LEGISLATIVE COUNCIL

Tuesday 27 September 2011

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

COMMERCIAL ARBITRATION BILL

His Excellency the Governor assented to the bill.

ELECTRICAL PRODUCTS (ENERGY PRODUCTS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

EVIDENCE (DISCREDITABLE CONDUCT) AMENDMENT BILL

His Excellency the Governor assented to the bill.

DEVELOPMENT (BUILDING RULES CONSENT—DISABILITY ACCESS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (DIRECTORS' LIABILITY) 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) (14:22): I move:

That standing orders be so far suspended as to enable the continuation of the conference on the bill.

Motion carried.

MULLIGHAN, MR E.P.

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) (14:22): With the leave of the council, I move:

That the council expresses its deep regret at the recent death of the Hon. Edward Mullighan QC, former South Australian Supreme Court judge, and places on record its appreciation of his distinguished and meritorious public service, and that, as a mark of respect to his memory, the sitting of the council be suspended until the ringing of the bells.

It is with great sadness that I rise to speak about the life of Edward Picton Mullighan (Ted Mullighan) QC, who died on 16 September, aged 72, after a long battle with cancer. With the loss of Ted Mullighan, we have lost far more than one of the state's most highly distinguished jurists; we have lost a man who brought to the law a passionately humane sense of advocacy.

Ted Mullighan gave profound resonance and meaning to what it is to be an advocate, that is, to listen sympathetically and respectfully to voices that had struggled to be heard and then, using the full scope of his legal skills, increase public awareness of the issue and then push for change—and he did so with such a universal humanity that his departure will be mourned by people from every possible walk of life in this state.

This was brought home to me when I had the privilege of representing the Premier on 17 June last year at the opening of the Memorial for Forgotten Australians in Peace Park, North Adelaide. The official opening of this beautiful sculpture by Craig Andrae of four stainless steel yellow daisies was in its own way an outcome of Ted Mullighan's extraordinary work on the Inquiry into Children in State Care. Although his deteriorating health at the time did not permit him to be there, no-one that day forgot for one moment that he was there in spirit.

At that event, I was told numerous times by survivors of the deep affection with which they held Ted Mullighan. It was his gentle manner that had coaxed, often for the first time, open expression of the pain that individuals had been through and that, as a result of his extraordinary empathy, opened the way forward to the healing of many victims of this grim aspect of our state's history. To say he was much loved for this work is no exaggeration. I came away from that event very moved, not only by the stories that people told me personally, but also by the fact that Ted Mullighan's compassion shone so brightly.

He was appointed a QC in 1978 and served on no less than six royal commissions. Appointed as a judge of the Supreme Court in 1989, he became Justice Mullighan and soon brought a unique sense of change to legal circles in South Australia. From 1995 onwards he chaired the cultural awareness committee of the court. This committee managed seminars and community justice workshops through which cultural awareness within the judiciary was promoted. As a result of these endeavours, and many others, Justice Mullighan received the prestigious national 2003 Human Rights Award.

He proactively promoted cultural innovation in the sentencing of Aboriginal defendants, and in 1997 he instigated a law and justice conference which was hosted by the traditional communities of the APY lands, bringing together Aboriginal law men and a group of judges and magistrates. He also advocated for Aboriginal court interpreters and also promoted community justice.

Following the 1997 meeting, the Supreme Court in 2002 sat on the APY lands, the State Coroner conducted inquests into the death of three petrol sniffers on the APY lands, and the Federal Court heard APY native title cases there. Justice Mullighan was active in nominating Aboriginal justices of the peace and examined traditional Aboriginal ways of dealing with offending behaviours. He championed Aboriginal reconciliation amongst his peers and within the general South Australian community.

After a distinguished career, Justice Mullighan retired from the Supreme Court bench in 2004, but he did not rest. Almost immediately, he accepted a commission to conduct the children in state care inquiry. He examined more than 40 years' worth of alleged sexual abuse committed against wards of the state, and in April 2008 he tabled before parliament a 600-page report. Ted Mullighan also undertook a similarly harrowing task requiring great sensitivity in the inquiry into treatment of children on the APY lands that arose out of the children in state care inquiry.

It was these daunting and difficult challenges that he is most well known for but they were, indeed, just the cap to a very long and very distinguished and brilliant career. Ted Mullighan brought to both of those inquiries a truly magnificent set of qualities as a jurist and human being, and they were combined in wonderful balance.

Another of his qualities was that he had a pretty wicked sense of humour and he was a keen participant, I understand, in a number of practical jokes played on his colleagues and friends; and I think they were reciprocated as well. Ted was also one of our cricket tragics. He dearly loved attending the cricket at Adelaide Oval and, earlier in his life, I am told, was a cricketer of some skill.

There is no greater tribute to the man than the extraordinary range of people who turned up to his state funeral last week. Yes, there were many eminent public figures there, including large numbers of his colleagues from the legal fraternity, but also present were those formerly disenfranchised who had been given a voice, often for the very first time, by Ted Mullighan's actions. All were there to pay tribute to a man who had led a remarkable life and had left behind a world far better as a result of his being here.

Ted Mullighan is survived by his wife, Jan, and his five sons, James, Paul, Charles, David and Stephen. On behalf of us all, I am sure, I extend our condolences to his family members and close friends.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:29): I rise to second the motion and to offer some comments about the life of the Hon. Edward Mullighan QC. He began practising law in 1962—to put that into context, only two years after I was born—and he became a judge of the Supreme Court in 1989. He was president of the Law Society for two years and he assisted in six royal commissions, including acting for the victims of the 1983 Ash Wednesday in their claims for compensation.

The Hon. Ted Mullighan led the establishment of advocacy training programs and was instrumental in inspiring instructors and hundreds of young advocates to enhance and develop their skills. He championed Aboriginal reconciliation among his peers and the general community and, as the minister said, in 2003 he won the Human Rights and Equal Opportunity Commission's Law Award.

He retired in 2004 and immediately took the commissioner's post for the Inquiry into Children in State Care which, for most relatively new members of parliament like myself, is where we have gained the most knowledge of Ted Mullighan's work. When he took up that particular post, he managed to gain the trust of victims of severe child abuse and was respected for his sensitivity and discretion in leading the inquiry. He was described as a sympathetic listener. His inquiry

culminated in a 600-page report tabled in 2008 which prompted the state government to change many laws in relation to child protection.

Very sadly, he died on 16 September, aged 72—the same age that my own father died and way too young for anybody to depart. He leaves his wife, Jan, and five sons; and I offer our condolences to his family.

The Hon. S.G. WADE (14:31): I rise today to support this condolence motion and to express condolences to the family and friends at the passing of the Supreme Court judge and commissioner, Hon. Ted Mullighan QC. As the leaders have mentioned, Justice Mullighan passed away on 16 September at the age of 72. Ted Mullighan was widely respected as a man of deep humanity, great patience and outstanding dedication. As a result, he has left behind an impressive legacy.

A range of people have spoken warmly of the impacts of Justice Mullighan. His former Supreme Court associate, Justice Margaret Nyland, said Mr Mullighan will be remembered as 'a good friend, a proud man, a distinguished humanitarian who was a compassionate and committed advocate for those whose voices struggled to be heard'. His friend, Lindy Powell QC, said he will be remembered for 'his careful, thoughtful judgements and his uncompromising search for the right and just result'. His son James said he will be remembered for 'his compassion and rigorous intellectual gifts which made him a monumental figure to forgotten Australians'.

Ted Mullighan started his legal career at the South Australian bar in 1962, and took silk in 1978. He is widely recognised as a generous and wise mentor within the legal profession. He served as president of the Law Society of South Australia from 1978 to 1980 and was appointed a judge of the Supreme Court in 1989.

Justice Mullighan actively promoted cultural awareness amongst the judiciary and magistracy in South Australia and was an early supporter of innovation in the sentencing of Aboriginal defendants. He was a champion of Indigenous rights, and in 2003 he won the Human Rights and Equal Opportunity Commission's Law Award for his work with Aboriginal people.

Mr Mullighan's service to the Australian community did not end upon his retirement. In 2004 he accepted the role of Commissioner of the Inquiry into Children in State Care. In 2007 he was also made Commissioner of the Children on APY Lands Inquiry. His commitment to the protection of young children in South Australia proved to be one of his most satisfying roles. He is quoted as having said:

> I feel a deep sense of privilege and responsibility at having been entrusted with the disclosures of people's most painful memories. The courage and strength they showed is something that must never be forgotten.

In 2008, Justice Mullighan was awarded the Law Council President's Medal for his outstanding service to the community and the law. On presentation of the award the Law Council President, Mr Ross Ray QC, said:

> [Ted Mullighan] carried out his duties in an extremely conscientious and thoughtful manner and gained the confidence of a section of the population who had never before been able to speak about their experiences. Mr Mullighan is clearly a man of compassion and commitment, as well as being an excellent role model for all lawyers.

The love and respect of victims for Justice Mullighan was clearly demonstrated by the congregation that gathered in St Peter's Cathedral last Friday for the state funeral. St Peter's Cathedral was overflowing with people wanting to pay their final respects, from politicians to legal professionals, to public servants, to Aboriginal people, to victims for whom Mr Mullighan had advocated.

It was a powerful tribute to a man who had made a considerable contribution to the administration of justice in South Australia. It was not just that Justice Mullighan had collected and processed a mountain of evidence in two of the most sensitive inquires in this state's history; it was not just that he had to grapple with complex issues of evidence and law, but most of all in my view Ted Mullighan's greatest gift was to draw forth trust from people who had every right never to trust again. For many this gift was the key to their recovery. When so many of us act in ways that undermine the public's trust in the state and the administration of justice, Justice Mullighan did this state a great service by providing people damaged by the system a positive contact with the state.

The South Australian community is greatly indebted to a man who was selfless in his dedicated service to it. We repay that debt by taking seriously the reports he prepared and recommitting ourselves to promote the administration of justice for all in this state. I take this

opportunity to join other members of this council in offering our sincere condolences to his wife, Jan, and his family.

The Hon. M. PARNELL (14:36): On behalf of the Greens I add our support to the motion of condolence to the family of Ted Mullighan. As other members have said, Ted was a champion: a champion of human rights and a prominent figure for justice in the South Australian legal fraternity. Whilst I did not know Ted very well, I did meet him on a number of occasions in connection with his inquiry into the victims of abuse in state custody. As a state we owe Ted a huge debt of gratitude for the task he took on in relation to that inquiry. Whether you talk to members of his staff or to the victims who came forward to give evidence, they are unanimous in their assessment that he dealt with their cases with compassion, with understanding, with sensitivity and, most importantly, with patience.

On our behalf, Ted undertook what many of us would have found to be distasteful and, in many ways, unspeakable. He listened to horrid cases of abuse. He listened, as I have said, with compassion and sensitivity, and then he analysed it and told us what we needed to do to make sure it would not happen again. His task in that inquiry was dreadful, but it was absolutely necessary and for that we should thank him. On behalf of the Greens I extend our sympathies to Jan, his five sons, his other family members and his very many friends and admirers.

Motion carried by members standing in their places in silence.

[Sitting suspended from 14:38 to 14:55]

PAPERS

The following papers were laid on the table:

By the President—

Register of New Member's Interests, September 2011—Registrar's Statement
Ordered—That the Statement be printed (Paper No. 134C)
Joint Parliamentary Service—Report on Administration, 2010-11

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

Reports, 2010-11—
Leases of Properties held by Commissioner of Highways
Legal Practitioners Disciplinary Tribunal
Legal Practitioners Education and Admission Council
Report on the operation of Section 74A of the Civil Liability Act 1936: Food Donors and Distributors
Regulations under the following Act—
Harbors and Navigation Act 1993—Crew Competencies
Ministerial Responses to the 32nd Report of the Social Development Committee: Same-sex Parenting Inquiry
Section 83B(9) of the Summary Offences Act 1953 Declarations from 1 April 2011 to 30 June 2011

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

Regulations under the following Act—
Teachers Registration and Standards Act 2004—Fees
Management Plan for the Pelican Lagoon Aquatic Reserve

QUESTION TIME

GOVERNMENT BUILDINGS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:00): I seek leave to make a brief explanation before asking the Leader of the Government in the Legislative Council a question about government buildings.

Leave granted.

The Hon. D.W. RIDGWAY: As members would be aware, the Hon. Bernard Finnigan resigned as leader of the government in the Legislative Council and as a minister earlier this year. Members would also be aware that MPs and ministers often open government buildings in their electorates or in their portfolios. I am advised that the Hon. Bernard Finnigan opened a building at a primary school in Mount Gambier since becoming a member of the Legislative Council in May 2006. A commemorative plaque inscribed with his name was displayed to mark the opening.

I am further advised that the plaque on this building has been removed since the Hon. Bernard Finnigan resigned. My question to the minister is: is it government policy to remove plaques from all buildings opened by the Hon. Bernard Finnigan and, if not, why was this plaque removed from the Mount Gambier primary school?

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) (15:01): I thank the honourable member for his question. I am not aware of this plaque being removed, let alone any reason for it being removed. I am not familiar with any particular policy that we have around plaque removal, but I would be very happy to check whether we do in fact have any government policy or procedures around these matters, and I am happy to look into the missing and elusive plaque from the Mount Gambier primary school.

PRODUCER'S LIQUOR LICENCES

The Hon. J.M.A. LENSINK (15:02): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question on the subject of producer's licences.

Leave granted.

The Hon. J.M.A. LENSINK: The government is introducing an annual licence fee for all liquor licence holders so that it can engage in so-called cost recovery for administration of liquor licensing. Thus far we have not been able to get a final answer on what the fee regime will be, except that there will be a base tax of between $500 to $1,000, with an additional tax of $3,000 for premises which trade after 2am.

I note in the debate on the Statutes Amendment (Budget 2011) Bill that Treasurer Snelling stated the following:

> We are structuring the fees so that the greatest burden will be imposed on those licensed premises that cost us the most to regulate by virtue of their size, ability to pay and the fact that they trade late.

One of my constituents who is a holder of a producer's licence contacted me after receiving a letter from liquor licensing. The letter is about the licensee making a contribution to the late-night trading levy. However, my constituent states in this email:

> ...does have a producer's licence, but our winery is only small ('boutique'), we sell only to a private list and not through any commercial outlet, we do not have wine tastings or cellar door, and we are certainly not in any way involved in a situation where late hours trading would be an issue for us.

Can the minister advise whether the government has done costings to determine how much the compliance costs are for producer licensees, and under what circumstances will holders of producer's licences be granted exemptions from the additional fees?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:04): I thank the honourable member for her most important question. Indeed, this government has sought and achieved major reforms in the area of liquor licensing. As we have seen, problems associated with alcohol-related harm is on the increase. We see some terrible incidents happening in our streets. We have seen over the years a pattern of deregulation of our liquor licensing laws as trading hours have increased and other changes have occurred over the years. Although that has had some positive effects on our community, it has also had some very negative effects, and we have seen some of those recently in our newspapers and often witnessed by members.

So, we know that alcohol related harm costs Australians billions and billions of dollars every year, and this government was prepared to make some tough decisions. We took this head on and proposed a raft of changes, and many that were successful in passing this house. Of course, we know that the opposition failed to support a very fundamental plank of that reform, which was trading hours, where we know that there is a direct correlation between alcohol related

harm and trading hours. However, they were just too gutless to take that on, too gutless. They were prepared to support the traders' interests against those of the broader South Australian—so be it. Shame on them. Absolutely, shame on them.

In relation to liquor licensing fees, that was one of the reforms instigated, and that was about increasing the regulatory and compliance contributions from some traders. That is about ensuring that the industry as a whole makes an increased contribution to the costs associated with compliance and regulation. Some analysis was done, and it showed that South Australians were in fact subsidising compliance and regulatory costs. We were having to subsidise basically out of revenue—

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

The Hon. G.E. GAGO: Well, I was asked about costings. I am telling you about the costings.

The Hon. J.M.A. Lensink: For producer's licences.

The Hon. G.E. GAGO: I am talking about costings, Mr President.

The PRESIDENT: Order!

The Hon. J.M.A. Lensink: Very specific.

The Hon. G.E. GAGO: They ask a question. I am happy to answer.

The PRESIDENT: Very good.

The Hon. G.E. GAGO: Just because the answer requires something more than one syllable means that some of those across me find that too complicated. They can't concentrate.

The Hon. J.M.A. Lensink: No. We know all that.

The PRESIDENT: The minister should refrain from arousing the opposition.

Members interjecting:

The Hon. G.E. GAGO: Thank you for your guidance, Mr President. As I said, a position was reached where we said that there should be an industry-wide contribution to the cost recovery. That should be attempted to be shared broadly to try to bring the burdens down but also focus on issues where the most problems were occurring, so we tried to balance both of those aspects. Those that trade the longest pay the highest amount of fee, and I understand that the details of the actual costings have not been reached. Treasury is in fact, I understand, dealing with those final details. As I said, the costings were done on what the regulatory and compliance costs were, and the aim of the fee being struck was an attempt to have a cost recovery for the compliance and regulatory burdens around liquor licensing.

The costs were done (if I recall, Mr President) overall. We know that right across the industry, and we know that, in some respects, the whole industry really needs to make some sort of contribution towards that because it all has some effect in the long term. However, those contributing the largest components are obviously going to be expected to bear a much greater part of that levy burden.

PRODUCER'S LIQUOR LICENCES

The Hon. J.M.A. LENSINK (15:10): I have a supplementary question arising from the answer. Is the minister saying, therefore, that a holder of a producer's licence which does not even have a cellar door or a commercial outlet is somehow contributing to alcohol-related violence?

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) (15:10): The harmful effects of alcohol should be borne by the whole of the industry in some way or other; however, we recognise that the larger contributions should be burdened by those responsible, or those that are active in those parts of the industry. So, we have tried to strike a balance, if you like, between those different components.

In relation to exemptions, my understanding is that there will be access to exemptions and they will be dealt with on a case-by-case basis, and all relevant matters relating to that outlet (particularly those matters going to risk) will be considered.

LOCAL GOVERNMENT

The Hon. S.G. WADE (15:11): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to local government.

Leave granted.

The Hon. S.G. WADE: The minister has launched a series of press releases commonly known as the 'Listening to the Challenges' series. On 19 August, the minister issued a press release called 'Listening to the challenges of regional South Australia'. On 22 August, the minister issued a press release called 'Listening to the challenges facing Port Augusta'. On 2 September, the minister issued a press release called 'Listening to the challenges facing Eyre Peninsula'. The releases are substantially similar, with the date and the destination updated.

Local governments around South Australia are known to be rushing invitations to the minister's office to have the minister come and visit so that they can get a 'Listening to the challenges' press release issued in their name, too. Despite the three releases of 2 September, 22 August and 19 August being substantially the same, collectors know that subtle differences can make all the difference.

What they have noticed is that, while all the releases refer to the conviction the minister has 'to the pressing need to restore faith in our political institutions', only the first two contain the following paragraph:

> This will build in the reforms of the past couple of years and take into account the lessons arising from the investigation into the former Burnside Council.

This quote was not included in the release on 2 September to Eyre Peninsula. My questions to the minister are:

1. What happened leading up to the 2 September release that meant he no longer had anything to learn from the Burnside council affair?

2. Was the minister advised that for him to suggest he was open to learning anything from the Burnside investigation lacked credibility?

The PRESIDENT: The minister will disregard the opinion in the question.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:13): Thank you, Mr President. I thank the member for his question. I know it upsets the honourable members on the opposition benches that I am actually out there meeting with mayors, regional local government associations and the like. I have had extensive travel throughout the state talking to these mayors, listening to their concerns and also letting them know what I stand for as minister.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY: Mr President, one of the things I have noticed in regards to local government is their inability to try—I believe, and I make this quite clear wherever I go, that we need to increase the governance and accountability of councils. I use the broader issues of the Burnside investigation to actually put the point there that, if they were to have had powers under the Local Government Act in the very early stages to handle some of these bad behaviour problems, this would never have eventuated into a $1.3 million investigation, costing the taxpayers probably close to, at the end of the day, about $1.5 million.

You may mock it, the Hon. Mr Wade, but, the more you mock in here, the better it is; it makes no difference. The fact is that there is overwhelming support out there for the position I have taken on governance. You talk about the Burnside issue; the Local Government Association supports the position I have taken. The new president, Mr Kym McHugh, supports the position I have taken.

Members interjecting:

The Hon. R.P. WORTLEY: This is what question time has been reduced to.

Members interjecting:

The Hon. R.P. WORTLEY: Well, that's my answer, Mr Wade. Thank you very much for listening.

GROUP BUYING WEBSITES

The Hon. I.K. HUNTER (15:15): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question about group-buying websites.

Leave granted.

The Hon. I.K. HUNTER: I have seen in the media more and more reports of group-buying websites in Australia, otherwise known as collective buying. I am advised by those more attuned to the digital age that they provide consumers with an opportunity to purchase a bargain online, whatever that means.

I understand that concerns have been raised about whether consumers are getting value for money and, indeed, whether consumers know their consumer rights before proceeding to push the 'purchase now' button—and I have no idea at all what that means. I ask the minister: can she advise the chamber and those honourable members with an iPad or an iPhone what consumers need to look for when purchasing from these websites?

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) (15:16): I thank the honourable member for his most important question and his personal interest and passion for this particular policy area. Indeed, group-buying websites of the nature the honourable member has referred to are increasing in popularity. Group-buying internet traders negotiate deals with local businesses to offer discounted goods and services in exchange for an increase to the business customer base. This is usually in the form of a 'deal of the day'. These traders offer third-party deals for things such as hair, beauty and personal care services, restaurants and cleaning services, to name just a few.

While consumers can buy direct from the website, they can also sign up as members, where they are informed, via email, of daily deals in their local area (these deals may have a purchase time limit), and they then go off and buy these products that are part of this business deal. Buyers purchasing the deals are often required to print off a voucher to claim their discount at the retailer.

Since 2009, Consumer and Business Services have received around 22 inquiries and complaints about group-buying websites. Although that might not sound a lot, we are concerned that, with their increasing popularity, the number of complaints and problems will also escalate. As I said, there is a growing trend in the use of these particular websites and consumers need to be aware of their rights, just as they should be aware of their rights when purchasing any service or product in-store.

When looking at purchasing a coupon from a group-buying website, consumers need to be aware of exactly what is being offered and what the deal excludes. While they can offer value for money for consumers, group-buying websites can present issues when redeeming a coupon if the service cannot be provided at a suitable time due to excessive bookings or short expiry dates. Often, what we find is that the conditions—

Members interjecting:

The PRESIDENT: Order! It takes two to yap across the chamber. They should both be quiet.

The Hon. G.E. GAGO: —around the bargain are so difficult that they are impossible to abide by; for instance, the amount of time given to take up the offer might be so short and all other opportunities, say, for instance, the restaurant might be booked out until after the offer expires.

Under the Australian Consumer Law, it is an offence for a trader to accept payment for goods or services and not supply them within a reasonable period. Therefore, if a service provider has agreed to a promotion, they have an obligation to deliver those goods or services. Guarantees such as statutory warranties under the Australian Consumer Law apply to almost all goods and services sold to consumers, and that includes goods and services supplied under these sorts of offers. Consumers who rely upon representations made by the supplier of the coupon may be able to seek remedies. However, each case needs to be assessed on how the goods or services were represented and sold in the first instance.

Maximum penalties of $1.1 million for corporations and $220,000 for individuals may apply where it can be proven that the supplier either did not intend to supply the goods or service or could not supply within the stated period or within a reasonable period.

Before handing over payment—that is, pressing the 'I want to buy this' button or purchase button—consumers should check with the group-buying website to see what refunds are offered and carefully read over the associated terms and conditions, including expiry dates on coupons. Any consumers who experience difficulty in redeeming a voucher should immediately contact the group-buying website for a refund and, if they cannot resolve it with the retailer firsthand, they should seek advice from CBS.

STATE MINIMUM WAGE

The Hon. CARMEL ZOLLO (15:21): My question is to the Minister for Industrial Relations. Will the minister provide the chamber with details of the recent decision by the Industrial Relations Commission of South Australia to increase the pay of the state's lowest-paid public sector workers?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:21): I thank the honourable member for her question because this goes to the core of true Labor values, that is, looking after the low paid and people on the minimum wage. It gives me great pleasure to answer this question.

On 1 January 2010, South Australia referred certain industrial relations powers to the commonwealth to include the private sector in a national system of industrial relations. This means that all private sector employees, including those in the community service sector, have minimum wages determined by the Fair Work Australia Minimum Wage Panel. The public sector, including almost all government business enterprises and the local government sector, had been excluded from the referral and are subject to the South Australian Fair Work Act 1994 (called 'the act'). This means minimum wages in these sectors are established by the Industrial Relations Commission of South Australia.

Currently, the state minimum wage is $580.30 a week. On 3 June 2011, the Fair Work Australia Minimum Wage Panel delivered its 2010-11 annual wage review decision. It awarded a 3.4 per cent increase in the national minimum wage and the same amount to all modern award classifications. The Fair Work Australia decision to increase minimum wages by 3.4 per cent had the effect of increasing the national minimum wage by $19.40 a week from $569.90 to $589.30, operative from 1 July 2011. This increase applies to the entire private sector in South Australia.

The commission, acting on its own initiative, has concluded proceedings for the 2011 state wage case and minimum standard remuneration review. SA Unions, the Chief Executive of the Department of the Premier and Cabinet, the Employee Ombudsman and the South Australian government all supported an increase of 3.4 per cent to the minimum rates and state award wages. This will be a flow-on of the increase awarded by the Fair Work Australia Minimum Wage Panel in the 2010-11 annual wage review for national industrial relations systems employees. On 9 September 2011, the commission delivered its decision supporting a flow-on of the Fair Work Australia decision and awarding a 3.4 per cent increase to state awards.

This decision applies to 47 state awards of the commission, with the coverage limited to the South Australian public and local government sectors. This decision means South Australia's lowest paid workers under the state industrial system will not be left behind workers on the minimum national wage. This decision to increase the minimum wage by $19.70 a week for a full-time adult employee also helps maintain the real value of wages even during these times of relatively minor inflation. We all know that the cost of living pressures are a daily concern for South Australian households, and any additional income will help to ease the burden.

This decision by the Industrial Relations Commission of South Australia ensures that the increase to the national minimum wage now flows to the lowest-paid workers still covered by the state industrial relations system. The decision increases the wage of about 1,100 workers employed by the state government and up to 150 employed by local government in South Australia. The 3.4 per cent increase takes the state minimum award wage and minimum standard remuneration for a full-time adult employee to $600 per week, up from $580.30, an increase of $19.70, effective from the first pay period on or after 1 October 2011.

MOUNT BARKER DEVELOPMENT PLAN AMENDMENT

The Hon. M. PARNELL (15:25): I seek leave to make a brief explanation before asking a question of the Minister for Regional Development, representing the Deputy Premier, on the Mount Barker DPA.

Leave granted.

The Hon. M. PARNELL: I have recently received documents under freedom of information that provide a disturbing insight into the preparation of the highly controversial Mount Barker DPA. These documents show the intimacy of the relationship between property developers, their planning consultants and the state government.

Many times over the last few years I have asked questions and I have spoken in this place about the dual role that planning consultants Connor Holmes play in working for the government and advising the government on where to open new areas for housing, at the same time as advising the developers and at the same time as acting as consultants who prepare the rezoning plans. In response to me raising these questions, the former minister, the Hon. Paul Holloway, described an apparent firewall within the firm that somehow would enable them to act for both parties at the same time without any conflict of interest.

Three documents in particular show that no such firewall existed. Firstly, in a letter from November 2008, Connor Holmes director Stephen Holmes wrote to Ian Nightingale, the head of DPLG, saying that they would be:

> ...pleased to assist the Minister by accelerating GIA (Growth Investigation Areas) investigations in Mount Barker. In particular we would be pleased to provide investigations on the opportunities and constraints for the future development of Mount Barker as well as background analysis to assist in potentially initiating a Ministerial DPA for the township.

Secondly, in June of the following year, Mr Dean Day, on behalf of the group of developers who initially approached the former minister to initiate the Mount Barker DPA—the Mount Barker Consortium—wrote to minister Holloway to confirm that they would:

> ...engage Connor Holmes P/L to prepare background investigations, associated draft Development Plan policies and a formal structure plan for the whole of the affected area, to be submitted to the Minister for consideration.

The letter goes on:

> ...as you are aware, the firm of Connor Holmes...have for some time been providing advice to the Consortium regarding the possible future rezoning of much of the land in question.

Thirdly, in March 2010 we have formal minutes that were prepared by Connor Holmes. They are labelled in bold 'Commercial in Confidence' and they relate to a meeting attended by two officers from DPLG, Dean Day from the developer consortium, and two employees of Connor Holmes, including the director Stephen Holmes. These minutes describe in detail a carve-up of essential responsibilities between DPLG and Connor Holmes to finalise the preparation of the Mount Barker DPA. My questions are:

1. At the meeting on 5 March 2010 to finalise the preparation of the Mount Barker DPA, who exactly were Connor Holmes representing? Was it the consortium of developers who had been employing them for a number of years to champion their interests and who were their nominated representatives to write the DPA on their behalf, or was it the state government who had also contracted Connor Holmes to prepare background analysis for the Mount Barker DPA?

2. How did the so-called firewall operate that apparently managed to allow Connor Holmes to work for two employers at the same time?

3. How isn't this a clear case of irreconcilable conflict of interest?

4. Will the new minister for planning follow through on his previous mea culpa about how the Mount Barker DPA progressed and commit to reviewing ways to reverse this appalling decision?

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) (15:28): I thank the honourable member for his most important questions and will refer them to the Minister for Planning and Development in another place and bring back a response.

BAY TO BIRDWOOD

The Hon. J.S.L. DAWKINS (15:29): I seek leave to make a brief explanation before asking a question of the Minister for Regional Development, representing the Minister for Police, relating to the Bay to Birdwood run.

Leave granted.

The Hon. J.S.L. DAWKINS: All members of this house will be familiar with the Bay to Birdwood run, which was held again on Sunday. It is important to recognise that the Bay to Birdwood run was largely responsible for the introduction of South Australia's much-envied historic vehicle registration system, an initiative of the Federation of Historic Motoring Clubs of South Australia and legislated under a Liberal government, which recognised that historic motoring is an important facet of South Australian life and a revenue earner for the state.

The federation is a fifty-fifty partner in the Bay to Birdwood events, with the state government through History SA. The Governor of South Australia is its patron. The Bay to Birdwood run is a South Australian major event, which last year celebrated its 30th anniversary. Problems during the first run in 1980 led the committee to request a one-way section through the Hills, and this was approved by the Tea Tree Gully council for the second run in 1982.

The traditional run for pre-1956 vehicles has continued to enjoy the one-way section, which drastically lessens problems that would otherwise be encountered by vehicles of different eras and hill climbing ability, for example, overheating as a result of being impeded by slower vehicles where it is impossible to overtake. The alternate year Bay to Birdwood Classic, introduced in 1997 for later model vehicles, initially enjoyed the one-way section, but in 2009 it was removed by SAPOL because, in its opinion, the more modern vehicles in that event did not need it.

There have still been instances of radiators boiling, however. In the past two years SAPOL has voiced its opinion that the one-way section should also be abolished for the traditional run and, indeed, the event should change its route completely. I am advised that SAPOL's reasoning that passing in the right-hand lane is not utilised by entrant vehicles is a flawed reasoning. Being attuned to returning to the left as soon as an overtaking manoeuvre is complete, drivers do precisely that, leaving the right-hand lane clear for the next faster entrant. That does not diminish the need for slightly quicker vehicles to be able to pull out without fear of encountering others coming towards them in the opposite direction. I understand that the one-way section did not operate for the event this year. My questions are:

1. Given that the Bay to Birdwood run has hundreds of entrants and more than 100,000 spectators, will the minister, first, ensure that the traditional one-way section is restored for the 2012 run?

2. Will the minister ensure that the present route through the metropolitan area and into the Adelaide Hills is retained?

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) (15:32): I thank the honourable member for his question and I understand that he is referring to the Bay to Birdwood Classic run and not the Bay to Birdwood run, which is a different event.

Members interjecting:

The Hon. G.E. GAGO: The event that is occurring currently is in fact the classic run. I understand that it was a huge success this Sunday. I have been informed that about 2,000 entered cars in that classic run and it was a huge success and a most enjoyable day, and the weather helped considerably too. In relation to the specific questions the honourable member has asked, I am happy to refer those to the relevant minister in another place and bring back a response.

TELSTRA BUSINESS WOMEN'S AWARD

The Hon. G.A. KANDELAARS (15:33): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about the Telstra Business Women's Award.

Leave granted.

The Hon. G.A. KANDELAARS: Since 1995 the Telstra Business Women's Award has been recognising and rewarding Australian women for their contribution to business and the wider community. Will the minister inform the chamber of the outcome of the 2011 awards?

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 thank the honourable member for his most important question and was delighted to yet again attend and speak at the recent Telstra Business Women's Award held at the Hilton here in Adelaide on 16 September. As members may

be aware, there are five categories of awards available to Australian businesswomen: the Commonwealth Bank Business Owner Award, the Hudson Private and Corporate Sector Award, the White Pages Community and Government Award, the Nokia Business Innovation Award and the *marie claire* Young Business Women's Award.

Awards are offered in each category in every state and territory, with women eligible for the national finals in November, and the Telstra South Australian Business Woman of the Year Award is also given each year. Members would no doubt have seen Ms Kelly Baker-Jamieson on the front page of Saturday's *Advertiser*. Kelly launched Edible Blooms in Brisbane while also leading the marketing team at a very large legal firm. Within a year Kelly also opened stores in Brisbane, Adelaide, Sydney and Melbourne, expanding her previous product range of fruit bouquets to chocolate bouquets and next-day delivery all over Australia. The New Zealand expansion followed in 2008.

The next logical step for many businesses may have been franchising, but Kelly opted for less saturation and more sustainable growth via an extensive delivery service and a small network of company-owned stores. At just 33 Kelly employs a team of 25, all of whom benefit from a bonus structure that she has introduced to drive and recognise performance and help manage business costs. With revenue growth averaging about 35 per cent per annum over the past three years, Kelly is now planning her expansion into the United Kingdom.

I am pleased to advise that Kelly also won the Commonwealth Bank Business Owner Award and the *marie claire* Young Business Women's Award. In fact, she is no stranger to awards, with her business winning the Telstra South Australian Business of the Year prize two years ago.

Other winners who received their awards on Friday included Theressa Hines, Global Director for Environment, Health and Safety for appliance giant Electrolux, who received the Hudson Private and Corporate Sector Award. Fiona Godfrey, Principal of St Peter's Collegiate Girls' School, received the White Pages Community and Government Award, and Cathryn Harris, Mount Gambier Library Manager, received the Nokia Business Innovation Award.

The Telstra South Australian Business Woman's Award has gone to some of South Australia's—indeed, Australia's—most influential women. Past recipients include physicist and Scientist of the Year Tanya Monro, Chief Executive of the Adelaide Festival Kate Gould, Tammy May from MyBudget, and food author and restaurateur Maggie Beer. This year's winners joined this list of amazing achievers, and they will no doubt continue to inspire future generations of businesswomen, no doubt as well as businessmen. I wish Kelly lots of good luck in the finals, which will be held in Melbourne on 18 November 2011.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. R.L. BROKENSHIRE (15:37): I seek leave to make a brief explanation before asking the Minister for Regional Development a question regarding the Riverland Futures grants program.

Leave granted.

The Hon. R.L. BROKENSHIRE: Riverland Futures has a lot of potential, and has some very dedicated local Riverland people working on it. An example of a positive concept developed with the help of Riverland Futures is the proposal towards an Australian date industry that received publicity in recent times in Adelaide and locally in the Riverland. I am pleased to see there have been some grants announced, including $20,000 to the fresh and dried fruit industries. However, out of the $20 million to $21 million fund, there is still a significant amount that was rolled over from the 2010-11 budget due to underspend.

The Scholefield Robinson research identified, for the Riverland Futures Task Force prospectus released in September 2010, the viable prospect of growing vegetables and other annual crops, many of which can be grown in a particularly water efficient way in glasshouses. I understand that there are opportunities—with an application at the moment through Grow SA—to actually reinvigorate the Riverland with diverse market gardening opportunities, as well as to restore the former Berri fruit juice site into a progressive food processing plant.

The application that Grow SA has put to the department is supported by organisations such as the three Riverland councils, AUSVEG, Horticulture Australia Limited, the Primary Industries Skills Council, and the Central Irrigation Trust, plus seven private enterprise partners.

It appears that the department may have been slow in putting recommendations to the minister on this application considering that it has taken longer than the decision for the government to spend $500 million on the proposal put by the AFL to reinvigorate the stadium at Adelaide Oval. My question to the minister is: given that the application has been in for over six months, when can we expect a decision one way or another on this important application from Grow SA to reinvigorate in real terms jobs and economic opportunity in the Riverland?

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) (15:40): I thank the honourable member for his question; indeed, he is being most mischievous and misleading in his question, which is incredibly disappointing. He has been quite disingenuous and most unfair in some ways around some of the statements he has made. You would think that if he really wanted to get behind this proposal and really make sure that it succeeds, which he obviously does, he would be prepared to approach this with a great deal of truth and honesty.

The Hon. R.L. Brokenshire: I beg your pardon? I have been to see you about this on several occasions. It has taken six months. I have been totally truthful and honest. I am asking a simple question. That's an outrageous allegation from the minister, and untrue.

The Hon. G.E. GAGO: He is being most misleading. I will outline—

The Hon. R.L. BROKENSHIRE: Mr President, I ask that she withdraw those remarks because they are untrue and unacceptable and out of order.

Members interjecting:

The PRESIDENT: Order! The honourable minister can answer the question in any way she sees fit.

The Hon. G.E. GAGO: Thank you, Mr President. I will outline the arguments and the reasons that I have made those statements. In relation to the Sustainable Futures Fund—

The Hon. R.L. BROKENSHIRE: On a point of order, the minister made comments that are untrue, and I ask that they be withdrawn.

The PRESIDENT: The honourable minister is answering the question, and she is entitled to answer the question. You can dispute the relevance, or whatever, but the minister can answer in any way she thinks fit.

The Hon. G.E. GAGO: He is afraid of listening to the answer. If we go back to the Riverland futures fund, a $20 million fund over four years that was an election commitment of this government, it is about trying to reinvigorate investment into the Riverland region to help it overcome the adversity it faced in terms of the 10-year drought—one of the most dreadful droughts on record—followed by floods. It was a community that needed assistance to transition its industries into more long-term viable and sustainable areas and to attract new industries. As I said, it was about building on a community to help its long-term financial position and its prosperity generally in a sustainable way.

There are many projects from that fund that I have granted. Just to briefly outline a few: $620,000 to AgriExchange, which is about supporting the expansion of a fruit packing house; $10,500 to GM Arnold & Son that looks at a new trial crop; $20,000-odd to the SA Fresh Fruit Growers Association, helping a dried fruit association put forth a marketing plan for dried apricots; just over $447,000 to assist Wild n Fresh with their products; $250,000 to JMA Engineering to assist with a new grit-blasting machine; $245,000 for Biological Services; and also $438,000 to Plumco, which I recently spoke about in this council.

All applications—and I have spoken to the honourable member directly about this in the past—are dealt with expeditiously by our agency. To suggest that in any way our agency or the government or my office is holding up or dragging the chain is completely misleading. We deal expeditiously with these applications.

As you can see, there have been many that we have dealt with already. Of course, there is a high degree of due diligence that is required in terms of making sure that these applications fulfil the eligibility criteria and that rigorous financial analysis is done. We have an accounting firm from outside (independent of the office) that does some work on the financials. There is a risk analysis that is done, Mr President. You would appreciate, I know, that the $20 million is taxpayers' money—it is the money of the general public, hard-earned money—and it is most important that

the government allocate this in a highly responsible and accountable way, and that is exactly what we do.

Grow SA is an applicant that has obviously been lobbying very hard to have its application—

The Hon. R.L. Brokenshire interjecting:

The Hon. G.E. GAGO: In fact, Mr President, I am not aware of any of the—only what people have lobbied me to the best of my recollection, Grow SA and the honourable member, so the honourable member needs to be careful when he talks about who has been lobbying me.

Grow SA, a not-for-profit statewide organisation, aims to implement industry strategies for the advancement of horticulture. Grow SA's initial application was seeking $4.1 million from the fund to help to develop a futures food centre on the former National Foods site at Berri. All of this is public information, so I am not breaching any confidentiality here. The centre aims to be a focal point for growers and businesses in the region looking to grow and market different crops and are able to adjust for climate and water conditions.

As the honourable member points out, that is most consistent with the reports that were completed and funded by the South Australian government and showed the sorts of opportunities that existed in the region. Indeed, it is most consistent with that. That original application for $4.1 million was processed and the application was unsuccessful. The project concept was considered to have potential; however, it was found to be unsuccessful. So, to say that we have not processed their application is simply wrong. It is most incorrect and wrong, and it is misleading to come here and say that the government has not processed their application.

However, the application did have merit and we recognised that. So, although we were not able to support the application per se, we went back to Grow SA and had the agency work with them to go through where there were issues of concern and where there were weaknesses in their application, where more rigour and detail were needed and provided assistance to help develop that proposal in a way that might meet the rigorous requirements that are established to protect the public interest.

Grow SA has since submitted a revised application, and that application is currently being considered, and I will be making a decision about that and announcing that in the foreseeable future. But he is not going to help Grow SA's case by coming into this place and, as I said, misleading this place in terms of information around the processing of the application of this proposal.

PRINTER CARTRIDGE SCAM

The Hon. R.I. LUCAS (15:50): I seek leave to make an explanation prior to directing a question to the minister representing the Attorney-General on the subject of rorts involving printer cartridges within the South Australian Public Service.

Leave granted.

The Hon. R.I. LUCAS: At a recent meeting of the Budget and Finance Committee, the purchasing policies for printer cartridges in the Aboriginal Affairs and Reconciliation Division of the Premier's department were highlighted. An allegation in relation to some 200 printer cartridges having been purchased for over $80,000 in less than two months was raised. The chief executive of the department, within 24 hours, announced publicly that an employee within the Premier's own department had been suspended pending further investigations.

I lodged a freedom of information request with all government departments and agencies on that day, with a simple request of a copy of all invoices for printer cartridges from those departments. I have been provided today with an answer from the Attorney-General's Department, which says:

> Unfortunately, I cannot identify the documents you are seeking...For your information the common practice within the Attorney-General's Department when purchasing printer cartridges is to code the cost to the stationery code...I cannot, by looking at this document, determine which transactions include the purchase of printer cartridges.
>
> Please provide me with a list of suppliers to enable me to locate the documents you are seeking.
>
> Your application will be considered invalid until you have provided me with information that enables me to locate the documents you are seeking.

What the Attorney-General's Department is telling me is they cannot, through their invoicing and accounts, tell me how many printer cartridges they have purchased in the last year and what they actually paid for the printer cartridges, and that it is up to me, as the applicant, to identify the unnamed or unknown suppliers of printer cartridges to the Attorney-General's Department before any freedom of information request can be considered. My questions to the minister are:

1. Can the minister explain how his department's accounting and financial management practices can be so slack that they supposedly cannot identify how many printer cartridges they have purchased in the last 12 months and what price they paid for them?

2. If the Auditor-General is going to conduct an inquiry into these particular claims and procurement practices in government departments and agencies, will the Attorney-General's Department provide this same response to any requests for information from the Auditor-General in relation to purchases of printer cartridges?

3. Does the minister accept that this extraordinary refusal under freedom of information from his own department indicates that he and his government are embarking on a massive cover-up designed to prevent the release of any information about the scandals and rorts of purchasing within government departments and agencies?

The PRESIDENT: The honourable minister should disregard the enormous amount of opinion in that question and also realise that this has been evidence at a committee, and whilst the Hon. Mr Lucas sailed very close to that, he was not in breach of standing orders, but I remind members that the Attorney-General should not respond to evidence of that committee until it has reported. The honourable minister.

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) (15:54): Thank you, Mr President. I thank the honourable member for his question and will refer those to the Attorney-General in another place and bring back a response. Obviously it is a matter for the Attorney-General, but just by way of some very broad and general background, I am advised that an internal investigation in DPC has resulted in action that is deemed appropriate for the alleged breach.

I am advised that the Chief Executive, Department of the Premier and Cabinet, has written to all chief executives asking for an urgent review of procurement practices, particularly in relation to computer consumables, to ascertain if there are any irregularities. As members would no doubt be aware, the Premier advised on Thursday 21 September that the matter had been referred to the Attorney-General and also to the police. The Attorney-General has—

The Hon. R.I. Lucas: The Auditor-General.

The Hon. G.E. GAGO: The Auditor-General, I beg your pardon. The Auditor-General has broad-ranging investigative powers, including the ability to summons witnesses, demand documents, conduct searches and inspect records, and it is up to the Auditor-General to determine whether and how to conduct the inquiry and the scope of his investigation. It is obviously not appropriate to direct the Auditor-General as to how he carries out his role as an independent statutory officer. As I have said, in terms of being able to answer any of the questions the honourable member has asked about, I will refer those to the Attorney-General in another place and bring back a response.

PRINTER CARTRIDGE SCAM

The Hon. R.I. LUCAS (15:56): I have a supplementary question arising out of the answer. Given that the minister indicated that the Chief Executive of the DPC had written to all chief executives asking them to conduct their own inquiries into procurement practices, how does the CEO of the Attorney-General's Department intend to investigate procurement practices if the department maintains that it cannot tell him how many printer cartridges it purchased in the last year and what price it paid for them?

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): As I have said, I do not have any degree of detail around these matters; they are not my portfolio responsibility. However, as I have indicated, I am happy to refer the supplementary question to the Attorney-General in another place and bring back a response.

TEENAGE RUNAWAYS

The Hon. A. BRESSINGTON (15:57): I seek leave to make a brief explanation before asking the minister representing the Minister for Police questions about police handling of teenage runaways.

Leave granted.

The Hon. A. BRESSINGTON: It is with regret that I again need to rise to discuss the case of a runaway teenager, where the parents certainly feel that the police failed to assist their family to be reunited when their 15-year-old son ran away from home. He did so after being grounded for going against what were reasonable parental controls and on the insistence of his girlfriend of the same age, who comes from what can be described only as a dysfunctional background. Early on Easter Sunday morning, the boy arranged to be collected by his girlfriend's stepfather, who then drove the two to the girlfriend's brother's place.

After calling the police, the mother was informed of her son's location. She wanted to see her son, and it was arranged by the police for two officers to meet the mother at the brother's home, several hours drive from where they were living. The police informed the mother that the brother was well known to them, with all that that implies. The girlfriend had previously disclosed that her brother had sexually abused her.

At this point in time, it would have been appropriate for the police to advise the parents that they could access or apply for a child protection restraining order, but that was not done. Instead, the mother was informed that, while she could speak to her son, if she attempted to take him home, she would be arrested and charged with assault—that is, the mother of a 15-year-old boy. Unfortunately, having been told that no law required him to go home, he did not do so.

From thereon, the parents reported that they were treated with suspicion by police, who basically implied that the son must have had a reason to run away from home. The police inaction is traceable to a fiction that is seemingly being created that children at the age of 15 have a right to leave home. This was the standard refrain and something the mother became increasingly frustrated with hearing. Further, the police seemingly presumed that the boy had good reason for doing so, despite making no inquiries at all about the safety or suitability of the family home.

This attitude is not exclusive to police, the school counsellor at Whyalla school and the nursing staff at Whyalla hospital. After the young boy attempted suicide, the mother was contacted and asked for parental consent to medical treatment and then was told that she could not go to the hospital to see her son.

The PRESIDENT: I remind the honourable member that matters of interest are tomorrow.

The Hon. A. BRESSINGTON: Mr President, this isn't any longer than any other member's question.

The PRESIDENT: I think it is, quite a bit.

The Hon. A. BRESSINGTON: Families SA are among the myriad others enabling, if not encouraging, this boy's choice to run away from home. Our police can and should be doing more to investigate these situations and working to reunite families where no abuse or neglect has occurred. My questions to the police minister are:

1. Does the minister agree that 15-year-old children do not have a right to leave home and that police were wrong to inform both the mother and her son that there was such a law?

2. As I have asked previously (and had no answer), does the minister concede that this parliament's intent of empowering parents to protect teenage runaways is being undermined by what is clearly police reluctance to acknowledge the existence of parental rights?

3. Have the police and courts been briefed yet on the application and intent of the child harbouring laws passed in this place in 2009?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (16:00): I thank the member for her most important questions and will refer them to the Minister for Police in another place and bring back a response.

The PRESIDENT: I must remind honourable members that today there have been a couple of long explanations. There has also been a lot of asking for ministers to give opinions in their answers, and that is not on. Most of you have been here long enough now to know standing orders. If you do not, I remind you that you should refresh yourself of them. The Hon. Mr Wortley.

APY LANDS, SUBSTANCE MISUSE FACILITY

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:01): I table a copy of a ministerial statement made by the Hon. John Hill, the Minister for Health in another place, regarding his visit to Amata in the APY lands.

CRIMINAL ASSETS CONFISCATION (PRESCRIBED DRUG OFFENDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 September 2011.)

The Hon. S.G. WADE (16:02): Before addressing the bill itself, I would like to make a comment about the management of the bill today. Yesterday morning, all members of the council received a message from the government in the following terms:

> Due to the availability of a legal officer, it would be appreciated if the order of the priority could be slightly reorganised. The Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill will now need to be debated first on Tuesday 27 September 2011 with the aim of completing the committee stage the same day if possible.

The opposition appreciates that from time to time circumstances arise and it is necessary to reorder the business of the council to accommodate external factors. We are pleased that we are able to accede to that request and will strive in good faith to complete consideration of the bill today.

However, I want to reiterate the caveat in the government's message, that is, that the aim is to complete the committee stage today if possible. This is an important piece of legislation and it is important that it not be rushed. If issues arise today that mean that we cannot give proper consideration to this bill, the opposition will be seeking for the matter to be held over. In that regard, I remind the minister that the council is the captain of its own business and it does rely on goodwill and cooperation for it to operate properly.

The Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill 2011 was introduced by minister Koutsantonis on 18 May 2011. The bill follows through with the ALP election pledge to confiscate the assets of repeat drug offenders to the point of bankruptcy, even where confiscated assets had no connection to criminal activity. This council, in my view, is again debating legislation which is bad law—bad law driven by PR spin rather than by evidence-based policy. Not only is the bill an affront to legal principles and basic fairness but also it does nothing to make South Australia safer.

In my view, former attorney-general Atkinson was the worst attorney-general in the state's history. He served in a cabinet led by a premier with a low regard for the legal profession and its role in the administration of justice. The attitude of this government is summed up in one slogan: rack, pack and stack. For this government, being tough on crime is a simplistic commitment to incapacitation through imprisonment. The legacy of nine years of damage done and wasted opportunities will be with us for decades to come. Crime will be higher than it otherwise would be; correctional services expenditure will be higher than it otherwise would have been.

The legal profession, admittedly, did breathe a collective sigh of relief at the appointment of Attorney-General Rau, hoping for a return to reason. However, the profession is becoming increasingly concerned that all that has changed is the tone of the discussion. Attorney-General Rau spares the profession the vitriol but there has been no change in direction. In that context, the profession could just have kept its head down and enjoyed the respite, but to its credit increasingly the profession is expressing its concern at the direction of this government, its policy and its legislation. The reality is that Attorney-General Rau has turned out to be a pale imitation of attorney-general Atkinson. He has maintained the rack, pack and stack approach to law and order; he just lacks the passion of his predecessor—which brings us to this bill.

A fundamental principle of the Rann government's PR approach is that a policy has not really been announced unless it has been announced and reannounced a number of times. In this case the Attorney-General attempted not once, not twice but three times to put this bill on the

media agenda, all with the usual spin about being tough on crime. The public is tired of the rhetoric; it just wants results.

On 15 September the Attorney-General yet again went to the media on this issue for the third time. For all his huffing and puffing the Attorney-General was only reported in one newspaper article. The media had heard it all before from a tired government desperate to cut through on a poorly thought-out policy. We may well get a fourth release today. The opposition is happy to put its case because we believe it is our duty to provide better law for South Australians, because better laws properly implemented mean a safer South Australia.

To highlight the shallowness of the Labor approach I will highlight a series of sections of the 2010 ALP election policy. Under the heading 'Taking the Profits from Drug Takers', the policy states that the ALP is committed to 'hitting drug dealers and traffickers where it hurts by targeting their illegal profits'. The opposition has no problem with targeting the profits of criminals, but that is not new. In this aspect the policy merely affirms the law as it stands. It is a long-standing principle of common law that criminals are not entitled to profit from their crimes. We have had legislation for some time to deprive criminals of the proceeds of crime and the instruments of crime. Again, in typical ALP style, the government has included existing criminal confiscation arrangements in its policy and much of this bill merely finetunes the existing legislative framework.

This reminds me of the Controlled Substances (Offences Relating to Instructions) Bill introduced by the Attorney-General last year. That bill purported to be implementing another ALP policy that merely committed to introduce law that already existed. That time it was relating to providing instructions for drug manufacturing. So lacking in leadership and ideas, this government has taken to releasing existing laws as new policy. I quote another passage from the 2010 ALP policy:

> This deterrent is an effective way of disrupting and hindering the activities of serious organised crime gangs by removing or reducing profits.

Again, this deterrent already existed both then and now in law. If the profits are in fact derived from crime, then existing laws allow the full confiscation of such profit, not just the reduction as proposed by the policy. The Attorney-General had said in an earlier press release on 16 May 2011 that:

> Criminal gangs typically use the proceeds of drug trafficking to create a lavish lifestyle, as well as build their criminal capabilities.

Again, if the drug trafficker is using the proceeds of crime to create a 'lavish lifestyle' that is a failure of the government to use existing proceeds of crime legislation to confiscate those assets. It is almost as if the government were saying, 'We're not going to bother using existing legislation because more law means more media.'

In his media release dated 15 September 2011 the Attorney-General states that the opposition position on the bill would:

> ...send a message to serious criminals who traffic drugs that they should be able to retain their fortunes, as long as they launder the proceeds of their crimes.

Under section 138 of the Criminal Law Consolidation Act 1935, money laundering is already an offence punishable with a maximum penalty of 20 years' imprisonment. If a person is found to have laundered the proceeds of crime, and the proceeds are under the effective control of the person as per the bill and the act, then those proceeds can be taken away. The Liberal Party has supported and continues to support confiscation of the proceeds and instruments of crime, but there is one aspect of the policy that is novel and we do not support it. We argue that it is counterproductive. The bill reflects the ALP policy commitment that reads:

> All of a convicted offender's property can be confiscated, whether or not it is established as unlawfully acquired, and whether or not there is any level of proof about any property at all.

This goes to the heart of the legislation we see before us today. It contradicts the focus on crime and grabs lawfully acquired assets of people. The government has given no justification as to how this policy and how this legislation will reduce drug trafficking.

The bankrupting of drug offenders may indeed have the opposite effect of increasing drug offending, for the offender pushed to the point of bankruptcy may be so desperate for money that they turn again to crime. Also I fear that confiscation to the point of bankruptcy will disproportionately affect children and other innocent people. Children of offenders are already at risk of becoming offenders. Heavy-handed confiscation that could destabilise the family unit, even after the offender has been removed, is likely to increase the risk of offending behaviour,

particularly if clumsy implementation of justice embitters the young people involved. The confiscation of a family's legally acquired assets is hardly a recipe for successful social inclusion. In any case, the fight against organised crime is far broader than the fight against drugs. If the government really believed that this approach is likely to be an effective punishment, why not apply it against all repeat offenders?

The Attorney-General has claimed that the last election has given him a mandate to push this legislation through parliament. That mandate, he claims, entitles him to anything the ALP policy set proposes and that that right should be unchallenged. I take the opportunity to remind the Attorney-General that the Labor Party did not receive a majority of voter support in the House of Assembly, and more so that 70 per cent of voters voted for a non-government candidate in this council. The Law Society has commented on this bill and expressed its opposition in the strongest terms. It has described the legislation as:

> ...inimical to a free society which applies the rule of law and encourages the citizen to be self-sufficient. To say it is draconian only tells a fraction of the story.

The Australian Lawyers Alliance says that aspects of the bill:

> ...unfortunately bear witness to a further erosion of the rights and principles central to the administration of justice.

Later in the submission it says:

> The bill represents a horrendous incursion into the rights of citizens, with legislation being drafted which essentially eases the burden upon the prosecuting authority to prove its case.

These comments are a damning indictment of a government that claims to be in the tradition of Don Dunstan.

The bill also does not make sense. Why is the government bothering with it? What is the government's true motivation in bringing the bill forward? Having introduced legislation to address issues that significantly can already be addressed under existing legislation, the real reason for the government's desperation to have the bill passed is seen in clause 36. The clause proposes to set up a so-called justice resources fund. The fund's stated purpose is 'for the provision of courts' infrastructure, equipment or services' and 'the provision of programs and facilities within the justice system for dealing with drug and related crime'.

In other words, the assets seized under the bill will fund the Attorney-General's Department. It is a clear cash grab that hopes to fill the gaping hole in the state's finances created by this government's mismanagement, a government whose creativity is only shown through new and clever ways to tax people, clever measures which, ultimately, hurt the vulnerable, in this case victims. Under existing criminal assets and proceeds of crime legislation, confiscated finances are added to the Victims of Crime Fund. That fund was established to provide some redress for victims regardless of their aggressor's ability to pay. The justice resources fund, on the other hand, essentially diverts funds that are currently being set aside for victims to fund projects usually funded out of general revenue. It is a stark demonstration of the parlous state of the government's finances and the poor priorities of the government that it needs to start sneakily raiding Victims of Crime Fund revenue to pay for basic government services.

Stakeholders like the Law Society of South Australia have also expressed concern that not only is this legislation bad policy, but it may in fact be unconstitutional. Concerns have been raised as to whether the legislation offends the Kable principle, as set out in Kable v Director of Public Prosecutions for NSW in 1996. There have also been similar conclusions drawn from International Finance Trust Co Ltd v New South Wales Crime Commission in 2009.

We all know that this government enjoys a frolic in the courts. Like a gambling junkie, the government seems to go out of its way to spend more time and money in the courts—the problem is that it is wasting taxpayers' money, not its own. Whether it is a minister defending themselves against defamation proceedings or the government handing out hundreds of thousands of dollars to outlaw bikie gangs for court costs, we need to stop government waste in legal frolics.

To be fair, the government does acknowledge the constitutional risk in its second reading speech, and I quote from the second reading contribution of minister Gago:

> Under the WA scheme and its counterpart in the Northern Territory, all of the declared drug trafficker's assets are subject to forfeiture…The government has taken the view that, under the current attitude of the High Court, such a scheme is, if challenged, likely to be held unconstitutional. So, in order to ameliorate the harshness of

the scheme, it is proposed that the prescribed trafficker forfeit everything except what a bankrupt would be allowed to keep.

Ameliorate the harshness of unconstitutionality? Remarkable. The revenue collected by the justice resources fund may need to fund the court costs in proceedings that the scheme creates, again at the expense of victims. I reiterate the Law Society advice in relation to the bill: it is still not confident the government has achieved its stated purpose and assured constitutionality.

The Attorney-General has attacked the opposition in the media for not supporting the prescribed drug offender provisions in this bill or the High Court challenges that would result from it. For our part, we see it as irresponsible to support a law that is of questionable constitutionality. We find that the provisions of this bill are not only unlikely to have a positive impact but to punish those who had nothing to do with the crime.

The Attorney-General has also attacked the opposition for not offering amendments, but the fact is that we foreshadowed amendments in the House of Assembly and we have filed amendments in this place. We have amendments filed which amend the bill to remove the elements of the bill that are harmful to victims, that abandon fair legal principle, that may be unconstitutional, and those that serve no purpose in reducing crime. We will support the technical amendments which finetune the existing regime and which, I understand, make up 22 of the 38 clauses in the bill.

Let us be clear: the Attorney-General lacks credibility when he demands that the Legislative Council amend the bill. If we had engaged in a futile effort to try to salvage a bad law, the Attorney-General would have howled mercilessly, as he did in relation to the Summary Offences (Weapons) Amendment Bill 2010. I note that he now refers to that bill as 'the pig marketing bill'. On one bill he demands amendments: on another he rails against the council when we do amend.

To assist the council in its consideration, I advise that the opposition will oppose clause 7. If we do not get support for that position, we are attracted to the amendment of the Hon. Ann Bressington, because that clarifies that a person can only be declared a prescribed drug offender if they commit a relevant offence on three separate occasions. A number of members have indicated that they have concerns with the bill, and many of those concerns are concerns that the opposition shares.

Many of us have been assisted by the Law Society and the Australian Lawyers Alliance to appreciate the range of problems with this bill, and I would like to take this opportunity to thank them for their diligent support. We are grateful for the feedback of stakeholders in so many ways. I call on the council to demand that the government focus on real solutions to deal with the drug crime that our communities face, and support the opposition amendments as we progress through the 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) (16:19): I understand that there are no further second reading contributions, so by way of some brief concluding remarks I would like to thank honourable members for their contributions. This bill is part of an election commitment by this government and seeks to introduce provisions to allow confiscation to the point of bankruptcy of repeat drug offenders' assets, even those that have been lawfully acquired. If an offender has committed three prescribed offences within 10 years, they are then eligible to be a declared drug trafficker.

It is obvious from the second reading contributions that the government does not have support for the major thrust of this legislation, which is disappointing; however, I thank members for their contribution and look forward to the committee stage.

Bill read a second time.

In committee.

Clauses 1 to 3 passed.

Clause 4.

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

Page 3, lines 11 to 13—Delete clause 4

This amendment is the first of 22 amendments that remove provisions relating to the prescribed drug offenders confiscation scheme. I propose that this amendment be a test amendment for the following 21 amendments, which I suggest are consequential. If members were persuaded by my contribution not to support the amendments, it might assist the committee if they let me know so I can spare you the restatement of my case.

The Hon. G.E. GAGO: The government rises to oppose these amendments, and we are happy for this to be treated as a test for the rest of the honourable member's amendments, or this particular series of amendments.

The bill does three things: it contains the election pledge of the government in relation to the confiscation of the assets of certain serious drug offenders, it confirms the result of the decision of the Full Court in the case of the DPP v George [2008] SASC 330, and it makes some minor drafting changes to the principal act thought desirable by parliamentary counsel. The effect of the amendments tabled by the Hon. Stephen Wade is, quite simply, to delete all those parts of the bill dealing with the election policy, leaving the other two very minor aspects of the bill unaffected.

Again, the opposition and, it seems, the minor parties are obviously not prepared to support the election pledge that this government made. Obviously, they do not respect the mandate that this government has, given that this was part of an election pledge.

The effect of the government's election policy has been well understood by those who oppose it. The policy is to effectively bankrupt those drug dealers convicted of a commercial serious drug offence and those convicted of three more minor (but nevertheless serious) drug offences of trafficking, manufacturing and the like. The policy reflects a more generous version of legislative policy enacted in Western Australia and the Northern Territory.

It seems from the course of the debate that the majority of members are quite clearly unpersuaded by the virtues of this approach. As I said, if the government loses this test amendment, it will oppose the rest of the amendments as a matter of form. But we see no point in us speaking to them; we see this as a test.

Amendment carried; clause deleted.

Clause 5.

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

Page 3—

Lines 15 to 17 [clause 5(1)]—Delete subclause (1)

Lines 19 to 28 [clause 5(3), (4) and (5)]—Delete subclauses (3), (4) and (5)

Page 4, lines 1 to 10 [clause 5(7)]—Delete subclause (7)

Amendments carried; clause as amended passed.

Clause 6 passed.

Clause 7.

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

Page 4, lines 21 to 40 and page 5, lines 1 to 28—Delete clause 7

Amendment carried; clause deleted.

Clause 8.

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

Page 5, lines 32 to 38—Delete clause 8

Amendment carried; clause deleted.

Clause 9.

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

Page 5, lines 32 to 38—Delete clause 9

Amendment carried; clause deleted.

Clause 10.

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

Page 6, lines 1 to 25 [clause 10(1)]—Delete subclause (1)

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12.

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

Page 6, lines 38 to 41 and page 7, lines 1 to 7 [clause 12(1)]—Delete subclause (1)

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14.

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

Page 7, lines 16 to 25—Delete clause 14

Amendment carried; clause deleted.

Clause 15.

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

Page 7, lines 16 to 25—Delete clause 15

Amendment carried; clause deleted.

Clause 16.

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

Page 7, lines 26 to 31—Delete clause 16

Amendment carried; clause deleted.

Clause 17.

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

Page 8, lines 1 to 41—Delete clause 17

Amendment carried; clause deleted.

Clause 18.

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

Page 9, line 5 [clause 18, inserted section 62A]—Delete 'Subject to section 59A but despite' and substitute: 'Despite'

Amendment carried; clause as amended passed.

Clauses 19 and 20 passed.

Clause 21.

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

Page 10, lines 6 to 11 [clause 21(3), inserted subparagraph (ia)]—Delete inserted subparagraph (ia)

Amendment carried; clause as amended passed.

Clause 22.

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

Page 10, lines 17 to 38, and page 11, lines 1 to 6 [clause 22, inserted section 76A]—Delete insertion 76A.

Amendment carried.

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

Page 11, line 9 [clause 22, inserted section 76B]—Delete 'but subject to section 76A'

Amendment carried; clause as amended passed.

Clauses 23 to 32 passed.

Clause 33.

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

Page 14, lines 1 to 18—Delete clause 33

Amendment carried; clause deleted.

Clause 34.

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

Page 14, lines 19 to 21—Delete clause 34

Amendment carried; clause deleted.

Clause 35.

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

Page 14, lines 22 to 24—Delete clause 35

Amendment carried; clause deleted.

Clause 36.

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

Page 14, lines 25 to 38, and page 14, lines 1 to 22—Delete clause 36

Amendment carried; clause deleted.

Clause 37 passed.

Clause 38.

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

Page 16, lines 9 to 24 [clause 38, inserted section 224A]—Delete inserted section 224A

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) (16:36): I move:

That this bill be now read a third time.

Bill read a third time and passed.

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

In committee.

(Continued from 15 September 2011.)

Clause 4.

The CHAIR: I think the Hon. Mr Wade has moved his amendment.

The Hon. S.G. WADE: Yes. In the context of the discussion we had on 15 September, if I can confirm my understanding, I think the minister indicated that the government preferred the Franks amendment to the Wade amendment. If that is the case, I am happy to withdraw the amendment because the same effect will be achieved by the Franks amendment.

The Hon. G.E. GAGO: We do prefer the Hon. Tammy Franks' amendment.

The Hon. S.G. WADE: By leave, I formally withdraw my amendment.

Amendment withdrawn.

The Hon. T.A. FRANKS: I move:

Page 4, lines 28 to 33 (inclusive) [clause 4, inserted section 21C(2)(b)]—Delete paragraph (b) and substitute:

(b) any body piercing on a minor without the consent of the minor's guardian given in accordance with section 21D.

The effect of this amendment is to ensure that earlobe piercing is also within the rubric of having to get the consent of a parent or guardian if a minor is under 16.

The Hon. G.E. GAGO: We will not be opposing this amendment.

Amendment carried.

The Hon. T.A. FRANKS: I move:

Page 4, after line 34 [clause 4, inserted section 21C]—After subsection (2) insert:

(2a) Subsection (2)(b) does not apply if the minor on whom the body piercing is to be performed is at least 16 years old.

The committee should note that this amendment is consequential on the previous amendment.

Amendment carried.

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

Page 5, lines 15 and 16 [clause 4, inserted section 21D(1)]—Delete '(other than an earlobe piercing)'

This amendment builds on the earlier amendments proposed by the opposition and when we deferred to the Hon. Tommy Franks' amendment. It would require the provision of information and a written agreement to be undertaken for piercings on earlobes for minors under the age of 16. As we indicated previously, we see no reason as to why minors should not require the consent of a parent simply because they choose an earlobe piercing over another non-intimate piercing. I will briefly flag at this point that we do not think that this information or agreement is necessary for persons 16 years old and above and will be moving a subsequent amendment to reflect that fact.

The Hon. G.E. GAGO: The government will not be opposing this amendment. New section 21D requires service providers to enter into a written agreement with customers about the nature of the procedure and the manner in which it is to be carried out and give customers a free-of-charge copy of prescribed information. However, these requirements do not apply to earlobe piercing.

The effect of this amendment and Mr Wade's third amendment would mean that service providers would have to enter into a written agreement to give out prescribed information for earlobe piercings but only if the person is under the age of 16 years. This will have an impact on those businesses that only offer earlobe piercing and are not currently captured by section 21D, as they will be required to enter into a written agreement with every customer who wishes to have their earlobes pierced.

Although it seems onerous to require service providers to enter into a written agreement for such a simple procedure, there is merit in service providers being required to give all customers appropriate health information regardless of the procedure they are seeking. Therefore, the government will not be opposing this amendment.

The Hon. T.A. FRANKS: I indicate the Greens support this amendment.

Amendment carried.

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

Page 5, after line 35 [clause 4, inserted section 21D]—After line 35 insert:

(1a) Subsection (1) does not apply to an earlobe piercing performed on a person who is at least 16 years old.

This amendment seeks to remove the requirement for a written agreement and the provision of information for earlobe piercing procedures on persons aged 16 years and above. The opposition does not think there is a demonstrated need for a departure from the current requirements in relation to this procedure. It is our view that those that are of consenting age generally know what they are engaging in when they ask for an earlobe piercing. It is a relatively straightforward procedure and we do not believe it is justified for businesses to have additional requirements placed on them in this instance.

The Hon. G.E. GAGO: The government will not be opposing this amendment. It is linked to the Hon. Mr Wade's second amendment that was not opposed.

Amendment carried.

The Hon. T.A. FRANKS: I move:

Page 5, after line 38 [clause 4, inserted section 21D]—After subsection (2) insert:

(3) In this section—

prescribed information means—

(a) information about how to care for the health and recovery of the area of the body affected by the body piercing or body modification procedure; and

(b) any other information prescribed by the regulations.

This deals with provision of after-care health and recovery information to be prescribed. I understand the Liberal Party will be amending this amendment, and I will be supportive of that.

The Hon. S.G. WADE: I move to amend the amendment as follows:

Inserted subsection (3)—Delete 'this section' and substitute: 'subsection (1)(b)(i)'

The Hon. G.E. GAGO: The government will not be opposing this amendment. For the record, at present the bill requires service providers to provide customers with a copy of prescribed information as the bill does not define 'prescribed information'. The government intends to set out what is prescribed information in the regulations. At this stage it is envisaged that service providers will need to provide customers with the information about any health risks associated with the procedure being sought, as well as information about how to care for the site after the procedure has been performed.

The effect of this amendment is to put into the act a requirement to provide after-care information and to allow other information to be prescribed in regulation. Although the government obviously would prefer that these requirements be prescribed in the regulations so that they can easily be updated if necessary, we will not be opposing it.

Amendment to amendment carried; amendment as amended carried.

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

Page 5, after line 38—After inserted section 21D insert:

21DA—Offence to body pierce etc using unsterilised equipment

A person must not perform a body piercing or body modification procedure on another person using an instrument that has previously been used to pierce or modify a person's body unless that instrument has first been sterilised in accordance with the regulations.

Maximum penalty: $5,000.

For the reasons outlined previously, we believe that sterilisation procedures should be universal and applied to all multi-use devices. One of the major health risks raised by stakeholders was poor practice in regards to hygiene of procedures both while they are undertaken and in after-care arrangements. This amendment seeks to address the first part of this concern as raised by the Hon. Tammy Franks previously.

The Hon. G.E. GAGO: The government opposes this amendment. This amendment inserts a new section 21DA into the bill. The proposed new section makes it an offence to re-use a piercing or body modification instrument unless that instrument has been sterilised in accordance with the regulations. The government has no objection to that in principle in relation to the amendment. However, the use of unsterilised equipment by tattooing and piercing studios is a public health issue and should not be included in the Summary Offences Act.

The Department of Health publishes guidelines on the safe and hygienic practice of skin penetration which are enforced by local government environmental health officers. These officers are trained to carry out inspections of these premises in relation to sterilisation and infection control. Issues relating to sterilisation should be referred to the health minister who looks after the Public Health Act. They should not be put in the Summary Offences Act and enforced by SA Police officers who do not have the same training in relation to public health matters. It is for those reasons that we oppose this amendment.

The Hon. T.A. FRANKS: I rise on behalf of the Greens to say that we certainly support the intent of this amendment, and obviously we had moved a similar amendment ourselves. We are most concerned that the use of non-sterilisable piercing guns has been linked to serious infections and complications from their use. This was detailed in evidence before the 2005 select committee. This alone should be grounds to reconsider their use, and the additional risks provided of blood to blood transmission of serious and potentially fatal diseases subsequently leaves this issue as something that should have been much more urgently addressed.

I indicate that the government raises some quite salient points and certainly while the Greens would like to see addressed the use of these particular piercing guns and any non-sterilisable machinery with regards to piercing or tattooing, perhaps while saying that we support the intent of that and accept the government concerns, the government could suggest a way forward, which may be of use.

The Hon. A. BRESSINGTON: I will support the government's stand on this issue. There are a lot of pieces of equipment used for tattooing and piercing that do not necessarily have to be sterilised because they do not come into direct contact. It is a health issue. I have had tattoos and piercings. I just do not know what all the fuss is about, but I am with the government on this.

The Hon. J.A. DARLEY: I will support the government's position on this.

The Hon. G.E. GAGO: I put on the record that we will be happy to refer this matter to the Minister for Health in another place and ask him to consider this particular issue and provide a response to that.

Amendment negatived.

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

Page 7, line 24, page 8, line 9 (inclusive) [clause 4, inserted section 21I]—Delete section 21I

The bill would enable South Australia Police to enter premises providing tattooing, piercing or modification services and inspect, copy or retain copies of documents. The police officer would also be empowered to require a person who they reasonably believed to be a minor to give the person's name and address, proof of age and information about the procedure they are seeking. Such investigations by police would already be justified in the context of criminal investigations.

The industry is concerned that no other service industry has laws that allow the inspection and removal of private client data without justifiable cause. Indeed section 21I of the bill only requires that it is at a reasonable time for an officer to inspect and retain documents proscribed by regulation. Only if the police propose to retain copies of documents will it be necessary for them to suspect an offence. As the minister has indicated in her immediate past contribution, significant powers already exist for local government in relation to health and public safety standards compliance through the Public and Environmental Health Act.

A recurring concern of public health experts is that over-regulation will encourage consumers to access amateur providers or to self-administer. Minors may also have difficulty providing proof of age for procedures. Apart from a driver's licence, there are few other reasons why a 16-year old would require identification. This requirement may also encourage minors seeking piercings to choose amateur rather than professional services. It is our view that it is perfectly reasonable to expect that the police should be able to justify any intrusion or confiscation of property before it occurs, something this provision would not require.

The remedy to this concern is best found in the removal rather than amendment of the provision. The opposition believes that such expended powers are unnecessary and likely to do more harm than good. As such we move to delete this section of the bill. I note that the Hon. Tammy Franks has an identical amendment filed under her name, cited as [Franks-2] amendment No.8, and I trust that this amendment will be agreeable to her.

The Hon. G.E. GAGO: The government opposes this amendment, which would remove new section 21I which deals with police powers. This section gives police the power to enter premises at which tattooing, body piercing or body modification procedures are advertised, offered or performed, and to require the production and inspection of records that are required to be kept. A police officer may also require any person present at such premises whom the officer reasonably believes to be a minor to provide his or her name, age and address and the details of the procedure the person is seeking at the premises.

As it will be an offence for any person to perform intimate body piercings or body modification procedures on a minor, or to perform these procedures on any person without first entering into a written agreement with the customer, police need to be able to inspect records retained by service providers for the purposes of the act to ensure that businesses are acting lawfully. The ability to enter premises and ask a person to produce proof of age will also assist police in determining whether a service provider—and this includes backyarders—is complying with the legislation.

Unlike other industries such as hairdressing, waxing and the like, this bill imposes restrictions on the type of procedures that can be legally performed on a minor. The expanded police powers are an important part of the bill as they allow police to be proactive in ensuring that service providers are complying with the legislation. Without these expanded powers police would have to rely on someone making a complaint before they could investigate whether an offence had occurred. In many cases this is unlikely to happen, as a minor who has obviously sought out a prohibited procedure is highly unlikely to then turn around and lodge a complaint against themselves to the police. The new police powers enable the legislation to be properly enforced, and their deletion is opposed.

The Hon. A. BRESSINGTON: I support this amendment. It does not sit well with me to allow police to walk into a business and be able to demand records without reasonable suspicion, for a start. I believe that if a minor has gone to a tattoo shop or a piercing shop and come home with a ball in their earlobe or a tattoo that covers their back, perhaps the minor may not complain but their parents probably will. We are doing away with the whole reasonable suspicion basis here, and I think that is probably treading quite dangerous ground.

The Hon. T.A. FRANKS: The Greens support this amendment, and I note that we also have an identical amendment. We believe that giving police powers to go into piercing and tattooing studios to randomly check records is, in fact, an invasion of the privacy of the clients. It also gives unnecessary powers to SAPOL without any justifiable cause.

It is interesting that on the previous amendment, while the government was very keen that the machinery used was to be treated as a public health issue, here it is treated as a police issue. I find that an unusual jump in logic. In no other service industry in Australia do police have this power, yet the government has just argued that it is unacceptable that in this industry we would have to rely on someone making a complaint before police could enter and investigate. That seems to me to be quite a fair state of affairs, that someone would make a complaint before police would enter the premises and undertake such a search.

I also note the report of the select committee on tattooing and body piercing, which I have previously mentioned. Page 16, paragraph 3 states that there has actually only been three breaches of law prohibiting the tattoos of minors and that these breaches were, in fact, not linked to the tattoo industry but were persons known to the underage individual being tattooed and were private backyard amateur operators. This sort of introduction that is enclosed in this bill would, in fact, encourage just those sorts of operators and defeat the government's so-called campaign for better law and order. I think it would actually drive underage people underground and put their health at risk, and that is why we support this.

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

Amendment carried; clause as amended passed.

Schedule 1.

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

Page 8, lines 10 to 14—Delete Schedule 1

Section 144F of the Criminal Law Consolidation Act 1935 exempts minors from offences relating to the use of a false identity, the misuse of another person's identity and information, and producing or possessing prohibited material if it is for the purposes of obtaining alcohol, tobacco or any other product not lawfully available to persons under the age of 18 or to gain access to premises which restrict access to under 18s.

The opposition, on principle, opposes section 144F of the Criminal Law Consolidation Act 1935 altogether and, as such, would not support an expansion of the exemption to include services. Essentially, the government is saying that if a minor uses or produces a fake ID to get a tattoo, an intimate piercing or, for that matter, services beyond the scope of this bill—for example,

attend a striptease, hire an R-rated video, fraudulently apply to go on the electoral roll, or any range of adult services—no penalty should be applied. The government is sending a strong message to under 18s wanting to get any range of items restricted to adults that that is okay as long as you use fake ID.

For all the protections introduced for minors in the bill, the government is saying that it should all come to nothing if a minor misrepresents themselves. In fact, in relation to the previous clause, what is the point of the police being able to go in and seize records if they are all fakes?

It is worth noting that retailers who hold a reasonable belief that a person is of age as a result of the use of a false ID are provided with a defence under section 21C. So, there will be no penalty for the minor or retailer, provided the minor did a good enough job of breaking the law by faking their adulthood. This is an unacceptable and irresponsible position and one which the opposition cannot support, and we will be seeking to have a schedule 1 deleted.

The Hon. G.E. GAGO: The government opposes this amendment. Schedule 1 of the bill makes a consequential amendment to section 144F in part 5A of the Criminal Law Consolidation Act 1934. Part 5A deals with offences relating to identity theft. Section 144F provides that part 5A does not apply to misrepresentation by a person under the age of 18 years for the purpose of obtaining alcohol, tobacco or any other product not lawfully available to persons under the age of 18, or for gaining entry to a premises to which access is not ordinarily allowed to persons under the age of 18, or to anything done by a person under that age to facilitate such misrepresentation.

This provision was included to make it clear that the serious offences of part 5A of the Criminal Law Consolidation Act did not apply to the conduct of a minor attempting to be admitted to age-restricted venues or attempting to purchase age-restricted goods, such as alcohol or cigarettes. It was pointed out in the other place that similar issues would arise here if a minor attempted to use a fake ID to obtain a body modification procedure or body piercing.

However, the current wording of section 144F would only appear to cover products or goods, not services. Schedule 1 of the bill addresses this by amending section 144F to include services. The government is therefore opposed to the deletion of the schedule. Honourable members should note, however, that this does not mean that minors who use false IDs will get off scot-free. Pursuant to the new section 21H of the bill, a minor who makes a false statement or produces false evidence is liable to a maximum penalty of $2,500.

The Hon. S.G. WADE: If I could make a brief response to the minister's last comments, it is interesting to notice 21H, but I would stress the point that I made in my contribution that the inclusion of the services is much broader than this bill. It does not specifically say services in relation to tattooing.

The Hon. T.A. FRANKS: I rise on behalf of the Greens to indicate that we will not be supporting this amendment. We think that the use of a fake ID by an underage teenager to get a piercing, or even possibly a tattoo, is not to be equated with the indictable offence of identity theft. While it is not to be encouraged, it certainly should not be copping such a heavy penalty.

The Hon. A. BRESSINGTON: Yes, same as the Hon. Tammy Franks. Now that we have had some clarification on the ramifications of that, I will be supporting the government.

The Hon. G.E. GAGO: For honourable members who were not privy to the conversation in terms of answering the question that the Hon. Tammy Franks asked, the effect, if this amendment was not supported, would mean that a minor who used a fake ID for a piercing could be accused of identity theft, which is a very serious offence—it is an indictable offence—and, depending on the circumstances, could face up to three years' imprisonment.

We believe that that is obviously an inappropriate response to a minor who might use a fake ID for these purposes—even though, clearly, we do not want minors doing this—and it is obviously overkill to end up with a minor with, in effect, a criminal record.

The Hon. S.G. WADE: Could I ask the minister where she can identify that there is a three-year penalty for a breach of identity theft?

The Hon. G.E. GAGO: I have been advised that the matter is dealt with in the Criminal Law Consolidation Act 1935, section 144D—Prohibited material, which states:

(1) A person who—

(a) produces prohibited material; or

(b) has possession of prohibited material,

intending to use the material, or to enable another person to use the material, for a criminal purpose is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

(2) A person who sells (or offers for sale) or gives (or offers to give) prohibited material to another person, knowing that the other person is likely to use the material for a criminal purpose is guilty of an offence.

Maximum penalty: Imprisonment for 3 years.

The Hon. S.G. WADE: I would suggest that this is not what we are discussing; we are discussing the use of false identity, and I am advised that section 144B(3) is the relevant section, which states:

(3) A person who makes a false pretence to which this section applies intending, by doing so, to commit, or facilitate the commission of, a serious criminal offence is guilty of an offence and liable to the penalty appropriate to an attempt to commit the serious criminal offence.

I would ask the minister to clarify what, in fact, the legal position is.

The Hon. G.E. GAGO: I have been advised that section 144 is part of a complete scheme. Section 144B, which talks about false identity, does not specify a specific penalty because it would depend on the offence for which you have assumed the false ID. Therefore, section 144D, which I provided as the answer, provides for the offence of producing false ID material, which is up to three years.

The Hon. S.G. WADE: Are there any serious criminal offences under the bill?

The Hon. G.E. GAGO: I have been advised no.

The Hon. S.G. WADE: Can the minister advise whether the government anticipates that the inclusion of the word 'services' would exempt minors in services beyond the context of this bill?

The Hon. G.E. GAGO: I have been advised that it might be possible.

The Hon. S.G. WADE: I would put it to members that, even if members are concerned about the potential for an overly harsh response in relation to the tattoo bill, I think that to support this schedule opens up a can of worms for a whole range of other pieces of legislation and would be reckless legislating. I would urge the committee either to vote this schedule down or to report progress.

The Hon. G.E. GAGO: I urge honourable members to consider that, even though, as I responded as advised, some might be captured more broadly, if you consider the impact of a minor being captured by an indictable offence, that is obviously something most serious and something we should seek to avoid. I do not believe that we should expose minors to that risk and to all of the implications of indicting minors, which would have a lifelong impact. I do not believe that risk is warranted in this particular case.

The Hon. S.G. WADE: I remind the committee that criminal law prosecutions are launched by the state; the DPP and the police can have policy on these matters.

The committee divided on the amendment:

AYES (10)

Bressington, A.	Finnigan, B.V.	Franks, T.A.
Gago, G.E. (teller)	Gazzola, J.M.	Hunter, I.K.
Kandelaars, G.A.	Parnell, M.	Vincent, K.L.
Zollo, C.		

NOES (9)

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

PAIRS (2)

Wortley, R.P.	Ridgway, D.W.

Majority of 1 for the ayes.

Amendment thus negatived; schedule 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) (17:24): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LEGAL SERVICES COMMISSION (CHARGES ON LAND) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 September 2011.)

The Hon. M. PARNELL (17:25): The Greens support the second reading of this bill, which is a fairly simple bill to clarify that a charge on land in favour of the Legal Services Commission does in fact operate as intended, notwithstanding that the property charged may be sold by a third party.

The Legal Services Commission operates under fairly tight financial arrangements and, whether we like it or not, is obliged to seek recovery of its legal costs in as many cases as possible. The Legal Services Commission, on its website, includes an information sheet entitled 'Statutory Charge', which it gives to all legally-aided persons where there is an intention to get them to sign a consent to a statutory charge form.

This information sheet sets out fairly simply, under the heading 'Legal Aid is not Free', that if you as a legally-aided person or a financially-associated person own or are buying real estate and if there is equity in that real estate and the legal fees being spent on your behalf are likely to be more than $2,000, the legal aid is less a gift than a loan. The way the repayment of that loan is secured is via a charge on property. It is not a new regime and all this bill seeks to do is to clarify that it has the effect that I assume most people believe it always has had. We can see no reason, in principle, why this simple legislation should not be approved.

There is some question around the retrospective operation of this bill and, generally speaking, the Greens do not support retrospective legislation unless there is a good reason to do so and unless there is no particular harm or injustice done by it. We will reserve our position on the amendment: first of all, to see whether it is moved; and, secondly, what our position will be. We look forward to that debate. However, for present purposes we think this is a sensible, remedial bill that is deserving of support at the second reading.

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

SMALL BUSINESS COMMISSIONER BILL

Adjourned debate on second reading.

(Continued from 14 September 2011.)

The Hon. T.J. STEPHENS (17:28): I rise to speak on the Small Business Commissioner Bill. As lead speaker for the Liberal Party, I will outline the opposition's concerns with regards to this bill. As honourable members are aware, the Liberal Party opposed this bill in the other place.

The Small Business Commissioner Bill establishes an agency of the Crown to regulate franchising arrangements as well as other aspects of small business. The first problem with this bill is that it does not define what a small business is. Where is the line drawn? Where would the commissioner's powers end?

It strikes me as bizarre—and it is typical of this government—that it thinks that in order to better facilitate business more regulation needs to be introduced. It is hard to fathom. I fail to see

how the creation of a new bureaucracy with more regulation is going to better serve anyone in the business community. The powers and scope that this bill gives to the commissioner are already in place and are invested in other agencies. We do not believe there is any need to double up. We have seen this all too often with Labor governments over the years.

Another aspect I have concerns with is state regulation of franchising agreements. While this has always been true, it is more relevant today than it has ever been. Many franchises and buying groups are nationally, if not internationally, trading companies, with franchises all over the country and the world. Why then would we have a different regulatory framework and umpire than anywhere else in Australia? Franchising regulations should occur at the commonwealth level in order to avoid inconsistency between jurisdictions. While this would make it easier for franchisors to run their companies, it would also make it easier for franchisees, who would be on a level playing field in terms of the law and have certainty and peace of mind about the framework they are working in, regardless of what state or territory they conduct their businesses in.

It is my understanding that this bill dilutes the franchise code of conduct already in place and allows the commissioner to add to the code, which is commonwealth law, to create a unique code in South Australia. This will inevitably lead to inconsistencies of the nature I have just referred to. Opposition to this bill boils down to this: making it harder for small business people to run their businesses in South Australia. By over-regulating the government will isolate South Australia from the rest of the country, which will affect competitiveness in the franchising industry in this state.

The member for Mawson in another place likened the Franchise Council of Australia, the industry body for all involved in franchising—both franchisors and franchisees—to big tobacco, which I think summarises Labor's approach to the business community in general. Labor has never been a friend of business: despite all its masquerading people are seeing through it. The reality is that this bill will not help franchisees at all, and everyone in that industry will be worse off. Coming from a small business background myself, I can assure this place, the minister and the countless small business people in this state that the last thing they need is more regulation and bureaucracy paid for by higher taxes on just about every aspect of their business. The Liberal Party understands this.

From my own personal perspective, can I say that I used to lay awake at night worrying about the size of my overdraft, the purchases I had made, my staffing contingents, rent deals, advertising deals—all the things that make a business operate. I can say that not once did I ever lose a moment's sleep about whether a small business commissioner would be appointed. Who has time for such things? It is about getting on and running your own business.

The member for Norwood in another place referred to the gutting of funding to business enterprise centres of $1.35 million and to Regional Development Australia boards of $4.083 million, which were a key part of the government's small business platform leading up to last year's election. If this government cares as much as it says it does about small businesses, why is it cutting funding to the key businesses that support bodies in this state, which are crucial in advising businesses on their legal options, avenues to resolving disputes, as well as liaising with government? It is obvious from this move that the government has lost touch with the business community and is no longer interested in listening and is intent on satisfying only its own interests and not those of hardworking South Australians.

I certainly acknowledge the fact that there are rogue franchisors (if I can use that term), who act in a disingenuous manner to their franchisees for their own interest. In fact, I have spoken to franchisees who have been personally affected. Those franchisees should have the opportunity to seek reparation. However, this is the wrong way to help those people. This will not help and, while I welcome assistance and protection for franchisees from poor franchisors, we should not punish the majority who work well within industry.

I have had a very commendable letter that I would like to read into *Hansard* from a lawyer who has practised for many years and operated for both franchisors and franchisees. It starts:

> Dear Honourable Member
>
> Re: Small Business Commissioner Bill 2011.
>
> I am a concerned lawyer who has represented small to medium businesses (including franchised businesses) in South Australia for over 30 years.
>
> I am writing in relation to the Small Business Commissioner Bill 2011 which has recently passed through the lower house and is to be considered by the Legislative Council in the next week or so.

The stated objective of the government is that the bill will result in legislation similar to the Victorian Small Business Commissioner Act 2003.

I support that objective, but unfortunately the Bill goes considerably further than the Victorian act in that it:

1. enables the relevant minister to bring within the ambit of the legislation any industry by prescribing an 'industry code' in respect of that industry, and he can do that simply by regulation;

2. grants extensive rights to investigate and prosecute; and.

3. imposes a new and extreme penalty regime that is far more extensive than those contained in the federal Competition and Consumer Act and the South Australia Fair Trading Act.

I am particularly concerned about the ability of the minister to prescribe a code in respect of an industry without reference to Parliament. Added to this, and to complicate matters further, there is nothing prohibiting the Minister prescribing a code in relation to industries which are already the subject of a code eg. the oil and franchising industries. Should that occur, it will only result in further bureaucracy in relation to the same industry, added cost and, undoubtedly, confusion.

Mr Piccolo MP proudly states that the bill will make 'South Australia the safest place in Australia for small business to set up shop'. My concern is that it is likely to make South Australia the last place in Australia that franchisors and other generators of employment and opportunity will want to set up shop.

As you would be aware, Mr Piccolo introduced a private member's bill for the establishment of State based franchising legislation, because he was unable to persuade the Federal Government to make the amendments he was seeking to the Commonwealth Franchising Code of Conduct. His bill lapsed.

At around the time that Mr Piccolo was introducing his private member's bill, Peter Abetz was attempting to do the same thing in Western Australia. The Parliamentary Committee established to examine the WA bill recommended against its introduction. Tellingly, the WA Committee Chairman, Dr Mike Nahan, commented that 'the Committee felt that the Bill was not an appropriate measure at this time given the significance of the amendments, and the importance of uniform legislation to easing the cost and compliance burden for small businesses. The Committee's view was also influenced by what it saw as the potentially adverse legal implications and cost impact to Western Australia and franchising participants from the Bill.'

Interestingly, the South Australian Small Business Commissioner Bill will set up a framework that will enable the South Australian Government to introduce State-based franchising legislation which will impose a different regime and penalties to those which currently apply in respect of the Commonwealth Franchising Code of Conduct.

Mr Piccolo's private member's bill was not acceptable, and therefore what he sought to achieve should not be permitted to slip through the net as part of the Bill.

I am of the view that an industry code should not be able to be prescribed under the Bill by regulation. Such prescription should only occur with the approval of Parliament. At the very least, the Bill should be limited to ensure that the Minister cannot prescribe an industry code where there is already a Commonwealth code dealing with the same industry.

To allow a State-based industry code to co-exist with a pre-existing Commonwealth code for the same industry will only result in small businesses having to deal with the two regimes. This, at a time when governments throughout Australia are committed to creating more efficient regulatory frameworks for business. I have no doubt that if the Bill is passed, then soon thereafter there will be a code prescribed in relation to the franchise industry.

In support of my concerns, I refer you to the comments below that were made by Messrs Piccolo and Koutsantonis in relation to the Bill.

In a News Release dated 28 July 2011, Mr Koutsantonis stated 'We understand that for too long small businesses, franchisees and tenants have felt powerless when dealing with unfair practices of franchisors, larger businesses or large scale landlords.' In a News Release dated 14 September 2011 he said 'This is about giving franchisees some rights; a voice to help them stand up to the big corporations, why the Liberal Party has taken [the] side of big business and opposed these measures is a mystery.'

Mr Piccolo in a News Release dated 3 August 2011 stated that his lapsed private member's bill 'would have complemented the existing Federal Code but would have gone further in protecting franchisees from rogue and unscrupulous franchisors.' He went on to say that 'while the Bill is structured differently to his own, it will ultimately achieve the same objectives.'

There are other significant criticisms of the Bill that have been brought to the attention of Mr Koutsantonis, but based simply on the above I request that you:

4. vote to reject the Bill; or

5. move to have the Bill referred to a Parliamentary Committee for proper consideration.

Proper consideration will enable fuller consultation (rather than the limited and selective consultation that has occurred) and the consideration of amendments such as removing the right to prescribe industry codes; providing a definition of 'industry code'; and/or removing the right of the Minister to prescribe an industry code where there is already a Commonwealth code in relation to that industry eg. Oil Code or Franchising Code of Conduct.

Thank you for taking the time to read this letter. If there is anything which you wish me to elaborate on or provide to you in support of what I have written, please do not hesitate to contact me.

Yours sincerely,

Ramsay Andary.

I did check with Mr Andary to see whether he was prepared for me to use his name and read his letter into the *Hansard*.

I can say at the outset that we prefer option 4: vote to reject the bill. It is not my intention to move to have a parliamentary committee look at it because I believe that it has already been investigated on a previous occasion.

The real issues here for small business are: this government has withdrawn $200,000 from CITCSA, we are paying record land tax, unsustainable payroll tax, and we have a WorkCover scheme that has been an embarrassment to this government, failing both workers and business. This bill should be treated with the contempt that it deserves and voted down.

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

CRIMINAL LAW (SENTENCING) (SENTENCING CONSIDERATIONS) AMENDMENT BILL

Adjourned debate on second reading

(Continued from 15 September 2011.)

The Hon. D.G.E. HOOD (17:40): My apologies for being out of the chamber a moment ago, extremely rare that it is.

The Hon. J.S.L. Dawkins: Unlike some others.

The Hon. D.G.E. HOOD: Indeed. Well, rare to miss the call is perhaps a better way of putting it. I rise to indicate Family First's position on this important bill. This is a bill that is ostensibly designated to formalise in legislation what is already an accepted practice in our courts, that is, the practice of awarding discounts to defendants who plead guilty at the earliest available opportunity.

To summarise the bill and the minister's contribution, the bill provides a discount of up to 40 per cent for pleading guilty within four weeks of the defendant's first scheduled appearance. There is a discount of up to 30 per cent for a guilty plea after four weeks from the defendant's first scheduled appearance but before the committal for trial. Finally, there is a discount of up to 20 per cent for a guilty plea in the period after the committal and up to 12 weeks from the arraignment date set at committal.

Under the bill there will not ordinarily be any discount in the higher courts if a guilty plea is entered in the period after 12 weeks of the first arraignment date and up to, and including, the first trial date. It sounds complicated, but it is not.

The question for Family First and all members of this chamber, of course, is whether it is appropriate to put rigid systems in place to deal with the discount process, as this bill proposes, or whether it is appropriate for our judicial officers to retain flexibility in determining the appropriate reduction. Certainly our courts deal with cases that come in a wide variety of shapes and sizes and they confront whole spectrums of different issues on a daily basis. I think that in itself is certainly an argument for allowing judicial discretion.

On the other hand, there is also a valid argument, in my view, for uniformity in sentencing practices. Indeed, members would be aware that I have raised in the past the need to ensure as much as is possible and practical that all judicial officers impose similar sentences for similar offences.

Some time ago, for example, I discovered through freedom of information that one particular magistrate sentenced 90 defendants to imprisonment on an offence of theft and another magistrate sentenced only one offender to imprisonment for the same offence, and that was for a period of only three weeks. Clearly, the level of sentencing varies dramatically across our courts. Both magistrates heard a similar number of theft cases in that particular example, so it is not a statistical anomaly; it is, in fact, an anomaly.

Given that both magistrates heard many hundreds of cases in this particular example, one might expect that any peculiarities in the cases heard would even themselves out or allow for any statistical anomalies, if you like. Parity in sentencing is important, and it seems that we are not there yet.

Nevertheless, there are certain issues in this bill that I think require much closer scrutiny. My general position would be to support such a bill because I think it is a step in the right direction but, as I say, there are a number of issues that I think need to be more closely scrutinised, and no doubt we will do that during the committee stage. I have already raised a number of these issues with the minister directly via correspondence through my office, and I understand that he is in the process of drafting a response.

The most significant issue from Family First's perspective is that this bill has the capacity to be much harder or much tougher, if you like, on the poor, who are reliant on Legal Aid, than it would be on others who can afford private lawyers.

This bill does not take into account current blowouts in legal aid application times. Legal aid often now takes two to three weeks to process applications for legal aid. If there is a problem in the application or, if there is an initial refusal of aid and it must be appealed, then this time period can easily blow out to four or six weeks waiting for an assessment of aid—that is, an approval essentially of whether or not legal aid will be provided.

Defendants who can afford private representations straight away for their early court attendances can have their matters dealt with and will be eligible for the discount under this proposed legislation. Low income defendants, on the other hand, who are reliant on legal aid and must wait weeks or months before having a lawyer assigned to them under that system, will just by necessity under this bill face the potential of higher penalties. That is certainly something that is unfair.

We are also concerned with the reference to delays being measured in weeks. In the new section 10C(2) the bill certainly refers to delay by reference to weeks, but this is problematic because adjournments are not always for less than four weeks. In a busy court, for example, a defendant's matter may be adjourned on the first occasion for more than four weeks, meaning that they would automatically be disqualified from attaining the reduction after only one court date.

What takes up the courts' time and prosecution's time, and therefore costs the community, is largely the number of court appearances, not the time it takes—and certainly not the number of weeks as is proposed under this bill. We would therefore argue that a reference to the number of court appearances, rather than the number of weeks it takes, will be the most appropriate measure of the delay. The truth is that a magistrate may simply set the next hearing out for a longer period of time, and that is something beyond the control of the defendant, which has an impact under the provisions of this bill.

It is probably widely known that I do not always agree with the Law Society's views regarding bills like these, but the Law Society does raise a worthwhile concern in this instance regarding cases where there may be errors in the prosecution case or a reasonable dispute of fact that may be resolved before a guilty plea can be entered. A defendant certainly should not be penalised for an error in the prosecution case, or the delay in having that error rectified, as this bill would do.

Related to that is the unresolved question in the bill as to what happens if a prosecution case against the defendant is amended or if one or two counts on a multiple count complaint are withdrawn. We are forced to ask whether the clock starts ticking again regarding the discount process, or has the discount been lost to the defendant?

We are also open to the view that if a defendant is penalised in reference to how close they are to the matter being listed for trial that magistrates should be barred from listing that as for trial on the first or second court dates. This sometimes occurs, of course, and means that a magistrate could unilaterally disqualify a defendant from receiving a discount by listing a matter for an early trial. They may do this completely without any malice, and just as a simple matter of scheduling, which could work against the defendant.

Further, I am also concerned to hear the government's response to a complaint made by several bodies that this bill no longer leaves any disincentive to defendants proceeding with the trial on the trial date. Currently many magistrates are able to persuade a defendant to discontinue with a trial by offering a discount on the trial date—something that saves the community significant resources.

This bill will ensure that many defendants continue with the trial knowing that there is a chance they will defeat the charges on one hand if they proceed and on the other hand knowing

that the penalty cannot be less if they admit their guilt. There is no longer any benefit for the defendant in pleading to the charge as there currently is.

With those concerns on record, I look forward to hearing the government's response. I indicate that Family First is genuinely open to supporting this bill. We like the general thrust of it, but I think there are some details that need to be addressed. While we are sympathetic to any measures designed to reduce the costs of the courts administration and other legal matters, we do not believe that defendants on low incomes should be placed in a worse position to those who are on better incomes. I indicate that we will listen carefully to the debate, and particularly the government's response to these particular issues, before making our final conclusion as to deciding which way we will go on this bill. However, I indicate that we are predisposed to supporting such a bill subject to those concerns being addressed.

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

ROAD TRAFFIC (RED LIGHT OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 14 September 2011.)

The Hon. A. BRESSINGTON (17:49): I rise very briefly to indicate that I will be supporting the Road Traffic (Red Light Offences) Amendment Bill. The bill extends the existing provision of the Road Traffic Act 1963, specifically section 79B, to include level crossings (termed 'twin red lights') so that drivers caught both speeding and crossing against the lights can be fined for both offences. This is in line with what occurs at road intersections, and there is no question in my mind that those who speed through a level crossing whilst running a red light should definitely be fined for both offences.

While many will see supporting this bill as supporting red-light and speed cameras at level crossings, I think it is important to distinguish between the policy decision to install cameras at some six level crossings (as was announced earlier this year) and this bill which, as I said, simply seeks to bring level crossings in line with what occurs at road intersections.

That said, I do have some sympathy for the position of the Law Society, which concludes that the policy decision to install cameras at level crossings is 'just another revenue raiser'. They do so after analysing the statistics provided by the government showing the number of vehicle collisions at level crossings is falling—a fact to be welcomed—and that twin red lights (referred to in another place as ding-dings and wig-wags) remarkably reduced the number of motorists speeding across level crossings.

There is no doubting that many in the public see existing red-light cameras, particularly the snap-happy trio—the cameras near the Port Adelaide hospital, St Peter's Cathedral and Bakewell Bridge—as revenue raisers. When they each raise, I believe, nearly $1 million per year on the back of the highest fines in the nation, it is hard to escape that conclusion. Consequently, many will no doubt see the use of such cameras at level crossings as the government chasing extra revenue.

While there are many reasons to support cameras at level crossings, the cynic in me does believe that there is probably a money motivation here somewhere, but I would hope that, after spending $11 million to install those cameras, if any extra money is raised, it would be put back into making level crossings far safer.

On the issue of revenue, the Minister for Road Safety has often highlighted that revenue raised from speeding fines is—and I quote from an Adelaidenow article—'dedicated to enhance road safety throughout the state'. In an ABC 639 radio interview, the minister stated that revenue raised goes into a road safety fund, despite the popular perception that fines go straight to general revenue. I ask asking the minister in this place, prior to the committee stage, to clarify for me and my constituents what the arrangements are for the disbursement of revenue from fixed cameras.

The Hon. M. PARNELL (17:52): The Greens will be supporting this bill which seeks to replicate the laws that apply at road crossings to certain railway level crossings as well. The mechanism, as is now well known to members, is that where both red-light and speed cameras exist and a person infringes both sets of laws, then both sets of penalties apply. It makes sense at road crossings and it makes equal sense at level crossings.

I note the Law Society's submission, which has been sent to all members, and I will say that I do not think it is one of the Law Society's more considered submissions, as it has jumped on

the bandwagon of saying that this is no more than a revenue raiser and denies that it is a road safety measure. In support of that position, the Law Society refers to the statistics, where they say:

> ...for the period 1 January 2001 to 31 December 2011 there were 85 road vehicle collisions at level crossings in South Australia. However, since July 2008, there have only been six.

That is not correct: there have been seven. In fact, whilst I was contemplating this bill at home, sitting at my computer, I received an email from a friend who said, 'Did you see the accident at the level crossing at Crystal Brook last night? That was my mother.' This is a friend of mine who is thinking a great deal about level crossings and the harm they cause. This is a 75-year-old woman who is in hospital at the moment. It was an accident at a level crossing at Crystal Brook, and it is unknown what happened. Was the driver blinded by the sun, or was it too dark and the train could not be seen? We know that level crossings are dangerous and that, when accidents do occur, trains are very unforgiving. If you are in a collision with a train, your prospects of escaping with your life or without serious injury are remote.

I understand that the government's intention is for speed and red-light cameras to be installed at suburban rail crossings, rather than country rail crossings, but I would urge the government to consider the whole of the road safety situation and to particularly look at safety at country level crossings. If these measures do, in fact, raise venue, which the Law Society suspects they are designed to do, I would join the call that other members have made, and that is that the revenue that is raised should go into making our road network and our train level crossings safer.

It may involve putting in flashing lights or booms where they do not currently exist. It may also involve either encouraging or compelling the rail freight industry, to the extent it is possible to do that within a state jurisdiction, to make the trains safer, which would include either lights or reflectors on the sides of freight trains so that you can see them because they are almost impossible to detect from side on when approached at night. I think there is a lot of room to move.

The bill before us is a simple bill and it says that, if you speed and go through the red light, you will be subjected to both penalties and you will be subjected to both lots of demerit points. On that basis, the Greens will be supporting this bill.

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

RADIATION PROTECTION AND CONTROL (LICENCES AND REGISTRATION) AMENDMENT BILL

Second reading.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (17:57): 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.

Radioactive substances are widely used in science, industry and medicine. In the medical field, for example, radioactive substances are used by licensed radiation therapists and medical physicists for treating certain cancers. Strict procedures are followed by these clinicians to protect themselves and patients from harm. In industry, highly radioactive substances are used for industrial radiography, it is crucial that procedures must be put in place to ensure the safety of the users of the radioactive substances as well as people who may be in the vicinity of the work.

The *Radiation Protection and Control Act 1982* (RPC Act) serves to ensure that the health and safety of South Australians who may be affected by radioactive substances are protected and that those who use radioactive substances or radiation equipment are properly trained and licensed.

The purpose of this Bill is to remove paragraph (a) from section 28(2) and paragraph (a) from section 29(3)of the RPC Act. Without the removal of these paragraphs, these provisions would have unintended consequences on the enactment of the *Statutes Amendment (Budget 2010) Act 2010* (Budget Act) that have the potential to expose persons involved in the use of radioactive substances to risk.

Licence to use or handle radioactive substances

Without this amendment, changes made to the RPC Act by the Budget Act may result in unintended persons being able to lawfully handle radioactive substances.

Section 28(2)(a) of the RPC Act provides that the requirement for a licence to use or handle radioactive substances does not apply

> *'to the use or handling of radioactive substances in the course of operations authorised under another provision of the RPC Act'*.

Currently, the only provision of the RPC Act which authorises operations is section 24, Licence to mine or mill radioactive ores. Section 28(2)(a) therefore only applies to operations authorised under section 24. However, when amendments are made to the RPC Act by the Budget Act, a licence to possess a radiation source and a facilities licence will also be introduced. Individuals involved in these operations would arguably be exempted from the requirement of a licence by virtue of section 28(2)(a).

To remedy the situation, paragraph (a) of section 28(2) needs to be deleted. A provision will instead be made in the regulations to prescribe persons using or handling radioactive substances in the course of operations authorised by a licence under section 24 of the RPC Act as persons of a prescribed class.

Registration of premises in which unsealed radioactive substances are handled or kept

Section 29(3)(a) provides for the requirement to register premises in which an unsealed radioactive substance is kept or handled. It is thought that because of the new licences provided for under the Budget Act there is a risk that section 29(3)(a) could be interpreted to allow new premises not to be registered. This could lead to a situation where the records for the location of dangerous radioactive substances are incomplete. The resulting radiation risk would not be as significant as that associated with a licence to use or handle radiation substances.

In this case, conditions of a licence to possess a radiation source would still apply to these premises and therefore radiation management plans and radiation waste management plans would still apply.

However, when premises are registered with the Authority an inspection is undertaken to ensure that the premises meets the requirements of the Regulations and this may not take place.

To remedy this situation paragraph (a) of section 29(3) needs to be deleted. A provision would instead be made in the regulations to prescribe premises in which unsealed radioactive substances are kept or handled in the course of operations authorised by a licence under section 24 of the RPC Act as a premises of a prescribed class.

Correction of definition of 'mining' inserted by Statutes Amendment (Budget) Act 2010

The Bill also takes the opportunity to make a minor correction to the definition of 'mining' that was inserted in Part 12 of the *Statutes Amendment (Budget) Amendment Act 2010* as an amendment to the *Radiation Protection and Control Act 1982*. Part 12 of the *Statutes Amendment (Budget) Amendment Act 2010* has been enacted but not yet commenced and this minor correction will take effect after that commencement.

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 *Radiation Protection and Control Act 1982*

4—Amendment of section 5—Interpretation

This clause makes a minor correction to the definition of 'mining' that was included in the *Statutes Amendment (Budget) Amendment Act 2010* (the '2010 Budget amendments') as an amendment to the *Radiation Protection and Control Act 1982*. The *Statutes Amendment (Budget) Amendment Act 2010* was enacted in 2010 but is as yet uncommenced, hence the definition of 'mining' that is to be amended by this clause does not yet appear in the principal Act. The mechanics of the order of all the amendments is expected to be managed by commencement proclamations.

This clause proposes to substitute the word 'excavation' with 'exploration' in paragraph (h) of the definition of 'mining' in section 5 (once the 2010 Budget amendments have commenced).

5—Amendment of section 28—Licence to use or handle radioactive substances

This clause removes paragraph (a) from section 28(2). Paragraph (a) exempts a natural person from the requirement to be licensed under the section if the use or handling of a radioactive substance is in the course of operations authorised under another provision of the principal Act. The amendment is necessary in light of the *Statutes Amendment (Budget 2010) Act 2010* which establishes new licences in circumstances in which a natural person may still be required to be licensed under section 28. It is anticipated that the activities in connection with which a licence under section 28 will not be required will be prescribed in the regulations under this amended provision, thus the current status quo for existing licences will be retained.

6—Amendment of section 29—Registration of premises in which unsealed radioactive substances are handled or kept

This clause removes paragraph (a) from section 29(3). Paragraph (a) exempts premises from the requirement to be registered under the section if the keeping or handling of radioactive substances is in the course of operations authorised under another provision of the principal Act. This is a similar amendment to that in clause 5 and is similarly consequential on amendments to the principal Act effected by the *Statutes Amendment (Budget 2010) Act 2010*.

The Hon. J.M.A. LENSINK (17:58): I rise to indicate support for this bill, which is really a technical tidying up as a necessary consequential amendment arising from unintended consequences of the Statutes Amendment (Budget 2010) Act, which may have the unintended consequence of permitting unintended persons to lawfully handle radioactive substances and not to require new premises which handle radioactive substances to be licensed.

My understanding is that, currently, veterinarians, dentists, laboratories, and radiographers, as individuals or through their organisation, having responsibility for radioactive materials and/or machines require a licence to handle or to have radioactive substances on their premises. I understand that the mining industry falls under a separate regime, which is section 24 of the act, in which an operation is licensed, thereby authorising all properly trained employees under its umbrella.

This bill deletes sections 22(2)(a) and 29(3)(a) of the act, which provide the unintended exemptions from the requirement to be registered as either a person or a premise licensed to handle radioactive substances. I was advised in the briefing that industry is being consulted through ARPANSA's National Directory for Radiation Protection, which provides guidelines for state-based regulation training and so forth. We did have some discussion in the briefing as to the setting of the licence fees, which I understand is still in train. For the record, I would request that the government provide more details about the status of that process. It was talking about a licence fee for individuals of $75 plus a $75 application fee, which would vary depending on the number of machines.

A list of all of the classes of individuals and premises would also be appreciated because one of the concerns of honourable members on this side of the house is that we are not unnecessarily charging people additional fees which are beyond reasonable. With those comments, I support the bill.

The Hon. A. BRESSINGTON (18:00): I rise to briefly indicate my support for the Radiation Protection and Control (Licences and Registration) Amendment Bill, a short and simple bill which seeks to correct an unintended consequence of amendments moved to the Radiation Protection and Control Act 1982 in the Statutes Amendment (Budget 2010) Act. While the amendments in the budget bill are yet to be enacted, it is my understanding that, if they were, in the absence of this bill, by virtue of section 28(2)(a) holders of a newly created licence to possess a radiation source or a facilities licence would, unintentionally, be exempted from the requirement to hold a licence to use or handle radioactive substances and the controls that go with it.

A further amendment is required to section 29(3) to ensure that premises storing or handling unsealed radioactive substances are registered. Another amendment was moved in the House of Assembly by the minister to correct what is essentially portrayed as a drafting error that replaced the word 'excavation' with 'exploration' in the new definition of mining, which will be inserted upon enactment of the budget bill. This is a nuts and bolts bill and it has my support.

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

RAILWAYS (OPERATIONS AND ACCESS) (ACCESS REGIME REVIEW) 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) (18:02): I move:

That this bill be now read a second time.

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

Leave granted.

In February 2006, COAG signed the Competition and Infrastructure Reform Agreement (CIRA) to provide a simpler and consistent national system of economic regulation for nationally significant infrastructure including ports, railways and other export related infrastructure. The agreed reforms aim to reduce regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure and to support the efficient use of national infrastructure.

The CIRA required South Australia to ensure that its rail access regime was consistent with the principles in the CIRA and to submit an application to the National Competition Council (NCC) for certification of the regime as an effective access regime under the *Trade Practices Act 1974* (Cth) (now the *Competition and Consumer Act 2010* (Cth)) by the end of 2010.

An application for the certification of the South Australian rail access regime as an effective regime for a period of 10 years was submitted to the NCC on 29 December 2010. The NCC released its draft recommendation on the certification application on 16 March 2011.

The NCC recommended the regime be certified for a period of five years. The Council expressed the view that satisfaction of the requirement for periodic review of the need for access regulation to apply to a particular service would be stronger if the South Australian Government were to formalise a requirement for the Essential Services Commission of South Australia (ESCOSA) to review the railway services covered by the regime on a regular basis. The NCC has advised that certification for a period of 10 years would be considered if the *Railways (Operations and Access) Act 1997* was amended to formalise this requirement.

As a 10 year certification period would offer greater regulatory certainty to access seekers and providers, the SA Government signalled to the NCC its intention to introduce an amendment to the *Railways (Operations and Access) Act 1997* to include a mechanism requiring ESCOSA to conduct five yearly reviews of the South Australian rail access regime.

The amendment Bill requires ESCOSA to conduct five yearly reviews of the South Australian rail access regime.

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 *Railways (Operations and Access) Act 1997*

4—Insertion of section 7A—Review and expiry of access regime

This clause proposes to insert a new section 7A that provides that the regulator (the Essential Services Commission established under the *Essential Services Commission Act 2002*) must conduct a review of the operators and railway services subject to the access regime to determine whether or not the access regime should continue to apply. Such a review must be undertaken in the last year of each prescribed period, the first of which concludes on 30 October 2015, with each successive prescribed period being five years.

The public will be notified of each review by notice in a newspaper circulating generally throughout the State and any submissions made in response to the notice must be considered by the regulator along with other forms of public consultation.

On completing a review the regulator must report to the Minister with a recommendation on whether the access regime should continue or not for a further prescribed period. The Minister must have copies of the report laid before both Houses of Parliament and must have the regulator's recommendation published in the Gazette.

Proposed subsection (6) has the effect that the access regime automatically expires at the end of a prescribed period unless a review under the section has been completed with a recommendation for the continuation of the access regime and the period of its operation has also been extended by regulation.

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

At 18:03 the council adjourned until Wednesday 28 September 2011 at 14:15.