LEGISLATIVE COUNCIL

Thursday 29 September 2011

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:19 and read prayers.

SUMMARY OFFENCES (PRESCRIBED MOTOR VEHICLES) AMENDMENT BILL

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

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

Motion carried.

PARKS COMMUNITY CENTRE

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 77 residents of South Australia requesting the council to urge the government to reinstate funding for the redevelopment, continuation of existing services and locating of new community services at the Parks Community Centre site and support legislation that will guarantee protection of the Parks site as community land reserved for future generations.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 169 residents of South Australia requesting the council to urge the government to:

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

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

SCHOOL BUS CONTRACTS

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 17 residents of South Australia requesting the council to urge the government to:

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

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

STOCK THEFT SQUAD

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 17 residents of South Australia requesting the council to urge the government reinstate a stock squad specially trained to investigate, prosecute, liaise with local and interstate agencies and bring to justice perpetrators of stock theft.

PAPERS

The following paper was laid on the table:

By the President—

Ombudsman SA—Report, 2010-11

QUESTION TIME

MINING, MCLAREN VALE AND BAROSSA VALLEY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about mining in McLaren Vale and the Barossa Valley.

Leave granted.

The Hon. D.W. RIDGWAY: Members would aware that, yesterday, the Minister for Urban Development and Planning tabled in another place a couple of pieces of legislation, being the Character Preservation (McLaren Vale) Bill 2011 and the Character Preservation (Barossa Valley) Bill 2011.

I attended two public consultation meetings in relation to the McLaren Vale bill. It was unusual, but I note that it was the first planning and development-type public meeting I have been to in the 9½ years I have been a member of parliament that Mark Parnell did not turn up to. I was surprised—no Greens at all. It was refreshing that I actually had the group all to myself for the evening.

Members interjecting:

The Hon. D.W. RIDGWAY: The Hon. Robert Brokenshire was at the second one, but he was not at the first one. Obviously, he thought it was important to go out only one night that week, not two! The important thing, Mr President—

Members interjecting:

The PRESIDENT: Order! The important thing is that you get on with your question.

The Hon. D.W. RIDGWAY: I would like to get on with my explanation, if I could. One of the important things that was described at the community consultation was that mining would be prohibited in both the McLaren Vale area and the Barossa Valley. I have noticed, after close examination of the two pieces of legislation, that there is no mention of any prohibition of mining in those particular areas. Could the Minister for Regional Development confirm that this means that mining activities will still be allowed to develop in those two areas?

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) (14:26): I thank the honourable member for his most important question. Indeed, what he does is refer to a very important initiative of the Rann Labor government; that is, for the first time ever, we have put through important legislation to ensure the long-term preservation of the character of two very important regions here in South Australia.

This is obviously legislation that is the responsibility of the minister for planning and development, so he has carriage of this legislation and is aware of all the detail of this. My understanding is that what this bill allows to occur are those activities that are part of the current character of that region, and so it enables those activities to continue, but it does not allow any development of new activities, or changes in activities, that are outside of that fundamental character of the region.

As I have said, I am happy to check the details of this, but my understanding is that if, for instance, mining was a part of the current character of the region—if there was a mining industry or sector there—then that is part of the character of the region, and they would be entitled to continue those activities. While that is my understanding, as I said, I would be pleased to refer those particular questions to the minister for planning and development in another place to clarify those aspects around mining activities and bring back an answer.

DRINK SAFE PRECINCT TRIAL

The Hon. J.M.A. LENSINK (14:28): I seek leave to make a brief explanation before asking the Minister for Consumer Affairs a question on the subject of Queensland's Drink Safe Precinct trial.

Leave granted.

The Hon. J.M.A. LENSINK: In August last year, the Bligh government introduced the Drink Safe Precinct program, which was a package of measures aimed at improving alcohol-related violence associated with late-night licensed venue precincts, specifically in Fortitude Valley in Brisbane, the Gold Coast and Townsville.

The measures included a whole range of things which this government has not done, including:

- increased and high visibility police presence during peak times;
- the establishment of safe zones for patrons to access non-government support services;

- improved transport information and way-finding signage;
- addressing issues such as crowding and footpath queuing; and
- better on-the-ground coordination between community groups, security, police and licensees.

As a result of the year-long trial, Premier Anna Bligh has declared this week that, while drink safe precincts actually work, 'The research on lockouts has got pretty mixed results,' and she will consider lifting the 3am lockout on licensed venues. My questions to the minister are:

1. Will she look at the evidence from the Queensland drink safe trials and its application in South Australia?

2. Will she now admit that her approach to alcohol-related violence in our state was completely flawed?

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) (14:30): Absolutely not. I thank the honourable member for this question and the opportunity to set the record straight: that is absolutely and categorically no.

In respect of the particular trials the honourable member refers to, I am happy to look at the evaluation of those trials and how they equate to activities in our industry here. I am more than happy to look at that. We are always monitoring and assessing new ways of doing things and new activities, in particular research going on not only in other jurisdictions but also internationally. It is important we keep an eye on those things and learn the valuable lessons that others might be able to show us and to assess the value of them and the relevant application of those measures to this state. We are always willing to do that. I have done that in the past and will continue that practice in the future.

It is outrageous to suggest that this government has not been extremely committed to reducing alcohol-related harm, particularly around our licensed premises and particularly in our entertainment areas, where we know the higher rates of alcohol-related incidents occur. It is outrageous because, in terms of policing, around 12 months or so ago—give or take a bit—police numbers around the CBD and the Hindley Street area increased considerably. They are always monitoring that and ensuring that we have adequate policing in that area.

This government has record achievements in terms of funding and increases in our police numbers—the highest numbers ever—and we continue that commitment. We have unprecedented numbers of police out on our streets and doing other policing activity, including on the APY lands, where we know that the former Liberal government had no police. We have put police there, and I understand that we now have two Aboriginal police on the lands as well. Back to the point—

Members interjecting:

The Hon. G.E. GAGO: The question went to policing and our lack of commitment to policing, so it is relevant. It is just not so at all. As part of our reform agenda that recently passed through this place, the police indicated again a further commitment to ensure there were safe policing numbers, particularly around our entertainment precincts.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: We have put forward a raft of really important reforms, both legislative and regulatory—

Members interjecting:

The PRESIDENT: The Hons Mr Wortley and Mr Ridgway should stop mumbling to each other.

The Hon. G.E. GAGO: —both in terms of the legislation that passed through this place and the code of conduct that is almost completed. It includes things like the very important reform of ensuring that the liquor commissioner is able to readily apply conditions to liquor licences, which gives a much greater degree of flexibility to the commissioner. It includes things like the ability to

put conditions on, for instance, the concentration of alcohol in a single drink after a certain hour, the use of glass containers, and the requirement to have extra security or extra cameras.

There is a whole raft of measures. We also looked at moderating things like drinking competitions and other activities that promote rapid, excessive drinking, and moderating behaviour around happy hour, to ensure that people can enjoy a cheap drink but that it is done in moderation.

As I said, there is a raft of measures, including a commitment for extra funding to increase the number of managed taxi ranks around the CBD. That not only helps improve safety for party revellers but the taxi industry is also very supportive of them because they make their life much easier. As I said, there is a raft of measures that I am convinced will make a significant difference to safety on our streets, particularly in terms of alcohol-related incidents.

I am very proud of the commitment of this government, and I am very proud of our track record. It is a moving feast, but we will not rest on our laurels. We will continue to look at ways of advancing further measures to ensure that people who want to enjoy a night out are safe and try to minimise or reduce the adverse effects of excessive alcohol.

DRINK SAFE PRECINCT TRIAL

The Hon. R.L. BROKENSHIRE (14:37): I have a supplementary question, based on the specifics of the minister's answer with respect to police numbers in the CBD. Given that the minister said they have record police numbers in the CBD, can the minister explain why information I have in my office shows that, over the last three years, the establishment numbers of SAPOL officers have been at least 20 to 25 down on what the establishment numbers should be each year of those three years?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:38): I thank the honourable member for his important question. Obviously I am not the Minister for Police, but the advice I have received is that we have 4,400 full-time equivalent police officers in South Australia, which is 700 more than when Labor took office in 2002 when there were only 3,701. This government has provided 700 more police than you and your former government, so you should be ashamed of yourself—absolutely ashamed of yourself. He was part of the government—

Members interjecting:

The Hon. G.E. GAGO: Absolutely ashamed of himself. He was part of a government that had no commitment—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —very little commitment.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Brokenshire should take his punishment in silence.

The Hon. G.E. GAGO: I do not know how he can stand up straight in this place. The government plans to recruit an additional 313 police over the next 3½ years to meet a target of 1,000 more police since taking office. I have been advised that the government's commitment to boosting police resources has resulted in hundreds of extra front-line police being delivered, clearly debunking the nonsense argument that is being presented by the Hon. Robert Brokenshire. The latest report from the Productivity Commission shows that SA continues to have the highest number of police per capita in any state.

Members interjecting:

The Hon. G.E. GAGO: I will just repeat that because he is having trouble taking his medicine and he is squealing like a stuck pig. So, I will just make sure he hears this. I want to make sure that he hears this.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Just to repeat: I have been advised that the latest report from the Productivity Commission shows that South Australia continues to have the highest number of police per capita in any state. South Australia has 312, I am advised—312 operational police staff for every 100,000 persons. The next closest is Queensland with 293. So, that is 312 compared with 293. Western Australia has 281. Victoria and New South Wales—

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: —fall far behind, with just 236 and 234 respectively.

Members interjecting:

The PRESIDENT: Order! I might have to get the minister to repeat it again.

The Hon. G.E. GAGO: I have some other advice, Mr President. Given the question, it is most important that I also indicate that, since 2002, new police stations have been opened: Roxby Downs, Golden Grove, Aldinga, Gawler, Mount Barker, Victor Harbor, Berri—the list goes on and on. It is too long. We would be here until midnight, so I will spare you that. There is a further $115 million worth of new building works currently under construction, I have been advised.

In terms of the police budget, I have been advised that the funding for SAPOL operations has been boosted to $693 million in 2010-11. Just to emphasise: it is a massive increase of 88 per cent—88 per cent more than the last Liberal budget. So, here we have a government that is prepared to increase the police budget by 88 per cent of the former Liberal government that you were part of. So, we outnumber you, we out-budget you, we out-police you, we out-commit you.

DRINK SAFE PRECINCT TRIAL

The Hon. R.L. BROKENSHIRE (14:42): A supplementary, if I may.

The PRESIDENT: Not another Dorothy Dixer, is it? The Hon. Mr Brokenshire.

The Hon. R.L. BROKENSHIRE: The supplementary question is: can the minister first of all please explain why, for the last three years in succession, in spite of the claims that she has about record numbers, the establishment level numbers in the very busy and sometimes dangerous CBD of Adelaide have been 20 to 25 below the establishment level? The establishment level is set by scientific work by SAPOL saying that is a safe number. The second question is—

The PRESIDENT: No.

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) (14:43): Out-budget you, out-commit you.

The PRESIDENT: I advise the Hon. Mr Brokenshire to do a matter of interest. The Hon. Mr Wade.

RUNDLE MALL

The Hon. S.G. WADE (14:43): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question relating to Local Government Act enforcement.

Leave granted.

The Hon. S.G. WADE: For two years, the government has failed to deal with public disorder in Rundle Mall created by the street preachers and others. Yesterday's comments was the first time the minister has shown any interest in the issue. He did not even speak on the disallowance motion. On 14 September, Lord Mayor Stephen Yarwood stated on radio that, as council officers do not have the power to force a person to provide their—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: —name and address, officers cannot enforce council by-laws related to smoking. The same enforcement powers are required to enforce other by-laws. The Lord Mayor made it clear that such by-laws can only be enforced with the assistance of police. The

police have repeatedly stated that they do not see it as their role to enforce council by-laws. My questions to the minister are:

1. Does the minister stand by his assertion yesterday that police are enforcing the law, including council by-laws, in relation to the street preachers?

2. Does the government intend to amend the Local Government Act to strengthen the powers of council officers to enforce council by-laws?

3. Has the minister met with the Adelaide City Council or SA Police in relation to dealing with the conflict in the mall?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:45): I thank the honourable member for his silly question. Mr President, what you've got here is a member here who is trying to cover his tracks because he knows through his very actions that he has now put the Adelaide City Council into a position where they have lost control of Rundle Mall. This is causing significant downturn in trade—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order!

The Hon. R.P. WORTLEY: —for the traders and also allowing some preachers to actually physically jostle shoppers. This hasn't always been a problem, but it has now become a very big problem because of the ridiculous situation that has developed through the actions of a person who wants to be the next number one lawmaker in this state. He fails to have any comprehension of the consequences of his actions.

We have put enough police out there. We have increased the numbers to such an extent. Of course, at the end of the day, if a law is broken, they will do their duty. Fancy asking me whether the police will do their duty.

The Hon. S.G. Wade interjecting:

The Hon. R.P. WORTLEY: Keep going, he says. You are a fool. You have no understanding of what you have done. You are incompetent and just fail to understand the consequences of your actions. But I will tell you who does know: the shop traders in Rundle Mall know the consequences of your actions, because they are suffering day by day because of a drop in trade. You ought to be ashamed of yourself. As the consequences of your actions become more evident, you will be in deeper trouble I can tell you, my friend. The police will do their duty, but I do know that you have put the Adelaide City Council in a very awkward position, and I tell you what we will do. As a government, we will be working with the council to fix your stuff-up. We will fix your problem. We will fix it at the end of the day, because you fail to understand.

RUNDLE MALL

The Hon. T.A. FRANKS (14:47): I have a supplementary. Can the minister provide the government's time line for fixing up this issue?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:47): There is a process by which we have to do another model by-law or whatever. I understand that it is around about four months or so for a process to go through—four or five months. There is a process. I am not exactly sure of the time frame. It will take quite a few months to fix up and, in the meantime, there will be anarchy in Rundle Mall.

Members interjecting:

The PRESIDENT: Order!

RUNDLE MALL

The Hon. T.A. FRANKS (14:48): A supplementary question arising from the original answer. Has the government commenced work on this?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:48): First of all, there has been correspondence between the—

Members interjecting:

The Hon. R.P. WORTLEY: It only happened two weeks ago. The consequences have only become appropriate now, so the government will be working with the Adelaide City Council.

There has been correspondence between the council and the Attorney-General, and we will be putting whatever efforts we can into fixing up the problems created by the Hon. Mr Wade.

RUNDLE MALL

The Hon. S.G. WADE (14:49): I have a supplementary question. Could the minister identify what elements of by-law 6 are not available under by-law 4?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:49): As I stated before, there is confusion over exactly what the council—

The Hon. S.G. Wade: You just don't know.

The Hon. R.P. WORTLEY: Do you know?

The Hon. S.G. Wade: You tell me. I do.

The Hon. R.P. WORTLEY: You're the one—you do know. Good. What is occurring right now is that the council have no control over regulating the preachers in Rundle Mall.

The Hon. S.G. Wade: That is rubbish!

The PRESIDENT: Order!

The Hon. R.P. WORTLEY: No control over the preachers in Rundle Mall. Obviously, you are trying to cover up your mistakes by trying to blame the police for not enforcing the law. The reality is that the traders themselves are flabbergasted (which was the word I saw) at the incompetence of this man because they are now subjected to wild scenes in Rundle Mall through the actions of certain preachers, and shoppers themselves have found themselves physically accosted by these preachers.

The PRESIDENT: The flabbergasted Hon. Mr Wade.

RUNDLE MALL

The Hon. S.G. WADE (14:49): I am not at all flabbergasted. Considering that the key difference between by-law 6 and by-law 4 is the power in relation to amplification, does the minister think that taking away speakers is going to solve what has not been solved in two years?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:49): The reality is that the honourable member has disallowed by-law No. 6, which has taken away the right of the council to control breaches. Yesterday, the member asked for a report on the consequences of disallowing a by-law. So, it is obvious that you do not know what you are doing. It is obvious that you do not know what you—

The Hon. S.G. Wade interjecting:

The Hon. R.P. WORTLEY: Well informed. You do not know what you are doing. You are incompetent. You ought to admit the fact that you are incompetent and end it at that.

SA LOTTERIES

The Hon. G.A. KANDELAARS (14:50): I seek leave to make a brief explanation before asking the Minister for Government Enterprises a question about the systems applied at SA Lotteries to protect information assets.

Leave granted.

The Hon. G.A. KANDELAARS: I understand that SA Lotteries has worked hard to achieve high standards in its operations. My question to the minister is: how have SA Lotteries' efforts to improve its standards been recognised recently?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:51): I thank the honourable member for his most important question. I am pleased to be able to tell the chamber that SA Lotteries continues to work to maintain the highest standard of security over information and system processes, as the SA Lotteries commission and management consider those aspects that are crucial to its business.

I can announce that on 9 September, SA Lotteries attained certification with the international information standard AS/NZS, and there is a code after that which I will not go into.

This achievement is the result of a rigorous auditing and accreditation process undertaken by SAI Global, a worldwide integrated supplier of standards registration and certification audits.

The information processes and operations of SA Lotteries have been given thorough scrutiny before each compliance requirement has been achieved. I am advised that this is an internationally recognised and respected standard that demonstrates both integrity and an organisation's adherence to the most stringent information and system security controls.

All information, including Easiplay Club data on individual players, is subject to controls to ensure the appropriate level of protection attaches to all information. SA Lotteries can assure customers of privacy, security and safety of their personal information. The certification mark of this standard signifies to stakeholders, the public and the lottery industry more broadly that SA Lotteries has secure systems. Importantly, that can guarantee confidentiality to customers, that SA Lotteries operates to best practice standards in information management.

Compliance with this information security standard is also required for accreditation with the World Lottery Association (WLA) Security Control Standard and the state government's protective security management framework, which is a whole of government security standard.

SA Lotteries is now focusing on achieving accreditation with WLA standard and ensuring that the implementation of the standards facilitate compliance with the government framework. Certification to this information security standard builds on SA Lotteries' previous achievement to certification of the standard prior to that, which SA Lotteries gained in March 2002 and which recognised SA Lotteries' quality management system. This is subject to regular external auditing.

SA Lotteries also has received the highest accreditation under the World Lottery Association Responsible Gambling Framework. SA Lotteries remains one of 23 lottery jurisdictions worldwide, and the only jurisdiction in Australia, to have received global recognition for operating at the highest level of responsible gambling standards. SA Lotteries, the commission and staff, are to be congratulated for their dedication to reaching and maintaining such high and excellent standards.

MINING, REGIONAL DEVELOPMENT

The Hon. M. PARNELL (14:55): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the creation of regional manufacturing on the back of the Olympic Dam expansion.

Leave granted.

The Hon. M. PARNELL: Yesterday, I had the pleasure to attend a presentation by the current Thinker in Residence, Professor Göran Roos, on the future of manufacturing in South Australia, and I thank the Academy of Technological Sciences and Engineering and the Friends of the Parliament Research Library for organising this event.

One of the key points that Professor Roos has been making when speaking to groups around our state is that our manufacturing sector is at significant risk from the emergence of what is often called the Dutch disease. Dutch disease is the phenomenon where a significant decline in the manufacturing sector follows a resource boom. An economy becomes so inflated by revenues from the resource industry, which leads to a sharp increase in foreign currency that throws the exchange rate out of kilter, that exports from other industries are prohibitively expensive.

Professor Roos argued strongly that there was a cure at a state level to stop this occurring, and he said South Australia needed to look to Ontario, Canada, and Norway to see how they have responded to a major resource boom through government-led industry intervention. In particular, Professor Roos said that Ontario has actually used the resources boom to create new local manufacturing.

Members will be aware that the government here is currently finalising negotiations with the world's richest resource company on one of the world's largest resource projects in our state's north. My questions to the minister are:

1. What are you doing as Minister for Regional Development to ensure that a strong local industry intervention policy, including preferential procurement, is one of the key outcomes of the final negotiations over the Olympic Dam expansion?

2. How, as Minister for Regional Development, are you ensuring that, rather than regional economies in South Australia suffering from Dutch disease, a new, stronger regional manufacturing base is created on the back of the Olympic Dam expansion?

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) (14:57): I thank the honourable member for his most important questions. These are, indeed, very important issues and issues that this government has put its mind to. I know it is an issue that the whole of government is wrestling with and I know that not only our Treasurer but also our minister for mining, minister for trade and I have been and continue to be involved in matters around the issues that the honourable member has raised.

In terms of my own portfolio areas, there are a number of ways that I have been working with businesses and also mining interests to attempt to advance the involvement of local communities in mining and resource development initiatives. I spoke recently at a conference and raised those very themes. I have talked publicly in many forums about the importance of not relying on a trickle down effect from these advances and that it is most important that we attempt to develop real partnerships, particularly partnerships that involve local regional communities, in meaningful ways.

Some of the work that is being done involves things like, for instance, the Upper Spencer Gulf feasibility fund and grants initiatives, which is grant moneys that have been made available to help businesses and industries in those areas attempt to maximise and take full advantage of mining and resource development opportunities. So, that fund I am responsible for, and there have been a number of successful proponents for that; it is still fairly early days. I was recently up at Whyalla and, in fact, announced a grant to the Whyalla council for some wastewater re-use as part of some initiatives there. Engaging with local communities in relation to using that fund in a strategic way to enhance local business to develop themselves to be able to fully maximise the mining developments to assist in attracting new industries is all part of that grant proposal.

There is also the federal grants arrangements around the Regional Development Australia Fund. The last round was significant in that it was about $150 million, and another round has been announced for November. Those grants are about assisting regional Australia to advance regional communities, in particular, to be able to advance and develop businesses. Those funds are very much designed to encourage regions to develop their economies in a long-term, sustainable way.

So, in relation to those funds and the establishment of the RDAs, the state government provides funding to those RDAs, and we work with them. They have developed road maps to help provide guidance on where there are opportunities for these sorts of initiatives and to help identify local partners and to help bring those partners together to work towards program initiatives to develop both business and industry initiatives.

So, they are a couple of initiatives. As I said, the minister for mining is also very much engaged, and I have also met with some mining and resource companies as well and given out the same message. I know the minister for mining has a very strong commitment as well to ensuring that engagement and supporting the long-term sustainability of regional communities.

MINING, REGIONAL DEVELOPMENT

The Hon. M. PARNELL (15:03): I thank the minister for that answer, but my supplementary question arising from the answer is: as the Minister for Regional Development, has she personally discussed these issues—in particular, local procurement—with the minister for mining or directly with BHP Billiton?

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) (15:03): There is a negotiation team that is dealing with BHP, and those matters are part of those discussions. I know that those matters are under consideration—they are part of the discussions that are taking place.

In terms of the minister for mining, I have had discussions with him about these types of matters and the importance of regional communities. In fact, I have recently asked him to meet with me to discuss further initiatives that we might be able to put forward to mining interests. In terms of personal meetings, I visited the Far North just recently and went out to a couple of the mines there, IMX and OZ Minerals at Prominent Hill, and I was pleased to have the opportunity to look around

the mines because they are pretty awesome, I have to say. I had the opportunity to be able to sit down and go through these issues and talk to them about what they have done in the past and what strategies they have in place to involve local procurement.

You would be delighted to know that when I was driving out to one of the mines—I had to fly to one of the mines, but one I was able to drive to from Coober Pedy—we passed the baker's car coming back from the mine. This baker delivers bread to that particular mine and, apparently, his business is booming. That is only a very small example, but I was very pleased to see that a local baker was involved in that particular development.

I have personally had discussions with mining interests regarding the strategies they currently have in place, and I expressed the importance of local engagement and encouraged them to continue to meet with and provide information to local communities. Often, the local communities simply do not know the needs of the mine and do not understand what the future development of that particular interest might be, so therefore they cannot ready themselves to take advantage—just talking through those issues and encouraging communication and information exchange that involves local councils (where there are local councils) and, as I have said, encouraging a better and more thorough engagement process.

GENDER EQUITY, LOCAL GOVERNMENT

The Hon. CARMEL ZOLLO (15:06): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations a question on the South Australian local government sector's participation in 50:50 Vision—Councils for Gender Equity.

Leave granted.

The Hon. CARMEL ZOLLO: I understand '50:50 Vision—Councils for Gender Equity is a 10-year federally funded program designed to build on the successes of the 2010 Year of Women in Local Government. Can the minister provide the chamber with an update on how this program is being rolled out across South Australia?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:06): I would like to thank the honourable member for this important question, and I recognise that the honourable member has always had a great interest in gender equality. As members would be aware, gender equity is recognised as a governance issue in both public and private sector organisations around the world, and I am pleased to be able to say that local government in Australia is leading the way with this innovative gender equality program.

Women are still under-represented in many areas of local government, accounting for only 30 per cent of councillors, only 20 per cent of senior management positions and only 5 per cent of chief executive positions. I am sure members would agree that councils that reflect the diversity of our society are best placed to represent our communities.

Furthermore, in a competitive employment market, councils that have addressed gender equity issues in their recruitment and employment processes are best placed to attract top quality candidates. The 50:50 Vision program is an outcome of the Local Government and Planning Ministers' Council, Women in Local Government Strategy 2009-12, which looked at addressing gender equity issues and setting aspirational goals to be achieved by 2020. These goals include:

- 40 per cent female councillors;
- 35 per cent female mayors; and
- 30 per cent senior managers.

A major objective of the program is the promotion of long-term cultural change on gender equity issues and to be incorporated as part of a council's workforce strategy.

The program itself is a three-stage award and accreditation program designed to be accessible to all councils, regardless of location and size. The program is based on an information sharing and capacity building model, allowing councils to share their experiences and seek guidance and information.

I am pleased to advise the chamber that 100 councils from across the country have already signed up for the program, ranging from capital city councils to small remote councils. South Australia currently has 10 councils enrolled in the 50:50 Vision program, and I have recently written to all South Australian councils and encouraged their participation in the program.

Councils can apply for accreditation at three levels, starting with bronze and working up to the prestigious peer-reviewed gold award. I am very pleased to advise the chamber that Unley council will become the first Australian council to win the silver award in the 50:50 Vision—Councils for Gender Equity program, at a gala dinner which will be held this Friday, 30 September, in Adelaide to celebrate the 60th anniversary of the Australian Local Government Women's Association.

The silver award is central to the 50:50 Vision—Councils for Gender Equity program, and is the award with most opportunity to generate real change within councils. Silver accreditation involves self-assessment on progress in one or more of the four categories of achievement:

- Leadership;
- Nomination and recruitment;
- Remuneration, recognition and training; and
- Work and family balance

Councils need to achieve accreditation in three of the four categories of achievement to qualify for the silver award. In applying for the award they only achieve accreditation in the areas of commitment and leadership, nomination and recruitment, and work and family balance. I take this opportunity to congratulate the City of Unley on its incredible success. I also pay tribute to my colleague, a former minister for state/local government relations and the current Minister for the Status of Women, for her ongoing contribution in promoting gender equality in local government.

It is my hope that all South Australian councils sign up for the program. I take this opportunity to have it placed on the record that, for any council interested in signing up for more information, please visit www.5050vision.com.au.

WORKPLACE SAFETY

The Hon. R.I. LUCAS (15:11): I seek leave to make a brief explanation prior to asking the Minister for Industrial Relations a question on the subject of industrial relations.

Leave granted.

The Hon. R.I. LUCAS: Earlier this week in an interview on FIVEaa the minister said—and I quote the transcript:

> Look, currently existing legislation provides that people working at heights greater than two metres must put controls in place to mitigate the chance of a worker falling from such a height. This requirement will not change under the new legislation, nor will it impose greater requirements that do not already exist.

My question to the minister is: does he stand by that statement or, to quote an expression used by the minister yesterday, will he try to 'swirm' his way out of it?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:11): 'Swirm' is a new one. The only one who mentioned that was me about you, I think. My advice is that if employers are complying with the current laws with regard to working at heights of two metres and over, they are required to put appropriate safeguards there to prevent falls. The other day a young apprentice on his first day on the job fell from a three-storey building and SafeWork has been out there and put some prohibition notices on it, because obviously there were problems with that site.

We do not back off from the fact that we will ensure that the new work health and safety legislation, which will hopefully come to this house in the near future, will provide the appropriate measures to protect workers. If employers are complying currently with the provisions under the occupational health and safety legislation, there is very little change in what they have to do.

WORKPLACE SAFETY

The Hon. R.I. LUCAS (15:13): By way of supplementary question arising from the minister's answer, I heard what the minister said, but is he standing by the statement he made that I read into the *Hansard* transcript?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:13): I answered that question. My advice is that under the current laws, provisions have to be put in place for workers working at levels higher than two metres.

PARLIAMENTARY SITTING HOURS

The Hon. R.L. BROKENSHIRE (15:13): I seek leave to make a brief explanation before asking the Leader of Government Business in this place a question about the status of women, men and their families in this house.

Leave granted.

The Hon. R.L. BROKENSHIRE: As a step forward in reform of the Legislative Council, would the Leader of Government Business in this house consider meeting on a multipartisan basis prior to the next sitting week to consider establishing a trial whereby we start sitting on Tuesdays, Wednesdays and Thursdays at 11am, while still having the same amount of private members' time as we have allocated on Wednesdays? We could sit at 11am for the last three sitting weeks of this year to see whether we can get more efficiencies into this place and get home before 12.30 in the morning.

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) (15:14): I thank the honourable member for his most important question. I think there are a number of ways efficiencies can be improved in this place without necessarily making any changes whatsoever. In principle I have no objection to what the honourable member raises. However, as I said I would like to see whether we can improve the efficiencies in this place under the current provisions; I think that there is a lot we can do better and that there is a lot of filibustering and time wasting. I believe some of those practices would just follow us into the new timeslots, and that would continue to eat away at the efficiency of this place. I would rather explore those inefficiencies currently in this chamber.

PARLIAMENTARY SITTING HOURS

The Hon. R.I. LUCAS (15:15): I have a supplementary question arising out of the answer. In her considerations, would the minister also consider ways of making the operations of the House of Assembly more efficient and effective; in particular, when an important bill such as the Work Health and Safety Bill is there, waiting for debate in this chamber, but the House of Assembly gets up, for example, at 5 to 6 on Tuesday night and 5 to 6 last night without debating it?

The Hon. I.K. HUNTER: Point of order, Mr President. Clearly the honourable minister who has been addressed has no responsibility for the behaviour and actions of the House of Assembly.

The PRESIDENT: I uphold that point of order. The minister does not have to answer the question—even though we know which house works the longest hours, of course.

SMART STATE PERSONAL COMPUTER PROGRAM

The Hon. I.K. HUNTER (15:16): I seek leave to make a brief explanation before directing a question to the Minister for Public Sector Management on the topic of the Smart State PC Donation Program.

Leave granted.

The Hon. I.K. HUNTER: The minister has previously advised (in response to a question I asked here in July) how, through the Smart State PC Donation Program, the government is assisting South Australian community-based, not-for-profit organisations to access personal computing equipment. The minister has also advised how this program is assisting the government to meet its sustainability climate change targets by making available surplus government computers to community groups without cost. Will the minister provide an update on this program, and further details of the benefits to the community?

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) (15:17): I thank the honourable member for his important question. The state government is a very proud supporter of community organisations because of the valuable role they play. However, we recognise that these organisations are often challenged by the cost of electronic equipment that can be vital to providing or promoting their services.

As the honourable member mentioned in his question, the government is assisting South Australian community-based, not-for-profit organisations to access personal computer equipment at no cost from surplus government stocks through the Smart State PC Donation Program. This

serves the dual purpose of benefiting the community and the environment. I am pleased to announce that I have recently approved the eligible applications made under round 28 of this program, and those organisations will shortly receive instructions on how they can collect their equipment.

A total of 33 eligible applications were received from organisations as diverse as Woodlands Grove Residents Association, the Merchant Navy Association, the Willunga District Soccer Club and the Riverland West Chamber of Commerce. I understand that successful organisations will be using their equipment for activities such as producing newsletters, pamphlets and flyers to promote their services and programs, for things like training of volunteers and clients, for research activities, and also for general administration duties, including maintaining membership and club databases.

I was very pleasantly surprised to see 11 successful applications made by bowling clubs across South Australia. These included clubs as far away as Kangaroo Island and Moonta, as well as clubs in the metropolitan area. I would like to thank Bowls SA, the governing body of lawn bowls in South Australia, for its effort in promoting the PC donation program. According to the organisation's website, Bowls SA has 224 clubs in metropolitan and country areas and over 18,000 registered members, as well as 10,000 people who participate in social bowls every year through the Night Owls program. I understand it was on its website that Bowls SA informed members of the program, and it included a link to the program's official website. This very much helped in the promotion of the program.

The success of this strategy is a testament to the powers of modern communications and information technology—something I hope these clubs and, by extension, the 28,000 people who participate in bowls each year will be able to continue to enjoy, through the computer equipment they will receive. I recognise that many members in this place and the other place actively promote the PC donation program to their constituents and organisations in their local community. However, it is very pleasing to see organisations such as Bowls SA encouraging their member clubs to apply.

Round 29 of the program will open on 21 November this year and applications will be accepted to the closing date, 19 December. Eligible organisations may receive up to a maximum of three personal computers. Organisations interested in applying must be able to demonstrate in their application that the equipment will be used for the benefit of the wider South Australian community, especially where they will be used to do things like:

- enhance support services or educational opportunities for the elderly, socially isolated or risk groups, to improve wellbeing, quality of life, community participation and life management skills of individuals, families and communities, through programs and services; or
- to develop and strengthen community relationships and community spirit throughout South Australia.

So, congratulations to all 33 organisations that have been a successful part of round 28.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S.L. DAWKINS (15:21): I seek leave to make a brief explanation before asking a question of the Minister for Regional Development regarding the Riverland Sustainable Futures Fund.

Leave granted.

The Hon. J.S.L. DAWKINS: I have noted recent Riverland media reports attributing comments regarding the Riverland Sustainable Futures Fund to the minister. There has been significant local criticism of the process by which the Riverland Sustainable Futures projects have been determined.

Indeed, the member for Chaffey in another place, Mr Tim Whetstone, told *The Murray Pioneer* that, despite the often stated aim of using this money to diversify the region's economic base away from a reliance on irrigated horticulture, almost all of the money distributed to date had, in fact, gone to projects that rely on irrigated horticulture.

Responding to criticism of community concern about the level of Riverland input in the decision-making, the minister described to *The Murray Pioneer* the Riverland office of the

RDA (Regional Development Australia), as 'absolutely critical' to processing the funding applications. The minister's comments continued as follows:

> The RDA itself provides the community interface, with the nature of the projects.
>
> The RDA link is absolutely critical, and that's the on the ground interface between the proposals and the work that the agency does in sifting through and analysing in a vigorous way the integrity of the project itself.
>
> The roadmaps the RDA has compiled...established what the priorities are for the region, where the opportunities are [and] where the main drivers are, and we look to make sure that the proposals meet those roadmaps...

My questions are:

1. Given the minister's impressive declaration of faith in the RDA, how can she justify the government's decision to remove all state funding to the RDA network by June 2013?

2. What action will the minister take to ensure that more projects that can broaden the economic base of the Riverland, beyond the horticultural sector, are supported?

3. Will she confirm that, in more than one-third of the time allocated for the Riverland futures programs, only 10 per cent of the funds have been paid out?

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) (15:24): In relation to the scope of the fund, the fund is—I have said this in this place before, so I won't go into it in great detail again—about promoting local businesses and existing businesses and helping to attract new businesses. It is about helping to develop and create industry development to bring about long-term sustainability of the Riverland area that, as we know, has been through a very tough time, and it needs to reposition itself in terms of its industry.

The state government provided funds through the RDA, and a number of building blocks or blueprints have been developed to assist in identifying those areas where opportunities lie and where projects should look to be taken on board. They include the RDA road map, the prospectus that was developed, and there are a number of supporting documents to that prospectus such as the Scholefield report which, in itself, identifies protected horticulture as a really important area for future development of the area.

So, I just do not understand why the honourable member can come into this place and criticise the horticulture projects when, in fact, the reports that have been done identify particular areas of horticulture development that a number of the successful applicants to this program have adopted. They have done exactly the right thing. They have taken on board that information, incorporated it into a proposal and have been successful, and that is how it should be. It was set up to work that way, to fund those projects that are identified to have a potential long-term sustainable future.

There has been one project—a successful grit blasting proponent—that is not involved in horticulture, but the challenge is to businesses and industries to identify potential for them and to put their proposals forward. I would be very pleased—and I go out and encourage industry to take advantage of this scheme and to put forward proposals. So, I guess it is only limited by the lack of diversity of proposals being put to me at present. All I can do is again put on record how important it is that industries right across the board take this up.

In terms of the funding, I have already put on record in this place that we are looking at alternate funding arrangements (exploring the possibility or potential for alternative funding arrangements) and no decisions have been made on that yet. Those discussions and considerations are still in place.

In terms of how much is spent of the project, as I have said in this place before, the proposals were slow to be put forward for consideration. It took some time for those building blocks to which I referred to be put in place so that adequate direction for future potential could be clearly articulated and also for time to promote the grant scheme. As the honourable member rightly points out, the RDA has a critical role. It is a critical community interface in helping to identify suitable proponents, to identify where suitable partnerships might exist, and to be encouraging those proponents and assisting them to put forward and develop up grant proposals.

ANSWERS TO QUESTIONS

RESIDENTIAL ENERGY EFFICIENCY SCHEME

In reply to the **Hon. J.M.A. LENSINK** (15 September 2010).

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

1. Several building work contractors who operated both under the Residential Energy Efficiency Scheme (REES) and the Commonwealth's Home Insulation Program have been investigated by the Office of Consumer and Business Affairs (OCBA).

In order to pursue legal action, OCBA requires sufficient evidence to prove each aspect of an offence including evidence of unsafe or substandard work to support each case. This information was held by the Commonwealth and safety and quality audit information was supplied in December 2010.

An Initial investigation of the 15 installers of interest against the information provided by the Commonwealth determined that 14 installers would not be pursued for various reasons. These included that:

- the information supplied from the Commonwealth did not indicate sufficient evidence for action to be taken;
- the installer was no longer in business or had disappeared ; and
- an appropriate OCBA licence has subsequently been granted.

Further detailed insulation inspection documents submitted to the Federal Government by its subcontractors, including photographs and detailed audit observations were sought and provided by the Commonwealth in late January 2011.

The investigation against the targeted installer is progressing and is well advanced.

ROYAL ADELAIDE HOSPITAL

In reply to the **Hon. D.G.E. HOOD** (8 June 2011).

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

1. Hansen Yuncken and Leighton Contractors have a working partnership with the Jam Factory for concepts, ideas and opportunities for trainee craftspeople, which is not considered 'public art' and has no specific budget, in order to incorporate good quality design into all aspects of the hospital design.

There is a specific budget of $2 million for 'health and art'. This is to fund specific commissions of art pieces to act as reference points throughout the facility and to fund the position of a Health and Art Co-ordinator.

We are also working with the archivist at the existing Royal Adelaide Hospital (RAH) to identify those heritage and art artefacts at the existing RAH that should either be transferred to the new RAH or moved to the Art Gallery or South Australian Museum.

ROYAL ADELAIDE HOSPITAL

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (8 June 2011).

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

1. Throughout the entire facility there are a range of courtyards and green spaces, the design of which will not be finalised until the conclusion of the Design Development Process.

YATALA LABOUR PRISON

In reply to the **Hon. T.J. STEPHENS** (22 June 2011).

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

1. The Department for Correctional Services is committed to operating rosters in our prisons that are effective, safe and efficient.

The new roster at Yatala Labour Prison, to which the Honourable Member has referred, will require greater rotation of staff through two distinct work areas.

2. & 3. Contrary to the Honourable Member's second and third questions, the new practices are not due to budget constraints. The Government and the Department identified the need to rotate staff for a variety of reasons including to reduce the possibility of familiarity developing between prisoners and custodial staff.

The new rostering practices also ensure better utilisation of available staff and a healthier roster with no eight-day runs of work. All Correctional Officers are recruited and trained to work in all areas of the prison and undertake a full range of tasks.

Whilst the objective is to implement such practices across all institutions, pilot projects have been undertaken at Yatala Labour Prison and Port Lincoln Prison.

The Department commenced consultation with the Public Service Association in January 2010.

All staff are being offered relevant induction to new work areas based on existing induction/training packages.

The new rosters will not cost the State more money and it is not known what the foundations for the figure quoted in the Member's question are. The opposite is the case. The new rosters will enhance efficiencies in that it provides far more flexible deployment of staff across different work areas within the prison.

4. In response to the Honourable Member's fourth question, the new rostering practices also seek to provide continuous improvement and development for custodial staff thereby strengthening the skills of employees to better contribute to the safe management of prisoners.

FAMILIES SA

In reply to the **Hon. D.G.E. HOOD** (29 July 2011).

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

1. The State Government recognises the value of early intervention and in 2008 committed $28.2 million over four years to the Stronger Families, Safer Children program to provide support to strengthen vulnerable families.

The Department for Families and Communities commenced reform of the Family and Community Development Program in May 2010. The Program has not been reviewed since it was introduced in the early 1990s and funding has become historically based, rather than needs based. Funding should be directed to those in the community who need it most, and this is the purpose of the review.

The reform process involves mapping current service delivery and predicting future need using the principles of an Evidence Based Management Framework. This Framework requires an undertaking of an analysis of population needs and a mapping of the current level and mix of services including identifying service gaps, unmet demand and alternative funding sources.

The reform will also examine the aims and objectives of the program, the client groups to be targeted for services, service planning and funding approaches, service models, and accountability and quality measures.

The Department has made a commitment to consult and collaborate with all relevant stakeholders during the reform process.

SMALL BUSINESS COMMISSIONER BILL

Adjourned debate on second reading.

(Continued from 27 September 2011.)

The Hon. M. PARNELL (15:30): The Greens will be supporting the second reading of the Small Business Commissioner Bill. The bill establishes a small business commissioner along the lines of the Victorian model, but not identical to that model. The key role of the small business commissioner will be to facilitate commercial dispute resolution as an alternative to the courts.

The emphasis of the small business commissioner's work is expected to be on disputes arising from landlord/tenant relationships and perhaps franchisee/franchisor disputes as well. It is important to note that the small business commissioner will not resolve disputes herself, or himself, but will try to facilitate a resolution using other services.

I understand, from the briefing I obtained from the government, that it is likely to cost in the vicinity of $1 million each year. One of the questions that we should ask ourselves is whether we will get good value from that investment.

When this bill first arrived my initial reaction was that it was one of those common sense measures, a measure that was known to work interstate, was unlikely to attract much controversy, was not that expensive and I did not expect to receive very much correspondence on it. What I have found since is that they were very much in the category of famous last words, because we have had a great deal of correspondence on this bill.

What I will say is that I still have not heard any credible argument as to why helping facilitate dispute resolution between businesses, especially when one of the parties is a small business, is a bad idea. I cannot see that it is a bad idea, but a number of people have written with concerns and I will go through some of those in a second.

I thought I would start with reading an extract from one email that I received, and I understand that all members would have received these emails. This is not a person who I have contacted personally and asked to use their name, so I will not use their name. This person describes a dispute that they had as a franchisee with their franchisor, a dispute that went over many years and involved a considerable sum of money. What my correspondent writes is:

> During this difficult time we had no Government body or person to turn to. We were left to spend many tens of thousands of dollars on lawyers and mediation with no result. I and my Family are personally devastated by this experience, and we would have valued an opportunity to have approached [a] Small Business Commissioner.

They go on to say:

> We need laws to ensure that all Franchisors fully comply with Franchising Code. We need a body like a Small Business Commissioner to be there for Franchisees.

It is important to note that the bill before us does not specifically refer to the relationship between franchisee and franchisor. However, it is expected that it is likely to be a key area of work, if for no other reason than that is an area where disputes arise.

The other thing I will say at the outset is that some of the submissions that I received and have not given a great deal of credence to are ones that fall into the category of what I refer to as turf protection. There are a small number of lawyers who have written saying that they do not believe that any regime for dispute resolution other than the current one, presumably one that is lucrative to them, is needed in this state.

I requested a briefing of the government and I was pleased to meet with Associate Professor Frank Zumbo and Mike Sinkunas, Director of Small Business Commissioner Project. I will say that at the very first meeting I had I did not envisage that this bill would be at all contentious. However, as with other members, I have received a deal of correspondence against the bill in the last couple of weeks, and it appears that most of this correspondence has been driven by the Franchise Council of Australia and some of its member bodies. The Franchise Council of Australia Limited is described on its website as 'the peak body for the $128 billion franchise sector in Australia, representing franchisees, franchisors and service providers to the sector'.

To verify that claim, I went to the section of its website which lists its members and, at my first visit, that page was down, which always fills me with some dread as to whether it is accidentally down or been removed; but it is back up again today and I had a quick look this

morning before parliament started. It is clear from that list that it is overwhelmingly an organisation comprised of franchisors. On the list of members, and there are very many of them, I could not see the mums and dads, the individual names, of people who are working as franchisees. They were overwhelmingly the big end of town. I think that does help inform the range of submissions we have had from the Franchise Council and its member groups.

In fact, a quick Google search of some of the people and organisations involved in the Franchise Council shows a very long history of dispute over many years at both the federal and state level, especially around the appropriate degree of regulation that it believed was necessary, or not, in the franchise industry. Not surprisingly, in those debates over many years, at federal and state level, the franchisors wanted less regulation and the franchisees wanted more.

As a result of debate nationally and legislation federally, we now have the Franchising Code of Conduct, which is a mandatory industry code of conduct that has the force of law under the commonwealth Competition and Consumer Act 2010. Interestingly, when you do a Google search you find all manner of information, including what appeared to be some fairly unsavoury behaviour, with allegations of contempt of parliament. They were certainly fiery debates: that is what I will probably best leave it at at this stage. But, certainly, this is a dispute that is now boiling over into state parliament and, no doubt, when we get into committee we will hear more about it.

All the bodies that wrote to me urging me to oppose this bill focused on the same fairly small set of concerns around what they saw as being too much regulation, unnecessary duplication of regulation and the potential for unreasonable mandatory standards to be imposed on them that would impact negatively on their businesses, and, in the case of some of the more extreme submissions, that level of regulation would, in fact, drive business away from South Australia.

In fact, I did find some of the concerns in this correspondence to be quite alarmist, given that the bill before us does not actually create any codes of conduct, whether binding or otherwise, and there is nothing in the bill to suggest which codes of conduct might be prepared and what aspects of those codes might be mandatory or simply advisory.

I will just refer briefly to one of the submissions that I received, which was urging the Greens to oppose this legislation, and it included the following:

> At the end of the day, if the proposed SA bill acts as a deterrent to the business world, including franchisors and franchisees, then it will have a very negative and unproductive effect. Governments, whether state or federal, should be seen to be promoting best business practice with ongoing education, such as that now promoted by the ACCC, and not discouraging well educated participants.

There is a range of similar comments. My response to that is to suggest that I cannot envisage that we would discourage anything other than charlatans if we were to have on our statute book or on our books of delegated legislation fair standards of conduct that operated between businesses.

If our laws are driving people away, they are probably driving the right people away. But I do not even accept that basic premise. I do not see that laws and codes of conduct that create for fair relations between business entities is a disincentive to business. In fact, the opposite could equally be argued: that it provides a level of certainty and security that would make South Australia a good place to do business.

What is important, especially in relation to proposed codes of conduct, is that they will be subject to disallowance as delegated legislation so that, if the government does overstep the mark and tries to impose unreasonable requirements on business, the parliament can step in and can disallow those codes.

Another criticism of the bill is that the version that has been presented to us is not identical to the one that was put out for public consultation. I note that the changes are relatively minor, and I include in that category of minor the creation of the head of power that would allow for regulated mandatory codes of conduct. I point out that it is not unusual for that type of regulatory approach. You need only look at the bulk of our pollution laws, which are enshrined in environment protection policies, rather than in the legislation itself.

The obvious thing to say is that, if the bill which was presented to parliament was identical to the bill which was presented for public consultation, the criticism would have been levelled at government, 'You didn't listen to anything that anyone said and you've kept it exactly the same. Why did we bother making submissions?' The government has made a small number of changes, and I think those changes are improvements.

The final criticism in the correspondence that has come to me, which can be best described as self-interest, comes from some of the lawyers, who suggested that the entire role of small business commissioner was unnecessary. The assumption behind that claim is that the existing legal system works well enough for the small number of disputes that occur each year, particularly in the franchise sector. My response to that is to say that there are hundreds of small businesses out there that would beg to differ.

Having received a large number of submissions against the bill last week and continuing, I have now started to receive an equal number of submissions from people urging me to support the bill. The big difference between the two lots of submissions is that the ones I have been getting in the last few days are basically from mums and dads—they are from the individual proprietors of small businesses, with the newsagents clearly well represented because that has been a source of conflict, in particular, in relation to their dealings with News Limited in the past.

It would be wrong to suggest that the demarcation is simply between big business and individuals. There are also a large number of business groups that are supporting this bill. I will not name them all, but I will mention, for example, the South Australian Farmers Federation, the Motor Trade Association—and I did take the opportunity to have a brief chat with the Executive Director, John Chapman. The Council of Small Business Organisations of Australia, the national peak body, is supportive of the bill, and I did take the opportunity to meet with the organisation's Executive Director, Peter Strong.

There is clearly a campaign afoot, both for and against. So, our job here, I think, is to go back to first principles and to look at what the bill seeks to achieve, what it actually does state on its face. It seems to me that we come back to the fact that a low-cost, relatively small agency designed to help resolve disputes between business partners of unequal strength is, in fact, a good thing to do.

I will finish with one final submission, one I received, in fact, just yesterday. I did ring the person to check that they were happy for me to use their name in parliament. I offer members the following from Paul Smith of the Millicent Newsagency. He says:

> As one of hundreds of small business owners in South Australia, I write to you to ask that you support the appointment of the small business commissioner. It is vital that we have someone to call upon as an adjudicator/mediator/umpire when we feel unfairly treated either in contract negotiations or day to day business dealings with big business.
>
> We have seen time & time again small companies, family owned & run businesses wiped off the map because of the ruthless actions used by bigger organisations. There needs to be a level playing field. There is room for all, but the pressures applied can become too much, and the small business owner is pushed out of the market.
>
> The economic impact reaches much further than that one business when they close. They employ local people. They are affected, their families are affected, the shops that they frequent are affected. It becomes epidemic and spreads like a plague throughout the community.
>
> If too many small businesses are bullied, harassed and forced out, imagine the economic effect that would have.
>
> Please support this vital appointment for South Australia's economic engine: small business.

I just remind members that, when we talk about small business, we are talking about 136,000 small businesses in South Australia, but behind each of those trading names, or each of those shopfronts are real people—real South Australians—who are trying to make a living out of business. I think that if we can help level the playing field in their disputes with big business then we have done a good job, so the Greens will be supporting the bill.

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

LEGAL SERVICES COMMISSION (CHARGES ON LAND) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September 2011.)

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:46): I do not believe there are any further second reading contributions, so I will make a few concluding remarks. First, I want to deal with two main questions asked in the debate, and then briefly conclude.

One of the questions asked by the Hon. Stephen Wade was: why not treat the charge as a mortgage only, rather than an encumbrance? The Attorney-General explained in detail why that is not appropriate in a letter to the Hon. Mr Wade on 22 September, and I will give an overview of what the Attorney-General has said.

Except in section 135A, part 12 of the Real Property Act (which deals with mortgages, encumbrances and discharges) treats mortgages and encumbrances equally, making no distinction between them, but section 135 applies to applies to encumbrances only. In securing legal assistance costs that cannot be quantified at a particular point in time and may fall due for repayment after the charged land is sold, the charge is more akin to an encumbrance than to a mortgage and corresponds in all respects with the kind of instrument contemplated by section 135A of the Real Property Act.

If section 18A is to be clarified by these amendments, then the careful wording used in the proposed section 18A(6a) (by which a charge is taken to be an encumbrance for the purposes of section 135A) should be retained. In relation to retrospectivity, the Hon. Stephen Wade and the Hon. Mark Parnell also queried why the bill should apply retrospectively. The Attorney-General has provided this response: the reason these amendments to section 18A should apply retrospectively is that they clarify the legal effect of section 18A, but do not change it.

The rule is that an amendment that simply clarifies the legal effect of a section but does not change it must apply retrospectively because the amendment is saying that this is, and always has been, the legal effect of the section. I understand that that is the custom and practice at present, and since the act has been in place, so this practice currently exists.

By specifically providing that amendments apply retrospectively, a transition clause, such as the one in this bill, announces that the law being amended has not changed and that these amendments simply clarify what has always been. If there were no transition clause to make the clarifying amendments apply retrospectively, or if the transition clause deliberately prevented the amendment applying retrospectively, as would be the case under the honourable member's proposed amendment, the bill will appear to be making changes to the legal effect of section 18A when in fact it does not. This could cause confusion when people read the act, particularly over time as the reason for the amendment is forgotten.

If the amendments did not state that they were to apply retrospectively, other mortgages, charges, purchasers and public officials may be misled into believing that the provisions of part 12 of the Real Property Act do not apply to the commissioner's charge. This could lead to the following situations: assume land that is owned by legally assisted person X has a pre-existing mortgage to Y registered on the certificate of title when the commission places a charge on the title. Another mortgage to Z is subsequently registered on the title. Y then exercises the power of sale and from the proceeds pays out itself and also the money owed to Z in the belief that Z's mortgage has priority over the commission's earlier mortgage.

Assume that after doing so there is nothing left—or not enough left to pay out the commission in full. Under section 136 of the RPA the purchaser from Y obtains a title that is clear of Y and Z's mortgages and the commission's charge. So there is the potential to actually lose money to the commission. In the alternative, assume that Z exercises the power of sale under its mortgage and pays out Y and itself in the belief that its mortgage has priority over the commission's charge: again there is nothing left to pay the commission. A certificate of title issues to the purchaser that does not mention the charge because the Registrar-General believes that the effect of section 136 is that the purchaser obtains a title that is clear of Y and Z's mortgages and the commissioner's charge, which in fact would only be clear of Y and Z's mortgages, and the debt to the commission is still payable.

In both scenarios the commission has lost the share of the sale proceeds that should have been received ahead of Z and no longer has security of charge registered on the title. The likelihood of this happening will be greatly reduced if the amendments apply retrospectively, because then there can be no doubt about the legal effect of the charges already registered over the land before these amendments commence. I do not believe we are trying to say that there is likely to be many of those sorts of circumstances. However, there could be some and that is a loss of revenue for the commission, which is unfair and should be avoided and prevented.

Briefly summarising the effect of the bill: when registered on the title of the charged land, the statutory charge secures the cost of legal aid by permitting the commission to recover those costs and deal with the charged land in the same way as would a registered mortgagee or an

encumbrancee under the Real Property Act. If that were not the intended effect, there would have been no point in section 18A providing for registration of the charge under the Real Property Act.

The problem that this bill seeks to overcome is that section 18A does not spell out that effect in so many words. In some cases this has resulted in mortgagees selling the charged land and not paying out the charge. The amendments in this bill clarify the legal effect of a section 18A charge under the Real Property Act by cross-referencing section 18A to the relevant sections of the Real Property Act 1886. The aim is to prevent any further confusion about the legal effect of the charge and so avert this risk to the recovery of legal assistance costs.

The amendments do not change the legal effect of the statutory charge. Because the amendments simply clarify the law, they must apply retrospectively. If the amendments did not apply retrospectively it may appear that the amendments do change the legal effect of the charge and the very confusion that has occurred in the past is likely to occur again. With those few words I commend the bill to the house.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: I would like to respond to the minister's comments in relation to the letter from the Attorney-General, at this stage only in relation to the encumbrance. I can confirm that we did receive a letter, and we appreciate the short summary by the minister—which is shorter than the Attorney's letter—and I can indicate to the committee that the Law Society has also had similar communication and agrees with the Attorney-General that the approach in the bill is appropriate.

Clause passed.

Clauses 2 to 4 passed.

Schedule 1.

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

Page 3, lines 3 and 4—Delete

'apply, after the commencement of section 4, in relation to charged land whether the charge was created before or after that commencement' and substitute:

only apply in relation to a charge on land created after the commencement of section 4.

I would like to briefly respond to the minister's comments. It would be fair to say that both the government and the opposition are of the view that this bill does not affect the legal rights of people; indeed, it clarifies the legal rights of people vis-a-vis the Legal Services Commission. However, in the Liberal Party we have a strong view—and we have had it for many years—that retrospectivity clauses, in other words clauses that legally bind a provision to have retrospective effect, should only be used in rare cases when it is strongly necessary.

The necessity the government is suggesting in this case is clarity. Clarity can be achieved in other ways. You can put in marginal notes that say (whatever the word is in parliamentary counsel terms) that this provision does not affect the legal rights pre-existing. However, if the opposition and the government are wrong for whatever reason and the substantive provisions do cause an effect, cause a change to the legal rights, the government's option of putting the clarifying within the substantive provision affects the legal rights of South Australians. We believe that is inappropriate. We believe you are entitled to act by the law at the time you make a transaction, and that you should not be adversely affected by subsequent acts.

I appreciate that the minister made some comment about rules and customer practice; I do not know exactly to what she is referring, but I can assure the committee that the custom and practice of the Liberal Party is to be very suspicious of retrospective clauses and only to support them when there is a strong case for them. Mere clarification is not sufficient, so we will be moving this amendment.

The Hon. G.E. GAGO: The government opposes this amendment. I have already, I think, outlined in considerable detail—

The Hon. S.G. Wade: Sorry. Actually, Ann Bressington wasn't here. She might want to listen.

The Hon. G.E. GAGO: I could go through those two scenarios again, Ann, but I do not think it would be particularly clarifying. However, the simple—

Members interjecting:

The Hon. G.E. GAGO: Pardon? I guess the threshold reason for the government opposing this is that the rule is that an amendment that simply clarifies the legal effect of a section—which is what this bill is doing, it is a clarifying effect—but does not change it must apply retrospectively because the amendment is saying that this is and has always been the legal effect of this section.

That has been the custom and practice in the past. It has always been in place that these fees are paid. It has been in place since the time that this bill has been in place. It is well established in the industry. No-one is disputing that. There is some ambiguity from time to time—not often, but from time to time. This amendment helps close that loophole once and for all, but it only has a clarifying effect. It does not actually change what is applying.

The Hon. S.G. WADE: I hope it is not closing a loophole because that would suggest it actually does something and we think it is only clarifying. Just for my edification, could the minister clarify, when she says, 'the rules and the customs and practice', is she referring to the rules and customs and practice of parliamentary counsel? What are the 'rules' and the 'must'? That is what I am wondering. I suppose I am asking that in the context that our parliamentary party, since time immemorial, has not had that customary practice.

The Hon. G.E. GAGO: I have been advised that the rule that I refer to is in fact a very general legal policy principle that is considered to be a common-sense principle by people like parliamentary counsel who draft laws. I understand it is a fairly well-established practice.

The Hon. M. PARNELL: It is certainly a very complex area of law that we are debating because if the opposition is correct and we have an alteration of legal rights retrospectively, then it is something to be opposed. If the government is correct—and, in fact, we have a clarification of the legal rights that everyone has always assumed was the case—then it is not retrospective and, therefore, there is less of a case for cutting out what appears to be the retrospective clause.

I guess just to get this in clear context, we are talking about people who have received legal aid; they have not been able to pay. The Legal Services Commission has put a note on their certificate of title saying, 'The owner owes $5,000', and, as I understand it, the expectation has always been that that particular charge, on the face of it, would mean what it says, which is that the Legal Services Commission will not agree to the property being sold until they get their money back and that will be a condition for them releasing the charge—or like a caveat, as the Hon. John Darley and I were just discussing before.

The problem, as I understand it, is more to do with the relative order of things on the title and the fact that the Legal Services Commission runs the risk of missing out on getting its money in the appropriate order because of a potential way of interpreting these charges. As I understand it, that is the problem.

So, perhaps the common-sense test that we could apply is: would anyone think that that was the case? Would they act on that as the case? Would someone loan money to a person, look at the title and say, 'I see there is one of those Legal Services Commission charges on the land. I reckon I can get around that, and therefore it is safer for me to loan money because I reckon my mortgage will take priority over that'? If people are modifying their behaviour to take advantage of what might be a lack of clarity or a loophole, which was a word that was used, then that puts it back into the category of retrospectivity because people are actually making decisions and we are changing the law on them.

I have to say, despite the Hon. Stephen Wade's efforts here, I am not entirely convinced that this is a true retrospective clause that truly alters the legal rights of the parties. By parties we are talking about the Legal Services Commission who want their money and other people who might have loaned money against the property and, therefore, have mortgages or other charges. So, unless there is something new or I have entirely missed the point here, I am not inclined to support the amendment at this stage.

The Hon. S.G. WADE: Yes. I think I might resort to the Law Society's letter rather than argue on my own. The Law Society on this matter says that the transitional provision in the bill, which is the schedule we are talking about:

...seeks to make the changes retrospective and to apply to LSC charges created before or after the commencement of the amendments. In the Society's view, such retrospectivity would be unfair—

in other words, the Law Society opposes this—

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

Accordingly, in our opinion, the amendments should not be retrospective but should only apply to LSC charges registered after the date of the commencement of the amendments.

The Hon. M. PARNELL: I thank the Hon. Stephen Wade for reading that out. At the heart of it, I think, is an assumption which I find difficult to believe in practice. That assumption would be that a bank, for example, knew that there was a difficulty with the Legal Services Commission's ability to get their money and that they either loaned more, or even loaned at all, on the basis of an understanding of this difficulty with the Legal Services Commission charge.

I will bet you that no lender has done that. If any lender has done that, then let them come forward. Let a bank or a building society come forward and say, 'Yes, we regularly see these Legal Services Commission charges and we know that we can sneak in ahead of them; therefore, we lend more money than we otherwise would.' I just cannot conceive that that has happened, and if it has not happened then I do not think that anyone has been disadvantaged and that this is, as the minister has said (on her advice), a clarification rather than a substantial alteration of rights. So, I am still not supporting the amendment.

The Hon. G.E. GAGO: I put on the record that the Hon. Mark Parnell's summary of the effect of the bill and the amendment is correct. It is an extremely succinct summary, so thank you for that. It is also consistent with the advice that we have received from the Crown.

Amendment negatived; schedule passed.

Title passed.

Bill reported without amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (16:12): I move:

That this bill be now read a third time.

Bill read a third time and passed.

RADIATION PROTECTION AND CONTROL (LICENCES AND REGISTRATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September 2011.)

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:13): This bill seeks to make amendments to the Radiation Protection and Control Act 1982 immediately following the proclamation of amendments to be made to the act via part 12 of the Statutes Amendment (Budget 2010) Act 2010.

The passage of this bill will ensure that certain persons who are currently licensed or registered under the act are not unintentionally exempt from the requirement to hold a licence or registration in future. This will ensure that radioactive substances continue to be appropriately regulated and the health and safety of Australians who are exposed to radioactive substances continues to be maintained.

In addition, the further amendment to the definition of mining will correct a drafting error in part 12 of the Statutes Amendment (Budget 2010) Act 2010. This part of the definition clarifies that the act is not intended to regulate surface drilling for the purposes of exploration.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.M.A. LENSINK: During the briefing I discussed with the officers the matter of how much the licence fees were likely to be, and I would appreciate it if we could get some comments on the record from the government about what those are likely to be. I understand they are still under negotiation and the EPA is providing briefings to industry bodies, particularly the mining sector, next week but, if we could get some indication, that would be great.

The Hon. R.P. WORTLEY: I have the list of licence fees which I table.

Clause passed.

Remaining clauses (2 to 6) and title passed.

Bill reported without amendment.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:17): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CRIMINAL LAW (SENTENCING) (SENTENCING CONSIDERATIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September 2011.)

The Hon. K.L. VINCENT (16:17): I want to briefly place on the record my reasons for opposing this bill. When I first picked up this bill I was a little appalled by the suggestion that we should tinker with what is normally considered our fundamental right, that is, a person's decision on how to plead, as a mechanism to clear up our clogged court system. However, I attempted to suspend my outrage—as I have had to learn to do quite well since coming into this job, as I am sure we all have—because I perused various second reading speeches and other research and got the impression that maybe I was being a little naive.

I, as does everybody else in this chamber, want our justice system to function and want to clear the backlogs and, as someone who is not an expert in the law per se, I thought it comforting that other people who had experience in law felt that this mechanism was acceptable. Perhaps, I thought, this is a method which is already used and is therefore acceptable; and, to some extent, this is correct. There is encouragement to plead guilty as early as possible already built into our justice system in South Australia.

However, as I looked further into the matter and was able to consider a more diverse range of perspectives, I began to realise that my original feelings of outrage could well be justified. At this stage I think that I must thank the Law Society's Ralph Bönig and criminal lawyer David Stokes for providing further information on this matter.

While we already encourage people to plead guilty as early as possible, I do not believe that we do this simply to save time in court. There are a myriad of reasons that an early guilty plea might be preferable. These reasons encompass everything from shielding victims from the trauma of giving evidence to ensuring defendants get the most suitable consequence for their crime and circumstance. It has been put to me—and I believe—that, in the scheme of things, saving the court's time is a very low priority reason for encouraging early guilty pleas. Despite this, our government has seen fit to treat the relationship between reduced sentences and saving the court time as a simple one.

The government is telling us that, if we encourage people to give a guilty plea early, or give up information in return for a sentence discount, we will whip through the court list and everything will be wonderful. Plainly, given the complex reasons for early guilty pleas, this simplistic sentiment is untrue. Once we start messing with the balance of sentencing, there might be all kinds of unintended fallout related to the other reasons that it might be good to plead guilty.

This government is attempting to pretend that the justice system is a straightforward beast. This is also untrue. It pains me to once again stand here and speak about why we should not play fast and loose with people's rights to justice.

Our government has a certain way of dealing with the justice system which involves characterisation of defendants as not deserving rights. We see that theme again with this bill,

where our government is hoping that we will forget that it is important for someone to have the right to weigh carefully their decision of how to plead. If the government gets its way, lawyers will have no choice but to advise an early guilty plea, even when there is not necessarily enough information available for them to know the full details of the prosecution's case. There is no getting around the fact that, if we pass this bill, it will result in injustice for defendants and, in some cases, for victims, too.

Of course, this is of special interest to me because, as members are well aware, I am concerned about the rights of people with disabilities, in particular, who are in the justice system. Currently, a defendant who has an intellectual disability, for example, might be given special consideration when sentencing is being decided. For example, a judge might gather that they were unable to enter an early guilty plea because they were not offered enough support to understand the facts of the case or indeed present their evidence. I do not want these individualised considerations to be outlawed or discouraged in our court system, and the bill will obliterate this kind of flexibility.

Put simply, the government has identified a problem with the court system, and it is trying to solve the problem using an inappropriate tool—and I suspect that it was the cheapest and easiest tool to reach. It is like me getting a flat tyre on my car and then attempting to fix it by getting the engine serviced. I cannot support such an unsuitable measure, and I will not support this bill.

The Hon. S.G. WADE (16:23): I do not always enjoy getting bounced, but I am pleased in this case to be able to follow the Hon. Kelly Vincent because, as is often the case, Kelly brings a clear, fresh perspective. Perhaps, for some of us who have been involved in politics for longer than we care to remember, it is often challenging to have somebody who comes into the chamber and reminds us perhaps about what is more likely to be the view outside the building than inside the building. I will come back to the Hon. Kelly Vincent's comments when I reflect on what I anticipate would be the wider public's view of this bill.

I rise to speak on behalf of the opposition in relation to the Criminal Law (Sentencing) (Sentencing Considerations) Amendment Bill 2011. I think it is important that we be clear that this bill is not about doing justice; it is about managing justice. It is about trying to ease the pressure on an overstretched and under-resourced system. That is not my political spin; it is the repeated claim of the Attorney-General in his second reading explanation in the House of Assembly on 24 March. Not once does the Attorney claim that providing a discount for an early guilty plea is in the interests of justice. The focus of the speech is on the impact of the timing of the plea in terms of the interests of the justice system.

Let me give three quotes indicative of this, and I certainly do not think they are the limits of them. In one place, the Attorney-General says:

> A primary objective of the bill is to improve the operation and effectiveness of the criminal justice system by reducing delays and backlog in cases coming to trial.

In another place, the Attorney-General says, 'The problem of court delays is acute and complex.' In another place, he says:

> This bill is a major step forward in this government's determination to address court delays. It sets a benchmark in Australia criminal justice reform.

The Attorney-General specifically uses the phrase 'Justice delayed is justice denied.' We need to make sure that justice discounted is not justice devalued.

In common law, a criminal sentence may be reduced in response to an early guilty plea. I am informed that that might be up to 33 per cent where the defendant pleads guilty at the first opportunity, and up to 50 per cent where the defendant pleads guilty at the first opportunity and gives evidence for the Crown.

What the government claims that this bill does is consistent with that established judicial sentencing practice to codify that current practice but, at the same time, limit the freedom of the courts within that practice. The government sees the benefit of this because the government claims that in 2009-10, late guilty pleas were the cause of 35 per cent of fixed High Court trial dates that had to be vacated—that is 308 out of 883.

The government claims that the courts are not maintaining a sufficient difference between the reduction of truly early guilty pleas and those closer to trial. It says reductions of 20 per cent and 25 per cent are not uncommon for pleas entered into within weeks of a trial, and some defendants even receive significant discounts for a guilty plea on the day of trial.

The bill provides for a series of discounts for pleas of guilty, graduated upon the timing of the guilty plea: the earlier the plea, the greater the discount. A key purpose of this bill is to encourage offenders to make an early guilty plea. It also encourages offenders to assist authorities in the administration of justice; for example, if they provide valuable assistance in the context of serious and organised crime.

I would like to focus my comments today on early guilty pleas, and particularly on the no-discount period, but I will now continue with the background. The bill draws on recommendations made by His Honour Judge Rice of the District Court some years ago, and developed further by the Criminal Justice Ministerial Taskforce. The theme was returned to in the Smart Justice report by Judge Peggy Hora. She made a list of recommendations to encourage early guilty pleas, and one of those recommendations was to formalise sentencing discounts for guilty pleas.

Other suggestions she made were that we consider legal aid funding of cases which rewards early disposition, rather than encouraging pleas on the first day of trial, and that we should consider a sentence indication scheme, where a judicial officer, having received a summary of the facts agreed to by the prosecution and defence, provides information on the sentence likely to be imposed if a defendant enters a guilty plea during the pre-trial process.

Judge Hora also suggested that we could look at adopting rules of reciprocal discovery and disclosure, and provide for a review of all cases by a senior prosecutor from the Director of Public Prosecutions at the Magistrates Court level. I think this suggestion highlights one of the concerns I have with this government and with the current Attorney-General. There seems to be too much of a focus on public sector-focused responses, and a bill that deals with early guilty pleas is, if you like, putting the spotlight on the behaviour of defence counsel and their relationship to the defendant, and how the pleas are managed.

As Judge Peggy Hora highlighted, there are a number of issues in how the public sector plays its part in the process. For example, one of the issues that has been raised with me is in relation to the late allocation of prosecutors. It is apparently not uncommon for the Office of the Director of Public Prosecutions to allocate a prosecutor a week or so before the trial is to commence and, in many cases, it is only at that time that there is a sufficiently senior prosecutor in place who can engage in meaningful discussions that can lead to discussions around a guilty plea.

Returning to the issues that the Hon. Kelly Vincent highlighted for us, I think it is important that we do pause and consider this bill in the context of the sensitivities of the wider community. This concern is highlighted by recent events in the United Kingdom.

This bill was tabled in the House of Assembly in March 2011, and for some months the British government has been trying to promote similar reforms in the Westminster parliament. The Conservative-Liberal Democrat coalition government wanted to increase the discount available there from 33 per cent to 50 per cent. That is somewhat different from the South Australian situation because we are going from a common law unspecified discount to a statutory discount of up to 40 per cent in most cases, whereas the coalition government was going from a Labour government introduced discount of 33 per cent, increasing it to 50 per cent.

The proposal was mauled by the popular press. Under a heading 'Ken Clarke, the paedophiles pal', *The Sun* newspaper of 17 June 2011 railed:

> Ken Clarke was blasted last night over the latest scandal in his crusade for soft justice—halving sentences for thousands of paedophiles.

The Labour shadow, presumably the Labour shadow secretary for justice (whose name is Sadiq Khan), raged:

> It is unacceptable that people who have committed such heinous crimes could have half knocked off their sentence just for pleading guilty.

He begged the government to scrap the disastrous move. Four days later Prime Minister Cameron did indeed scrap the proposal because, in his words, sentences would have become too lenient and criminals would have been sent the wrong message.

The Labour leader, Ed Miliband, described the proposal as 'yet another example of this government not being in touch with people and making proposals which they then have to abandon'. The UK government had admitted that the proposal was driven by resources and management and not justice—another similarity with our situation. It saw the proposal as a way of easing pressure on an overcrowded prison system. I note that, after years of racking, packing and

stacking, our prison system is also chronically overcrowded. Perhaps our government has a similar objective in mind as well.

Let us remember that early guilty pleas are a form of plea bargaining. Plea negotiations have become an entrenched part of the justice system and, within bounds, they may well promote justice. But, as the British experience highlights, we need to be acutely aware that our public is likely to be deeply suspicious.

In an article in 1997 Mack and Anleu—I think it was in the Flinders Law Reform Journals—reflect on plea bargaining in the following terms:

> It puts an inappropriate burden on the accused's choice to plead guilty, undermines proper sentencing principles, risks inducing a guilty plea from the innocent, undermines judicial neutrality and independence, and does not directly address the problems of time and delay which motivated its introduction by the courts.

The withdrawal of the British proposal I suspect does not reflect the fact that the public was happy with the 33 per cent discount. I suspect the British public and the Australian public would see a zero per cent discount as a good starting point.

We need to acknowledge that our public is very suspicious of measures such as these. So, while the opposition appreciates the appropriateness of discounts and will not be seeking to eliminate them in this bill, we do believe that we need to be careful that we do not undermine public confidence in the sentencing process by changes that we make. The particular level of any discounts, and the circumstances in which they are given, is a matter for judgment and it is important that, whilst it is legitimate for the state to understand the operational impacts of its changes, it is also extremely important that we keep in mind the public's view on these matters and that we do not serve to undermine public confidence in the sentencing process.

There is one difference between the British proposal and this bill, and that is that this bill denies any discount if the guilty plea is made just before trial. That element the opposition strongly opposes, and it will be the focus of my remarks today. The Attorney-General in the other place rightly concluded that this is a key 'point of difference between the government and the opposition—and the Law Society—a fundamental point of difference which is a matter of principle'.

In his second reading summing up the Attorney-General put the government's position in the following terms:

> The principle is: if you are really late with your guilty plea, like on the day of trial, or, to put it another way, so late that the courts cannot backfill your spot in the court and therefore you might as well have left it to the last day—if you do that you do not get any discount on account of the plea only. You may get a discount for your personal circumstances, you may get a discount because of cooperation with the prosecuting authorities or any number of other things, but the element of your discount that might be attributable to a plea is zero.

The Attorney-General argues that if you are actually going to put a disincentive in the system it needs to be genuine and effective. The opposition does not object to codification per se if it were genuinely a codification of the current position, but we do not support removing from the courts the discretion to use discounting after a certain date. We strongly oppose the change.

Of course, plea bargaining already has implications for victims. I have already talked about the Westminster parliament considering this matter in recent weeks; it is also currently being considered by the Northern Ireland parliament. On 15 September, two weeks ago today, the *Belfast Telegraph* reported on concerns in the Northern Ireland Assembly on implementing discounts for early guilty pleas. The report states that several parliamentarians in the Assembly's justice committee claimed that early guilty pleas risk overlooking victims' concerns. The Ulster Unionist member of the Assembly, Basil McCrea, said:

> There is a move afoot that the impact on victims should be considered more fully. There is a feeling I think that this is a discussion between defendants and legal process. I have a sense that if you were to ask the population in general would they prefer a quick decision or a decision where the appropriate sentence was passed, they would not be minded to say 'let's get it done quickly'.

My understanding is that victims' advisory bodies in South Australia have, in the past, objected to early guilty pleas on the grounds of this general concern about lessening appropriate sentences, but with this bill the Rann Labor government goes beyond that general risk and, by introducing the no-discount period, I believe it has doubly harmed the interests of victims and witnesses.

The Law Society highlighted that their principal concern with the bill is this no-discount period. A discount is not permitted for guilty pleas potentially well before a trial commences in the superior courts, and with four weeks of trial commencing in the Magistrates Court. In superior

courts, the no-discount period might be many months before trial. Having no discount up to and possibly including the trial period fails to recognise the interests of victims and witnesses. A guilty plea during this period (depending on its timing) currently saves the state the cost of preparing and running a trial, and also benefits victims and witnesses by:

- saving victims and witnesses the time and often the anguish of being involved in the trial preparation process;
- saving victims and witnesses the inconvenience of travelling, particularly in relation to proofing and the trial, and the associated costs to the state in witness expenses; and
- saving victims and witnesses the stress, even the trauma, of going through the trial.

The Rann Labor government is showing, in this bill, very low regard for victims' rights. The Attorney-General's asserts in his second reading speech that 'the retention of even a minimal discretion for a late guilty plea up to the trial date would undermine the policy behind the bill'. To rephrase that, benefits to victims and witnesses are of no concern to this government.

The member for Bragg and the Attorney-General thoroughly surveyed a range of current and potential initiatives which could be used to reduce the courts' backlog in this state. Rather than summarise their rich set of observations, I refer members to the *Hansard* of the other place, but I would like to take the opportunity to highlight one pilot mentioned by the Attorney-General on which I have been fortunate enough to be briefed by the Chief Magistrate, Chief Magistrate Bolton, which relates to case conferencing in the Magistrates Court.

Case conferencing provides a forum for constructive early negotiations to facilitate the speedy and appropriate resolution of matters, and Chief Magistrate Bolton assured me that it is showing very good prospects. It provides an opportunity for the magistrate and the parties to identify issues and to exchange information, and that often leads to matters being resolved at a much earlier stage.

The trial highlights that it is not just a matter of getting the plea in early. A number of elements need to come together for a trial to be as efficient as it can be. I think case flow management initiatives such as that—and I understand a similar program is operating in the District Court—should be given both consideration and also the resources.

There is a range of other matters dealt with by the bill, including discounts for assisting the state. The opposition is in the process of developing amendments. I consider that these issues would best be addressed by me in the context of the amendments in the committee stage, so I shall not take the time of the council this afternoon to go through them.

I do not consider that the bill will significantly reduce court delays. The bill will only be effective if the police, the DPP—in fact all elements of the justice system—ensure that they do all they can to facilitate matters and, particularly for the police and the DPP, that all information is brought together at an early stage, otherwise the disincentive to plead late will counterbalance the early incentive. I look forward to further consideration of this bill in committee.

The Hon. M. PARNELL (16:40): This bill seeks to regulate sentencing discounts given to offenders who plead guilty or offer assistance to the authorities. The driving force behind this bill is a desire to improve the operation and effectiveness of the criminal justice system by reducing current delays and backlogs in cases coming to trial. It does this by encouraging offenders who are minded to plead guilty to do so at an early stage.

I note the comments of the Hon. Stephen Wade who said that the justice outcomes were not a consideration in this bill and that, in fact, it had everything to do with the management of cases. I will come to that shortly, but I think he is right.

A second objective of this bill is to encourage offenders to assist the authorities in the administration of justice by offering sentencing discounts, particularly in the context of serious and organised crime. The bill provides for a graduated series of discounts for pleas of guilty and/or for cooperation with the authorities. The quantum of the discounts are dependent on the timing of the guilty plea and the nature of the cooperation with the authorities. The earlier the plea, the more significant the discount. Most importantly, the bill restricts the conferral of discounts for late guilty pleas.

I support the concept of sentencing discounts to be applied by judges and magistrates in certain circumstances, such as for early pleas and for cooperation with police, but the question

before us in this bill is whether or not the regime that is currently contained primarily within the common law should be codified and, if so, whether the range of sentencing considerations and discount figures in this bill is an improvement on the current arrangement. In relation to the first point—Is it appropriate to codify?—my answer is: it may be. In relation to the second—Have they got it right in this bill?—the answer is: I do not think so yet.

The next thing I want to say is that the Greens believe that there is a range of principles that need to be taken into consideration. The first of these is the presumption of innocence. Everyone is presumed to be innocent until they are proven beyond a reasonable doubt to be guilty. The second principle is that the accused person has the right to put the prosecution to its proof and to challenge that evidence in court.

The third principle is that an accused person should not be unreasonably pressured into pleading guilty within an arbitrary time frame in order to potentially qualify for a sentencing discount, especially when the evidence is unknown or unclear or, in the worst-case situation, they are, in fact, innocent. Fourthly—and it is a flip side of the previous principle—a person should not be encouraged to go to trial, rather than plead guilty, simply because they have nothing to lose because there is no potential sentencing discount available to them. It is this fourth point that is particularly worrying in relation to this bill.

I attended the briefing this week by the Law Society which was arranged by the Hon. Stephen Wade, and I thank him for the opportunity to attend that briefing. Along with Law Society President Ralph Bonig, we also heard from barrister David Stokes. He presented a very convincing case, including a number of real-life case studies, that, he said, would be impacted by changes to the law such as are contained in this bill.

One example that he used—and he cut straight to the chase—was in relation to a potential rape trial. What he invited us to do was to imagine having to look the victim in the eye and explain that the only reason that she had to undergo the trauma of a trial was because the accused no longer had anything to lose or anything to gain by pleading guilty because it was too late to be eligible for any sentencing discount, therefore he may as well go ahead with the trial. That would be an injustice. It wouldn't just be an injustice to the victim; it would be an injustice to the witnesses and to the many other people who are involved in the criminal justice system. But that is not to say that we should encourage defendants to hold out for as long as possible unnecessarily or that we should not still reward early pleas.

The point to note is that the existing system already takes this into account. Like the Hon. Stephen Wade, my main concerns with this aspect of the bill are in relation to the mandatory no discount period. I believe that the potential impact of that provision could lead to adverse and perverse outcomes for justice in the pursuit of trying to fix what is essentially an administrative listing problem for the courts.

We want our courts to be as efficient as possible. We do not want to see long delays and we do not want to see the court sitting idle because there are no cases ready to proceed. I have no doubt that the job of listing cases for trial is an absolute nightmare. My court experience, as limited as it is, focused primarily on the Environment, Resources and Development Court. Their listing processes were fairly efficient, and part of the reason for that is that no-one went to trial without going to a compulsory roundtable conference first.

We have heard already today that there is a case conference trial under way in the Magistrates Court—effectively, a roundtable conference—and that similar provisions are applying in the District Court, and I think they are valuable tools for fixing the nightmare that can be the listing of criminal trials. But we do need to ask ourselves whether using sentencing discounts is the right tool for what is essentially a case management problem.

So, I am not convinced that this approach is appropriate. I am not convinced that this is the right tool for the job but, having heard from the opposition that they have some amendments in mind and, no doubt, the government will take stock of the lay of the land as they see it in the Legislative Council, I will not be opposing the bill at the second reading but I put the government on notice that it will require substantial amendment before I could support it at the third reading.

The Hon. A. BRESSINGTON (16:48): I also rise to speak to the Criminal Law (Sentencing) (Sentencing Considerations) Amendment Bill. I, like the Hons Kelly Vincent, Stephen Wade and Mark Parnell, have serious concerns about this piece of legislation. I concur with all of the examples that they have used and also thank again the Hon. Stephen Wade for organising the briefing with the Law Society and barrister David Stokes.

One thing about having a briefing with a practitioner on the ground, who would have to manage these changes and incorporate these changes into practising law effectively for people who have been accused, is an eye-opening experience. We can sit in here, especially those of us without legal background or legal experience, and sometimes come to the conclusion that it is pretty much cut and dried when, in actual fact, the examples that Mr Stokes gave the other day show that there are many variants to be taken into consideration during that pre-trial period.

I believe from his comments, and also those of Ralph Bonig, that we are not improving the law here. As they said, the law works in this area perfectly well as it stands. We have a backlog in our justice system, but that is more about a resourcing issue than it is about whether or not people get discounts on their sentences for an early guilty plea.

I understand from that briefing that the court system has put in two pilots, if you like—although they do not like it to be referred to as a pilot, but I cannot think of another word for it—that are trying to work out within the court system itself better ways to deal with the backlog.

Apparently, in those two instances, they are getting results in being able to move through their case load a lot more efficiently. I think it would probably do this place and the Attorney-General well to speak to the magistrates and judges who are involved in that and see what it is that they are trying to do to deal with the issue that this bill seeks to address.

Again, I state in this place, as I have many times, that simply changing laws, especially in our justice system, to meet financial bottom lines, if you like, is hardly a good reason to fix something that ain't broken. I am inclined to not support this bill at all but I will wait and see what amendments the Hon. Stephen Wade comes up with. I do know that Mr Strokes said, 'Don't do it. Just leave it alone. Leave it be.'

I will seek other legal advice because I know there are always two sides to the legal story as well, but I am not of the belief that if there is a piece of bad legislation in front of us that we can amend it to make it good legislation. We can amend reasonable legislation and make it better, but if it is bad legislation then it is bad legislation.

So, I will wait and see with interest the amendments that the Hon. Stephen Wade puts forward and make my decision then. I, like the Hon. Mark Parnell, will not be opposing the second reading of this bill but I will be watching the debate very carefully before I make any decisions on those amendments.

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) (16:52): I understand that there are no further second reading contributions to this bill, so I would like to make a couple of concluding remarks. I want to thank those honourable members who have made second reading contributions. They have been valuable contributions and have offered a range of different levels of support.

There are a number of important issues that have been raised in the second reading debate that I think will be best dealt with in the committee stage. So, I look forward to that. I understand that there are likely to be amendments, so I look forward to those and I will respond to them at the appropriate time. I commend the bill to the council and look forward to dealing expeditiously with the committee stage.

Bill read a second time.

ROAD TRAFFIC (RED LIGHT OFFENCES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 September 2011.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:53): I rise on behalf of the opposition to speak to the Road Traffic (Red Light Offences) Amendment Bill 2011. The opposition will be supporting the amendments to the road traffic and motor vehicles acts. This is the second bill I have spoken on this year to do with the safety of level crossings.

The Labor government and the opposition does not often see eye to eye on the use of speed cameras; however, in this instance we believe that placing red light cameras at busy level crossings may be effective in deterring drivers who would otherwise attempt to speed through the crossing just before a train passes. I remind the house of what I said throughout the debate on the rail safety bill in April, namely, 'railway...crossings are the single biggest source of death and injury

associated with railway operations'. There are approximately 100 crashes between a road vehicle and a train in Australia each year and in South Australia that averages about 10 per year.

To revisit some further statistics mentioned by my colleagues in the House of Assembly, there have been 24 fatalities in South Australia in the last 10 years and, in particular, the Womma crossing at Elizabeth had, over a two-week period, 21,000 vehicles exceeding the speed limit over the crossing. Whether they were trying to speed up to get away from the local member, Mike Rann, I am not sure. Over 12,000 entered the lights as they began flashing and 237 of those were speeding. Nineteen of those entered as the boom gates were lowering.

With that particular statistic I am reminded of my aunt who was a couple of years older than my mother and, if she was still alive, she would be in her early 90s. She and my uncle and cousins lived in Melbourne. At the time, boom gates were installed rather than gates that swing across to shut off the road as the train goes through. She was told that, as soon as the ding dong bells go, she should stop because the boom gate is going to come down. She used to drive a little Mini, and she jammed on the brakes and ended up being stuck between the boom gate and the train. She was not game to move and she sat there as the train whizzed past about a foot from the front of her little Mini. I think she was taking it to an extreme to stop as soon as she heard the bells go off.

The Hon. J.S.L. Dawkins: She took note of that?

The Hon. D.W. RIDGWAY: She did take note of that, and it never happened again. She could not back up because the boom gate was behind her and she could not go forward because a train was coming. It is very clear from those statistics that a large proportion of motorists are prepared to demonstrate extremely risky behaviour for the sake of saving a few minutes waiting as a train passes. In doing so, they are not only putting their lives at risk but also the lives of their passengers and, of course, sometimes hundreds of people who may be on a train that is passing the intersection.

The state government announced a while back it would install speed cameras at six metropolitan train level crossings: Leader Street in Goodwood; Woodville Road, Woodville; Kilkenny Road, Kilkenny; Cormack Road and Magazine Road, Wingfield; Womma Road at Elizabeth North; and Commercial Road at Salisbury North. The Road Traffic Act currently defines 'traffic arrows' and 'traffic lights' but does not define 'twin red lights', which you will find at these level crossings. Therefore, these amendments are to bring level crossings into line with other intersections. It will therefore be provided that people who speed through level crossings will pay a fine on each of the two offences—red light and speeding—and demerit points will apply to both.

This is a technical bill but an important one. It is one of the few instances in which the Labor government has moved to place speed cameras in places of proven high risk rather than at the bottom of hills such as the new Bakewell Bridge underpass or even out here on the golden mile past Adelaide Oval. I am often blinded when sitting there by how many times the lights flash. The poor unsuspecting South Australian motorists are just topping up the government coffers yet again.

I really do think that this state should follow the lead of the New South Wales government and have an audit of all speed cameras to see whether they do actually deliver a road safety outcome or whether it is just more and more revenue into the government coffers. The opposition would always support a positive road safety outcome but it should not always be at the expense of the poor unsuspecting motorist. I iterate again that the opposition is on the same page about road safety and especially the value of them at level crossings. The statistics speak for themselves: level crossings are extremely dangerous and some drivers certainly have a propensity to use them riskily.

Also, I am reminded of a very tragic accident that happened probably 30 years ago now. A farmer in Wolseley was driving parallel to the railway line. There was no level crossing and no signals. He was unsuspecting and pulled across in front of the Bluebird and it hit his tractor and, sadly, he lost his life. Certainly, it is a good step in the right direction to have some metropolitan level crossings policed in this way, but I think there are a number of country ones where people still take unnecessary risks. I suspect in this case this gentleman was listening to his radio and not paying attention and running parallel to the train. The train came from behind him, he did not see it and just turned in front of it and the rest, sadly, is history.

With those few words, I indicate the opposition will support the installation of cameras at these spots and support the legislation to allow their use, and we commend the bill to the house.

The Hon. D.G.E. HOOD (17:00): I rise briefly to also indicate Family First's general support of this bill. However, there are a few issues I would like to outline. In general, we will always be supportive of any moves to reduce our road toll and to penalise dangerous driving. I can scarcely think of anything more dangerous than speeding through a level crossing while a train is approaching.

As the minister advised, the Road Traffic Act 1961 currently provides that, where a vehicle is detected by a photographic detection device committing both a red-light offence and a speeding offence arising from the same incident at a place where there are traffic lights or traffic arrows, such as at an intersection, the penalty for both offences apply. Similarly, the Motor Vehicles Act 1959 provides that the demerit points for both offences apply in this case. Drivers therefore routinely receive six demerit points and a whopping fine for driving at 15 km/h or more through a red light.

I would argue that some people who speed up to get through an orange light but miss that light and end up speeding through a red light are heavily penalised by this rule. Some would argue that the penalty is too high. Nevertheless, Family First does not necessarily oppose that provision; it is indeed dangerous behaviour. However, the double penalty for the two offences arising from the same incident when committed at an intersection with traffic lights does not apply to a level crossing with twin red lights, the flashing lights.

This bill amends the definition of 'red light offence' in the Road Traffic Act to include the twin red lights, being the horizontal or diagonal alternatively flashing red warning lights seen at level crossings that we all know. Therefore, people speeding through a rail intersection will also be liable for the double penalty under this bill. In general, Family First is supportive of the concept, but there are some questions we would like answered.

One of the main differences between traffic lights and rail crossings is that we have orange traffic lights (that is, there is a warning light, or a period of caution, if you like), but there is no warning on rail crossings that their lights are about to start flashing. There needs to be some time given to drivers to enable them to stop, otherwise many drivers will be accidentally and unintentionally caught in these circumstances.

I ask the minister: what tolerance are we giving to drivers in that regard? Clearly, we would need to give drivers a second or so (or something of that order) of grace of the lights flashing before they are fined. You could have a situation, for example, where someone was just a few minutes short of entering the intersection when the lights start flashing, and because they cannot possibly stop their car in that time, they enter and then can be slugged with a very substantial fine and, potentially, six demerit points. It is a very substantial penalty for something that cannot be avoided.

I indicate that we will listen carefully to the government's response to this particular question in the summing up before we make our final conclusion. However, as I said at the outset, in general, we support the concept of the bill. People should not be driving with unnecessary speed, or without due care, through an intersection, particularly where trains are involved, obviously. However, it is really important that people who have no other option but to continue through that intersection are not in any way fined or receive demerit points or anything of that nature.

I also flag that my colleague the Hon. Robert Brokenshire has a number of amendments to this bill that he will table. I understand that the amendments are being drafted as we speak, or the drafting of them may already be concluded, and he will be tabling those amendments very soon.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (17:03): First of all, with regard to the question regarding the instantaneous red lights on a crossing, yes, that would be a concern for me also. However, there will be a delay for that camera that is equivalent to the orange light, and that is an appropriate measure taken to protect the unaware public.

With regard to the amendments, we are looking to putting this bill through committee. This is a priority bill. We should have already debated this bill but, as I understand it, because the Hon. Ms Kelly Vincent was not well, we allowed No. 8 to be debated first. This bill would have been well and truly finished now had we not agreed to that request. It is inappropriate at this stage of the proceedings that we suddenly get an amendment—and it is still being typed. So, we seek the house's—

The Hon. D.W. Ridgway: Why don't you report progress?

The Hon. R.P. WORTLEY: No, I don't want to. I want to get the bill through.

The PRESIDENT: The honourable minister is in charge of the bill.

The Hon. R.P. WORTLEY: Yes. As I have said, the reality is this bill would have been passed now—it would have been passed 10 minutes ago—if it were not for the fact that, because the Hon. Ms Vincent was not well, we allowed for this not to come up, and we allowed No. 8 (Sentencing) to come on, so we would be seeking just to go ahead with this through the committee without those amendments.

I thank the honourable members who have spoken to this bill for their contributions. The Hon. Ms Bressington asked for clarification of arrangements for the dispersal of revenue from fixed cameras, and I will answer that right now. Revenue from the anti-speed devices goes into the Community Road Safety Fund, and the Victims of Crime Fund.

Safety camera revenue and expiation fees are collected by the South Australian police and paid into a consolidated account in the Department of Treasury and Finance. The Community Road Safety fund is funded by a yearly appropriation from the Department of Treasury and Finance utilising this revenue.

The Road Traffic (Red Light Offences) Amendment Bill 2011 is a simple bill that contains a small amendment to section 79B of the Road Traffic Act 1961 relating to level crossing offences. Crashes at level crossings can have catastrophic impacts on car drivers and passengers, who often lose their lives or are seriously injured, and can cause trauma to train drivers, passengers and the local community.

Currently, the Road Traffic Act 1961 provides that, where a vehicle is detected by a photographic detection device committing both a red light offence and a speeding offence arising from the same incident at an intersection or marked pedestrian crossing, the penalties for both offences apply. Similarly, the Motor Vehicles Act 1959 provides that the demerit points for both offences apply.

Driving through a level crossing while the warning lights are flashing has serious road safety implications. Also, drivers often speed up when they see the level crossing warning lights flashing and drive through the crossing above the applicable speed limit. However, the double penalty for the two offences arising from the incident, when committed at an intersection or marked pedestrian crossing, does not apply to level crossings.

The bill rectifies this anomaly by amending the definitions of 'red light offence' and 'speeding offence' in the Road Traffic Act to include 'twin red lights'—these are the horizontal or diagonal alternately flashing red warning lights seen at level crossings. This will have the effect of applying the existing double penalty of speeding through a red light at an intersection or marked pedestrian crossing to speeding through a level crossing where the warning lights are flashing. The changed definition will flow onto the Motor Vehicles Act 1959 and ensure the demerit points for both offences apply.

Bill read a second time.

In committee.

Clause 1.

The Hon. R.L. BROKENSHIRE: With respect to clause 1, I would like to advise the committee that I am close to parliamentary counsel bringing in some amendments to this bill. I believe those amendments are very relevant to this debate, and could add quite a lot of benefit to the government with respect to road safety around red light camera locations.

The reason for my amendments only being finalised right at this point is because information that came to me in the last week or so has indicated that there are some serious concerns with respect to the location of red-light cameras and other associated road safety factors which I believe colleagues may be interested in looking at debating.

I have a real concern about safety issues at red-light cameras. Years ago, I met a lovely young lady who was severely injured as a result of someone running a red light, and information given to me in writing by DTEI indicates to me that many colleagues would like to see how the criteria are set for red-light cameras.

Whilst the minister has indicated that he would like to see the bill go through this place today, I ask colleagues to consider looking at these amendments. They will be available so that we can put this on the *Notice Paper* as priority one in the next sitting week. I also raise the fact that, when crossbench and opposition members try to bring in private members' bills, even when we get private members' bills passed in this chamber, they are deliberately blocked in the other place because the government has the numbers. We have an opportunity, when the government brings in a bill, whether or not it likes it, under the democratic processes for any member to be able to bring in an amendment. I believe that is healthy democracy.

I also remind my colleagues that it was not very long ago—in fact, only a couple of sitting weeks ago—that we had amendments being dropped in our lap for big, detailed bills by the government during committee, and it has happened on many occasions. Also we have had situations where the government has brought in bills and expected us to pass them within 24 hours—in fact on the same day on one occasion, I recall. I simply ask that we go to a reasonable extent today, if that is the wish of the minister, but that we do not complete the committee stage until I give my colleagues the chance to consider three amendments in particular with respect to this issue that could be of benefit to road safety.

The CHAIR: This bill has been on the *Notice Paper* for three weeks, which gives members ample time. I think the Hon. Mr Brokenshire asked today that the council might consider sitting at 11am. If you started sitting at 11am you would have less time to prepare your amendments, so that would be terribly inconvenient for you, I understand.

The Hon. D.W. RIDGWAY: The minister discussed the road safety fund into which revenue goes in his summing up remarks. Given that we try not to stifle debate—and the opposition is happy to support reporting progress if that is what the Hon. Mr Brokenshire wants to do—we can make this a priority.

The CHAIR: The minister is in charge.

The Hon. D.W. RIDGWAY: You may say that the minister is in charge, but I wish to ask questions about the amount of revenue that has gone into the road safety fund over the life of this government. It has had nearly nine years, but one of the early promises by Premier Rann was extra speed cameras, but every cent would go into road safety initiatives. I would like to see an annual balance of that fund and where it has been expended. Tell the parliament the road safety initiatives on which that money has been spent, because, at times, the community feels that it is just revenue raising.

I am giving the minister an opportunity to demonstrate to the community that the money collected in those fines goes back to proper road safety initiatives. I doubt whether the minister has that information at his fingertips. If the Hon. Mr Brokenshire happens to move to report progress, we would be inclined to support it, which would allow the minister time to bring back that important information.

The Hon. K.L. VINCENT: By way of personal explanation, a few minutes ago I retired from the chamber temporarily to take some Panadol and have a rest as I am recovering from a flu and I am still experiencing a bit of a fever. I was surprised to find that, by the time I had come out from the bathroom from doing exactly that, the Hon. Mr Wortley was speaking words—I cannot recall them exactly—which I felt put me at blame for delaying the committee in debating this matter.

Members interjecting:

The CHAIR: Order!

The Hon. K.L. VINCENT: I may well stand corrected if the Hon. Mr Wortley can prove me wrong, but I fail to see how my absence has delayed the proceedings of the council, and I find it quite offensive that he has seen fit to do this, particularly without checking whether I was still within the building. Obviously I was still performing my duties, as I did hear him—

An honourable member: Unlike he does, most of the time.

The CHAIR: Order!

The Hon. K.L. VINCENT: —say those words. Could the Hon. Mr Wortley clarify exactly what was meant? I do not wish to delay the council any further, but I do think this is a matter that is worth pursuing.

The CHAIR: The Hon. Mr Wortley did not indicate that you delayed the council; what the Hon. Mr Wortley said to the Hon. Mr Brokenshire was that this bill would have been discussed earlier, and that the Hon. Mr Brokenshire attempting to table some amendments had delayed the bill. The Hon. Mr Wortley did not indicate that it was because of anything that you had done, Hon. Ms Vincent; he was indicating that the Hon. Mr Brokenshire was delaying the bill, not you.

The Hon. K.L. VINCENT: And how was my illness relevant to this?

The CHAIR: The Hon. Mr Wortley has no need to apologise to anyone. He made a statement and he certainly did not implicate you in any position of delaying the bill.

The Hon. K.L. VINCENT: That may well be the case. My question is: how is my illness in any way relevant to this?

The Hon. R.I. Lucas: Hear, hear. Why was it discussed at all? Why did he have to raise it?

The CHAIR: The Hon. Mr Wade indicated to us that the Hon. Ms Vincent did not feel well—

Members interjecting:

The CHAIR: The Hon. Mr Wade raised it with us. I think—

The Hon. K.L. VINCENT: Mr President, if the Hon. Mr Wortley was blaming the Hon. Mr Brokenshire for delaying the proceedings of the council, I fail to see how my illness was relevant.

The CHAIR: I think if the government had persisted in going ahead and not calling you prior, because you were not feeling well, then you could have had some objection to its inconsiderate behaviour, but—

The Hon. K.L. VINCENT: I do have objection to the fact that I wasn't called, and that my illness was seen as being relevant to delaying the proceedings of this council when no-one had checked to see whether I was still present.

The CHAIR: I must say that the Hon. Ms Vincent is behaving a little bit preciously.

The Hon. R.P. WORTLEY: The priority list has No. 10 on it, which is this bill here at the moment. When we finished with No. 12 the Clerk actually went straight to item No. 8. We sat there and debated it. I asked the question: why aren't we debating this bill now? I was told that the Hon. Ms Vincent was not feeling well and wanted to speak. I accepted that. If the bill had gone ahead it would have been through and there would be no talk about amendments, because the Hon. Mr Brokenshire was down fixing up amendments at that time.

So I do think that some people get too precious. The reality is that I had no problem with the fact that No. 8 was debated; I thought it was fair enough. I waited for my turn, and now I am stuck with this issue about amendments at the eleventh hour.

Clause passed.

Clause 2.

The Hon. R.L. BROKENSHIRE: Is the minister in agreement that at some stage during this committee he will report progress so that I have the right to table these three amendments for members' consideration?

The Hon. R.P. WORTLEY: No, I am not. I will, in regard to the questions asked by the Hon. Mr Ridgway, notify the Minister for Road Safety, the Hon. Mr Kenyon in another place, and try to get that information for him. Other than that I believe there is a process we go through, and this has been on the paper for three weeks. We tried to do that and were slapped around the head pretty quickly, so what we are saying is let's be consistent and just move on with this bill.

The Hon. R.L. BROKENSHIRE: My advice is that this bill was actually tabled in this house at 9.54pm on 14 September 2011, which is about four sitting days ago. Based on what the minister has said, and based on the fact that I believe that these amendments are at least worthy of consideration with respect to road safety—

Members interjecting:

The CHAIR: Order!

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

That progress be reported.

The committee divided on the motion:

AYES (13)

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

NOES (6)

Finnigan, B.V.	Gago, G.E.	Gazzola, J.M.
Kandelaars, G.A.	Wortley, R.P. (teller)	Zollo, C.

PAIRS (2)

Stephens, T.J.	Hunter, I.K.

Majority of 7 for the ayes.

Progress thus reported; committee to sit again.

NATIVE VEGETATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 September 2011.)

The Hon. J.M.A. LENSINK (17:25): I rise to make some remarks about this particular bill, which has been around for some time in various forms. I would like to say at the introduction, in terms of the progress of the debate in the House of Assembly, that we were not given a lot of notice after the winter recess that the government wished to progress the debate, so we had not had an opportunity to complete all of our due diligence consultation, which is to talk to all the people who will be affected by it, by the time it was debated. So, in that place, my colleague the member for MacKillop raised a number of issues and we have reserved our right to introduce amendments. I am in discussions with parliamentary counsel in relation to those. I will outline those issues in this speech.

Native vegetation legislation is very important in South Australia because there has been so much land clearance since settlement, and clearance of native vegetation is one of the great threats to our loss of species, particularly as more land is taken up for further development on those fringes. The amount of land cleared in each of our regions in South Australia varies. I note from the recently released draft State Natural Resources Management Plan that it details the regions with the least amount of vegetation compared to those which are not too bad.

Looking at those various regions: Adelaide Mount Lofty Ranges and the South-East are those which have the indication of 'poor'. Eyre Peninsula, Kangaroo Island and South Australian Arid Lands are in the fair to moderate condition. Then the Alintytjara Wilurara, Northern Yorke and SA MDB are variable. I think it is important to bear in mind. It is important as well in terms of the significant environmental benefit credits, which is part of this particular bill, that they will be able to be transferred between regions. I will talk a bit more about those in some detail.

There will be a focus with those environmental benefits to those regions which have a lower amount of retained native vegetation than those which are well represented. I certainly subscribe to the point of view, one which might be at variance with some of my Liberal colleagues, that rehabilitated land is never as much of an environmental asset as virgin scrub. I think some of the concern with exchange programs is embedded in them not having the ability to provide a system which discounts too heavily those remnant ecosystems.

I am grateful for the work of David Paton, Associate Professor of Ecology and Evolutionary Biology, who has done extensive studies, particularly on birds, which demonstrate that there is a

greater number of native birds per square kilometre in undisturbed native vegetation, or virgin scrub, compared to any other vegetation type, including rehabilitated land. He has done a lot of work in the Coorong and Lower Lakes and also holds great concern for the Mount Lofty Ranges and the declining bird species there. So, I think that is one of the things that we need to bear in mind in this debate.

With that in mind, I probably have more sympathy for the tendency of the Native Vegetation Council to be reluctant to grant clearance permits in regions which have lost a lot of original native vegetation, such as the Mount Lofty Ranges and the South-East where there is only some 4 per cent of original vegetation. However, at the same time, this risk has also led to some perverse applications across the state whereby the council has been accused of being too slow and unreasonable in approving permits.

I enjoyed reading the member for MacKillop's contribution regarding his youthful fascination with eucalypts. That is a fact that I had not been aware of. My colleague, the Hon. David Ridgway, in a contribution on the significant trees legislation a few years ago, spoke about his disappointment that he and some of the people on his property had accidentally set fire to a very mature, probably river red gum, with all of its attendant biodiversity.

Hearing from my country colleagues about their fascination with our native world is always of interest to me. I would recommend to the member for MacKillop that if he wishes to reacquaint himself with eucalypts he should visit Mr Dean Nicolle of the Currency Creek Arboretum.

Members interjecting:

The Hon. J.M.A. LENSINK: Mr President, can I just say that some of our colleagues are ferreting on about people not being here and they are distracting me. I might have to continue speaking a little bit longer because I am so distracted. I am having trouble hearing myself talking about native vegetation.

The PRESIDENT: The Hon. Ms Lensink could certainly say that. I would probably agree with you.

The Hon. J.M.A. LENSINK: Thank you, Mr President. I was saying that I would recommend that the member for MacKillop can reacquaint himself with all sorts of eucalypt species by visiting Mr Dean Nicolle of the Currency Creek Arboretum. On a recent visit to the Mount Lofty Botanic Gardens, I was told by a director of the botanic gardens that Mr Nicolle has voluntarily propagated hundreds of species of Australian native trees and is regarded as an expert in this area.

I would like to correct some comments the member for MacKillop made regarding Trees for Life and the provenance of its seeds. It is an area that I have some personal knowledge of because I have been growing for them for about three seasons. The first batch that I grew would be about four years old. They are doing very well and are probably about 15 feet tall. My landholder is revegetating a property at Emu Bay on Kangaroo Island and this year he took custody of some 300 or 400 eucalypt melaleuca and sheoak seedlings that I raised myself.

Trees for Life is very careful to collect seedlings from each region and it provides idiot-proof instructions to make sure that we grow the seedlings properly. One of those aspects is that we carefully label seedling boxes including the region which they belong to so that they do not get mixed up.

In relation to the connection between native vegetation and no species lost, I would like to put on the record the failure of this government with its no species lost target. According to its own environment department statistics, there are currently 828 plant species and 342 animal species listed as threatened in South Australia.

The number of threatened species has soared since Labor came to office in 2002, when there were just 67 animals and 144 plants listed. The staggering increase should come as no surprise because Labor has significantly weakened its commitment to protecting endangered species. Not only has Labor failed to deliver on its promise to save endangered species but the situation has become dramatically worse. In its original strategic plan released in 2004, the target was 'lose no species'.

This has been changed in 2010 to a redefined target, and read that as you will: it just really means, 'Our spin, we realise, is no longer achievable.' That has been amended to 'lose no known native species as a result of human impacts' and it is now just measuring against 20 so-called

indicator species rather than across the board, which does not provide a true representation of just how serious the situation is for endangered plants and animals. While we are at it, let us not forget that this Labor government has cut $64 million from the environment department's budget in Mr Foley's last budget.

The background to this particular piece of legislation is that there was an Environment, Resources and Development Committee inquiry in 2005 which was partly prompted by the devastating Wangary fires. The terms of reference and the committee recommendations covered the topics of the recovery of native vegetation, the role of fire access tracks, cold burning regimes, soil degradation, native vegetation management, fauna and education.

Recommendations focused on many things, including firebreaks and access tracks, the need for management plans, designated fire safety areas within native vegetation and at road intersections, the need for a single community representative body to authorise clearing of native vegetation for fire management, minimisation of soil erosion, management of weeds and pests, consideration for native flora and fauna, and a number of recommendations regarding prescribed burning of native vegetation.

These were that there was a need for a consistent approach to prescribed burning on both public and private lands, that the planning and approval process for prescribed burning be amended to allow flexibility for burning on optimum days, who should undertake the prescribed burning (which it said should be professionally trained personnel), that training should be provided to landholders to enable them to assist with prescribed burns, and that the government actively manage native vegetation for fuel loads, weeds and pests.

The 2008 bill which was presented to this parliament was a result of the government review of the act and contained a number of measures to improve its operations. This bill is largely the same as that which was presented to parliament in 2008. The Liberal Party at that stage did not consider the bill contentious and still does not consider it contentious. We supported it then, with two amendments from Graham Gunn, the first of which sought to include the definition of burning as a form of clearing, and the second was to allow people to put extra watering points on their properties so that stock would not have to walk as far, neither of which was accepted by the government. The bill then came to the Legislative Council and, due to the impact of the Victorian bushfires in February 2009, there was then a review which held up the bill.

I have done an examination of the changes to the Fire and Emergency Services Act in 2009 and there is nothing that specifically relates to native vegetation in the regulations. There are bushfire management plans which must set out the principles to be applied in achieving appropriate levels of hazard reduction. A bushfire coordination committee must take reasonable steps to consult with any government agency designated by the minister, the LGA, NRM staff, SAFF and the conservation council. The plan must identify existing or potential risks to people in communities and outline strategies to achieve appropriate hazard reduction.

My understanding of bushfire management plans is that it is very much a responsibility that rests with the CFS and they have some discretion and flexibility in how those are applied, but, as a formal question, if I have missed something in terms of changes to the Fire and Emergency Services Act, I would appreciate it if the government in its summing up could tell us what has been implemented since 2008 and 2009 in relation to native vegetation.

Also, in division 3 of the act there are duties to prevent fire, in that an owner of land must take reasonable steps to prevent and inhibit outbreaks of fire, etc. If an authorised person believes that the owner has failed to comply, they can receive a notice in writing, which may include directions to trim or remove vegetation from the land or create, establish or maintain firebreaks or fuel breaks. That does not specifically refer to native vegetation, either, so I am still not clear what changes occurred because we did have amendments which would relate to allowing fire to be used more flexibly. I suspect that that issue is still alive.

If we turn to the specific provisions in this bill, it contains the piece of legislation which the Hon. Mark Parnell moved and which was accepted recently. It clarifies that the act applies to the Mitcham Hills, which was to protect the remnant grey box vegetation in that area; there is an addition to the Native Vegetation Council of a person with expertise in planning or development, which arises because the commonwealth environment minister had a statutory nomination, which the commonwealth no longer wishes to retain; there are a number of technical amendments which relate to the operation of the council; and there is an increase in the expiation for illegal clearance

from $500 to $750. My second question is: can the government advise when this penalty was last increased? I would appreciate an answer to that during the summing up.

In the bill, there is greater flexibility in the treatment of significant environmental benefits (or SEB) offsets, specifically to allow for offset funding from the Native Vegetation Fund to be transferred between regions, which will be subject to the criteria of ensuring increased biodiversity value (I was advised in the briefing that those will be publicly available). There is also provision of future offset credits for current conservation works, which is new section 28A of what will be the act; a new lesser regime for minor enforcement notices; and changes to court proceedings. There are amendments to the time frame for when proceedings may be commenced, and there is a change in jurisdiction for criminal hearings from the Magistrates Court to the ERD Court (I note that civil jurisdiction is already in the ERD Court). It expressly stipulates that satellite imagery is a legitimate mode of evidence, which I think is just a reflection of how technology changes with the time.

The Nature Foundation is a well-respected conservation organisation. Honourable members may know it as the non-government organisation that purchased the pastoral property Witchelina in our Far North as a private reserve, with support from the state and commonwealth governments. The foundation is supportive of the bill as it provides greater flexibility in the treatment of significant environment benefit credits. However, the Nature Foundation would like amendments to the bill that will recognise credits for offsets that result from mining activities, which are known as third-party offsets.

The South Australian Chamber of Mines and Energy completely supports the Nature Foundation's proposal and submissions it has made to government on the grounds that it will encourage resource companies to take a more proactive role in natural resources management funding than electing to discharge their SEB through payment into the Native Vegetation Fund.

The resources sector has articulated its increasing need for representation in natural resources management. It also believes that it is having an increasing role with native vegetation, and it has therefore requested an amendment that it be represented on the Native Vegetation Council. I have also contacted SAFF. I have material from SAFF's submissions in the past, which I think indicate that it is largely supportive of this bill, but, at the time of giving this speech, I have not actually received a formal response.

The member for MacKillop raised the issue of third-party credits in another place. This is an area that other states are taking the initiative on. It is a pretty new area of regulation for state governments. Victoria has something that it calls its bush broker scheme which matches credits which are compliant with its framework rules. It is running a six-month trial in Gippsland and landowners and conservation organisations can be matched up so that those credits can be exchanged.

In Western Australia, as recently as two days ago, the minister, the Hon. Bill Marmion, has released a new framework for environmental offsets which may include acquisition of land for conservation, revegetation of natural areas outside the project area or improving scientific or community understanding and awareness of environmental values affected by a development.

The minister developed the policy through a ministerial task force on approvals, development and sustainability and peak representative groups including the Association of Mining and Exploration; the World Wildlife Fund; the Conservation Council of WA; the Chamber of Mines and Energy; the Urban Development Industry Association; the Property Council; and the Housing Industry Association all made a contribution to the development of that policy.

Queensland has also announced this week that it is developing an offset program which will allow for land-based offsets or, in certain circumstances, an offset payment. That indicates that other jurisdictions are moving on this. The Nature Foundation of SA, in its formal submission, has endorsed this bill. However, it has concerns that under section 28 the proposed SEB credits can only be redeemed on application for clearance consent under the act. They would also like a formal mechanism within the act for third-party offsets.

I indicate that we will be supporting the bill. I will have some amendments which I will file as soon as practicable and I look forward to the progress of the debate.

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

NATURAL RESOURCES MANAGEMENT (COMMERCIAL FORESTS) AMENDMENT BILL

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

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (17:47): 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.

Large-scale commercial plantation forestry has the potential to intercept substantial volumes of water. In commercial plantation forests, trees are selected and grown intensively in timeframes designed to optimise growth, productivity and water use. As a result of this, plantations can significantly affect the availability of water from a surface or ground water resource, reducing runoff and recharge by 70-100 percent (when forestry replaces pastoral land use). Commercial plantations also directly extract ground water when planted above shallow aquifers. In areas where commercial forestry expands, surface water that previously recharged groundwater, or flowed to replenish streams, dams and wetlands is intercepted. Consequently, if commercial forestry is, or is likely to become a significant land use in a catchment, its impacts on water availability need to be properly managed. Mismanagement and overuse of the water resource has the real potential to put the future of the forestry and other industry at risk.

The statewide policy framework, *Managing the water resource impacts of plantation forests*, adopted in June 2009, aims for: 'South Australia [to] achieve ecologically sustainable development of plantation forests, while protecting and managing our water resources, for all users, now and in the future.' The policy framework stipulates that the use of water by commercial plantations should be managed by applying either a forest permit system or a water licensing system through the NRM Act in order to manage the effects that commercial forest plantations have upon the security of existing licensed water access and the integrity of water resources themselves. The *Natural Resources Management (Commercial Forests) Amendment Bill 2010* (Bill) is designed to include these two legislative tools in the *Natural Resources Management Act 2004* (SA) (NRM Act).

This Bill was introduced in 2009 and a number of changes have been made since that version in order to respond to issues that were raised including clarifying processes and details around forest water licences including that they provide secure access to water, are personal property, can be traded just like other water allocations, are subject to conversion or adjustment in accordance with the relevant water allocation plan, and can only be reduced after part, or all, of a forest has been clear-felled.

Further amendments have included allowing the forest permit system to effectively manage impacts of future rotations and providing for regulations to be made to identify forestry management practices that will not trigger reduced forest water allocations, such as plantation thinning.

Current regulation of water use by commercial forests

The NRM Act currently allows a regulation to be made to apply a forest permit system to manage the impacts of commercial forests on water resources. Regulation 13 of the *Natural Resource Management (General) Regulations 2005* (SA) applies in the South East, to ensure that the expansion of commercial forest plantations is carried out within the bounds of sustainable water resource management. This forest permit system links to the system of development assessment under the *Development Act 1993* (SA) (Development Act), rather than the NRM Act which governs other water resource uses, as conditions that address the water resource impacts of the plantation are placed on the development approval and are enforced under the Development Act. However, the current forest permit system does not allow the water resource impacts of commercial forestry to be adequately managed on an ongoing basis, as while the water resource impacts of the expansion of commercial forestry can be managed, it does not allow water use by plantations to be reduced along with the water use of licence holders where necessary to protect a water resource at serious risk of degradation.

The current forest permit system can also require the negotiation of complex contractual arrangements with forest enterprises to quarantine water licences, where forestry expansion is approved on the condition that a water allocation is quarantined to offset the impacts of the development. The permit system also does not enable the forestry sector to trade water with other water users when water is no longer being used by plantations, as licensed water allocations are not issued to commercial plantations.

Expanded forest water permit system

The expanded forest permit system proposed in the Bill is designed to manage water resource impacts of forestry by prescribing forestry as a water affecting activity under section 127 of the NRM Act. This will allow forest permit systems to be implemented across the state without a regulation needing to be made for each specific region as is currently the case under sections 127(5)(k) or 127(3)(f) of the NRM Act.

To allow the current forest permit system to be expanded and used more effectively, the Bill includes an amendment that provides for a regulation to be made to apply an expanded forest water permit system to future rotations of plantations that have development approval. At the moment, an expansion of forestry cannot be brought within the ambit of the scheme where the establishment of a particular forest was within the ambit of a development approval (due to the application of section 129(1)(e) of the NRM Act). An amendment to section 129 will provide an option of expanding the current forest permit system to enable the water resource impacts of future rotations of commercial plantations to be adjusted to address over-allocation or over-use and to protect the integrity of a water resource and the security of rights to access water. Depending on the policy in the NRM Plan or Water Allocation

Plan, a complementary reduction in water use would be required for other water licence holders. Conversely, should it be identified that water is available for further development, allocation or use, the relevant plan may provide for further permits to be issued to allow forest and other water resource development.

The disadvantages of administrative complexity and the lack of capacity to directly trade water that apply to the current permit system could also apply to an expanded forest water permit system. However the Bill ensures that expanding the current forest permit system can be considered for inclusion in a Water Allocation Plan, as an alternative to a forest water licensing system.

Forest water licensing system

The second provision included in the Bill is for a forest water licensing system to be included in the NRM Act which integrates with the current water licensing system. For an area to be covered by forest water licensing, the water allocation plan for a particular water resource must identify the significance of the impact of commercial forests on that water resource and recommend that forest water licensing be introduced. A plan may recommend that particular types of forestry be exempt from forest water licensing requirements, such as farm forestry, biodiversity, bio-sequestration or salinity benefits. Following approval of a Water Allocation Plan, the Minister, if he or she believes that licensing is a reasonable measure, and after consulting with the Minister primarily responsible for forestry, may then declare a forestry area by Gazette notice. This will enable forest water licensing to apply to that area, however, this decision can be varied or revoked at a later stage if appropriate.

Similar to the process under the NRM Act when a water resource is first prescribed, forest water licences will be issued to forestry that have water allocations attached that reflect the water consumption of existing plantations (that is, to existing forestry water users). No purchase price applies to the forest water licences issued for existing plantations. The benefits of issuing these assets are that licences allow water to be traded to other industries if it is no longer required for forestry and vice versa. The other benefit is that the water use of commercial plantations can be adjusted if water available in the consumptive pool reduces in the future, for example as a result of drought, and it becomes necessary to reduce total water consumption to protect the security of the water resource.

Therefore, the forest water licensing approach allows for more transparent accounting and management given that all significant water users would be managed under volume-based water allocations and licensing. Once implemented, a forest water licensing system facilitates trade within the commercial forestry sector and between forestry and other water users to allow water to be traded in response to market conditions to its most effective use. Under the current system, water cannot be directly traded between the forestry sector and other water use industry sectors or vice versa.

Both the expanded forest water permit and forest water licensing systems have the capacity to manage all significant water uses, including the impacts of commercial forestry, on an ongoing basis, to protect the integrity and security of water resources, water entitlements and the environment, on an equitable basis.

Lower Limestone Coast Water Allocation Plan

The South East is the predominant region for commercial forestry in South Australia. It is also the area where significant forestry expansion occurred over the last decade. Since early 2010, an Inter-agency Taskforce involving the Department of Primary Industry and Resources SA, the Department of Treasury and Finance, the Department for Water, the Department of Environment and Natural Resources, and the South East Natural Resources Management Board has been working to support the development of a Lower Limestone Coast Water Allocation Plan that appropriately addresses the water resource impacts of forestry and a range of other water resource management issues. This Taskforce has also established a Reference Group to ensure that key stakeholders are involved in developing water resource management policy that balances economic and social outcomes with the long-term integrity of the Lower Limestone Coast water resources. Policy options under consideration for inclusion in the draft Lower Limestone Coast Water Allocation Plan include both an expanded forest water permit system and forest water licensing.

The review of the condition of the Lower Limestone Coast water resources, which has been overseen by the Taskforce, indicates that water is over-allocated and overused in some areas and that there is a risk that the water resources and associated ecosystems may further degrade if water allocation and use is not reduced. That means that it may be necessary for the Lower Limestone Coast Water Allocation Plan to include policy that reduces current levels of water allocation and use in some areas. The Taskforce and Reference Group are currently considering these matters to develop policy options that will deliver sustainable water resource management, while minimising the social and economic impacts on the South East region.

Reducing water allocations and use

It is important to recognise that there are important differences between commercial forestry water use and other licensed water that need to be recognised in designing forest water licensing and expanded forest water permit systems. Plantation water use cannot be turned on or off immediately like pumps used by irrigators. To estimate a plantation's average annual water use, rainfall, plantation species, location, rotation period, area, and management practices all need to be known. In light of these significant differences, the Bill provides for plantations to continue to the end of their rotations before water allocations are reduced, should this be required. Plantations can not be required to be clear-felled prematurely, either under an expanded forest water permit system or under forest water licensing.

Under the forest water licensing system, the Bill provides for the Minister to approve schemes proposed by forest managers that set out how and when they will achieve reduced water use, or obtain extra water to offset any reductions to water allocation that are applied after clear-felling. For example, a forestry enterprise may seek the Minister's approval for a scheme that proposes replanting an area that has been clear-felled, even though that clear-

felling has triggered a reduction to the water allocation, and meeting the reduced water allocation by not replanting another area that will be clear-felled in future. Other schemes could involve changing plantation management practices, for example planting species that use less water, or increasing buffers between plantations and watercourses or wetlands. The Minister will be open to approving a range of different schemes that may be proposed as long as they deliver sustainable water resources management within reasonable timeframes.

The Bill provides a high level of flexibility to the commercial forestry sector to manage their plantations in ways that optimise forestry outcomes, while ensuring that forestry water use is managed sustainably.

Accountability for forest water licensing

The expanded forest water permit system and the forest water licensing scheme proposed in this Bill are embedded in the statutory water allocation planning processes required by the NRM Act. This approach ensures that all affected parties, regional NRM boards and relevant state agencies, can provide input. The statewide policy framework on water resources and forestry that was released last year (*Statewide policy framework for managing the water resource impacts of plantation forests*) provides guidance to water resource managers and regional NRM boards on the most appropriate tools to apply to manage the impacts of commercial forests. However, final accountability will rest with the Minister responsible for the NRM Act. The Minister, after consulting with the Minister primarily responsible for the forestry, must make a specific decision to declare a forestry area before forest water licensing can be implemented.

In closing, I reiterate that this Bill adds a forest water licensing tool to the NRM Act, and provides for the forest permit system to be expanded to ensure that the water resource impacts of commercial forests can be managed within sustainable limits. The forest water licensing system, although intentionally different from the water licensing system that applies to other water users, has the additional advantage of integrating with the existing water licensing system to facilitate trade between forestry and other water users and to provide a simpler and more effective system for both Government and business.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause provides for the short title of the measure.

2—Commencement

The measure will be brought into operation by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Natural Resources Management Act 2004*

4—Amendment of section 3—Interpretation

This clause inserts new definitions associated with the provisions to be inserted into the principal Act by this Act. A key definition will be *commercial forests*, which will be taken to mean a forest plantation where the forest vegetation is grown or maintained so that it can be harvested or used for commercial purposes (including through the commercial exploitation of the carbon absorption capacity of the forest vegetation).

5—Amendment of section 76—Preparation of water allocation plans

The scheme envisaged by this measure will include the preparation of amendments to any relevant water allocation plan to identify appropriate principles and methodologies to determine the impact that commercial forests may have on the prescribed water resource and to identify the commercial forests that are to be subject to the licensing scheme.

6—Amendment of section 101—Declaration of levies

The Minister will be able to declare and impose a levy in relation to commercial forests that are subject to a licence under this scheme.

7—Amendment of section 104—Liability for levy

This is a consequential amendment.

8—Amendment of section 124—Right to take water subject to certain requirements

This amendment makes it clear that rights of access to water apply subject to any requirement to have a licence with respect to a commercial forest.

9—Amendment of section 125—Declaration of prescribed water resources

This amendment recognises that it may be appropriate for a proposal to declare a water resource to be a prescribed water resource under the Act to set out any proposals to introduce controls relating to commercial forests under new Part 5A.

10—Amendment of section 127—Water affecting activities

This amendment recognises that a water allocation plan may regulate the activity of undertaking commercial forestry.

11—Amendment of section 129—Activities not requiring a permit

This amendment relates to section 129(1)(e) of the Act (which provides that a permit is not required under this Part of the Act if the relevant activity constitutes development under the *Development Act 1993* and has been approved under that Act) so as to allow the regulations to exclude prescribed classes of activities from the operation of that provision.

12—Amendment of section 146—Nature of water licences

This amendment makes it clear that a consumptive pool may be affected by a water allocation attached to a forest water licence.

13—Amendment of section 152—Allocation of water

A water allocation will be able to be obtained from the holder of a forest water licence (subject to any conversion or adjustment under the provisions of any relevant water allocation plan).

14—Insertion of Chapter 7 Part 5A

This clause sets out a new scheme for the regulation of commercial forests under a licensing system in declared forestry areas.

15—Redesignation of Chapter 7 Part 5A

16—Redesignation of section 169A—Interaction with *Irrigation Act 2009*

17—Redesignation of section 169B—Interaction with *Renmark Irrigation Trust Act 2009*

These amendments provide for the redesignation of certain provisions.

18—Amendment of section 193—Protection orders

The scheme set out in section 193 of the Act to provide for protection orders will extend to the ability to be able to issue an order for the purpose of securing compliance with Chapter 7 Part 5A.

19—Amendment of section 195—Reparation orders

It will be possible to issue a reparation order to address any harm to a natural resource by contravention of Chapter 7 Part 5A.

20—Amendment of section 197—Reparation authorisations

It will also be possible to issue a reparation authorisation in relation to any harm caused to a natural resource by contravention of Chapter 7 Part 5A.

21—Amendment of section 202—Right of appeal

This is a consequential amendment.

22—Amendment of section 216—Criminal jurisdiction of Court

A number of offences under the Act—especially related to natural resource management—lie within the criminal jurisdiction of the ERD Court. This amendment will provide that an offence against new section 169L will also lie within that jurisdiction.

23—Amendment of section 226—NRM Register

24—Variation of Schedule 3A—The Water Register

These clauses contain consequential amendments.

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

At 17:48 the council adjourned until Tuesday 18 October 2011 at 14:15.