes that have been made. I want to report progress before we do the transitional arrangements, is what I am trying to do.

Clause 36 passed.

Progress reported; committee to sit again.

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

Adjourned debate on second reading.

(Continued from 6 July 2011.)

The Hon. D.G.E. HOOD (20:16): I rise to indicate Family First support for this bill. Family First believes that children need to be protected from decisions that they may regret in the future. They are, after all, young, and they have a different filter of what is in their long-term interest and what is not. Things such as tongue splitting, branding, scarification and risky piercings that may

lead to infection can obviously be harmful to children and may have long-term consequences that they can, in some cases, be too young to fully appreciate.

This bill introduces several important measures that are welcomed by Family First. First, the bill prohibits a person from performing a body piercing or body modification procedure on a person who is intoxicated, whether by alcohol or any other substance or combination of substances. This is a good move. Secondly, this bill prohibits a person from performing a body modification procedure on a minor, which includes such things as branding, implantation and scarification. Further, a person must not perform an intimate body piercing on a minor. These two provisions seem to be completely sensible from a child protection standpoint and are provisions that we support.

As inserted, new section 21C requires a child under 16 wanting to have any body piercing other than an earlobe piercing to have the consent of a guardian. The later section 21D provides that a piercing cannot be performed unless the minor is accompanied by a parent or guardian who consents to the procedure or who otherwise has a statutory declaration to that effect. There are also enhanced police powers to enter premises in which tattooing, body piercing or body modification procedures are advertised, offered or performed, and to require a person who has possession of records produced under the act to produce those records for inspection.

Family First warmly supports the general principles contained in this bill. For far too long, in many areas of law parents have been kept out of the loop, so to speak, with respect to what their children are doing. I raised in the media some time ago—and, indeed, as recently as last week—that Facebook, for example, had a policy of not communicating with parents of children who had pages on its site. According to Facebook, if you are 13 years old then you are a registered account holder and the wishes of any parents are irrelevant.

The same principle has applied for some time now with respect to piercing and scarification. If you are at an appropriate age to consent to such procedures being performed on you—and, mind you, age is not defined—you can have your tongue split, be branded and have all sorts of other procedures performed on you. There was little that parents could do about that until this bill.

Certainly, when some of these people grow up they may regret the decisions they made as a very young person. Many of the procedures addressed in this bill are irreversible and the results will be lifelong, and a young person who today may not welcome these restrictions may thank this parliament for them in the future. Family First certainly agrees with the complete banning of some of the more permanent procedures, such as the branding or scarification of children, as well as intimate piercings of children. We would also like to see parents being involved in more ordinary piercings, for example nasal piercings, as this bill will allow.

Certainly, Family First is a strong proponent of family rights. Indeed, my colleague the Hon. Robert Brokenshire has a bill before this place that would ensure that parents are kept aware of medical procedures being performed on their children. In our view the same principle applies in this bill, as it is unacceptable that two doctors can approve medical procedures to be performed on children without that child's parent or guardian having knowledge—except in emergency situations, of course. If members are, therefore, willing to accept the principle in this bill I would encourage them to accept a similar proposition with respect to non-emergency medical procedures as outlined in my colleague the Hon. Robert Brokenshire's bill.

Many in this and the other place have attempted to improve the law in this area over the years. The first proposal I am aware of dates back to 2001 when the member for Fisher introduced a similar measure to the one we are debating at the moment. This proposal has consistently met with strong support, only to get bogged down in detail or delay time and time again. The member for Enfield introduced a private member's bill in 2002 and again in 2004, on this very issue. Both measures were met with strong support from other members as well as from Family First.

I understand from my previous notes that the member for Enfield's bill in 2002 actually passed through the other place unanimously. Where no consensus could be reached on the bill between the houses, a select committee was formed which reported on the practice on 19 October 2005. I also introduced a very similar bill back in 2008. Indeed, my bill passed this place with strong support from the opposition but, again, lapsed in the other place. As part of that process I ran a forum in the old chamber of Parliament House on this very issue, and I am grateful for the many valuable recommendations that members of parliament were given from industry leaders such as Morag Draper.

It is clear that action is needed; indeed, it seems that there is widespread agreement across this parliament that action needs to be taken. The debate is about precisely what that action should be; that is, not if but how. The select committee confirmed that there are currently no laws to prohibit the piercing of minors. Indeed, David Peake QC confirms in the report that so long as they are aware of the nature of the act (that is, the minor) being performed on them, they can consent to any of these procedures. The report strongly called for action, and the only disappointment that we have is that it has been some six years in waiting for a legislative response to this particular issue.

Nevertheless, this bill implements many of the recommendations of that select committee to protect children from the risk of permanent damage, and it is strongly welcomed by Family First. My closing comment is that this is something that has been before this parliament in one form or another since way back in 2002, and here we are nearly 10 years later. It is good to see the Attorney-General taking on a bill like this, because it makes it more likely that it will actually receive passage through both houses. It will certainly receive our support.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): The Hon. Tammy Franks, on her birthday.

The Hon. T.A. FRANKS (20:22): Thank you, Mr Acting President. I am not quite young enough to be affected by this bill. I rise on behalf of the Greens to address this bill, which we have, in general, support for. This bill had its origins in the 2005 Select Committee on the Tattooing and Body Piercing Industries. Subsequently, a government-initiated discussion paper and draft bill generated over 40 responses. Comments were received from stakeholders working in the industry: the Professional Tattooing Association of Australia, the Australian Professional Piercing Association, the Youth Affairs Council of South Australia, the Law Society, the Australian Medical Association, the Hepatitis C Council, Environmental Health Australia and government agencies.

The government's summary noted that there was widespread support for the objectives of the bill, that is, to ensure that there is clarity around what procedures can and cannot be performed on minors. I note that this bill does not impact on adults at all other than to prevent them from receiving a tattoo or body modification procedure whilst they are intoxicated or under the influence—which is certainly not a bad thing. It also precludes them from giving consent for such procedures for minors in their care if they are similarly intoxicated.

I also note that the government has taken some of the feedback received from its consultations into account in the drafting of this final proposal in the bill that we have before us here tonight, and I commend it for this, particularly for dropping or modifying some of the more inappropriate and contentious provisions. However, there are still some small areas of concern that the Greens would like to see addressed, and we will be putting forward amendments to this end.

The consultation and feedback process found that, although there was broad support for better regulation of these industries, there were objections to some areas of the draft bill, particularly the proposed age restrictions, the proposal to ban the taking of deposits and the police powers that were being proposed. I am pleased to note that in response to this the government has amended its draft bill before it presented it in its response to these well-founded and constructive criticisms on some, but not all, of the contentious provisions.

I note, as the discussion paper acknowledged, that alternative forms of body piercing, other than traditional (and I say that in the so-called western context) ear lobe piercing, have become more popular and more widely accepted through many subcultures of western culture in the world today and have, in fact, crossed over into what would be mainstream Australian culture. I say that traditional ear lobe piercing as we see it in our society is not necessarily the tradition of many of the peoples who make up our society. They may have traditions—particularly in Indian cultures, and so on—where other parts of the body are the areas that are 'traditional'.

As Australia has become, I believe (and it is very much to be welcomed), a more multicultural society, other types of piercing such as nose and navel piercings common to either other cultures or other subcultures are now more typically seen—or not seen, depending where they are on the body—and are more widely and increasingly accepted. More recently, other body modification procedures such as branding, scarification or implantation common in some cultures have also risen in popularity and acceptance amongst young people in particular. Whether members present agree with such practices or would themselves submit to such practices is immaterial. These practices are often age-old and, in many cases, follow the trends and the fashions in popularity.

As an aside, in regard to this one concern, we raise whether sufficient consideration has been given to indigenous concerns and whether traditional initiation ceremonial activities may also be captured under this legislation. I put that to the minister for a response. I do not think that it is the intention of this bill, but I would appreciate hearing whether or not indigenous communities have been considered or consulted in this regard and whether they might be, intentionally or unintentionally, caught up by its provisions.

Returning to the main thrust of the bill, the Greens share the concerns raised by the government that any such activity should be conducted in a safe and professional manner and should not unduly risk the health or wellbeing of those people engaging in the practices. It is therefore a concern to realise that the government has failed to recognise and address a major potential harm that was raised by the industry itself. I would also be interested to know what the health department itself thinks of this submission.

I refer here to the failure of the government to act upon the industry's call to ban reusable ear piercing guns. If you were to walk into a hairdressing salon and ask for your ears to be pierced today—I must say, as I did when I was 11 years old, because I begged my mother for some years to have my ears pierced, and did so under this particular method in the hairdresser's: I also got a haircut and a KFC dinner that night—it is very likely that the hairdresser would pierce your ears, as they did to me when I was 11 years old, with an ear piercing gun. These are the very guns that, over six years ago, concerns were raised about to the select committee by doctors, including a plastic surgeon, who highlighted the trauma that these could do to the very soft tissue of ear lobes and cases that they had to deal with.

In this day and age of sensitivity to, and awareness of, blood-borne viruses such as hepatitis C, other hepatitis variants and, of course, HIV, it beggars belief that the government would not act to ensure that an old-fashioned device like this, which cannot be sterilised easily or effectively and that the industry representatives themselves have actually called to be banned, is still permitted to be used. The Greens will be introducing amendments to the bill to rectify this omission and we will look forward to ensuring that the potential for serious and permanent harm that viruses like Hep C and HIV present are not further spread through ear piercing using these old-fashioned devices.

I am advised by the industry representatives who do this sort of thing for a living that the alternative—using a single-use cannula, a metal tube used for inserting into the body attached to an IV drip, for instance—is a safer, more hygienic method and reduces the potential for damage to tissues and/or infection. They are commonly available from surgical supply stores. It would not be onerous to expect practitioners to switch to this method immediately.

The government has clearly missed the point on this aspect of the bill, which calls into question its motivation for some other aspects of the bill. Is the government really wanting to ensure the best health outcomes for youth, or is this is a backdoor way of harassing the Premier's favourite whipping boys, the so-called outlaw motorcycle gangs, which the drafter of this speech has referred to as the OMGs?

I am referring here to section 21(1), which relates to police powers. Here the Greens and the government will part ways. The Greens do not believe that such a draconian and over-the-top power in this bill is necessary to ensure the public good. Indeed, in no other industry which I am aware of do powers similar to this apply. We know that solariums, for example, are potentially deadly. The outcome in the tragic case of 26-year-old skin cancer victim, Clare Oliver from Melbourne, is far more significant than a slightly enlarged earlobe, for instance, yet no-one has suggested that police would be able to wander into solariums without due cause on fishing expeditions just on the off-chance that there might be some under-aged kids present.

The historical record does not support this provision, either. Of the three cases of under-age tattooing of which I have been made aware, all occurred from amateur backyarders, which is a cause for concern in itself. No reputable tattooing or piercing operation would want to sully its reputation, through exposure in the media and the court of public opinion, for tattooing children. I understand that the industry itself is happy to comply with recording and verifying identification and, indeed, already does so in order to satisfy public health requirements. However, the government's proposed section 21(1) has the potential to be counterproductive and to drive people away from reputable licensed providers into the arms of the backyarders, where hygiene and quality control standards are more likely to be seriously lacking.

The government has not demonstrated convincingly why the police, as opposed to public health officials, should be able to waltz into a legitimate business operation and immediately interrogate all customers as to their name, address and details of the procedures they are going to have or have had. This sort of heavy-handed interference in the legitimate business operations of providers is unwarranted, unnecessary and counterproductive and an infringement on the personal privacy of consumers.

We do not give police powers to gatecrash triple-X waxing studios, barbers, hairdressers or dentists, nor solariums, chiropractors, go-cart racers, ice-skating rinks, skirmish and paintball grounds or shooting ranges, despite the potential for all of these to be risky and potentially hazardous to the participants. Nor can they enter any individual's home or business without due cause; even then a warrant is necessary.

I note that the government itself acknowledges that the bill does not alter or add to the law about health inspections, which are provided for under the Public and Environmental Health Act and which are the responsibility of local councils. If a business poses a health hazard, the council can take action under that act to require rectification of the hazard and can, if necessary, close down the business until this occurs. The Greens will be moving an amendment to remove these police powers in the provisions in their entirety, and I look forward to working with other members who share the same concerns in relation to this bill.

The bill further requires that service providers who perform a body piercing or body modification procedure to enter into a written agreement with the customer, setting out the nature of the procedure and the manner in which it is to be carried out. They are required to give a copy of the agreement to the customer, free of charge, along with certain 'prescribed information'. The Greens support this provision, but we note that, at present, this requirement exempts providers from any obligation to provide similar information for earlobe piercing.

The Greens believe that it would not be particularly onerous, time consuming or even expensive to extend this requirement to include the provision of prescribed information for earlobe piercing as well, in the interests of patient health outcomes. This could be as simple as a photocopied sheet of paper detailing after-care techniques to keep the piercing site clean and hygienic and therefore reduce the chance of infection. This requirement is supported by the evidence, specifically the Healthy Body Art: Body Piercing Infection and Injury Research Report, which was compiled in October 2006 by Southern Primary Health, Noarlunga.

The report highlighted that earlobes were the second most commonly infected body part after navels and that the main contributing factor resulting in these infections or injuries was, in fact, 'poor after-care, including lack of, or inaccurate, after-care advice'. Accordingly, if the government is really serious about health outcomes, it will accept an amendment to include the provision of this information to all consumers of piercing services.

The prescribed information that will be required to be provided should include information about the possible health risks associated with body piercing and body modification procedures. This would also include, especially, after-care techniques and cover the health risks associated with any skin puncturing practice, such as the risk of blood-borne viruses such as hep B and C and HIV.

Another Green amendment will be to remove earlobe piercings as an exemption from parental consent for under 16 year olds. Whilst it is true that earlobe piercing is more socially acceptable and more commonly practised in our country than other piercings, this does not actually mean that it is any less hazardous than the other less common forms of piercing. Any form of piercing carries risks, especially so when conducted by poorly-trained service providers or, worse, by amateurs, often children themselves with no training or awareness of safe skin puncturing protocols.

The government itself notes that 16 years is the age for an individual to give informed consent to medical procedures. Industry representatives have made submissions calling for consistency here and indicated that they would support an across-the-board approach, requiring parental consent or other adult guardian consent for all non-intimate piercings for those children under 16. Having a consistent age of consent for all intimate piercings 18 and above and all non-intimate piercings 16 and above will, in our view, provide improved health outcomes for young people in South Australia. With that, we look forward to the committee stage of the bill and further debate.

Debate adjourned on motion of Hon. Carmel Zollo.

STATUTES AMENDMENT (COMMUNITY AND STRATA TITLES) BILL

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

STATUTES AMENDMENT (DIRECTORS' LIABILITY) BILL

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

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (20:41): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill carries out the requirements set by the Council of Australian Governments as to the criminal liability of company directors for offending by the company. The Council, concerned not to impose unjustifiable burdens on business or to discourage competent persons from becoming directors, has issued guidelines to be applied by all states and territories in statutory provisions creating such liability.

Broadly speaking, the effect of the guidelines is that statutes should not routinely create criminal liability of directors for the offending of the company. Instead, it is necessary to consider the policy justification for that liability, for example, the potential for significant public harm, such that it is reasonably necessary to hold directors liable so as to deter offending. Where liability is justified, the guidelines specify that directors could properly be held liable either where they are a party to the offence or where they have been negligent or reckless in relation to the offending. In some circumstances, the guidelines provide, it may be appropriate to put directors to proof that they have taken reasonable steps to prevent the corporation's offending if they are not to be personally liable.

South Australian statute law has been examined in the light of these guidelines. At present, in our statute book, where an Act creates criminal liability of a director for an offence by the company, a standard form of provision is commonly used which holds the director criminally liable on proof of the company's offending, subject to a defence of due diligence which the director must prove. In accordance with the Council's guidelines, those provisions have been reconsidered. This Bill makes amendments to some 25 statutes to bring them into conformity with the guidelines.

As agreed by the Council of Australian Governments, not all Acts containing such provisions are amended by this Bill. A decision was taken by the Council to exclude laws pertaining to environmental protection and to occupational health and safety. Also, amendments are not made in this Bill to Acts that are separately subject to other reviews. In some cases, the present high standard of liability has been judged to be appropriate and those Acts are not amended.

The Bill adjusts the liability of directors in some 25 Acts in light of the Council's guidelines. In some cases, it has been decided that directors should not be held criminally responsible for the company's offending, even if the director failed in due diligence, but should only be liable if the director was an accessory to the offence. In that case, the liability provision is removed from the Act or is disapplied to the relevant offence and the general law of accessorial liability applies. In other cases, it has been determined that because the offence is one that the directors should be vigilant to prevent, the law should hold directors criminally liable subject to a defence of due diligence which the director must prove, as is the case now. That is, the present law can be justified for the most serious offences. This is because to hold directors liable helps to deter offending by the company. In a number of cases, however, a middle ground has been taken because the offence is moderately serious. In those cases, the director will only be criminally liable if the prosecution can prove specified matters.

For this group of offences, the new form of provision requires the prosecution to prove, first, that the director knew or ought reasonably to have known that there was a significant risk that an offence of this type or kind might occur; second, that the director was in a position to influence the company's action in relation to this type of behaviour; and third, that the director failed to exercise due diligence to stop the company from offending. This form of provision is considered to be fair to directors in that they cannot be held responsible if they could not reasonably have known what was going on, or if they could not reasonably have done anything about it, but they are held responsible if they know or should know, they could do something, but they fail to act as they should. All of these are matters to be proved by the prosecution.

Thus, the overall effect of the Bill is to reduce the number of offences by a company for which directors will be criminally liable and also, where criminal liability is retained, to distinguish between those that are so serious that it should be left to the director to prove a defence of due diligence, and those that are not as serious, so that the required elements should be proved by the prosecution.

The Bill seeks, in conformity with the guidelines, to reduce the burden on company directors but without unacceptably increasing the risk that companies will commit offences. If these provisions are acceptable to the Parliament, it is intended in future legislation creating directors' liability to use the same type of provisions.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Aboriginal Heritage Act 1988*

4—Amendment of section 41—Vicarious liability

This clause amends the vicarious liability provision relating to members of the governing body of a body corporate so that it only applies to certain prescribed offences under the Act.

Part 3—Amendment of *Air Transport (Route Licensing—Passenger Services) Act 2002*

5—Repeal of section 23

This clause repeals the provision on liability of directors.

Part 4—Amendment of *Animal Welfare Act 1985*

6—Substitution of section 38

This clause substitutes new provisions on the liability of members of the governing body of a body corporate where the body corporate has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, a member will be liable in relation to certain prescribed offences committed by the body corporate unless the member proves that he or she could not by the exercise of due diligence have prevented the commission of the offence. Secondly, in relation to most other offences the member will only be guilty if the prosecution proves that the member knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for members of the governing body at all.

Part 5—Amendment of *ANZAC Day Commemoration Act 2005*

7—Amendment of section 18—Restriction on public sports and entertainment before 12 noon on ANZAC Day

This clause repeals the provision on liability of members of the governing body of a body corporate and managers that currently applies to offences against section 18.

Part 6—Amendment of *Architectural Practice Act 2009*

8—Repeal of section 64

This clause repeals the provision on liability of members of the governing body of a body corporate.

Part 7—Amendment of *Authorised Betting Operations Act 2000*

9—Substitution of section 84

This clause substitutes new provisions on the liability of members of the governing body of a body corporate, and managers, where the body corporate has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, a member or manager will be liable in relation to certain prescribed offences committed by the body corporate unless he or she proves that he or she could not by the exercise of due diligence have prevented the commission of the offence. Secondly, in relation to most other offences the member or manager will only be guilty if the prosecution proves that he or she knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for members of the governing body at all.

Part 8—Amendment of *Controlled Substances Act 1984*

10—Repeal of section 45

This clause repeals the provision on liability of members of the governing body of a body corporate.

Part 9—Amendment of *Employment Agents Registration Act 1993*

11—Repeal of section 27

This clause repeals the provision on liability of members of the governing body of a body corporate.

Part 10—Amendment of *Gaming Machines Act 1992*

12—Amendment of section 85—Vicarious liability

This clause substitutes new provisions on the liability of persons occupying a position of authority in the body corporate where the body corporate has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, such a person will be liable in relation to certain prescribed offences committed by the body corporate unless he or she proves that he or she could not by the exercise of due diligence have prevented the

commission of the offence. Secondly, in relation to most other offences the person will only be guilty if the prosecution proves that he or she knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for such persons at all.

Part 11—Amendment of *Health Care Act 2008*

13—Repeal of section 94

This clause repeals the provision on liability of members of the governing body of a body corporate.

Part 12—Amendment of *Misrepresentation Act 1972*

14—Amendment of section 4—Misrepresentation made in the course of trade or business

This clause repeals the provision on liability of members of the governing body of a body corporate.

Part 13—Amendment of *Opal Mining Act 1995*

15—Amendment of section 82—Offences

This clause repeals the provision on liability of directors and managers of corporations.

Part 14—Amendment of *Petroleum Products Regulation Act 1995*

16—Amendment of section 34—Controls during periods of restriction

This clause introduces a differential penalty for natural persons and bodies corporate.

17—Amendment of section 35—Controls during rationing periods

This clause introduces a differential penalty for natural persons and bodies corporate.

18—Amendment of section 36—Permits

This clause introduces a differential penalty for natural persons and bodies corporate.

19—Repeal of section 59—Offences by bodies corporate

This clause repeals the provision on liability of directors of a body corporate.

Part 15—Amendment of *Prohibition of Human Cloning for Reproduction Act 2003*

20—Repeal of section 29

This clause repeals the provision on liability of directors of a corporation.

Part 16—Amendment of *Racing (Proprietary Business Licensing) Act 2000*

21—Repeal of section 46

This clause repeals the provision on liability of members of the governing body of a body corporate and managers.

Part 17—Amendment of *Research Involving Human Embryos Act 2003*

22—Repeal of section 34

This clause repeals the provision on liability of directors of a corporation.

Part 18—Amendment of *Retirement Villages Act 1987*

23—Amendment of section 42—Offences

This clause repeals the provision on liability of directors and managers of a corporation.

Part 19—Amendment of *Second-hand Vehicle Dealers Act 1995*

24—Amendment of section 45—General defence

This clause ensures that the general defence is not available for a director of a body corporate charged with an offence under section 47.

25—Substitution of section 47

This clause substitutes new provisions on the liability of directors of a body corporate where the body corporate has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, a director will be liable in relation to certain prescribed offences committed by the body corporate unless he or she proves that he or she could not by the exercise of due diligence have prevented the commission of the offence. Secondly, in relation to most other offences the director will only be guilty if the prosecution proves that he or she knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for directors at all.

Part 20—Amendment of *Security and Investigation Agents Act 1995*

26—Amendment of section 40—General defence

This clause ensures that the general defence is not available for a director of a body corporate charged with an offence under section 42.

27—Substitution of section 42

This clause substitutes new provisions on the liability of directors of a body corporate where the body corporate has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, a director will be liable in relation to certain prescribed offences committed by the body corporate unless he or she proves that he or she could not by the exercise of due diligence have prevented the commission of the offence. Secondly, in relation to most other offences the director will only be guilty if the prosecution proves that he or she knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for directors at all.

Part 21—Amendment of *Supported Residential Facilities Act 1992*

28—Amendment of section 52—Prosecutions

This clause repeals the provision on liability of directors and managers of a corporation.

Part 22—Amendment of *Survey Act 1992*

29—Repeal of section 55B

This clause repeals the provision on liability of persons occupying a position of authority in a trust or corporate entity.

Part 23—Amendment of *Taxation Administration Act 1996*

30—Amendment of section 109—General criminal defence

This clause ensures that the general defence is not available for a person who is concerned in, or takes part in the management of, a corporation charged with an offence under section 110.

31—Amendment of section 110—Offences by persons involved in management of corporations

This clause substitutes new provisions on the liability of persons who are concerned in, or take part in the management of, a corporation where the corporation has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, such a person will be liable in relation to certain prescribed offences committed by the corporation unless he or she proves that he or she could not by the exercise of due diligence have prevented the commission of the offence. Secondly, in relation to most other offences the person will only be guilty if the prosecution proves that he or she knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the corporation in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for such persons at all.

Part 24—Amendment of *Tobacco Products Regulation Act 1997*

32—Amendment of section 81—Vicarious liability

This clause repeals the provision on liability of directors of a body corporate.

Part 25—Amendment of *Travel Agents Act 1986*

33—Amendment of section 38—General defence

This clause ensures that the general defence is not available for a director of a body corporate charged with an offence under section 40.

34—Substitution of section 40

This clause substitutes new provisions on the liability of directors of a body corporate where the body corporate has committed an offence against the Act. The new provisions provide for three tiers of liability. Firstly, a director will be liable in relation to certain prescribed offences committed by the body corporate unless he or she proves that he or she could not by the exercise of due diligence have prevented the commission of the offence. Secondly, in relation to most other offences the director will only be guilty if the prosecution proves that he or she knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed, was in a position to influence the conduct of the body corporate in relation to the commission of such an offence and failed to exercise due diligence to prevent the commission of the offence. Finally, in relation to some specified offences there will be no derivative liability for directors at all.

Part 26—Amendment of *Veterinary Practice Act 2003*

35—Repeal of section 73

This clause repeals the provision on liability of persons occupying a position of authority in a trust or corporate entity.

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

EVIDENCE (DISCREDITABLE CONDUCT) AMENDMENT BILL

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

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (20:42): 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.

Background

As part of its *Serious Crime Policy* at the last election, the Government undertook to amend the *Evidence Act 1929* to codify and improve the criminal law as it deals with the admission and use in criminal proceedings of evidence of past discreditable or criminal conduct of an accused. The *Evidence (Discreditable Conduct) Amendment Bill 2011* deals with a complex area and applies to the three types of evidence of past discreditable conduct that can be presented in a criminal trial. They may often overlap in practice because the evidence may be capable of supporting different chains of reasoning. This type of evidence is known as 'propensity evidence', 'similar fact evidence' and 'evidence of uncharged acts'.

The present law is overly restrictive, complex and unsatisfactory in having the practical effect that cogent and reliable evidence of past misconduct is often excluded from a criminal trial. The jury may well be kept in the dark as to such highly probative evidence. The present law in this area is in need of major reform. Given the fundamental importance of this area of the law in daily practice in the criminal courts at all levels, it is crucial that the law be clear and comprehensible and capable of straightforward application. At present, the law conspicuously does not meet these simple goals. The law in this important area needs reform.

The Bill will allow prosecutors in an appropriate case to present to a criminal court similar fact evidence (that is, evidence of multiple examples of similar conduct led to establish that the accused did a particular act), propensity evidence (that is, evidence that demonstrates that an accused has a particular tendency to act in a certain criminal manner) and evidence of previous criminal or discreditable conduct for which the accused had not been charged (uncharged acts). The Bill provides that a court may allow evidence of the previous acts and/or convictions of an accused to be admitted at a criminal trial when it is in the interest of justice to do so. The Bill will simplify and improve this often confused and controversial area of the criminal law. The Bill aims to improve outcomes for victims in general and, in particular, victims of sexual offences, whilst still maintaining an appropriate balance and ensuring that the defendant's right to a fair trial is not undermined.

Ever since the original leading decision of the Privy Council in 1894 in *Makin v Attorney-General (NSW)* [1894] AC 57, an immense amount of judicial, legal and academic ink has been spilt in trying to satisfactorily explain and rationalise this area of the law and attempting to reconcile the countless, and often inconsistent, decisions of the courts in applying the underlying principles to the many and varied circumstances before the criminal courts whilst maintaining appropriate safeguards. Such efforts have proved somewhat fruitless and the present law with respect to the admission and use of past misconduct in criminal proceedings is, frankly, in a mess. The present law in this area is not just complex but it is incomprehensible to many involved in the criminal justice system; be they police officers, jurors, lawyers and even magistrates and judges. It can be regarded as the legal equivalent of the famed Schleswig-Holstein question that bedevilled nineteenth century European diplomacy, of which Lord Palmerston, the British Prime Minister, said:

> *The Schleswig-Holstein question is so complicated, only three men in Europe have ever understood it. One was Prince Albert, who is dead. The second was a German professor who became mad thinking about it. I am the third and I have forgotten all about it.*

Recent decisions of the High Court, notably its decision in *R v HML* (2008) 235 CLR 334, far from solving the problems in this crucial area of criminal practice, have the potential to compound them. There continues to be much uncertainty about the admissibility and use of this type of evidence, the directions that a trial judge is required to give and the applicable standard of proof. Over recent years, the courts have considered this topic on numerous occasions. Much time has been spent by courts and law reform agencies on the subject. The number of cases of alleged sexual abuse, some dating back as far as 50 years ago, coming before the courts has increased over recent years. All indications are that this trend will continue. The present law is a confusing morass that is in need of comprehensive reform.

The Bill is the product of an extended consultation process. The Solicitor-General, officers of the Attorney-General's Department, the Bar Association and the judiciary have been closely involved in this process. I am particularly grateful for the invaluable assistance kindly and generously provided by Mr Malcolm Blue QC and Mr Jonathan Wells QC from the Bar Association, and Justice Duggan and the Joint Courts Criminal Legislation Committee, as part of that process. The final Bill meets with the approval of these parties and is an example of the benefits of a consultation process that has ultimately produced what has arguably eluded other efforts at law reform elsewhere, namely, agreement as to an effective, simplified and balanced legislative model. The Bill meets the objectives identified in the Serious Crime Policy without sacrificing appropriate safeguards. The Joint Courts Criminal Legislation Committee concludes of the Bill:

The simplicity of the Bill stands in stark contrast to the present mess. We think it has merit. There is nothing in the wording which requires further comment.

There is a general exclusionary rule at common law that evidence of bad character or criminal conduct not related to the charge is inadmissible and cannot be used in criminal trials. This rule is not absolute but the current common law test in South Australia imposes a very high threshold for the admissibility of such evidence, at least if it is to be used for propensity or similar fact purposes. The evidence must be of such a high standard that in itself it affords no reasonable inference other than the guilt of the accused before it is admitted. This test derives from the much criticised decisions of the High Court in *R v Hoch* (1988) 165 CLR 292 and *R v Pfennig* (1995) 182 CLR 461. The result of that test is that cogent, reliable and highly relevant evidence is sometimes kept from a jury. The Bill will improve the criminal justice process by allowing prosecutors in appropriate cases to introduce evidence of prior offending when it is both relevant and appropriate and in the interests of justice to do so (for example, in cases of alleged sexual abuse where the accused has committed other sexual offences in similar circumstances and that is relevant to the current proceedings).

However, the Bill also recognises the need for an appropriate balance to be struck. It is not intended to allow the routine introduction of evidence of discreditable conduct. The 'time honoured law' of England and Australia 'that you cannot convict a man of one crime by proving that he had committed some other crime' (*R v Ball* [1911] AC 47 at 71 per Lord Loreburn LC) is a strong principle of the criminal law. The election commitment does not overturn or displace this principle as much as modify it in order to arrive at a fair and workable modern model. The admission of such evidence is confined to where it is relevant, appropriate and in the interests of justice to do so.

Overview

The Bill has 6 major features.

First, it is intended to clearly and unequivocally overrule the high 'no rational inference test' test of admissibility prescribed by the High Court in *Pfennig*.

Secondly, it confirms that the rule of the High Court in *R v Hoch* is clearly and unequivocally overruled not just in relation to sexual offences but generally. The mere fact that there is a reasonable possibility of collusion between the alleged victims is an issue of credibility for the jury and not an issue or ground for determining the admissibility of the evidence.

Thirdly, it is not intended to 'open the floodgates' to the unrestricted or wholesale admission of evidence of discreditable conduct, especially if it is introduced for propensity or similar fact purposes. The Bill provides criteria for the admission and use of evidence of discreditable conduct. In any case, the probative value of the evidence of discreditable conduct must substantially outweigh its prejudicial effect. If the evidence of discreditable conduct which the prosecution seeks to use relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue, then the evidence must also have 'strong probative value', having regard to the particular issue arising at trial and the circumstances of the individual case, for it to be admissible. Judges are all too alert to the risk of impermissible reasoning and are well placed to assess that risk in any given case.

Fourthly, for completeness, the Bill extends to the admissibility and use of evidence of discreditable conduct for non-propensity, or non-similar fact, purposes, such as to show the background or context to the alleged offence, the relationship between the parties, to provide evidence of motive or intention in an appropriate case, or to disprove a possible defence, such as accident, self-defence or provocation. The Bill is intended to maintain the grounds for the admissibility and use of this type of evidence to the sensible, balanced and workable model outlined by Chief Justice Doyle in R v Nieterink (2000) 76 SASR 56.

Fifthly, the Bill endorses the position, outlined in *Nieterink* and other cases, that, if the evidence of discreditable conduct is admitted for a specific and limited purpose, such as to establish the background or context to the alleged offences or to shed light on the relationship between the parties and not for a wider propensity or similar fact line of reasoning, then it is incumbent upon the trial judge to give the jury an explicit warning as to both the correct and incorrect uses that they can put the evidence to. The jury, in particular, must be told that they cannot use the evidence of discreditable conduct to reason that the accused was the sort of person who might commit the offences charged.

Finally, the Bill is intended to dispel the uncertainty created by some recent cases, such as *HML* as to the standard of proof, and to further remove any suggestion of a universal requirement that any uncharged act must be separately proved beyond reasonable doubt. Any such general requirement is both unnecessary and confusing. The Bill incorporates the view expressed by the High Court in *R v Shepherd* (1990) 170 CLR 573 that the uncharged act, like any species of circumstantial evidence, need only be proved beyond reasonable doubt if it might form an indispensable link in the chain of reasoning towards guilt.

Detailed Operation

Section 34O makes it clear that the Bill applies to any type of criminal trial at any level of court. The Bill will not apply to disputed facts hearings which are not governed by the rules of evidence. The Bill does not apply to civil proceedings and is not intended to alter any of the rules relating to civil trials.

Section 34O further makes it clear that the Bill prevails in the event of any inconsistency with any existing common law rule of admissibility.

The Bill uses the expression 'discreditable conduct' as opposed to 'criminal conduct'. This is deliberate. It extends to conduct that is properly regarded as morally repugnant although not necessarily criminal. Such evidence might be properly admitted and used either for a propensity or similar fact purpose or for more limited purposes as evidence of uncharged acts. The type of egregious conduct described in *R v Alexander & McKenzie* (2002)

6 VR 53 is an example of the type of improper but non-criminal conduct that could be caught by the expression. However, by way of comparison, in *R v von Einem* (1985) 38 SASR 207, the fact that the accused was a homosexual was not, in itself, conduct which would fall within the term 'discreditable conduct'.

The Bill discards the existing rigid test governing propensity and similar fact evidence derived from the decision of the High Court in *R v Pfennig* (1985) 182 CLR 461 in favour of the simpler and clearer position stated in the Bill. The *Pfennig* test requires that the evidence of discreditable conduct, at least for propensity or similar fact purposes, will only be admissible at trial where it is more probative than prejudicial to such a degree that there is no rational explanation of that evidence consistent with the innocence of the accused. This test has been heavily criticised, even before *HML*, as technical, complex and too restrictive. It raises the bar too high. This test has the practical effect of excluding highly reliable and probative evidence. It further effectively requires the trial judge to usurp the traditional fact finding role of the jury. In effect, the *Pfennig* test takes the traditional 'gatekeeper' function of the trial judge into the proper domain of the jury or other trier of fact.

Pfennig has been subjected to much academic criticism, notably, by Jonathon Clough in 1998 in an article in the *Adelaide Law Review*. The *Pfennig* test has been rejected in England and New Zealand by their respective Law Reform Commissions and in Canada in the leading decision on point of the Supreme Court in *R v Handy* [2002] 2 SCR 908. *Pfennig* has been further rejected in successive Law Reform Commission studies in Australia, at both a State and Commonwealth level, and has been rejected in every other Australian jurisdiction apart from the Northern Territory and Queensland. The Queensland Law Reform Commission has recently suggested its repeal. The Australian Law Reform Commission has recently repeated its earlier criticism of the *Pfennig* test.

The High Court, in *Hoch,* ruled that a possibility of concoction by complainants colluding in their allegations created a rational explanation consistent with innocence, therefore excluding such evidence of discreditable conduct even if similar, under the high 'no rational inference' test later confirmed in *Pfennig*. The Bill provides that this approach is not to be applied in South Australia generally. Matters of credibility, such as the question of any possibility of collusion between the alleged victims, are matters within the province of the jury and are not an issue for the trial judge relating to admissibility of evidence. *Hoch* has been widely criticised. In particular, as three leading and erudite academics on the Law of Evidence, Jill Hunter, Camille Cameron and Terese Henning, noted in 2005:

> *Has the High Court in Hoch failed to acknowledge the multitude of cases in which complainants are siblings, neighbours and friends? The basis for insinuating collusion in these contexts is strong. Meeting the challenge of a cross-examiner who claims collusion is no easy exercise. Hoch, if it represents a standard of safety for the fairness of children, also represents a severe disadvantage to prosecuting a serial sexual predator of children.*

The approach in *Hoch* has previously been discarded in South Australia in relation to sexual offences and it is now thought that there is no reason why this should not be done generally.

Ever since *Makin v Attorney-General* in 1894 (if not earlier), the courts have resisted any diminution of 'the general principle that it is not competent for the prosecution to adduce evidence tending to show that the accused has been guilty of criminal acts other than those covered by the indictment for the purpose of leading to the conclusion that the accused is likely from his criminal conduct or character to have committed the offence for which he is being tried', as observed by the High Court in *Pfennig*. This basic proposition has been confirmed on many occasions by the High Court (see, for example, *R v Harriman* (1989) 167 CLR 590). The Bill does not displace or discard this basic principle. It operates on the principle that the courts will remain faithful to this principle. The Bill is not intended to open the door to the routine admission of evidence of discreditable conduct. The Bill acknowledges that it is wrong in principle to allow the unchecked use of evidence of discreditable conduct by the prosecution, especially for propensity or similar fact purposes. The Bill recognises the difficulty of containing the effects of such information which, once dropped like poison in the juror's ear, 'swift as quicksilver it courses through the natural gates and alleys of the body' (*Hamlet*, Act I, Scene v, ll. 66-67). The general principle is specifically preserved in section 34P(1) which confirms that it is impermissible to use evidence of discreditable conduct to suggest that the defendant is more likely to have committed the offence charged simply because he or she engaged in other discreditable conduct. Such evidence is inadmissible if only led for that purpose (the *impermissible use*). *Discreditable conduct evidence* is evidence tending to suggest that a defendant has engaged in discreditable conduct, whether or not constituting an offence, other than conduct constituting the offence charged.

The basic exclusionary principle in section 34P(1) is subject, however, to the important qualification in section 34P(2) which provides that evidence of discreditable conduct may be admitted for a use (the *permissible use*) if, and only if, the court is satisfied that the probative value of the evidence to be admitted for a permissible use substantially outweighs any prejudicial effect that it may have on the defendant. There will be a wide range of circumstances in which the prosecution's purpose for adducing evidence of discreditable conduct may be permissible. The evidence to be admitted must be sufficiently probative and possess a degree of relevance so that the probative value of the evidence substantially outweighs any prejudicial effect that it may have. The probative value of the evidence must be assessed against its likely prejudicial effect. The trial judge must determine if there is an unacceptable risk of prejudice to the accused, so that his or her trial would be unfair if the evidence of discreditable conduct were to be admitted. In this context, prejudice does not refer to simple prejudice to the accused but, rather, the risk of an unfair trial and a wrongful conviction. Here the risk is that, despite its permitted logical use, the jury may, nevertheless, engage in impermissible reasoning despite the efforts of the trial judge. The question of admissibility may, or may not, depend on the manner in which the defence case is to be conducted.

However, the Bill does not preclude the use of evidence of discreditable conduct to suggest that a defendant is more likely to have committed an offence if the evidence relies on, or discloses, a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue. Such evidence may be admissible if led for that purpose. There will be circumstances in which the probative value of evidence of discreditable conduct is

derived only from the propensity of the accused or disposition to act in a particular manner. The case of *R v Straffen* [1952] 2 QB 911, the famous 'brides in the bath' case (*R v Smith* (1915) 11 Cr App R 229), and the facts in the *Makin* and *Pfennig* cases, are examples of the type of case where this type of evidence would be properly admitted under the Bill for such reasoning. It would be artificial to attempt, as has been sought on occasion in the past, to argue that the evidence of discreditable conduct in such cases can always be properly admitted on a basis other than relying on the propensity or disposition of the accused to act in a particular way.

The Bill distinguishes between evidence of discreditable conduct that is introduced for propensity or similar fact purposes as circumstantial evidence of a fact in issue and that which is not. If the permissible use of the evidence of discreditable conduct which the prosecution seeks to use relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue, then the permissible use must, additionally, have 'strong probative value' having regard to the particular issue or issues arising at trial for the evidence to be admissible. This means that the evidence must be more than simply 'relevant' or 'material'. It must have a sufficiently strong probative value to clearly outweigh the prejudicial effect of such evidence. What will amount to strong probative value will depend on the particular circumstances of each case. The test of establishing strong probative value is not intended to be the same as under *Pfennig* as requiring the exclusion of any rational inference inconsistent with innocence.

A problem lies in the term 'evidence of uncharged acts'. A number of other expressions are also used to describe this type of evidence, such as 'background', 'relationship', 'context', 'narrative', 'sexual interest' or 'sexual attraction'. On occasion, this type of evidence has even been confused with, and included in, the definitions of similar fact or propensity evidence. The Bill recognises that no label is ideal.

The Bill clarifies and simplifies the current law in respect of the admissibility and use of evidence of uncharged acts for non-propensity or non-similar fact purposes by adopting the law as expressed in the South Australian decision of *R v Nieterink* (1996) 76 SASR 56. *Nieterink* was a workable and effective model that reflected many decades of established practice. This was widely taken to be the law prevailing in South Australia before the High Court's decision in *HML* in 2008 'muddied the water' and cast some doubt on its application.

Evidence of uncharged acts had long been used without major difficultly or objection in criminal cases at common law until relatively recent times. It was not generally viewed as a form of evidence introduced for similar fact or propensity purposes but, rather, was admissible for some other purpose. This emerges from the Chief Justice's analysis in *Nieterink*.

However, the introduction and use of evidence of uncharged acts has caused considerable difficultly in criminal trials over recent years. These difficulties have been exacerbated by the recent confusing judgment in 2008 of the High Court in *HML*. In this case, the 7 judges delivered 7 different and inconsistent judgments. It is very difficult to identify any clear and consistent statement of the law from *HML*. The Bill addresses this problem.

The Bill provides that, where the evidence of the uncharged acts of past discreditable conduct is adduced for a non-propensity or non-similar fact purpose, then the evidence need only be of sufficient probative value as to substantially outweigh its prejudicial effect. It need not additionally be of strong probative value. In practice, this type of evidence will most usually fall within the category of 'uncharged acts'. Evidence of 'uncharged acts' may be led in any type of criminal case and its use is not confined (as is sometimes supposed) to sexual cases. Such evidence may apply in a wide variety of different circumstances and for various purposes. Criminal charges cannot be fairly or accurately judged in a factual vacuum and, in order for the jury to make a rational assessment of the evidence directly relating to a criminal charge, it may be necessary for the jury to receive evidence, in some detail, of the context and circumstances in which the alleged offences are said to have been committed. In simple terms, evidence of uncharged acts of discreditable conduct is led where, without the evidence, it would simply be impossible to appreciate and weigh the story surrounding the alleged offence. The evidence of the uncharged acts of discreditable conduct, as the Law Commission of England in both its Consultation Paper and Report on the Use of Evidence of Bad Character helpfully noted, is so closely entwined and involved with the evidence directly relating to the facts in issue surrounding the alleged offence that it would amount to distortion to attempt to edit it out.

The potential use of evidence of uncharged acts of discreditable conduct cannot be exhaustively defined. The English Law Commission helpfully noted that there were 4 'indictors' of the type of evidence that fell within what might be termed as evidence of uncharged acts (or 'background evidence' as they described it) and was not subject to the criteria governing the admissibility of similar fact or propensity evidence.

Firstly, the evidence of discreditable conduct may be so close to time, place or circumstances to the fact or circumstances of the offence charged that it would make no sense to try and edit it. This category, the Law Commission Consultation Paper noted, was the *res gestae* type of evidence. The decision of the High Court in *R v O'Leary* (1946) 73 CLR 566 is a leading example of the use of this particular type of evidence.

Secondly, the Law Commission noted that evidence of discreditable conduct may be necessary to complete the account of the circumstances charged and to make it comprehensible to the jury. Such evidence may show the 'background' or 'context' to the charged offence, whether immediately prior to the alleged offence or going back some period in time. It might show that the alleged offence 'did not come out of the blue' and, without such evidence, the facts of the alleged offence would be incomplete or incoherent. The evidence is relevant, as was noted in *Nieterink*, as, without it, the jury could hardly understand the context in which the alleged offences occurred. It may explain other aspects of the case, such as why the victim might have submitted to the acts that are the subject of charge, why the victim did not complain about the alleged abuse, or why the victim acted or behaved in a certain manner.

Thirdly, the accused may have a relationship with the victim and the evidence of previous discreditable conduct may relate to the victim of the alleged offence rather than the victim of other offences. The evidence is not

admissible to establish a general criminal disposition or propensity but to show the true nature of the relationship between the parties in a manner that bears directly on the guilt of the accused and/or a fact in issue. Examples of the legitimate use of evidence of uncharged acts of discreditable conduct in this context is provided in cases such as *R v Garner* (1963) 81 NSWWN 120, *R v Hissey* (1973) 6 SASR 280, *R v Wilson* (1970) 123 CLR 334 and *R v Peake* (1996) 67 SASR 297. In particular, in *Wilson* (1970) 123 CLR 334 at 344, Menzies J persuasively reasoned:

> *It seems to me that here, as so often happens, an attempt has been made to reduce the law of evidence—which rests fundamentally upon the requirement of relevancy, i.e. having a bearing upon the matter in issue—to a set of artificial rules remote from reality and unsupported by reason. Any jury called upon to decide whether they were convinced beyond reasonable doubt that the applicant killed his wife would require to know what was the relationship between the deceased and the accused. Were they an ordinary married couple with a good relationship despite differences and disagreements, or was their relationship one of enmity and distrust? It seems to me that nothing spoke more eloquently of the bitter relationship between them than that the wife, in the course of a quarrel, should charge her husband with the desire to kill her. The evidence is admissible not because the wife's statements were causally connected with her death but to assist the jury in deciding whether the wife was murdered in cold blood or was the victim of mischance. To shut the jury off from any event throwing light upon the relationship between this husband and wife would be to require them to decide the issue as if it happened in a vacuum rather than in the setting of a tense and bitter relationship between a man and a woman who were husband and wife.*

The fourth category of uncharged acts identified by the Law Commission refers to evidence that may assist in establishing motive in an appropriate case. The oft quoted comments of general application of Lord Atkinson in *R v Ball* [1911] AC 47 at 68 illustrates this:

> *Surely in an ordinary prosecution for murder you can prove previous acts or words of the accused to show that he entertained feelings of enmity towards the deceased, and that is evidence not merely of the malicious mind with which he killed the deceased, but of the fact that he killed him. You can give in evidence the enmity of the accused towards the deceased to prove that the accused took the deceased's life. Evidence of motive necessarily goes to prove the fact of the homicide by the accused, as well as his 'malice aforethought', inasmuch as it is more probable that men are killed by those who have some motive for killing them than by those who have not.*

The potential significance of evidence of motivation is not confined to cases of murder.

Though not listed by the Law Commission, it is also clear that evidence of uncharged acts may also be relevant and admissible to assist in showing the requisite intention to make out an alleged offence. The English case of *R v Williams* (1987) 84 Cr App R 299 illustrates where the evidence of the violent history of the accused in relation to the victim was admitted to establish the intention. The accused was charged with threats to kill. The prior evidence was relevant and admissible to show that the threat had been uttered with the requisite intention, had been intended to be taken seriously by the victim and had not been said in jest or temper. The prior history showed that the accused had not been merely 'sounding off'.

The evidence of uncharged acts of discreditable conduct may be relevant in other contexts. Such evidence may rebut a potential defence, such as accident, self defence or provocation, or assist in showing the identity of the offender. It may show the accused's sexual attraction to the victim as in *R v Ball*. [1911] AC 47. Moreover, circumstantial evidence may be admissible although it reveals other criminal conduct. Evidence of previous crimes of the accused may be admissible because it identifies or connects the accused with the commission of the alleged offence. It extends to evidence disclosing criminal or discreditable conduct, such as evidence showing an association with the crime scene or the criminal venture or the possession of equipment which might have been used to commit the crime.

Though, in practice, evidence of uncharged acts of discreditable conduct most often arises in relation to cases of sexual abuse or homicide, the Bill is not confined to such cases. Evidence of uncharged acts under the Bill, as at common law, may apply in other types of cases, such as domestic violence, where the final violent act of the accused may result in a charge of assault or threats but at trial it is impossible to properly understand the nature and context of that final act without reference to evidence showing earlier discreditable conduct. The decision in *R v Garner* (1963) 81 (NSW) WN 120 illustrates this point.

The Bill makes it clear that careful consideration must be given to the purpose for which any discreditable conduct evidence is admitted. The use of evidence of uncharged acts is potentially dangerous because the notion of the relevance of uncharged acts can be rather vague and easily used to admit what otherwise would be inadmissible similar fact or propensity evidence by an extended view of what is to count as relevant as part of the 'background' or 'context' or 'relationship'. The prosecution must give reasonable notice of the purpose for which such evidence is adduced. Rules of Court will be formulated for this purpose. It will be incumbent on the prosecution to give sufficient particularity of the purpose it contends for the admission of evidence of discreditable conduct. If the evidence is adduced to show a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue, the prosecution must clearly signal that it is advanced for that purpose and describe in sufficient particularity why the evidence is properly relevant and admissible in the particular case for such a purpose. If the evidence is adduced for a non propensity or non-similar fact purpose, the prosecution must still clearly identify the specific and limited purpose for which the evidence is adduced. It is unlikely to be enough for the prosecution to simply assert, without anything further, that the evidence is relevant as part of the background, or to show the relationship between the parties. The prosecution should specify why the background or relationship is relevant and properly admissible in the particular facts and issues of the case. If the evidence of discreditable conduct is admitted for a specific and limited purpose, such as background or for placing events in their context or as part of the relationship, its use is confined

under section 34Q to that purpose and it cannot be employed for wider similar fact or propensity purposes, even if it is capable of such a wider application.

The Bill, consistent with *Nieterink* and established judicial practice, makes it clear that, if evidence of discreditable conduct is adduced as 'uncharged acts' and not as a form of propensity or similar fact evidence, then the jury must be explicitly warned that the evidence can only be used for the limited purpose (such as showing background or context or relationship) and cannot be used for a wider propensity or similar fact mode of reasoning (even though it may be capable of such a use). The directions required by the Bill should be simpler and more straightforward than required under the present unclear and complex law. Though it is sometimes asserted that the jury's ability to understand and act on such directions is debatable, such directions are commonplace in criminal trials. The criminal justice system must operate on the basis that the jury will faithfully act on, and follow, such directions. As was noted by the New South Wales Court of Appeal in the case of *R v Milat:*

> *Ultimately, however, it is the capacity of jurors, properly instructed by trial judges to decide cases by reference to legally admissible evidence and legally relevant arguments, and not otherwise, that is the foundation of the [criminal justice] system.*

This theme was developed by McHugh J in *R v Gilbert* (1993) 69 A Crim R 450 at 453-454:

> *The criminal trial on indictment proceeds on the assumption that jurors are true to their oath, that, in the quaint words of the ancient oath, they hearken to the evidence and that they obey the trial judge's directions. On that assumption, which I regard as fundamental to the criminal jury trial, the common law countries have staked a great deal. If it was rejected or disregarded, no one — accused, trial judge or member of the public — could have any confidence in any verdict of a criminal jury or in the criminal justice system whenever it involves a jury trial. If it was rejected or disregarded, the pursuit of justice through the jury system would be as much a charade as the show trial of any totalitarian state. Put bluntly, unless we act on the assumption that criminal juries act on the evidence and in accordance with the directions of the trial judge, there is no point in having criminal jury trials.*

One of the issues that often arises in practice is the standard of proof required in respect of uncharged acts, especially if of a sexual nature. There are also suggestions in some recent cases, notably *HML*, that any uncharged act, especially in a sexual case, must be established beyond reasonable doubt before it can be led or used. The Bill rejects this approach as dogmatic and unhelpful. Evidence of discreditable conduct is a species of circumstantial evidence and, like all circumstantial evidence, need not be established beyond reasonable doubt save, and unless, it forms an indispensable link in the chain of reasoning to guilt. Any universal requirement for an uncharged act to be independently proved beyond reasonable doubt is confusing and would have the effect of even further complicating jury directions in an already complex area of the law. It would have the practical effect of excluding cogent and reliable evidence that is routinely admitted and used, especially in non-sexual cases. Such a universal requirement is, further, a major departure from the established rule identified by the High Court in *R v Shepherd*(1990) 170 CLR 519.

The Bill incorporates the view of the High Court in *Shepherd*. Section 34R(2) provides that, if evidence of discreditable conduct is admitted under section 34P and that evidence is essential to the process of reasoning leading to a finding of guilt, the evidence cannot be used unless on the whole of the evidence, the facts in proof of which the evidence was admitted, are established beyond reasonable doubt, and the trial judge must give a direction to that effect. This accords with past judicial practice.

The Bill confirms the established judicial practice set out in *Nieterink* and many other cases that, if the evidence of past discreditable conduct is admitted for a specific and limited purpose, such as background or relationship that does not involve a propensity or similar fact line of reasoning, then it is incumbent on the trial judge to warn the jury to this effect.

The effect of *Nieterink* is that the jury should be told how they should use the evidence and how they should not use the evidence. The jury has to be told the particular manner in which the evidence could be used. It is contemplated that this can be done relatively briefly. Usually, it will not be enough for the trial judge to speak generally to the jury of the evidence establishing 'background', 'context' or 'relationship' matters. It will be preferable for the trial judge to be quite specific about the proper use of the evidence, both to help the jury to approach the evidence in the correct manner and to reduce the risk of an incorrect approach. The jury should be told that the evidence, if accepted, is evidence of the limited and specific purpose for which the evidence was specifically admitted. Even if the evidence is capable of being used for propensity or similar fact purposes, as will often be the case in practice, the jury must be warned they cannot use the evidence for such wider purposes.

The jury has to be warned quite specifically not to reason, if they accepted the evidence of the uncharged acts of discreditable conduct, that the accused has committed similar offences and that the accused was the type of person who might commit the offence charged and find him or her guilty on that basis. The trial judge should emphasise that generalised reasoning of that sort is not permissible. The jury should be particularly directed to convict only if satisfied beyond reasonable doubt that the particular conduct that is the subject of the specific charges the defendant faces has occurred. The jury should be specifically warned not to reason that, as conduct similar to that charged has occurred, they can convict on a particular count.

The Bill recognises, as was observed by the Chief Justice in *Nieterink*, that it is very important that these warnings and directions are given in an appropriate case because of the potential for prejudicial misuse of evidence of uncharged acts of discreditable conduct. The Bill further recognises that it is important for the trial judge to emphasise both the correct and incorrect use of the evidence. If both aspects are not present in any summing up, there is a real risk that the jury will misunderstand their task.

The Bill finally deals with 2 incidental issues.

First, the Bill applies to both the prosecution and the defence. The accused may seek to show that a police officer or the alleged victim has a tendency to act in a certain malevolent manner. The cases of *Knight v Jones; ex parte Jones* [1981] Qd R 98 and *R v Harmer* (1985) 28 A Crim R 35 are examples of such situations. However, it is clear that in deciding whether to exercise its discretion to admit the evidence of discreditable conduct under the Bill, the court, as at common law, will be swayed by the very different nature and purpose of the defence as opposed to the prosecution leading such evidence. The fundamental right to a fair trial will obviously apply. Therefore, in practice, a different test of admissibility will apply as regards the defence. Whilst it is clear that an accused is not entitled to adduce evidence going merely to the credit of a prosecution witness, it is equally clear that an accused is entitled to call, in support of his or her defence in disproof of the prosecution case, any evidence which is properly relevant to an issue and this might include evidence touching on the disposition, character or violent propensity of some other person. Though evidence of a propensity to commit the alleged crime, bad character or prior convictions cannot be simply led by the prosecution, that is because the policy of the law as to the fairness of a criminal trial and not because such evidence is irrelevant. This policy of exclusion does not apply to the defence. The test of admissibility in such cases for the defence will be more akin to the test of relevance applicable in civil cases. The Bill is not intended to alter this position. The ability of the defence to adduce such evidence will still be considerably wider than the prosecution.

The accused may seek to introduce evidence of discreditable conduct against a third party in criminal proceedings. The case of *R v Button* (2002) 25 WAR 382 provides an illustration of when such evidence could have been properly adduced by A at his or her trial to suggest that B had in fact committed the crimes with which A had been charged. That is appropriate, as it must be possible for an accused A to defend a criminal charge by seeking to prove that the offence was committed, in fact, by another person B. It is logical that A should be able in an appropriate case to lead any evidence tending to prove that the offence was actually committed by B. That would include any discreditable conduct adduced for propensity or similar fact or other purposes which would be admissible in a trial of B. The test for the admissibility of such evidence will not be as high as if the prosecution were seeking to use such evidence. The test will essentially remain as one of relevance having regard to the nature of the facts and issues in the case. To require more of an accused is to interfere with the time honoured principle that it is not for an accused to prove his or her innocence. That is consistent with the usual position that the accused bears no persuasive onus of proof, merely an evidential one.

Secondly, the Bill recognises, in section 34T, the major practical problems that can arise from the defence seeking to use evidence of discreditable conduct against a co-defendant at a joint trial. Such a joint trial may become too entangled and a jury, even if given detailed directions, may be unable to prevent undue prejudice to the co-defendant. In such circumstances, the Bill, confirming and reinforcing existing practice in this area, provides this to be a strong factor to taken into account in the trial judge's existing common law discretion in deciding whether to order separate trials.

Conclusion

Though a variety of other models are used in Australia and elsewhere, it was considered that none of those models was ideal for South Australia. The *Uniform Evidence Act* model arising from the work of the Australian Law Reform Commission that is used in Victoria, New South Wales, Tasmania and the Australian Capital Territory is not without its benefits but that model is also not without its problems and has not met with universal acclaim. There have been very recent suggestions about reforming this model.

The Bill is particular to South Australia and has been the subject of an extensive consultation process with expert input from various interested parties. There was unanimity that the existing law was in need of major reform. It was widely felt that the present law was too complex and difficult to apply in practice and that the test from *Pfennig* and *Hoch* set the bar of admissibility too high and should be modified. It was further widely felt that the position in *Nieterink* usefully reflected what should be the position with regards to evidence of uncharged acts. These features are all incorporated in the final Bill.

In summary, the Bill will enhance the successful prosecution of offenders and improve outcomes for victims of crime in general and, in particular, victims of sexual offences, whilst still maintaining an appropriate balance and ensuring that the defendant's right to a fair trial is not undermined. The Bill is not a dramatic 'shifting of the goalposts' in favour of the routine and unrestricted introduction of evidence of discreditable character. Rather, it is an overdue effort at clarification of a notoriously difficult area of the criminal law in favour of a workable and considered model. The Bill is the product of the extensive consultation process and implements an important election policy in a fair, workable and effective manner that achieves the stated goals of codifying and simplifying this difficult and complex area of the criminal law and allowing, in an appropriate case and with proper safeguards, the greater use of this type of evidence by the prosecution. The conclusion of the Joint Courts Criminal Legislation Committee of the final Bill is telling:

> *The simplicity of the Bill stands in stark contrast to the present mess. We think it has merit. There is nothing in the wording which requires further comment.*

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Evidence Act 1929*

4—Insertion of Part 3 Division 3

The new Division (comprising sections 34O to 34T) is to be inserted after section 34N of the *Evidence Act 1929* (the *principal Act*).

Division 3—Admissibility of evidence showing discreditable conduct or disposition

1—Application of Division

The Division applies to criminal proceedings and prevails over any relevant common law rule of admissibility of evidence to the extent of any inconsistency. The Division does not apply to—

- evidence given by an accused person pursuant to section 18 of the principal Act; or
- evidence of the character, reputation, conduct or disposition of a person as a fact in issue.

2—Evidence of discreditable conduct

Discreditable conduct evidence, in the trial of a charge of an offence, is evidence that tends to suggest that the defendant has engaged in discreditable conduct (whether or not constituting an offence) other than the discreditable conduct constituting the offence in respect of which the defendant is on trial. Discreditable conduct evidence—

- cannot be used to suggest that the defendant is more likely to have committed the offence because he or she has engaged in discreditable conduct; and
- is inadmissible for that purpose (*impermissible use*); and
- (subject to this section) is inadmissible for any other purpose.

Discreditable conduct evidence may be admitted for a use (the *permissible use*) other than an impermissible use if, and only if—

- the judge is satisfied that the probative value of the evidence admitted for a permissible use substantially outweighs any prejudicial effect it may have on the defendant; and
- in the case of evidence admitted for a permissible use that relies on a particular propensity or disposition of the defendant as circumstantial evidence of a fact in issue—the evidence has strong probative value having regard to the particular issue or issues arising at trial.

3—Use of evidence for other purposes

This section provides that evidence that under this Division is not admissible for one use must not be used in that way even if it is relevant and admissible for another use.

4—Trial directions

Provision is made in this section for the directions that the judge must give in a trial in which discreditable conduct evidence is admitted.

5—Certain matters excluded from consideration of admissibility

Evidence may not be excluded under this Division if the only grounds for excluding the evidence would be either (or both) of the following:

- there is a reasonable explanation in relation to the evidence consistent with the innocence of the defendant;
- the evidence may be the result of collusion or concoction.

6—Severance

This section makes provision for a defendant to apply for a separate trial where 2 or more defendants have been charged in the same information, or the severing of charges from an information, where a party proposes to adduce discreditable conduct evidence and the matters that a court must take into account when considering any such application.

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

5—Amendment of section 278—Joinder of charges

This amendment is related to the proposed amendments to the *Evidence Act 1929* relating to the admissibility of discreditable evidence and also makes a technical change relating to the definition of *sexual offence* in subsection (4).

Schedule 1—Transitional provision

1—Transitional provision

The transitional clause provides that the amendments to the *Evidence Act 1929* are intended to apply in respect of—

- proceedings for an offence commenced but not determined before the commencement of this clause; and
- proceedings for an offence commenced after the commencement of this clause.

An order made by a court under the *Evidence Act 1929* as in force immediately before the commencement of this clause will remain in force according to its terms.

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

At 20:43 the council adjourned until Wednesday 27 July 2011 at 14:15.