LEGISLATIVE COUNCIL

Thursday 20 October 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) (14:19): I move:

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

Motion carried.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 99 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.

HOSPITAL PARKING

The Hon. R.L. BROKENSHIRE: Presented a petition signed by 64 residents of South Australia requesting the council to urge the government to again allow free parking at the Noarlunga Hospital.

PAPERS

The following papers were laid on the table:

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

Reports, 2010-11—
Department of the Premier and Cabinet
Premier's Climate Change Council
Witness Protection Act 1996

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

Chief Psychiatrist of South Australia—Report, 2010-11
Phylloxera and Grape industry Board of South Australia—Report, 2011

QUESTION TIME

COURT FACILITIES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:23): I seek leave to make a brief explanation before asking the minister representing the Premier a question about Mike Rann's shameful legacy on justice.

Leave granted.

The Hon. D.W. RIDGWAY: The outgoing, disgraced and sacked Premier has been boasting about his record on law. He talks about the Dunstan legacy, which he has done his best to destroy. Meanwhile, I am told that John Doyle AC QC, the Chief Justice of the Supreme Court, the highest-ranking court in South Australia, is working in a wheelchair from his home. His Honour was struck by a vehicle in France the month before last. He was knocked unconscious and when he came to he learnt his leg had been broken, so he is in a wheelchair. I am happy to say he is otherwise fit and healthy and eager to discharge his important duties.

But the Chief Justice cannot hear cases, Mr President. Why, I hear you ask? Because he is a chief justice without a bench. To the disgrace of the whole state, there is not one courtroom in the Sir Samuel Way building on Victoria Square where the bench is accessible by wheelchair. Unlike

other buildings fronting Victoria Square—including the $100 million SA Water building and the State Administration Centre where the Premier, in his office, authorised the public spending of $68,000 for his farewell bash tonight—Chief Justice Doyle does not occupy one of these lavish offices.

Unlike the Premier, he does not even have his own toilet. To go to the toilet, the Chief Justice would have to leave his chambers, wheel himself to the lift—if it is working; the one and only lift on the first floor was out of commission for six months last year—then go to the adjacent building, where he will find a primitive amenity under the library near the old Gouger Street entrance.

That is still better than the public toilet. To get there, you have to go downstairs, up to the corner of Gouger and King William streets, walk 100 metres (or in his case, wheel himself 100 metres), turn into a lane and there you will find the nearest public toilets at the back of a building, accessed by yet another building. Then you would have to wheel or walk your way back to the courtroom, but you could not have washed your hands because there is no hot water there.

The buildings do not meet disability standards. There is disability access to only four of the 12 courtrooms and only one of the four provides disability access to the witness box. The Supreme Court had a reduction of eight judicial support officers. Budget cuts have forced it to reduce its registry staff (the people who deal with the public) by two and it has had to reduce opening hours because of that. There have been reductions right across the board in courts administration because the Premier has not provided enough money to administer justice. In the words of retiring Justice Bleby at his farewell speech, conditions are 'a disgrace'. My questions are:

1. What rotten miserable premier would let the system of justice run down almost to a halt while he spends taxpayers' money on his own wake?

2. When the Premier dismissed calls for improvements to the Supreme Court, did he scoffingly say that he was 'not interested in a Taj Mahal for justices'?

3. Does he find it ironic that during his June-July trip to India this year, the Premier was candidly photographed in the lobby of the Taj Mahal Hotel in New Delhi, where rooms cost $1,070 a night and which, incidentally, does have toilet facilities for disabled people?

The PRESIDENT: What a confusing question. The honourable minister.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (14:27): Indeed it was a most undignified question from the Leader of the Opposition. It was mean-spirited and churlish—a rambling, ranting rave—and it was beneath him. We should expect far more from the Leader of the Opposition, who one day hopes—and that day becomes further and further away—to be leader of the government in this place. It is no wonder that it will be such a long way off with behaviour like that.

Premier Mike Rann will go down in history as one of South Australia's greatest leaders. There is absolutely no denying that. His achievements have been many; they are vast. They cross South Australia's economic, social and environmental spheres—the full gamut. He will go down in history.

In terms of economics, I was looking at *The Australian* just before coming in here and it reported on figures that South Australia's economy grew faster relative to the Australian economy under the Rann government than it grew in the 12 years before. Under the Libs it grew at 73 per cent of Australia's growth, under Rann there was 84 per cent growth.

In terms of South Australia's employment, it grew nearly four times as fast under Rann than in the 12 years before. Employment grew four times as fast. There was 0.5 per cent growth under the former Liberal era versus 1.9 per cent growth under the Rann government. It has been driven by very fast-growing production sectors, particularly mining, other resources development, construction and electricity. In terms of mining, for instance, South Australia is currently home to four major operations, and today there are 16 approved with 30 or more in the development pipeline. Between 2002 and 2009 exploration in South Australia increased more than sevenfold—

Members interjecting:

The PRESIDENT: Order! You should be listening to these marvellous achievements that the minister is listing.

The Hon. G.E. GAGO: —primarily due to PACE, the Plan for Accelerated Exploration program. I am advised that, according to the latest ABS statistics, South Australia's mineral exploration expenditure for the last financial year increased to $254.6 million, up from approximately $167 million in the last financial year. We are now ranked third behind Queensland and Western Australia when it comes to mineral expenditure.

So, as I said, I think the opposition member's question was mean-spirited and churlish, and completely beneath him. I could stand here and list Premier Rann's achievements, I could spend all question time listing them; however, I will finish simply by saying that Mike Rann will go down in history as one of South Australia's greatest leaders.

COURT FACILITIES

The Hon. K.L. VINCENT (14:31): I have a supplementary question. If the Hon. Ms Gago had actually listened to and attempted to answer the actual question she would know that it was actually about Chief Justice Doyle's inability to access the bench in a wheelchair—

The PRESIDENT: You must ask the question.

The Hon. K.L. VINCENT: —and she would know that this is symbolic of—

The PRESIDENT: What is the question? You must ask the question.

The Hon. K.L. VINCENT: This is symbolic of the issues that are faced by many people with mobility issues—

The PRESIDENT: Order!

The Hon. K.L. VINCENT: If you would stop talking over me I could ask it.

The PRESIDENT: Order! The Hon. Ms Vincent must ask the question.

The Hon. K.L. VINCENT: Given that this is symbolic of—

Members interjecting:

The Hon. K.L. VINCENT: I am happy to waste all our time, if you like.

Members interjecting:

The PRESIDENT: We treat them all the same here. The Hon. Ms—

The Hon. K.L. VINCENT: Given that this is symbolic—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.L. VINCENT: Given that this situation of Justice Doyle is symbolic of all South Australians with mobility issues, does the minister really consider discussing this—

The PRESIDENT: You must ask the question.

The Hon. K.L. VINCENT: —undignified? Does the minister really consider this an undignified topic to discuss?

The Hon. S.G. Wade interjecting:

The PRESIDENT: The Hon. Mr Wade should put a sock in it.

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) (14:32): I have answered the question, Mr President.

Members interjecting:

The PRESIDENT: Order! If the opposition continues to ask Dorothy Dixers, it must cop the punishment and the answers.

The Hon. J.S.L. Dawkins: It is about time you stopped commenting from the chair.

The PRESIDENT: That's up to you. It is up to the President.

Members interjecting:

The PRESIDENT: Order! It is out of order that the opposition behaves like it does.

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

The PRESIDENT: The Hon. Mr Dawkins should put a sock in it too. The Hon. Ms Lensink.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.M.A. LENSINK (14:33): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Riverland Sustainable Futures Fund.

Leave granted.

The Hon. J.M.A. LENSINK: Yesterday in question time the minister announced a grant of $500,000 to Red Earth Farms to construct a 20 megalitre dam to irrigate 80 hectares of produce. The prospectus for funding from the Riverland Sustainable Futures Fund specifically refers to the Riverland's world-leading irrigation efficiency and, by implication, therefore suggests that funding would be best put towards the most efficient infrastructure, if it were to be funded. My questions are:

1. What assessment was made of the site to ensure that the operation would, in fact, be exceptionally water efficient?

2. Was the Department for Water and/or the SA Murray-Darling NRM Board consulted, and what was their advice?

3. Can the minister advise whether the dam will be lined with clay?

4. Is the minister aware that surface water storages such as dams can lose up to 20 metres of water through evaporation compared to using pipes?

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) (14:35): I thank the honourable member for her question and for the opportunity to talk about this most important fund. The Riverland Sustainable Futures Fund is a $20 million fund that is available over four years to assist organisations, industries and other businesses in allowing the Riverland to develop a sustainable, long-term economic future. As we know, they went through extremely challenging times and have suffered significantly from one of the worst droughts in history, followed by floods, and this fund is about trying to assist businesses back on their feet, to attract new businesses and investments into the area and also assist in the transitioning of businesses.

The fund has to be matched, so there are criteria around that. There are also extremely rigorous assessment criteria that deal with a wide range of financial, technical and risk management aspects to do with each of the proposals. All of the appropriate technical, financial and legal expertise is applied. There is a rigorous process that each application goes through to ensure that the financials do add up, that the projects are viable and that the risks associated with the project are minimal and that they are, in the medium to longer term, viable projects. We make sure that the project is able to achieve what it proposes to achieve.

Each of the applications go through that; this one did as well. A panel of different experts from various agencies are involved in that. It is on a case-by-case or application-by-application basis—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Dawkins will come to order.

The Hon. G.E. GAGO: It depends on what the proposal is and what technical aspects are involved as to what expert advice might be needed in that assessment. It varies case by case. I assure the member that I am confident that this application, like all others, would have gone through the appropriate scrutiny and met all the necessary rigour.

In terms of consultation and advice, the RDAs play a pivotal role on the ground assisting in attracting partnerships, in promoting the Riverland Sustainable Futures Fund, assisting people to put their applications together, providing advice and encouraging interest and activity in that area. We were very pleased that the applicant for this particular fund, although they have only been operating this particular business for two years, has been in that industry for something like almost 30 years—

The Hon. J.S.L. Dawkins: You said 40 yesterday.

The Hon. G.E. GAGO: Thirty, 40—I said 'around'. They have extensive experience in that field.

The PRESIDENT: The Hon. Ms Lensink has a supplementary question arising from the answer.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.M.A. LENSINK (14:39): Yes, notwithstanding the fact that the minister did not answer any of my questions, but arising from the answer: when she referred to rigorous assessment criteria can she confirm whether it was only RDA or whether any other water agencies were consulted and, if not, will she take it on notice and bring back replies, including to my previous questions?

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) (14:39): The Department for Water was involved in this assessment and I believe SARDI had input as well.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. S.G. WADE (14:39): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Riverland Sustainable Futures Fund.

Leave granted.

The Hon. S.G. WADE: According to the assessment criteria for the Riverland Sustainable Futures Fund, all applicants must be able to demonstrate that the project will have a positive and sustainable impact on economic activity in the Riverland through either diversifying the economy or building on existing competitive advantages.

Another essential criterion is that the project have strategic importance demonstrated by one of the following, including 'to contribute to the achievement of the targets associated with the five core strategies contained in the Riverland Regional Prospectus'. Minister O'Brien's ministerial foreword to the Riverland Regional Prospectus states:

> This Riverland Regional Prospectus recognises that whilst irrigated horticulture and agricultural production will continue to underpin the long term viability of the Riverland, the region's economic base must also evolve and diversify, building upon its strengths and competitive advantages.
>
> In order to achieve diversification, the Prospectus sets investment targets of an additional $500m and an increase in population of 7000 people over a 20 year period.
>
> Key objectives have been identified to achieve these targets in the areas of:
>
> - Pre-retirement, Retirement and Immigration;
> - Additional New Food/Beverage Manufacturing;
> - Tourism;
> - Education; and
> - Local Business Development

Yet, all of the money distributed to date from the Riverland Sustainable Futures Fund, in fact, has gone to projects that rely on irrigated horticulture. I understand that all of the grants, other than the one to JMA Engineering, have been to businesses relying directly or indirectly on irrigation. My questions are:

1. How is the minister's management of the Riverland Sustainable Futures Fund supporting diversification away from irrigated agriculture?

2. Will the minister reassess the criteria to ensure that diversification opportunities in key prospectus sectors including retirement and tourism are not inhibiting viable diversification opportunities?

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) (14:41): I thank the honourable member for his important question and, again, the opportunity to talk further about this very important

government initiative and support for the Riverland area. After all, let us get back to the bottom line: this is about helping a community, helping a region, get back on its feet and that is exactly what this fund is doing.

Indeed, the prospectus for which the South Australian government provided funding did identify five key potential growth areas as the member outlined: pre-retirement and retirement living, value-added food and beverage processing, tourism, education and local business development. Indeed, additionally, there were a number of reports that fed into this and helped inform the prospectus including a Scholefield report that listed and outlined the opportunities around horticulture in the area. I suggest that the honourable member read that because he clearly has not. It talks about enormous opportunities in the Riverland area particularly for protected horticulture and it actually identifies a range of different crops and flowers, etc., as well that they analyse as having potential and opportunity.

Diversification is not just about the diversifying out of horticulture. It is a horticulture centre. Water is their lifeline and it is important that we are able to develop an industry there that takes full use of the water that is available there, albeit that we need to be able to reduce reliance on water.

That is one of the reasons why we have invested money from these funds in the project, for instance, that the Hon. Michelle Lensink referred to which is about improving irrigation to a particular crop—the seedless watermelon—which is, in turn, produce that is in itself helping to diversify horticulture in that region so that it no longer becomes reliant on just a narrow range of produce such as citrus and grapes, but a far broader base in horticulture, such as seedless watermelons, feijoas and wholesale nursery plants. So, biological control agents was another. Also, the increasing of packing sheds and looking at strategies to market out into fresh and dried apricot industries. The honourable member does not have a clue when he refers to diversification. It is not just diversifying out of horticulture—obviously that is one part of the strategy—but diversifying within horticulture as well.

The other point is that it is not surprising, given the dominance of horticulture in that region, that most of the applications that have come in are around horticulture. Basically, the number of applications that I have received that look beyond that have been limited or are applications that have not been able to fulfil the criteria. Where they have failed to do that, we have attempted, where we can, to assist that applicant to go away and revisit and attempt to address those issues of concern to bring their proposal up to scratch or to meet the eligibility criteria of the fund.

The RDAs also play a critical role. These are local people from the Riverland who live, work and breathe the Riverland. They have a breadth of knowledge and a wealth of experience and are involved across a wide range of sectors. As I said, their role is to work with and identify local businesses and organisations on the ground, to inform people about the sorts of opportunities and to promote their prospectus and also their roadmap for the area so that we can generate a greater breadth of interest in this grant.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S.L. DAWKINS (14:47): I have a supplementary question. Will the minister concede that the significant cuts to PIRSA research and development funding have restricted the potential to develop new horticultural crops and varieties ideally suited to the Riverland climate and soils?

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) (14:47): I am speechless, Mr President, absolutely speechless. I am gobsmacked. The Rann government has done more for regional South Australia than the former Liberal government. We stand on our track record. We have done more for our regions than the former Liberal government.

The Hon. D.W. Ridgway: The only thing you stand on is the hands of progress.

The Hon. G.E. GAGO: Well, you stand on your head.

The PRESIDENT: Order!

The Hon. G.E. GAGO: Thank you, Mr President. There were cuts. There was a program of savings that this government put in place in response to the global economic crisis and the issues around that. Every agency had to wear cuts, and we were open and transparent about that

and very clear about the reasons why. Every agency had to share in that pain, and that pain is about making sure that we have a prosperous long-term sustainable future.

The Riverland has received, if you like, the lion's share—a $20 million fund, plus it still has access to all those others, the RDIF funding grants, etc. There is a plethora of assistance available to it, so it is absolutely outrageous. As I said, I stand by the track record and the commitment that this government has given to regional South Australia.

SERVICE SA

The Hon. I.K. HUNTER (14:49): I seek leave to make a brief explanation before asking the Minister for Government Enterprises a question about Service SA.

Leave granted.

The Hon. I.K. HUNTER: Service SA is tasked with the job of providing convenient access to comprehensive government information and services to the whole community. We have heard on several occasions how Service SA is striving to deliver on excellence in service delivery.

Members interjecting:

The PRESIDENT: Order! The honourable member might want to repeat that. I did not hear a thing.

The Hon. I.K. HUNTER: Indeed, sir. Service SA is tasked with the job of providing convenient access to comprehensive government information and services to the whole community. We have heard on many occasions how Service SA is striving to deliver on excellence in service delivery to the citizens of our state. Will the minister update the chamber on some recent recognition of performance in this area for Service SA?

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) (14:50): I thank the honourable member for his most important question and his interest in forward-thinking technology, which is a forte of his. He might not know a lot about running machines but he knows a lot about technology.

Previously, I have talked about the single entry point to government which has been designed to make services and information much more accessible for community and business. This website has gone from strength to strength and now brings together more than 400 sites across government. This means that consumers now have 24-hour, seven day a week access to government information, products and services. I am very pleased to advise the chamber that the success of this website has recently been internationally recognised.

At the FutureGov Summit Awards in Malaysia, Service SA received the FutureGov Public Sector Organisation of the Year—Oceania award for excellence and innovation. I am told that this represents an international benchmark. I am delighted that this website has been acknowledged in this particular esteemed way. It is, again, another success story for the very dedicated Service SA staff.

You would also be aware that I have spoken previously in this place about the innovative EzyReg iPhone and Android applications. These applications put the state government ahead of the rest of the country when it comes to making vehicle registration easier and faster with a smartphone. I know that members opposite, especially the Hon. Tammy Franks, will be really pleased to hear that the EzyReg iPhone app has now been recognised nationally. I am pleased to announce that in September the EzyReg iPhone app won an award, Best Government Services App at the 2011 Australian Mobile Awards, otherwise known as the Mobies.

The Australian Mobile Awards recognise the best of the Australian mobile industry and aim to reward the creativity and insight of both individuals and business at the cutting edge of the industry. So, this award represents another recognition of excellence for Service SA employees. The Australian Mobile Awards are given in a number of categories, including: government services, news, entertainment and information. The awards are decided by a combination of public vote and detailed judging panel of review, comprising a variety of leading figures from across the mobile industry.

The EzyReg iPhone application is the first of its type for an Australian government agency, providing vehicle registrations and the ability to be able to check registrations from an all-purpose mobile app. One of the most exciting elements of the iPhone app is the barcode scanning option,

which allows customers to use the phone's camera feature to pre-load vehicle and client information by simply scanning the barcode on the renewal notice. Of course, options for manual entry are also included for those without their bill or a suitably equipped phone.

I am pleased to advise that after around four months since the launch the applications have received over 8,600 iPhone renewals, approximately 1,080 Android renewals, and over 208,000 registration check inquiries for both the iPhone and the Android. Even the Hon. Tammy Franks must admit that these are impressive figures which demonstrate that the whole community is finding this app an extremely useful tool. These figures also demonstrate that this mobile technology is becoming pervasive across all sectors of the community. I would particularly like to take this opportunity to congratulate Service SA on this wonderful achievement and acknowledge the hardworking and very dedicated and committed team at Service SA.

SEX TRAFFICKING

The Hon. R.L. BROKENSHIRE (14:55): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about sex trafficking.

Leave granted.

The Hon. R.L. BROKENSHIRE: I begin by observing that Tuesday 18 October was Anti-Slavery Day, observed in particular in Europe and the United Kingdom where it is observed via a specific act of parliament.

Family First was concerned to see a well-researched story by the ABC's *Four Corners* program last week concerning sex trafficking in Sydney and Melbourne. In short, the allegation by the program was that Asian women are being tricked into coming to Australia on visas arranged by a Taiwan-based syndicate. Only upon arriving in Australia do these young women discover that they are not here to learn English or to get a job but, rather, to be held against their will as sex workers in Australian brothels.

I know from a briefing given to Family First by police in the past that there is intelligence that sex trafficking occurs in South Australia but it is very difficult to police as crime syndicates move the trafficked women quickly between brothels. *Four Corners* also claimed that the Australian Federal Police have not asked Taiwanese detectives for the information they had collected on the syndicate, although, to be fair, the Australian Federal Police representative on the program said that they had operational reasons for that approach.

Four Corners identified one man from the syndicate who allegedly informs the trafficked women that they are really here for sexual services and then physically prevents them from escaping. *Four Corners* claim that this man had a conviction for being involved in a brothel in South Australia in the past. In concluding this explanation, I note that 2 December is the United Nations International Day for the Abolition of Slavery and, therefore, I have three questions for the minister:

1. Has the minister discussed sex trafficking with the Office for Women?

2. Will the minister commit to investigating the extent of sex trafficking of women in South Australia?

3. Will the minister seek an urgent meeting with the new premier to ensure that his government implements measures to ensure that everything that can be done will be done to prevent sex trafficking in South Australia?

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 important question. Indeed, sex trafficking is an issue but I do not believe it is a significant issue for South Australia. I have certainly never, to the best of my knowledge, received any complaints or am aware of any complaints that have come through my office.

I have had general discussions with police. I meet with the commissioner and/or his representatives from time to time and we discuss a wide range of various policy issues at those meetings. I have had discussions with him about prostitution and areas of concern around that from a policing perspective. The commissioner did not raise sex trafficking as an issue of particular concern with me.

I am more than happy to check the complaints and to check with police whether there is a particular concern here in South Australia. As I said, to the best of my knowledge, it is not a

particular issue of concern here. However, I will certainly agree to check to see whether that is so or not.

ASBESTOS SAFETY DISPLAY

The Hon. G.A. KANDELAARS (14:59): My question is to the Minister for Industrial Relations. Can the minister inform the house about the asbestos safety display at the recent Adelaide Home & Gardening Show?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:59): I thank the member for his question. I recognise that the Hon. Gerry Kandelaars was a very good trade union official for quite a number of years for his organisation.

From Friday 14 October to Sunday 16 October, the South Australian Asbestos Coalition, in conjunction with SafeWork SA, presented a display of asbestos awareness in the home at the Adelaide Home & Gardening Show which was held at the Adelaide Showground. The home show display provided expert advice to home renovators on what to look for and how to manage asbestos should they identify it on their properties. A recent study published by the *Medical Journal of Australia* found that home renovations are causing an alarming surge in asbestos-related disease in Australia, especially among women. It is findings like this that highlight the importance of an initiative such as the Asbestos Awareness in the Home display presented by the South Australian Asbestos Coalition and SafeWork SA.

The display was staffed by members of the South Australian Asbestos Coalition which has representation from unions, research bodies, medical groups, victims associations, the asbestos removal industry, SafeWork SA and WorkCover SA. SafeWork SA occupational health and safety inspectors answered questions and provided advice and information to increase public knowledge about the dangers of asbestos. A number of free publications were also made available at the display, including SafeWork SA's publications *Asbestos and the Home Renovator* and *Asbestos in the Workplace*.

The South Australian government remains committed to asbestos safety. We have introduced important changes to the law and have raised community awareness through public forums, workshops and the provision of informed material. Through SafeWork SA, and with the guidance of the Asbestos Advisory Committee, the government has coordinated the Asbestos Safety Action Plan, which aims to reduce illness and disease caused by exposure to asbestos and provides a comprehensive community-wide plan of attack for the identification, management and safe removal of asbestos.

The plan represents the government's ongoing commitment to building asbestos safety awareness in the workplace and in the community. I will be releasing the third progress report of the Asbestos Safety Action Plan, which details progress for each of the five strategy areas (communication, education, partnerships, interventions and research) identified in the plan, during Asbestos Awareness Week which is held from 21 November to 25 November.

WORKCOVER CORPORATION

The Hon. R.I. LUCAS (15:02): I seek leave to make an explanation prior to directing a question on the subject of WorkCover to the minister representing the minister for WorkCover.

Leave granted.

The Hon. R.I. LUCAS: Recent national surveys have shown that the WorkCover scheme in South Australia has the worst return-to-work figures or records of any scheme in the nation. That has continued for a number of years now and continues even after the government's amendments of 2008.

Page 1809 of this year's Auditor-General's Report lists related parties' transactions with members of the board of WorkCover. In relation to Ms Sandra De Poi and a company in which she has an interest (De Poi Consulting Pty Ltd), the Auditor-General reports that for the provision of rehab and medical services Ms De Poi's companies, this year, received contracts to the value of $8.4 million—increased from $5.9 million in the previous year and increased from $3.1 million just two years ago. The Auditor-General reports that Ms De Poi's company or companies, in two years, have increased their contracts with WorkCover, or the claims agent for WorkCover, by $5.3 million to a total of $8.4 million or 171 per cent.

The Auditor-General does record the total expenditure by WorkCover on vocational rehabilitation and medical services. The Auditor-General's Report showed that in the same two years the increase in expenditure on medical services was a mere 5.8 per cent and the increase in expenditure on vocational rehabilitation services in the same two years was 37.8 per cent, compared to the increased value of Ms De Poi's company's contracts of 171 per cent.

The Hon. D.W. Ridgway: She is Leon's girlfriend, isn't she?

The Hon. R.I. LUCAS: I think partner in life, perhaps; I am not sure what the correct descriptor is. On 10 March this year I asked a number of questions, two of which I repeat, to the former minister for WorkCover, the Hon. Bernard Finnigan:

1. Have any concerns been expressed to the minister about the recent significant increase in the value of contracts being awarded to Ms De Poi's companies, and if yes, what action, if any, did he take?

2. What evidence, if any, is there that the return-to-work outcomes or other outcomes being achieved by Ms De Poi's companies are better than the scheme average and most other providers for each of the 2007-08, 2008-09 and 2009-10 financial years?

I never received a response to those questions from the Hon. Bernard Finnigan or, indeed, from ministers who followed the Hon. Bernard Finnigan in that particular role. My three questions to the new minister responsible for WorkCover are:

1. Was any work undertaken by the previous ministers for WorkCover to provide answers to the questions that I asked on 10 March and, if so, can they be provided?

2. Have any concerns been expressed to the current minister about the recent significant increase in the value of the contracts being awarded to Ms De Poi's companies? If yes, what action, if any, has he taken?

3. What evidence, if any, is there that the return-to-work outcomes, or other outcomes being achieved by Ms De Poi's companies, are better than the scheme average and most other providers for each of the 2007-08, 2008-09, 2009-10 and now 2010-11 financial 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) (15:06): I thank the member for his questions and will refer them to the relevant ministers in another place and bring back a response.

RANN, HON. M.D.

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) (15:06): I table a copy of a ministerial statement titled 20 October 2011 made earlier today in another place by the Premier Mike Rann.

QUESTION TIME

CHILD PROTECTION RESTRAINING ORDERS

The Hon. A. BRESSINGTON (15:07): I seek leave to make a brief explanation before asking the minister representing the Attorney-General questions about the operation of the child protection restraining orders.

Leave granted.

The Hon. A. BRESSINGTON: As you may recall, in late 2009 this parliament passed the Statutes Amendment (Children's Protection) Act, which introduced the child protection restraining orders, which in turn came into effect on 1 August 2010. Given that these orders have now been in operation for over 12 months, I ask the following questions of the Attorney-General:

1. In the 12 months since the commencement of the child protection restraining orders, how many applications for such an order have been made to the Magistrates Court by the police in accordance with section 99AAC subsection (1)(a)?

2. How many applications have been made by parents or guardians in accordance with section 99AAC subsection (1)(b), and of those how many were not supported by the police under subsection (7)?

3. Of the total number of applications, how many of those applications have been successful?

4. How many ancillary orders have been made under section 99AAC subsection (6)—Providing for the temporary placement of the child, and how many, if any, have directed the child into the custody of the minister?

5. If any orders have been made under subsection (6) directing the child placed into the custody of the child's parents, is the Attorney-General aware of any cases in which the police have given effect to that order by returning the child to the parents' home?

6. Has the Attorney-General ordered a review of the operation of the child protection restraining orders, given that it has been 12 months? If not, will he do so and furnish the parliament with a copy of the subsequent report?

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) (15:08): I thank the honourable member for her questions and will refer them to the Attorney-General in another place and bring back a response.

FAR NORTH REGIONAL DEVELOPMENT

The Hon. CARMEL ZOLLO (15:09): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Far North of our state.

Leave granted.

The Hon. CARMEL ZOLLO: The vastness of the north region presents challenges for those who live and work there, as well as the government, which seeks to promote regional development in the area. Some of those challenges, as we know, have been romantically depicted in poetry and song, but, in addition to extreme heat, drought and huge distances, there are significant economic opportunities in the vastness of our Far North. Can the minister advise the chamber about some of the developments taking place in the Far North?

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (15:09): I thank the honourable member for her important question. I recently had the great pleasure of getting out into one of our largest regions of South Australia, the Far North. The Far North region covers nearly 80 per cent of the state and incorporates two iconic tourist regions, the Flinders Ranges and the outback. It also includes a large proportion of the state's mineral exploration regions, so there was a lot to see and a lot of issues to deal with, as well as enormous distances to cover.

I was able to meet with RDA Far North board members, who outlined the strategic opportunities and strengths of the region. The committee helps guide development in the area through its regional roadmap. The RDA also helps businesses and communities access assistance from government, such as the $4 million over four years from the Enterprise Zone Fund for Upper Spencer Gulf and Outback. RDA Far North board members discussed with me what they see as the key opportunities for the region. They clearly appreciate that the expansion of the mining sector will help deliver real benefits for the region, and the committee is looking to ensure that communities in the region can link into the expansion and maximise benefits.

Port Augusta is obviously a central city in this region and is already an important service centre for the diverse communities in the region. I took time to visit some of the businesses which currently—or potentially will—play a vital role as the metals and mining exploration sector expands. I met with Michael Kuhn from Max Crane and Equipment Hire (SA), which has vast knowledge in lifting and rigging capabilities. With its highly trained operators, it is able to meet the needs of businesses in most areas and most terrains. This business has an important supporting role in the development of mining, and I understand that it is just about to commission a new 400-tonne crane to help meet that growing demand for services.

I had the pleasure of visiting Sundrop Farms, which uses remarkable technology to produce fresh water for agriculture in the arid lands. It is a horticulture centre basically in the middle of a desert. The project aims to use desalinated sea water in combination with the obviously almost unlimited sunlight, for which the region is famous, and modern greenhouse technology. Together, these elements are planned to lead to the production of high quality crops such as tomatoes,

capsicums and cucumbers, and I was interested to listen to their plans for expansion. This wonderful initiative was assisted in 2009-10, when the organisation received just over $100,000 from the RDIF fund.

I met with Lindsay Hill of Alinta Energy, who provided me with an insight into the power generation carried out at the Port Augusta site through the Playford and Northern stations. It was particularly interesting to see the plant during its programmed maintenance and to gain a sense of the evolution of the plant and the technology used to operate it.

I went on to Olympic Dam and met with Val and her son Darren Lamb, and manager Lee Emmett. Val, together with her husband, Ken Lamb, who is quite famous, runs Olympic Dam Transport, or ODT. Over the last two decades he has built up his family business from, I believe, one truck to what is now a significant supplier of services and materials to the mining and pastoral industries. I understand that ODT has used local knowledge and taken the opportunity to grow and is now an employer of over 100 people with an attached recruitment company.

While at Olympic Dam I was also privileged to meet with Ray Winter, the northern areas manager of Cowell Electric. This South Australian success story is run by Sue Chase, the 2010 Advantage SA Regional Awards Westpac Large Business Award winner. Cowell Electric is a powerline construction and electrical contracting company with a rich and diverse history based on Eyre Peninsula in South Australia. It has also developed a strong base in mining and resource industries through its maintenance work for both miners and the support sector. It is doing some very leading work in green technology.

I mentioned earlier that another important sector in this region is tourism. Wilpena Pound is a significant domestic and international tourism destination providing a great range of accommodation, tours and scenic flights, and I met with Wilpena Pound resort manager, Matt Coxon. I received an update on the tourist season and its experience as a longstanding provider of a great tourism experience. It was apparent that the great attractor of Lake Eyre is viewed as a very significant driver to increase tourism numbers coming to Wilpena as part of the bush or outback experience.

We visited Coober Pedy, which included a meeting with several members of the council, as well as the council CEO, Trevor McLeod. I was able to inspect the recently opened airport terminal, which is a fabulous new facility, and the council has done a great job in managing that project and should be congratulated.

I visited IMX Resources and OZ Minerals, two quite different mining operations in our Far North. IMX Resources' mining operations are based some 50 kilometres south-east of Coober Pedy. However, they have developed a camp within the town boundaries, which helps to ensure that some of the economic benefit of mining employment is harnessed in the town of Coober Pedy.

I was also able to tour IMX Resources' site to see the mining and crushing operation and hear from management about their plans for future exploration of the resource. At the Prominent Hill mine site I was able to see firsthand how the OZ Minerals' team have been able to accelerate their operations in the past two years.

Travelling the vast distances between settlements in our Far North is not always easily done and air travel in the region is critical. One such supplier of transport for miners and residents, tourist flights and mustering services for pastoralists is Wrightsair. This company is based at William Creek, was originally established in 1990 and provides a wide range of services to outback South Australia as well as into the Northern Territory, Queensland and New South Wales. Its founder, Trevor Wright, is a highly skilled pilot and passionate about the outback and certainly a fount of invaluable information. It was inspiring to hear how his business has grown to a fleet of some 18 aircraft servicing the region.

As members can see, there are exciting times ahead for our Far North region. We need to make every effort to harness this opportunity. The RDA Far North certainly has this exciting opportunity firmly in its sights.

RIVERLAND SUSTAINABLE FUTURES FUND

The Hon. J.S. LEE (15:18): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Riverland Sustainable Futures Fund.

Leave granted.

The Hon. J.S. LEE: The Riverland community has raised concerns through the local member, the member for Chaffey in another place, Mr Tim Whetstone, regarding the application and decision processes of the Riverland Sustainable Futures Fund. Given that the Riverland Sustainable Futures Fund of $20 million over four years, which the minister has mentioned a number of times in this chamber, was a 2010 election promise by the government—it is about 40 per cent into the funding period—it is reasonable for the community and industry to expect that almost 40 per cent of the funding will have been committed to assist the Riverland. This is not the case.

After going through all the government's media releases and counting all the projects that have been approved, the figure shows that only about 12 per cent of the money has been allocated. I refer to the minister's statement on Wednesday 19 October in this chamber as follows:

> Approval of the Red Earth Farms project brings to around $2.5 million the amount committed for projects to a total value of just over $5.3 million.

My questions to the minister are:

1. Can she confirm that $2.5 million is indeed what the government has committed so far?

2. Can she clarify that, when she mentioned a total value of over $5.3 million, she is not trying to inflate the figure to mislead honourable members in this house in any way?

3. With only 12 per cent of the Riverland Sustainable Futures Fund being allocated at this stage, the Riverland is at risk of losing the potential ability to access the $20 million fund. Will the minister listen to the concerns of the Riverland community and review its decision-making process and restructure the application procedures in any way?

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) (15:19): It is like a worn-out old record. I have answered this question on numerous occasions in this place. There are just screeds and screeds on this in *Hansard*. I have answered in detail—

The Hon. R.P. Wortley: Exhaustively.

The Hon. G.E. GAGO: —exhaustively—but I am happy to do it all over again. It is obvious that the opposition have run out of original questions, and just keep rehashing the old ones. They just go through *Hansard*, dust out the old questions and start out all over again.

I cannot believe that the Hon. Jing Lee is really suggesting that the application process should not require a rigorous analysis of the financial capabilities of the applicants, the risk assessment and the capabilities of the applicant to deliver what they are proposing. I cannot believe that she is sincerely asking me to be irresponsible and somehow cut corners and allow dud applications to go through.

She would know, because I have gone through this several times in this place, that we have refined a process. It is a process that is timely and extremely thorough, and I have been through that many times. It is thorough because $20 million is a large amount of taxpayers' money. The mums' and dads' taxes are paying out these grants, so there must be rigour attached to it.

We have worked very hard with the agency to balance being able to expedite processing these applications while at the same time applying absolute rigour. To be then standing up in the chamber and talking about the amounts that are spent and the suggestion that somehow there is some conspiracy going on—I have been completely open and transparent. I have listed the number of projects. I have listed the amounts that have been committed. Time and time again, I have come into this place—

Members interjecting:

The PRESIDENT: The opposition might want to listen. They won't have to ask the same question next week or the week after. The honourable minister.

The Hon. G.E. GAGO: Thank you for your assistance, Mr President. Every single time, on numerous occasions, I have come into this place and listed the projects that have been accepted and the amount.

The Hon. S.G. Wade: What's the current figure?

The Hon. G.E. GAGO: The current figure sits just over $2 million.

The Hon. S.G. Wade: Well, you said 2.5 yesterday.

The Hon. G.E. GAGO: Well, 2.5. I have listed it so many times in this place. I said over $2 million. I have put this on the record. I have put the amount on the record so many times; they are like a broken old record.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: I have been completely open, completely transparent. I have also been completely up-front and honest about the fact that this fund is underspent. That is well documented and well recorded. I have not hidden from that. I have also made it very clear that carryovers will occur within the same program period—the four years that was part of our election commitment. All of that is on record several times. As I said, there is screeds and screeds of it in *Hansard*. In terms of the particular projects, as I said, each one of those have been documented and the amounts have been put on the record.

The reason that the funding got off to a slow start—and I have put this on the record in the past—is that the building blocks had to be put in place. The roadmap and the prospectus needed to be done. There needed to be building blocks put in place so that it was very clear and transparent for applicants to be able to see where opportunities lay. Those building blocks are now in place and, as we can see, the number of applications has been increasing and I am regularly announcing new ones.

ANSWERS TO QUESTIONS

ALEXANDRIDES, MR N.

In reply to the **Hon. R.I. LUCAS** (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): I am advised that:

The Chief of Staff to the Premier did make application to have 20 days of his unused accrued annual leave paid out. The gross value of the payment was $13,433.94.

The application was approved by the Premier. As indicated previously the gross value of the payment was $13,433.94.

Mr Alexandrides provided information regarding the extenuating circumstances which necessitated the request to have the proportion of his accrued annual leave paid out. After consideration of the circumstances put forward by Mr Alexandrides, and on independent legal advice, the Premier was satisfied that support for the request to pay out a proportion of his unused annual leave entitlements was warranted.

Following the resignation of the Hon Bernard Finnigan MLC from Cabinet, his former ministerial office continued to provide professional and ministerial support on an interim basis to the two Ministers who were appointed by the Governor in Executive Council to the portfolios of Industrial Relations, State/Local Government Relations and Gambling. When the Hon Russell Wortley MLC was appointed by the Governor in Executive Council to the Cabinet, the office in question and its staff were assigned to him as the new Minister.

SMALL BUSINESS COMMISSIONER BILL

In committee.

Clause 1.

The Hon. G.E. GAGO: As indicated in my second reading summary, a number of questions and issues were raised during the second reading debate that I committed to providing answers for, and I will use clause 1 as an opportunity to provide those answers. In response to a question asked by the Hon. Ann Bressington, I have been advised that it is clear that section 51AEA of the Competition and Consumer Act 2010 allows the state to enact a law provided that the state law is not directly inconsistent with the Competition and Consumer Act 2010.

As a matter of constitutional law, any South Australian regulation must and will be directly consistent with the Competition and Consumer Act 2010. South Australian regulation will be directly consistent if it directly replicates or complements the Competition and Consumer Act 2010. There may be areas at the commonwealth level in which there is no equivalent code of conduct, such as, for example, farm machinery, and, in these areas, the state may introduce codes dealing with these areas given the absence of a commonwealth code.

In the event that industry consultation regarding an existing commonwealth code or codes reveals or confirms that there is a gap, for example, in the protection afforded franchisees, the state reserves its right to protect those franchisees in a manner that complements the commonwealth code following advice from crown law. It would not be appropriate for the South Australian parliament to restrict its ability to protect its South Australian franchisees where it has the constitutional power to do so.

In response to a question asked by the Hon. Rob Lucas regarding the commissioner having the power to require any further information, I am advised that the commissioner, under these reforms, will administer the Retail and Commercial Leases Act 1995. Under this act, there are clear functions, legislation and parameters which the commissioner must adhere to.

The commissioner's aim for parties in dispute is to attempt to resolve the complaint using the various powers that the commissioner has. It is expected that the commissioner will request information voluntarily in the first instance with a view to trying to resolve a dispute. We would expect in the vast majority of cases that this will be provided voluntarily, given that one would expect parties to act in good faith to resolve the dispute. In any mediation process, there will be disclosure of information if it is necessary for a mediation to be successful.

Under the mediation processes, any statements or admissions made in the mediation are not admissible before a court and are protected through standard confidentiality agreements entered into between the parties and mediators before mediation commences. The commissioner and staff are also bound by strict confidentiality requirements under provision 13 of the Small Business Commissioner Bill 2011, and there are strict penalties if the commissioner divulges information improperly.

In relation to the question asked about restrictions on the commissioner in terms of sharing information with parties to the dispute, I am advised that when a party requests the commissioner to investigate and mediate a dispute and make the written application to do so then there will be information provided to the party that will outline along the lines of, and I quote:

> The details that you provide in this application and any accompanying documents may be forwarded to the respondent. Submission of this referral form indicates your agreement to this.

Parties will also be advised that they may wish to obtain legal advice in a mediation context. Participants will be expected to sign confidentiality arrangements pertaining to the information that they are provided with prior to mediation. All of these details and information on the processes to be used will be provided on the commissioner's website and other information literature that will be made available.

In relation to the question asked about the commissioner's restrictions to require information, I am advised that as a general principle it is expected that the parties will willingly assist the commissioner. This will depend upon the individual circumstances. Any formal requirement for information by the commissioner would normally only occur as a last resort. Parties have a clear choice: they can act reasonably and with good business conduct or, if the commissioner deems it necessary, be required to provide the information so that the commissioner can carry out his or her functions. If a party thinks that the request is unreasonable, it can be challenged by judicial review or they can request the Ombudsman to look into the matter.

In relation to questions asked about franchisor and franchisee disputes, I am advised that the commissioner will at first seek voluntary disclosure of information by each party as it relates to the matter before the commissioner. Any request for information must be relevant and necessary to the commissioner assisting the parties or enforcing a code of conduct. Each matter before the commissioner will vary and the information that the commissioner may seek will vary according to the circumstances.

The commissioner will only be seeking the minimum information required to help resolve a dispute or enforce a code. The commissioner, as a matter of administrative law, cannot ask for information that is irrelevant or unconnected to the matter before the commissioner and any

attempt to obtain such irrelevant information could lead to a court challenge of a complaint to the Ombudsman.

In relation to the question asking if the commissioner can require tax records and other information from a tenant in a residing tenancy dispute, I am advised that it is not expected that the commissioner would be seeking tax records as such records are generally not in dispute between a franchisor and franchisee, but rather is a matter between the relevant party and the Australian Taxation Office. The commissioner does not have any role in a matter involving a party and the Australian Taxation Office. The commissioner can only deal with local and state government bodies, he or she has no jurisdiction over commonwealth matters.

In relation to the question about obtaining information on potential offers for the sale of a business, I am advised that one would not ordinarily expect that this information is relevant to an individual dispute. It is recognised that there is a possibility that the landlord may have represented to the tenant that a rent increase is due to other potential offers on the site. In these circumstances, it would be expected that the landlord would voluntarily verify their statement to the commissioner in confidence, as per clause 13 of the bill. Such information must be kept confidential to the commissioner and not divulged to the tenant unless, for example, the landlord agrees.

In relation to the question about the commissioner having the power to direct a landlord to deliver a nine-year lease arrangement, I am advised that, no, it needs to be made clear that the small business commissioner is not an arbiter of individual disputes. The commissioner cannot impose on the parties a commercial contract. The commissioner can assist the parties towards a commercial agreement but whether a commercial agreement is entered into (and the precise terms and conditions) is a matter for the commercial parties.

In relation to the question about specific powers in the bill, I am advised that there is no guarantee that the commissioner can successfully assist to resolve any commercial dispute. At the moment there is no easy process for businesses if they cannot resolve a dispute themselves unless they have, obviously, deep pockets and want to pursue litigation.

The significant evidence from the Victorian commissioner over eight years is that the commissioner's office can help to resolve about 80 per cent of all disputes. This is very significant as not only is it less costly, it is more timely than a court process—not to mention reducing the stress and anxiety that often disputes cause to all parties. It also often ensures that the party can continue to trade, employ people, pay taxes and so on. So there is, obviously, a wider economic benefit, as well.

In relation to the question about a code of practice for farm machinery and SAFF, I am advised that it is important to understand how industry codes of conduct will be developed. If a proposal is put forward from an industry participant or groups that there is a need for an industry code in a particular area to be developed, then obviously there needs to be an evidence base to support that proposition. In the case of farm machinery there is a body of work, especially the 79th report of the Economic and Finance Committee from 2009, to draw upon, as well as the submissions made to the inquiry and any new submissions made to the commissioner.

The development process is likely to have a number of common elements and a consultation process will be critical. It is proposed that the commissioner develop a discussion paper regarding the process envisaged for the development of industry codes as early as possible so that there is clarity and detail of the process to be used to consult and engage stakeholders.

It should also be noted that initially, once a code is developed, it may not be prescribed as historically many codes that have been developed are initially voluntary to allow a sector to work through any issues before they become mandatory or prescribed. This is consistent with the general approach that the commissioner would take in performing his or her functions in a way that promotes better relationships and conduct between business and between businesses and government bodies.

The ministers for small business met with the South Australian Farmers Federation and discussed the development of industry codes with that organisation. It is anticipated that the commissioner will commence consultation with the South Australian Farmers Federation and other industry participants to start the process of industry code development in a timely manner once the legislation is passed.

The government intends for the commissioner to work with the industry in a timely and meaningful way. The Hon. Robert Brokenshire and the Hon. John Darley have indicated their

willingness to be involved in the industry codes for this sector of the economy. Obviously, the commissioner will engage with other members in either chamber who might wish to participate in the industry development process. All industry codes that are developed will be monitored by the small business commissioner, if it is a mandatory or prescribed code, and enforce that code under the Fair Trading Act.

In relation to the question about the type of codes of practice that are envisaged by the government, I am advised that industry codes seek to set out the appropriate standards of conduct with which all industry participants will comply. This may involve disclosure requirements, online specific practices or conduct that is expected to be adhered to, and dispute-resolution processes. Areas are likely to include franchising, the farming sector and the services sector. This legislation provides the framework for the industry code reforms.

In relation to the question about negotiations between parties, if there is to be a code of practice for farm machinery, I am advised that it is expected that the major farm machinery manufacturers will adhere to their mission or customer statement where, for example, they represent that they exceed customers' expectations, quality and value, expect more from us, etc. Large companies are renowned for protecting their good name. We would expect that any codes would be consistent with these self-imposed standards of conduct. The government is confident that all stakeholders will contribute in good faith to the development of any code.

Finally, in relation to the question about power to require information and appeal rights, I am advised that, if a party feels aggrieved or believes there has been an abuse of power, then a complaint can be lodged with the Ombudsman and the commissioner will be subject to the adjudication of the Ombudsman. There is also the option of judicial review.

The Hon. T.J. STEPHENS: In relation to clause 1, I want to make the chamber aware of the most recent update from the federal Minister for Small Business (Hon. Nick Sherry). Nick Sherry is extremely confused as to why South Australia is heading down this path. He has issued a press release which states:

...Nick Sherry, has today welcomed the comments on franchising of the Chairman of the Australian Competition and Consumer Commission, Mr Rod Sims, at a Senate Estimates hearing last night.

Mr Sims elaborated to the Economics Committee on his comments during a speech to the Franchise Council of Australia on October 10. These comments have been used by the South Australian Government to support its state-based franchising legislation.

Mr Sims told the hearing:

'The point I was trying to make to the Franchising Council was a little bit different than the way that that was used there.

I was really trying to say that there are issues of imbalance of power between franchisees and franchisors, that this was a sector with new audit powers and within the ACL [which is the Australian Consumer Law], that we can take more action on.

I was really trying to signal that I thought there was more the ACCC could and would do. So, to find that line of argument used to support more powers in South Australia was I guess the almost opposite reaction to the one I thought I'd get.

What I'm saying is we've got more powers and we can do more and I think we can effectively deal with the issues.'

Mr Sims also agreed with the Commonwealth's policy of bedding down the new national franchise regulations.

The new enforcement powers under the ACL came into effect on 1 July this year and the Commonwealth's amendments to Franchising Code of Conduct—giving the sector greater protection, transparency and certainty—came into effect on 1 July 2010. The Commonwealth will undertake a review of the new laws in 2013.

Mr Sims was asked:

'Are you of the view that States should go on their own in terms of franchising policy—

this is the chairman of the ACCC—

The ACCC is I think on the record and it would also be my view that where you've got what is really already a national franchising code, many of these franchises do go beyond states. I think this is something that is better regulated nationally rather than different state regulations.'

Senator Sherry said today, 'The Government has no intention of revisiting franchise legislation until the new system has been give a chance to bed down.'

'The new national laws follow extensive consultation review and are the best chance yet to address concerns within the franchising sector. States acting alone will only create instability and uncertainty for a $130 billion growth industry,' Senator Sherry said.

I want the crossbench members to be aware that here we have the federal Minister for Small Business firing an absolute shot across the bow of this state government.

I want to know from the minister also, with regard to a question that I think the Hon. David Ridgway put regarding farming and purviews with regard to small business and does farming come under the banner of small business (which has always been the belief of the Liberal Party—small business is farming: farming is small business), whether there is a recognition of that?

Just on the minister's answer on clause 1, does the minister believe that farm machinery dealers are in any way going to be held to account if there is some sort of breakdown within their machinery and plant and they make their best endeavours to get it sorted? Are the minister and this government trying to force farm machinery dealers out of South Australia?

The Hon. G.E. GAGO: We know that Senator Sherry has expressed concerns about franchising in particular, but I draw to members' attention the fact that this bill goes much further than just franchising. There are a lot of people who do not share his point of view. For instance, a number of key national groups, such as the Council of Small Business of Australia, the Independent Contractors of Australia (ICA), and key local groups, such as the Motor Trade Association of South Australia and the South Australian Farmers Federation, have all published statements applauding the South Australian government for this initiative and strongly suggesting that the Liberals have abandoned their constituents.

Other states have a similar small business commissioner structure in place that has been shown to be highly successful: Victoria and New South Wales and, of course, soon WA. Just in relation to Mr Rod Sims, the ACCC chairman, his speech at the Franchise Council of Australia's national convention on 10 October made some key points, including things like 'the franchising sector has some image problems', 'dubious franchising practices give the franchising sector as a whole a bad name and discourage potential franchisees from investing in the sector', 'the level of franchising complaints to the ACCC is something that can't be ignored', 'there were 600 complaints to the ACCC last year, which shows that there are problems in the franchising sector', 'franchisees fear retaliation if they make complaints' and 'there is much that the ACCC cannot do; in particular the ACCC cannot mediate and does not get involved in individual business disputes', and finally 'the state-based small business commission has an important disputes resolution role to play'. Farming is indeed captured by this bill.

The Hon. T.J. STEPHENS: I would also make crossbench members aware of part of the transcript of last night's proceedings of that committee. We are not talking just about Senator Sherry. Senator Doug Cameron, another ALP stalwart, said:

Mr Sims, I would like to ask you some questions about your speech to the Franchising Council back on 10 October 2011. You indicated that you had 600 complaints from the sector as a whole—

sounds like a lot—

I understand there's about 70,000 franchises nationally. So that's quite a small number of complaints. Is that correct?

Chairman Sims:

Oh well, Senator, my arithmetic at this time of night…there's probably less than 1 per cent.

I repeat, less than 1 per cent.

But nonetheless, I mean this is a sector that does attract a certain number of complaints, but yes those are accurate numbers.

Minister, we are talking about 70,000 franchises nationally and less than 1 per cent complain. Why are you trying to crack the peanut with a sledgehammer?

The Hon. G.E. GAGO: There is a wide range of indicators that demonstrate that this role is needed and would be very valuable. A parliamentary inquiry identified a need for this. There are examples of individuals who have lost their home and their health has suffered, potential suicides, people not investing for fear of retaliation. There is a lot of this sort of evidence that people are adversely affected by the problems that they have in this sector. There is, in fact, significant evidence. I know that the honourable member has a different point of view and that he does not support this, but we support all the evidence that suggests there is a serious need for this.

The Hon. T.J. STEPHENS: I have a question with regard to the minister's comments on clause 1. If two parties enter into a legally binding contract, what powers will this small business commissioner have to set aside a contract? If a dispute is not resolved by mediation, what powers does this small business commissioner have?

The Hon. G.E. GAGO: I have been advised that there are no powers contained in this bill that enable a contract to be set aside. I guess the real issue is the success rate of the small business commission; that is, it is able to successfully resolve 80 per cent of disputes that come before it using the powers it has. It is about creating greater fairness. If the dispute is based on a bad commercial decision made by the applicant, then they have to wear that. However, if the dispute is about an irregularity that occurs, then the powers afforded in this bill apply.

The Hon. T.J. STEPHENS: I think the minister has just hit the nail on the head with all of this. We are told that the majority of complaints arise from people making bad commercial decisions. My crossbench colleagues will have to understand that people make bad commercial decisions, often when they have taken legal advice and then have chosen to ignore it. This small business commissioner—which will cost some millions of dollars—will do nothing for those people, and I suspect that they are the people who are generally the most vocal.

Again, we are trying to crack a peanut with a hammer, with no real power other than an added layer of bureaucracy. Of the 600 complaints that the ACCC has, out of the 70,000 national businesses, the vast number of them are dismissed as not being proper complaints.

The Hon. R.I. LUCAS: I return to the minister's answers to the questions I posed in the second reading in order to clarify the responses, starting in particular in relation to commercial tenancies. If a landlord refuses to be involved in the processes of the proposed small business commissioner's mediation, that is, there is a dispute between a landlord and a tenant and the landlord says, in essence, 'Get nicked, I'm not going to be involved in this,' what if any power is there to require the landlord to be part of the process?

The Hon. G.E. GAGO: I am advised that there are no powers in this bill that would require a landlord to participate in mediation. The powers that are involved are those to require information and certain documentation and also the power for the minister to basically name and shame, that is, to take that information into parliament and make it public.

The Hon. R.I. LUCAS: That was my understanding, but I do not think that is the belief or understanding of many of the supporters of the legislation, because this is a common occurrence where there is a dispute between a landlord and a tenant. A number of the tenants believe under the government's legislation that this mystical small business commissioner will resolve these sorts of disputes. The minister has now made it quite clear that, if a landlord says no, that is the end of it—the small business commissioner will have no power to resolve it.

To clarify the second part of the minister's response to that question: where the landlord refuses to be involved in the processes, is the minister saying that, under his or her power under clause 12—Power to require information, the commissioner can still require information from that landlord and, as the minister indicated, the minister can name and shame using that information in the parliament if the minister so chooses?

The Hon. G.E. GAGO: I am advised yes.

The Hon. R.I. LUCAS: What the minister is saying is that, where there is a dispute between the landlord and tenant and the landlord refuses to be part of the process, the government is seeking to give the power to the small business commissioner to demand documents from the landlord, including potentially tax records.

When I asked that question earlier, the minister responded, 'It is not expected that tax records would be able to be accessed.' There is no denial there and it is quite clear when one looks at clause 12 of the bill which simply says that the commissioner can require:

> ...within a reasonable time specified in the notice, information in the person's possession that the Commissioner requires for the performance of the Commissioner's functions...

If you look at the functions, they are indeed very broad. What the minister is conceding is that this bill is going to give this commissioner—this unelected bureaucrat, potentially with no legal training at all—the authority to say to a landlord (who has refused to be involved in this particular dispute and cannot be compelled to be involved) that the government has given the commissioner the power to demand whatever the commissioner deems to be within the terms of the functions of the

act that the commissioner wants, including potentially tax records, profitability records and all those sorts of details which hitherto have been confidential to a landlord, and, as the minister said, the option is then available to the minister to use that information in the parliament to name and shame the individuals concerned.

The ACTING CHAIR (Hon. Mr Hunter): Would the honourable member direct questions to the minister rather than making a second reading speech?

The Hon. R.I. LUCAS: I am not making a second reading speech. I do not have to ask questions, Mr Acting Chairman. I can ask questions and make comment in relation to the clauses of the bill. It is clear that that is the intention of the government in relation to this particular issue, that is, that that sort of information can be accessed.

In relation to the other question that I put that the minister responded to partially, I just want to clarify the minister's answer. I put the circumstances where a government department was negotiating with a tenant and the government department's position was, 'All I'm going to give you is a three-year tenancy. That's it.' The tenant wanted a three plus three plus three tenancy—that is a three-year tenancy with an option to renew for a further three years and another three years after that. That is a significant issue for that particular tenant in terms of the potential saleability and profitability of that tenant's business.

Is it correct that the minister is saying that if, at the conclusion of the previous lease arrangement, the landlord says, 'That's it. I'm only going to offer a three-year tenancy,' or indeed says, 'You're not going to get a further tenancy at all,' and the tenant is unhappy with that, the small business commissioner has no power under this bill to resolve that particular dispute between the landlord and the tenant? That is what I understood the minister's answer to say. I just wanted to clarify that that is the case.

The Hon. G.E. GAGO: I have been advised that, in relation to the first issue that the honourable member raised, in the current Retail and Commercial Leases Act 1995, the same powers to obtain information already exist. Section 77(1) provides that:

> an authorised officer may require any person—
>
> (a) to answer any questions, orally or in writing; or
>
> (b) to produce books or documents.

So those powers already exist. In respect of the second question, the powers of the commissioner are those powers pertaining to their powers to mediate.

The Hon. R.I. LUCAS: I am seeking clarification from the minister. Is the minister saying in the example that I have given that the commissioner would not have the power to intervene in that particular dispute?

The Hon. G.E. GAGO: Only through mediation.

The Hon. R.I. LUCAS: Can the minister just clarify what section it is? I thought she said section 77 of the Retail and Commercial Leases Act. Is that what she quoted?

The Hon. G.E. GAGO: I beg your pardon; I have been advised that it is the Fair Trading Act. We will get the section.

The Hon. D.W. RIDGWAY: Just a couple of questions in relation to how the small business commissioner will operate in relation to the newsagent industry. A number of country newsagents have contacted me; in fact, one from my own home town in Bordertown. I was privileged to have a meeting with a country newsagent this morning just prior to us sitting. I will just outline some of the issues he raised with me in relation to contract negotiations he had with News Ltd. I think that is when the Hon. Mr Darley became involved. I think it was a couple of years ago. This particular contract, in the eyes of the newsagent, was not generous enough, provided no opportunity for incremental increase in revenue, had a set date to sign the particular contract, and News Ltd was somewhat aggressive, seeking that he should sign at that particular time and really gave him no room to negotiate.

The newsagent will, I assume, present to the small business commissioner. At that point, what takes place? I think there are a lot of people in the community who expect that this will be the panacea to dealing or negotiating with, in this case, News Ltd in relation to *The Advertiser*. How exactly does the minister understand this will work?

The Hon. G.E. GAGO: I have been advised that the commissioner can assist a newsagent in a variety of ways, either directly or through their industry association. At one level, there may be an individual dispute between a newsagent and a publisher. The response by the commissioner will depend upon the nature of the particular dispute but, in general terms, the commissioner will seek to find out the necessary information from both parties in relation to the dispute. This would involve discussions with the newsagent and the publisher. The commissioner would expect that each party would be voluntarily forthcoming with their viewpoint and relevant information about the dispute.

Minor disputes may be able to be resolved quickly, either by telephone, email conversations or via a reconsideration by one or both of the parties after assistance is provided by the commissioner's office. In larger disputes, the commissioner would work towards a formal mediation with an external mediator appointed by the commissioner. Mediation has a high success rate; as I have said, up to 80 per cent, which the government expects the commissioner will be able to achieve here in South Australia. In the event that the matter fails to be resolved through mediation, the commissioner may seek to continue the dialogue between the parties with a view to maintaining dialogue, which is essential to resolve any dispute.

At another level, the commissioner may identify particular trends in relation to recurring disputes in that industry and may seek to engage relevant bodies with a view to exploring other possible industry processes for dealing with such issues. This could involve the commissioner convening an industry working party to explore the possibility of a voluntary code, a mandatory code or a review of existing legislation, for instance, on whatever the issue might be. These consultations may lead to the development of a voluntary code or recommendations to the minister of the day that a formal process be commenced towards prescribing a mandatory code under the Fair Trading Act 1987 or that a review of existing legislation be undertaken.

The Hon. A. Bressington: For how long?

The Hon. D.W. RIDGWAY: The Hon. Ann Bressington almost stole my thunder in relation to how long this process will take. In most cases, I suspect small businesses will attempt to negotiate themselves initially. It will only be at a point when they think, 'Hang on, I need a bit of assistance here.' The minister has talked about mediation and getting the parties together and, if that fails, the small business commissioner may continue dialogue and then may have some engagement with the parties and maybe the industry associations. Then there will be a process where maybe there will be some consultation. Then there will be an industry working party and then maybe we might end up with a voluntary code of conduct.

Minister, how long do you think that process will take? What I was trying to point out in my second reading speech is that the current government has very little understanding of how small business actually operates and the pressures that are on small business people. If the government believes this bit of legislation will be the panacea to the problems faced by small business, I would like to know how long this timeline of events and activities is likely to take.

The Hon. G.E. GAGO: I have been advised, as long as it needs to. Disputes can be very difficult things and they can be protracted, but we have clear evidence that there is a success rate of 80 per cent and we are confident that we can achieve a similar rate of success. Without this, parties are left to their own devices and disputes and the fallout from disputes can go on indefinitely. So, with this in place we have a far better chance of resolving disputes than without it.

The Hon. D.W. RIDGWAY: I will use the newsagents, if neither party is prepared to give ground then what role will the small business commissioner play in any legal proceedings that the small business operator wishes to instigate?

The Hon. G.E. GAGO: I have been advised that the commissioner would not play any role in legal proceedings.

The Hon. A. BRESSINGTON: In the issue of the newsagents, what if News Limited refused to participate in any way, where do those newsagents then go for some sort of reconciliation or solution to this problem? If it is through that process that the minister has just talked about, which sounds to me like it could take 20 years, then that will still end up in court, it will still end up with those businesses having to fight this out in court anyway. I thought the idea of this commissioner was to bypass all of that and to provide solutions to those businesses that are having these problems, but from what I am hearing this is not going to shorten any road to court or eliminate the need for that if News Limited, or some such, refuses to participate.

The Hon. G.E. GAGO: I have been advised that if parties such as the honourable member refers to refuse to participate then the other course of action would be that of litigation. Currently, that is all that is available to the parties. They have no other potential for any other course of action. This would offer an alternate course of action. If the parties refused then they would go to litigation. However, as I have put on the record, evidence shows that the small business commissioners in other states successfully resolve 80 per cent of disputes.

The Hon. A. BRESSINGTON: It is my understanding that 70 per cent of those disputes are about rental agreements, not about this sort of stuff, so how many of the rest of the 10 per cent that are not about rental agreements are solved without litigation?

The Hon. G.E. GAGO: I do not have a breakdown here of the classes of dispute. I have been advised that they are broad ranging.

The Hon. A. BRESSINGTON: I have another question, and we probably need to go back five steps because I missed my opportunity. On the issue of the commissioner being able to call for documents, profit and loss and taxation records and all of that sort of stuff, if the landlord refuses to come to the table he can still request all of those documents. What would be the need for that? What would be his course of action if he has those documents if there is nowhere left to go? Why does he actually need to be able to request those documents and get them if there is no further action that he, as a commissioner, can take to solve this problem?

The Hon. G.E. GAGO: The commissioner, once he receives a complaint, must attempt to resolve the dispute and to obtain relevant information that will assist in doing that. However, ultimately, if there was a complete breakdown, one use for information could be to determine that there was some sort of irregularity and to, for instance, name and shame.

The Hon. T.J. STEPHENS: Just for crossbench colleagues, if anybody would gather sympathy from this group I suspect it would be your local newsagent and, certainly in our case, generally country newsagents who are highly respected in the community. It has been a bit of a heart tug to listen to their particular situation and their dispute with News Corporation.

Today I sat in with the Hon. David Ridgway and listened to the story from a country newsagent who was desperate for this bill to be passed. It was his hope that this was going to be his salvation from the unfair way that he and his colleagues were being treated by their one supplier. You heard today that this is going to do absolutely nothing for any of those people—nothing. They are clinging to a false hope that this government has given them.

As far as name and shame goes, what sort of article do you reckon News Corporation is going to print about this government shaming them? I would like to see that front page—it will never happen. For all of you who have been attracted to this bill because of the pleas of good honest people, you have heard today what we have been saying all along, that is, this is a load of steaming stuff; it is not going to fix their problems.

This is legislation for political purposes. It is not going to fix the problems of small business people. Heaven forbid, most of us here were actually small business people and still have small business interests and we bleed for small business. However, I can tell you that this is a crock—and do not fall for it.

The Hon. G.E. GAGO: I have been further advised that if a publisher like News Ltd does not participate and is uncooperative then it runs the risk of having a mandatory code prescribed under the Fair Trading Act which it then must comply with.

The Hon. D.W. RIDGWAY: I am glad the minister is—

The Hon. J.M. Gazzola interjecting:

The Hon. D.W. RIDGWAY: I beg your pardon, the Hon. John Gazzola. You are off the phone and you are with us again now.

The Hon. J.M. GAZZOLA: Are you going to declare your interest as well? Terry did.

The Hon. D.W. RIDGWAY: I am interested in codes and in particular I used the example of a newsagent who contacted me. He is a tenant in quite a large shopping centre. Obviously, it is a newsagency, it has an instore banking facility, it runs an Australia Post agency and an SA Lotteries agency. I assume that they have to have some sort of legal arrangement or potential industry code with newsagents and publishers, and an industry code when it comes to banking. I am not sure where Australia Post fits—whether it is banking, telecommunications or postal retail I

am not quite sure—and SA Lotteries, of course, is gambling. Will we see these particular types of premises and businesses having to adhere to or operate under several industry codes with the small business commissioner?

The Hon. G.E. GAGO: I am advised that the specific code development, and the areas, will depend on an evidence base and on consultation with the industry, as I have said in some of my answers to members' questions.

The Hon. D.W. RIDGWAY: Clearly, from all the correspondence—the Farmers Federation, the newsagents, etc.—they have reached the point where they think industry codes are the next step. I do not think there is any expectation within the industry that there will be the long process that we have heard about of mediation, dialogue, engagement, working parties and voluntary codes. I think the assumption in the community, whether it is the Farmers Federation, newsagents and other small business owners, is that we are at that point. I have asked you some questions about the relevant codes and their development, but they should almost be in draft form now. That is the assumption out in the community. The minister needs to make it very clear that the operation of these codes, voluntary or mandatory, is many years away.

The Hon. G.E. GAGO: I have already put on the record what the process will be and that it will be dealt with as expeditiously as possible, but members of the industry have to have an opportunity to be involved.

The Hon. D.W. RIDGWAY: That brings me to the next point: members of the industry. In one of her answers, the minister mentioned agricultural machinery dealers, resellers and manufacturers, and most of these machinery companies are big international companies. Unfortunately, very little farming equipment is made in Australia these days. While I do not wish to mention them because I do not know the specific details, I know that the member for Light raised some concerns in the Economic and Finance Committee about particular machinery companies, and they were big international companies. I know from other examples that farmers have had machinery issues with very large international companies.

Am I right that the minister says the code of conduct would basically embrace that particular manufacturer's mission statement that they would provide high quality service, high quality machinery, etc., or are we going to see the small business commissioner in dialogue with companies like New Holland, Massey Ferguson, John Deere, Case International, Gleaner—all the big manufacturers that we see around the world? Are we likely to see the small business commissioner negotiating with them to have mandatory codes of practice or will it just be, as the minister said, a repeat or a reprint of the company's mission statement?

The Hon. G.E. GAGO: I have been advised that the codes of conduct are where the teeth are in relation to these reforms, and that negotiation with all relevant stakeholders will take place to achieve those.

The Hon. D.W. RIDGWAY: I suspect that is where the teeth will be—in the codes of conduct. I use the example of a piece of farm machinery that a farmer has bought in good faith and has been supplied probably by his local dealer in good faith. It causes some problem and either he misses the window of opportunity for sowing his crop, harvesting it or earning income from contracting. The industry codes of conduct are not in place, and I do not believe they will be in place, from the way the minister is talking, before the end of this government. How on earth will the small business commissioner be able to bring about a resolution when we do not have any codes of conduct in place?

The Farmers Federation has talked about them and says it wants to work with the government. My understanding is that, out of frustration, this is where people are at. They expect that this bill will pass the parliament today and industry codes of conduct will be in place next week. It is simply not the case.

The Hon. G.E. GAGO: The honourable member has touched on the very reason why these are needed and that is that they currently do not exist and therefore problems occur. This bill will allow codes of conduct to be developed. That is where the teeth will be in relation to powers of the commissioner and the codes will cover those matters that are relevant to that industry or that particular sector.

The Hon. D.W. RIDGWAY: These codes of conduct will be specific to South Australia. I assume that if the machinery company does not wish participate or the small business commissioner is not comfortable that it has participated and negotiated in good faith and it is not

prepared to submit to a voluntary code, then there will be a mandatory code imposed upon those machinery companies. Will that only apply to them in South Australia? Clearly we are doing the South Australian legislation. Will it apply to interstate-based companies or firms that retail equipment in South Australia? Will it only apply to those that are based and registered for business in South Australia?

The Hon. G.E. GAGO: I have been advised that once a prescribed mandatory code is in existence it will apply to all transactions made in South Australia, irrespective of where that company might be based.

The Hon. D.W. RIDGWAY: A transaction. As members would recall, I have farmed on the South Australian–Victorian border. If I went to Horsham and bought a piece of farming equipment and the financial transaction took place in Horsham, and then I had an issue with it when I was operating it in South Australia, how does this piece of legislation give any comfort to a farmer who does that?

I might just add for the record, while the minister is getting her answer, that of course in our wonderful country, the land of droughts and flooding rains, there are often bad seasons and there are often good bargains and opportunities to purchase equipment interstate: Western Australia, Queensland, New South Wales. Farm machinery is not always just bought at the corner shop. There are a tremendous number of transactions done right across the nation with the internet these days. You do not just wander into your local village and buy a new tractor, a new harvester or a new piece of equipment. You can buy it from anywhere in Australia.

The Hon. G.E. GAGO: I have been advised that, under the Fair Trading Act 1987, extraterritorial provisions apply. Section 4A states:

(1) This Act is intended to have extraterritorial application insofar as the legislative powers of the State permit.

(2) …this Act extends to conduct either in or outside the state that…is in connection with goods supplied…affects a person…results in loss or damage.

The Hon. D.W. RIDGWAY: Under the Fair Trading Act that would be covered, so the small business commissioner really has no impact on transactions that happen outside of the state. Is that correct?

The Hon. G.E. GAGO: I have been advised that the code can also have an extraterritorial application.

The Hon. D.W. RIDGWAY: What discussions has the government had with international machinery companies, the big manufacturers—John Deere, New Holland, Massey Ferguson—those types of big companies? Most tractors we see in the field today are green or blue or red; sadly, there is not a huge range to choose from.

The Hon. R.L. Brokenshire: Orange.

The Hon. D.W. RIDGWAY: Orange, of course.

The Hon. R.L. Brokenshire: There are white ones, too.

The Hon. D.W. RIDGWAY: Yes, but the number of manufacturers has diminished over the years, like a lot of industries. What discussions has the government had with those big companies? In my view, the farming community has had a problem—and we do not deny that there have been problems—and I think they believe that these codes of conduct are on the next page of the book and are about to be implemented.

The Hon. G.E. GAGO: I have been advised none directly, but in a general sense consultation occurred quite broadly, involving a range of peak organisations such as the Farmers Federation and the Motor Trade Association.

The Hon. D.W. RIDGWAY: I have read a copy of a letter that was sent to minister Koutsantonis from the Farmers Federation, and in it the Farmers Federation spoke not only about machinery dealers but also about grain handling. How does the minister envisage that a code of practice will operate in relation to the grain handling industry? I assume that this is in reference to Viterra, virtually a monopoly operator in our South Australian grain industry these days. How will disputes between Viterra and a farmer be resolved by the small business commissioner?

The Hon. G.E. GAGO: It will be done in consultation with that particular sector.

The Hon. R.L. BROKENSHIRE: With respect to Viterra, we are in the process of a select committee because we had no other way of trying to sort out the problems, concerns and issues of up to 4,000 farmers regarding the way they were treated at the last grain harvest. First, can the minister confirm that a small business—and hopefully farming—commissioner would, under the relevant part of this clause, act as an arbiter who could go in and mediate on behalf of that individual? At the moment the only way many of them are able to do it is through members of parliament.

Secondly, can the minister confirm that, through consultation between the industry sector, a code of conduct with sufficient teeth would enable the commissioner to apply pressure above any pressure that is currently available in South Australia with respect to trying to get a reasonable outcome for a farmer done over by Viterra?

The Hon. G.E. GAGO: I have been advised that I can confirm both of those matters.

The Hon. D.W. RIDGWAY: I will use the last harvest. During harvest there is a lot of pressure and stress on people. I just do not understand how the small business commissioner's role will play in any mediation between farmers and Viterra. Harvest is a very time-sensitive operation. If there is an issue—whether it be with the harvest, the handling of the grain or the marketing, which is usually within the four to six months after harvest—the mechanism the minister described earlier seems to be very long and protracted, and it is all sort of voluntary. She talks about the codes of conduct having teeth, but it is just like a gummy shark for the first six or 12 months, it appears.

The minister clearly does not understand or has no capacity to explain to the chamber how this will benefit the farming community. I am at a loss to think that we have had this development. I see the member for Light, Mr Piccolo, in the gallery. I think he likes to claim a lot of credit for starting this whole process. He introduced a bill before the last election, which then lapsed, and the point we are at today is probably due to some of the work that he and the Economic and Finance Committee did.

The minister just said that the teeth will be in the codes of conduct: we do not even know what the codes of conduct will look like. We have had some lovely letters from the Farmers Federation and contact from newsagents saying, 'That will be great; we are going to get these codes of conduct.' I would like to know a time line from the minister on when these codes of conduct will be available for the industries to peruse and to sit down and say, 'Yes, this is how we want to operate; this will give the farming community, the newsagents and the small business community some comfort.' The people they deal with will know the rules under which they have to operate. When will we see these codes of conduct?

The Hon. G.E. GAGO: In terms of the question of how this works, the commissioner provides an alternative to litigation, which is the only course of action currently available to farmers. We know that litigation can be extremely costly and time consuming, which would have an even greater impact on farmers and their families. We know that small business commissioners in other states resolve 80 per cent of disputes. I know the honourable member is trying to filibuster. I have already answered the question: the codes will be done as expeditiously as possible and in consultation with the appropriate sectors.

The Hon. D.W. RIDGWAY: I realise this minister is not the minister responsible, but I am sure she or her officer have been briefed. Surely there is some sort of time frame in the mind of the minister. We saw a lovely photograph of the minister at the market with a bunch of oranges and looking pretty happy. There surely must be some time frame within which these industry codes of conduct will be published so the community can actually look at them. This is all just window-dressing. Surely there have been some discussions about how long this will take and when they will be in place.

The Hon. G.E. GAGO: I have answered the question.

The Hon. D.W. RIDGWAY: The minister is not able to tell us when any of the codes of conduct will be in place. Am I right in understanding that she said that it will be done in a timely manner as expeditiously as possible, but after mediation, dialogue, engagement of process and industry working parties—maybe that is when we will get to a voluntary code? Will the minister confirm that there is no actual time line, for whichever industry it may be, for there to be a code of conduct in place? Can she confirm that there is no actual time line?

The Hon. G.E. GAGO: I have already answered the question a couple of times.

The Hon. D.W. RIDGWAY: Clearly the minister has no idea when these codes of conduct will be available—neither minister Gago nor minister Koutsantonis. I suspect that even the member for Light (who is watching), if he was able to come in and answer questions as the father of the legislation, would not be in any position to tell us when these industry codes of conduct will be in place.

That is the really essence of the problem with this piece of legislation. An expectation has been built up in the small business community that we have this document, this industry code of conduct for whatever industry you are in, and you will be able to go to News Limited, a machinery dealer or your landlord and say, 'Here it is: these are the rules and you have broken them and I have some recompense because of it.' Clearly that is not in place and that is the reason that this legislation is window-dressing. It certainly does not have teeth yet and the minister is not able to tell us when it will have teeth.

The Hon. R.I. LUCAS: The minister has confirmed in response to my earlier questions, certainly in relation to retail and commercial leases and tenancies where the landlord does not wish to be involved and says no, that there is going to be no greater power and no way of resolving those particular disputes between a landlord and a tenant.

However, in relation to the other areas that I raised in the second reading debate which have now been explored and which might be subject to an industry code (and they cover the examples of News Corp and the newsagents, farm machinery and grain handling with farmers), the minister is saying that there are going to be potentially these codes.

In relation to the industry codes and, looking at the first example, the dispute between News Corp (or *The Advertiser*) and the newsagents, the minister's response has been, based on advice, that even if *The Advertiser* objects to being involved in the process, even if *The Advertiser* objects to all of the discussions in relation to a voluntary code of practice, the small business commissioner—an unelected bureaucrat—will be able to impose a mandatory industry code on the operators of *The Advertiser* (News Corp) in relation to the issues in dispute with the newsagents. Can I clarify, having looked at this bill, that there is no restriction on what can be put into the industry code that might relate to that particular issue?

The Hon. G.E. GAGO: I have been advised that there are no restrictions to the matters that can be contained in the code, that it is the minister who prescribes the code and not the commissioner, and that the code would be prescribed in regulation and therefore can be disallowed by parliament.

The Hon. R.I. LUCAS: The minister has just made it quite clear that the small business commissioner will in essence make the recommendations to do the work for the mandatory code which would apply to *The Advertiser* or News Corp in relation to this, which would have no restrictions at all. Then the minister can issue that industry code which would in essence restrict the operations of *The Advertiser* and News Corp in any way that the minister and the commissioner see fit.

Can I just clarify that, under clause 6 which says that the minister 'may not give a direction in relation to the investigation, mediation or resolution of a particular complaint or dispute', that particular provision does not restrict because this would be a dispute between *The Advertiser* and all of its newsagents but it does not restrict the minister in relation to ultimately disagreeing with a conclusion arrived at by the small business commissioner? So the small business commissioner comes down with a mandatory code. I just seek to clarify that clause 6 will not restrict the minister in relation to whether he or she might vary that decision of the commissioner as it does relate to a specific dispute between *The Advertiser* and newsagents?

The Hon. G.E. GAGO: I have been advised that, under section 6, the minister cannot interfere in an individual complaint. As I have said previously, the code would be prescribed in regulation and therefore could be disallowed by parliament.

The Hon. R.I. LUCAS: I understand that, but that is not my question. My question is: if the small business commissioner goes through this long process that has been discussed—and I will not repeat it—and arrives at a mandatory code of practice which would govern what *The Advertiser* is allowed to do in its dealings with newsagents, can the minister, under the government's proposed bill, change or vary the decision of the commissioner before the minister issues the regulation?

The Hon. G.E. GAGO: I have been advised that the commissioner's role is to facilitate the code, but it is ultimately the power of the minister to prescribe that code, not the commissioner. Again, that is done in consultation with the industry, and it is then prescribed in regulation which then comes to parliament.

The Hon. R.I. LUCAS: That still does not answer the question. It is a simple question. If the commissioner arrives at a decision for a mandatory code—he or she has been through the whole process and comes to the decision of a mandatory code—does the minister have the right to change that decision or conclusion, whatever you want to call it? Before the commissioner proclaims it by regulation, does the minister have the right to change it or refuse to issue it as a regulation?

The Hon. G.E. GAGO: I have been advised that the commissioner does not have the power to make decisions about codes. He might make recommendations or such like, but he does not have the power to make decisions. The content of the code is a matter for regulation and the Governor makes regulation on the advice and consent of the Executive Council.

The Hon. R.I. LUCAS: What the minister is making clear now is that the commissioner could go through a process, could provide advice to say, this is the tough (in his or her words) industry code that should be imposed but that ultimately the minister is the person to make the decision in Executive Council. The minister can say, 'No, that's not the case. We're not going to accept any of those recommendations', or could agree, obviously.

The minister also has the power to not implement anything; that is, the commissioner can do all of the work, he can come up with a mandatory code which might apply to Viterra, the agricultural machinery manufacturers or *The Advertiser* and the minister and the government can not implement that particular industry code. Ultimately, it is a judgement for the minister and Executive Council. I thank the minister for clarifying the position there and the fact that the powers are unlimited for the industry code.

Can I now turn to a similar dispute with newsagents that involves a government agency, and that is the Lotteries Commission. As the minister would be aware, with both of her hats, newsagents have expressed concerns about the dealings between the Lotteries Commission and newsagencies in relation to various conditions that might apply to the long-term lease of the licence of the Lotteries Commission as it relates to the potential for online selling of tickets for lotteries products.

Briefly, the newsagents' concern is that if, as a condition of the sale, a new owner of the Lotteries Commission can go to online selling, that this would have a very significant impact on the profitability of the businesses of the newsagent. Clearly, it is in Treasury and the government's interest to maximise the value of the Lotteries Commission, so that conditions like that, and there are others which might impact on newsagents, are obviously of interest to Treasury and the government.

Based on what the Governor said in relation to it is possible for the commissioner, through the process that we are talking about, to ultimately end up with a mandatory code with unlimited powers to restrict the operations of News Corp, with unlimited powers to restrict the operations of Viterra and with unlimited powers to restrict the operations of agricultural machinery manufacturers through a mandatory code, is it also possible, within this bill, for the process to come up with a mandatory code which would place similar restrictions on a government agency, such as the Lotteries Commission?

The Hon. G.E. GAGO: I have been advised that it would be a matter for the government of the day, given that I have already outlined what the process is, to make a decision about whether a code would apply or not. I draw members' attention to the fact that these are the same processes and powers that are involved in most other codes. This is not unusual, particularly in consumer codes like the sport and fitness and funeral codes. This is exactly the same process and powers that are used.

The Hon. T.J. STEPHENS: After 40 years of franchising we are breaking new ground here so there is the opportunity for precedent. I do not know that the referral to other codes has any reference to this particular bill.

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

Page 3, line 2—Delete 'Small Business Commissioner Act 2011' and substitute:

I will try to be brief given the time of day, but I do want to advise the chamber why I am moving this amendment. As has already been said, Family First supports the Small Business Commissioner Bill. It is a two-faceted bill: first, to set up the small business commissioner and to allow that commissioner to have the powers of mediation and negotiation in dispute resolution; and, secondly, to develop codes of conduct for each industry sector.

Some would argue that that satisfies the farming community, but the reason I am moving this amendment is because farmers, in particular, find it more difficult to negotiate through the supply chain than many other business sectors. Other business sectors have opportunities that are not necessarily available to farmers.

We saw with the mining amendment act that it was almost impossible, through the parliament, to get anything in the way of strength or teeth for farmers. In fact, I stand by my opinion that farmers got very little or next to nothing out of that. Farmers are price takers, not price makers. We are seeing the situation now where from paddock to plate, to get to the plate, there is one obstacle before the plate called the duopoly—namely, Coles and Woolworths—and it is becoming more and more of a pressure cooker situation for farmers.

There has been some positive turnaround of late. We have the Small Business Commissioner in Victoria. I understand that the Barnett Liberal government in Western Australia is setting up a small business commissioner, and I also understand that the new Liberal government in New South Wales is in the process of drawing up a small business commissioner bill. What we have, just to summarise, are two Liberal states that are now going down the track of setting up something similar to what we are debating here today. We have a Labor government in South Australia—

An honourable member interjecting:

The CHAIR: Order!

The Hon. R.L. BROKENSHIRE: We have a Labor government in this state which has a bill that we are debating here today with the same principles as the two Liberal governments are looking at. The federal Leader of the Opposition, Tony Abbott—which is a very refreshing stance; we have not seen it from the Gillard government thus far—has indicated his concerns about the duopoly; he has indicated his concerns about foreign ownership of farming land and water; and he has indicated that, under an Abbott government, he would certainly be investigating and hopefully introducing legislation that would give fairer opportunity for all sectors, from paddock to plate, or from manufacturing to retail to purchaser, etc.

I say that because we are starting to see a change and we need to see that change, but from a farming point of view it is still very, very difficult for farmers to be able to go anywhere to seek strength of support when they are unfairly dealt with by a processor. I can give an example—and I will not mention the region—in respect of the wine industry and the last grape harvest. There were issues that colleagues would be well aware of that, in my opinion, were incredibly detrimental to the wine grape growers of this state. Some of it was to do with the weather but some of it was to do with a range of other issues that I will not go into now.

I have been trying to help those constituents but I do not have a tool like this, as a member of the Legislative Council, to be able to help those constituents. I would love to have had this tool in legislation now. As a legislator I am looking more and more at the title of the bill. I will be honest and say that, over quite a lot of years, I did not really focus on the title of the bill much at all; I focused more on the framework and structure of the bill.

To give one example of where things can get off the rails, the natural resources management bill—and I will have more to say about this during another debate—in theory should be a bill that focuses on sustainable farming and natural resource management, but because the title of that bill was not structured properly the focus now is on natural resource management at the disadvantage of the farmers. For it to work properly you need your farmers and your natural resource management to be cohesive, and that is not happening at the moment in the area of NRMs.

Farmers have not got the strength of the mining giants. We saw in this house the chamber of commerce and mines or whatever it is out here—

The Hon. D.W. Ridgway: SACOME.

The Hon. R.L. BROKENSHIRE: SACOME; you know it very well. They only have to start to bark and both the major parties' ears prick up like you would not believe, but if the farmers come out and bark not much happens.

What I want to see and my reason for pushing this is that, if the title says 'Small Business and Farming Commissioner', then it actually says that this commissioner is focused on small business and farming. I have said enough about where I see changes are starting to occur but I strongly believe that this would be of enormous benefit to farming. Farming has some real issues when it comes to getting any opportunity to negotiate or have someone come in as an arbiter with respect to what is happening with exploration, let alone mining, right now.

To conclude, we can see what is happening with the Labor government in Queensland currently. It is bringing in legislation to start to address some of the problems concerning the loss of so much valuable cropping land to mining.

I see this as an important change. It does not change the rest of the bill. I will not talk about it any further because all the other amendments are consequential, but it would be a win for country people and farmers, and it would send a message to the dealers who my honourable colleagues have been questioning interstate and overseas and the processors—from paddock to plate—'Hey, small business and farming has a commissioner and therefore has an opportunity to get a fair deal and a fair go.' That is all we can ask for. With those few words, I encourage colleagues to support the amendment.

The Hon. G.E. GAGO: I rise on behalf of the government to oppose this amendment. These 34 amendments seek to change the name of the small business commissioner to small business and farming commissioner. When developing the policy position for having a small business commissioner, the government decided that it should have a uniform approach as it was aware that Western Australia and New South Wales had intention to implement, or were in the process of implementing, a small business commissioner model.

These were all, as is the case in South Australia, modelled on the Victorian experience. The government received representation early in the piece for the name of the commissioner to be small and family business. This was not endorsed, as the specific sector approach was not envisaged. This is also why, as in the case of the Victorian legislation, there is no definition of small business. This is for two reasons. Firstly, there is no agreed definition of a small business. It is relative to the size of the parties. Secondly, the aim was to allow the commission to assist in resolving matters between any parties on a case-by-case basis to maximise the impact of the commissioner and the role that they could play in assisting a variety of businesses.

Farmers and farming activities will be a critical area of work for the small business commissioner, so I can reassure the honourable member of that. The strong endorsement and support by the South Australian Farmers Federation of the initiative has been appreciated by the government. However, other areas such as family business, newsagents, grocers, hardware stores and so on are equally important, and they are also equally covered by this. We believe to place the farming sector above all these other sectors is not warranted and therefore we would like to leave it as a more generic name.

The Hon. T.J. STEPHENS: I rise to indicate the Liberal Party's opposition to the amendment. I made it clear earlier that we always believe that the farming community is part of the small business community: no more, no less. I would not say that I was a jeweller by trade, because I was not that talented, but I was involved in a jewellery business. I say to the Hon. Robert Brokenshire: why isn't it called the small business and jewellers commissioner bill?

The CHAIR: Shearers.

The Hon. T.J. STEPHENS: Shearers? Sharers? I do not know. It depends what country you are from. We do not support the amendment. We believe that farming is very much an integral part of small business. We do not see that there should be a distinction.

The Hon. D.W. RIDGWAY: I have a question for the mover. Obviously we have heard discussion this afternoon that there is similar bill in Victoria. My understanding is that it is a similar commission and the title is just small business commissioner. What evidence does the mover have that the farming community in Victoria has been disadvantaged by not having farming included in the title of the Victorian Small Business Commissioner?

The Hon. R.L. BROKENSHIRE: At this point in time I do not have evidence, because it is still early days with respect to what has been passed and what is being developed with respect to

this model in Victoria. I do not have evidence, but the fact that I do not have evidence is irrelevant. The bottom line is that you have one chance only at the title.

We can go a step further than Victoria and we can put a stamp here now that highlights the importance of farmers with respect to this structure. It is not like the jewellery area, where a lot of the jewellers today are franchisees. A couple of the traditional jewellers are still around, but a lot of them are franchisees. They have other contract-specific arrangements.

The Hon. T.J. Stephens interjecting:

The Hon. R.L. BROKENSHIRE: There are; a lot of them are franchisees.

The Hon. T.J. Stephens: Name one. Who is a franchisee?

The Hon. R.L. BROKENSHIRE: The ones that I used to receive up until recently from Victor Harbor, where you had the promotion and the marketing—

The Hon. T.J. Stephens: That's a buying group.

The Hon. R.L. BROKENSHIRE: Well, buying group. Buying group or franchisee: the fact is they have a structure. With agriculture, it is very disjointed. For example, in grain alone you have 4,000 individual farmers in this state. Yes, they have SAFF, but that is more to do with association matters, not areas of litigation and the breakdown of opportunities for farmers to get a fair go.

So they may not have the title in Victoria, but simply because something is not on a title in another state does not mean that we should not be ahead of the pack. That is why I have moved the amendment.

The Hon. D.W. RIDGWAY: The mover might be interested to know that Victoria has had a small business commissioner for seven years. I guess things do move slowly at times, but that would hardly be early days. Now that we have a proposed title of 'Small Business and Farming Commissioner', does that mean that a big corporate farm, owned by a superannuation fund, is entitled to protection through this small business and farming commissioner?

The Hon. R.L. BROKENSHIRE: The Leader of Government Business, the minister responsible for the bill in this house, said that there was a broad definition with respect to small business and you, as Leader of the Opposition in this place, have been 1½ hours on half of clause 1, questioning all those issues specifically. The bottom line is that whether the person is a farmer with 1,000 acres or 7,000 acres or 10,000 acres, or whether they are a family trust, a sole trader, a partnership, or they happen to be a corporate body, if they are being done over by someone like Coles or Woolworths, as I understand it they would have the opportunity of being able to go to a small business and farming commissioner for support.

The Hon. D.W. RIDGWAY: The mover says that he does not place any restrictions on the structure, and, clearly, we do not have a clear definition from the government on what small business is. By rolling in the small business and farming commissioner, you put no limitations on the structure or the size of the farm.

The Hon. R.L. BROKENSHIRE: As I understand it, the response of the minister to, I think, the Leader of the Opposition, or the Hon. Rob Lucas or the Hon Terry Stephens, was that it was broad in respect of who could actually request the small business commissioner to assist them. That is how I understood the answer.

The Hon. R.I. Lucas: Coles wouldn't do that.

The Hon. R.L. BROKENSHIRE: Coles is a different scenario. The point is that if you look at farming—and you know this as well as I do—by and large, farmers are families, small businesses. There are very few corporate farmers in this state, and the challenge is to keep it that way. How can you help keep it that way? By having a small business and farming commissioner that looks after farmers when they are being done over.

The Hon. J.A. DARLEY: I also oppose this motion. However, I have asked the minister to provide an undertaking, on the record, that it is the government's intention that this bill will include farmers and that they will be consulted in relation to the code of conduct applicable to them. Further, I have asked that members of this parliament, representing their constituency, be able to have some input into that process as well.

The Hon. R.I. Lucas interjecting:

The Hon. R.L. BROKENSHIRE: Filibustering? I see; so I am now filibustering. I have been up for 10 minutes. This is an area I am passionate about, and a member of parliament has the right to, on the public record, see how a vote is recorded. I indicate that I will be pushing this with as much vigour as I can. I also want to say that I have spoken about the principle of farming in this with the minister, and the minister has made a commitment to me that, when codes of conduct are developed, farming will be the first code of conduct. I thank the minister for that at least, because that is important from the point of view of—

The Hon. R.I. Lucas interjecting:

The Hon. R.L. BROKENSHIRE: Farming will be one of the first to go through as a code of conduct, because it is important. I leave the debate at that.

The Hon. R.I. LUCAS: The member has just indicated that he has a commitment from the government and the minister that farming will be one of the first codes of conduct. Can the member indicate the nature of that commitment, whether it was given by minister Gago, minister Koutsantonis or some other minister to the member? This is important information he has now put on the public record. Can he indicate his understanding of the nature of that commitment he has been given by the government in relation to farming being an industry code?

The Hon. M. PARNELL: In the event that there is a division on this amendment, I feel the need to put the Greens' position on the record, and that is that we will not be supporting this amendment. Our reasons are similar to those described by other members. We also note the assurances the minister has already given in relation to the fact that the vast bulk of farming will be included under the description (I say description rather than definition) of small business. It is also important to note, as other members have said, that we have some of the wealthiest people in South Australia who would fall within this definition if we were to approve this series of amendments. Mr Tom Brinkworth of the South-East has been mentioned. We have the tuna barons of Port Lincoln—more millionaires per head of population than anywhere else in Australia—who would all be included by this.

I note that, whilst farmers are a very important part of our economy and we need to give them every opportunity to help them resolve their disputes in the simplest possible way—I am looking forward to farmers being able to take advantage of this legislation—the point is that we have not added the name 'newsagent', 'lawn mowers', 'ice-cream salesperson' or 'jewellers', as has come up. This is not to diminish or demean the importance of any of these sectors or to say that it is some competition between farmers and the others, but leaving it generic is the best thing to do.

I note in closing that we have not been inundated with submissions from farmers or from the South Australian Farmers Federation urging us to make this change and suggesting that the bill will somehow be diminished if the change is not made. On that basis I cannot see that it really adds much value, given the assurances that the minister has already given, so we will therefore not be supporting the amendment.

The Hon. R.I. LUCAS: I want to conclude that I think it is extraordinary that the Hon. Mr Brokenshire has refused to answer the question I put to him. He placed on the record a very important piece of information that the government and the minister had given him a commitment in relation to this bill that one of the first industry codes would be farming. Farming covers a multitude of areas, through the wine industry, through grains and dairy farmers like the Hon. Mr Brokenshire—right across the board. I will not list them all.

The Hon. Mr Brokenshire is saying that he has a commitment from the government and the minister that farming under that broad definition will be one of the first industry codes that will be brought down. That is an extraordinary proposition: that the government and the minister have given the Hon. Mr Brokenshire a commitment to get his support for this particular legislation. So, all the farmers out there have obviously had this commitment that farming will be one of the first industry codes that will be brought down. So all the farmers right across the board—aquaculture, wine, dairy farmers—will all say, 'Okay, we're going to have an industry code.' It will be one of the first things brought down by the minister and the government that will govern all those nasty people with whom they deal in relation to those industries.

The Hon. Mr Brokenshire has listed, with regard to wine, dairy farmers and a range of others, the combatants those farmers have in those sectors. Somehow this magical mystery tour in terms of solving every problem that exists for all farmers everywhere, will be resolved by a commitment the Hon. Mr Brokenshire—and I thank him for it—has put on the record that he has been given by the minister and the government that farming will be one of the first industry codes

that will be brought down. That is an extraordinary proposition that the government and the minister have given the Hon. Mr Brokenshire. It is also extraordinary that he was not prepared to provide further detail to the house in relation to that particular commitment.

The committee divided on the amendment:

The CHAIR: There being only one voice for the ayes, the motion is resolved in the negative.

Amendment negatived; clause passed.

Clause 2 passed.

Clause 3.

The Hon. T.J. STEPHENS: I move:

Page 4, lines 6 to 8 [clause 3, definition of *industry code*]—Delete the definition and substitute:

> *industry code* means a code regulating the conduct of participants in an industry towards other participants in the industry or towards persons to whom goods or services are or may be supplied by participants in the industry and a code under Part IVB of the *Competition and Consumer Act 2010* of the Commonwealth relating to franchising.

There is a suite of amendments that all relate to this particular amendment, so I would like to use this as a test. If it gets up, then obviously the indication is that all the others that pertain to this amendment will pass and, if this fails, then of course I will be withdrawing my other amendments.

Basically this is about codes of conduct. This is about the minister having the ability to impose codes of conduct. Given that this legislation goes further than anything we have seen before and given that we have had 40 years, for instance, of franchising history, if this chamber is going to pass this particular legislation, then it is our view that this parliament should take some responsibility with regard to the codes of conduct.

I will give you an example relating to the codes of conduct. We have had a discussion today about the newsagents—a great cause, I guess, and a great case in point. What we are going to do is pass legislation. We are going to give the newsagents some hope that their dispute with News Corp may well be solved by the small business commissioner. In fact we have found out that it is actually not going to make any difference whatsoever, so we might want to have a code of conduct to assist those particular newsagents.

I think that responsibility for those codes of conduct should rest with the parliament, because this is a one newspaper town. Can you imagine the pressure that a minister could perhaps be put under by an extremely influential group to have a pretty soft code of conduct? It is our view that, if we are going to go down this path, we think the codes of conduct should be passed by the parliament and not by regulation.

The Hon. G.E. GAGO: I rise to oppose this amendment. The Liberal Party is, by this amendment, trying to water down and deny small businesses in South Australia the full benefits of the government's small business reform legislation. This amendment would remove reference to the industry codes under the Fair Trading Act 1987. This is unacceptable to the government. It is the core and the whole thrust of this bill, given that the codes of conduct under the Fair Trading Act 1987 are essential and an integral part of these reforms. We remind members opposite that the leading small business groups have called for industry code backing by financial penalties and this, with the other amendments by the opposition, will remove the ability of the government of the day to prescribe industry codes under the Fair Trading Act 1987.

The Hon. M. PARNELL: The Greens are opposing this amendment.

The Hon. A. BRESSINGTON: I am also opposing this amendment. I had amendments drafted to do exactly what the Hon. Terry Stephens has done, mainly because I do not have too much faith in the disallowance process and, as I said in my second reading contribution, the minister did provide me with a letter that I tabled that there was a guarantee that, if I was not satisfied with a code of conduct and I moved a disallowance, he would not reinstate the next day and we would have a discussion about that code of conduct and it would be open for amendment. So, I am taking the minister on his word, and I hope that, if he is still the minister tomorrow—

The Hon. R.I. Lucas: Which minister is this?

The Hon. A. BRESSINGTON: Koutsantonis.

The Hon. R.I. Lucas: He's the one who bet me 50 bucks and still hasn't paid 10 years later.

The Hon. A. BRESSINGTON: Well, that is your issue; I would have got my 50 bucks well before then, or my 50 bucks worth.

The ACTING CHAIR (Hon. J.SL. Dawkins): I think it might be worth returning to the bill that we are discussing.

The Hon. A. BRESSINGTON: As I said, I hope that letter is still relevant even if Mr Koutsantonis is not minister tomorrow. That will just be a test case for me, I guess.

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

The Hon. R.L. BROKENSHIRE: For the record, Family First will also be opposing this amendment. It is not unusual for codes of conduct to come through the regulatory process, and we do have an opportunity of disallowance, as the Hon. Ann Bressington has said. The government is on notice about that. We will not be supporting these amendments.

The Hon. T.J. STEPHENS: We are obviously short of friends on this one, so when it is put, we will be withdrawing the other amendments which are consequential.

The Hon. R.I. LUCAS: Before putting a question to the minister, I might just note in relation to my aside to the Hon. Ann Bressington that I have had commitments from minister Koutsantonis before. Personally, I would not trust him as far as I could drop-kick him. I would also instance that this government, of which the minister is a member, gave a commitment in writing, signed by the Treasurer, to the Australian Hotels Association upon which they received a donation to their election campaign of $100,000.

Members interjecting:

The Hon. R.I. LUCAS: You did not get one. The commitment in writing from the government—no less than the former treasurer—was that it guaranteed it would not introduce any increase in gaming machine taxation for the following four years of parliament and, within 12 months, in the state budget, the government introduced the super taxes on gaming machines and broke that particular commitment. I just indicate that I am a little cynical about commitments that I am given by any member of this government, including the Hon. Mr Koutsantonis, on not only this issue but, indeed, on a range of others.

My question to the Leader of the Government is: how many codes currently exist? The minister has referred to the fitness industry and the funeral industry, I think; I stand corrected on that. How many existing codes are there at present?

The Hon. G.E. GAGO: I only know of two, and they are obviously areas for which I am responsible. I do not know of others, but I can attempt to find out.

The Hon. R.I. LUCAS: I am happy to take that and not delay the proceedings of the committee. Would the minister take on advice and provide an answer in writing as to the number of existing codes under the existing arrangements?

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

Amendment negatived; clause passed.

Clause 4.

The Hon. T.J. STEPHENS: It is stated that the commissioner will be a senior executive with a salary of up to $250,000, according to the Minister for Small Business. What sort of qualifications and experience will the government be looking for in the person appointed? Will you give us an assurance that it will be somebody with significant small business experience?

The Hon. G.E. GAGO: I have been advised that minister Koutsantonis has stated in another place that a nationwide search will be conducted for the commissioner once the legislation is passed. It is a senior executive role. There are a clear set of competencies that the successful candidate will need to demonstrate. Some of these are derived from the functions as outlined in the legislation: representative educative ADR knowledge or skills, understanding of investigation process, legal knowledge, legislation interpretation ability, and so on. There are also other capacities and experience needed: strategic thinking capacity, change management, a person who has a track record for achieving results, relationship development and stakeholder management,

personal integrity, obviously an understanding and experience in small business issues, and understanding of government administration is also necessary.

The Hon. R.I. LUCAS: Subclause (2) states, 'The Commissioner will be appointed by the Governor and is an agency of the Crown.' Can the minister outline the significance of making it clear that the commissioner is going to be an agency of the Crown? Does this make the commissioner subject to other important pieces of legislation, or not, and, in particular, what is the relationship of the Freedom of Information Act to the small business commissioner and the operations of the commissioner? Also, what is the relationship of the Public Finance and Audit Act and the role of the Auditor-General and the operations of the small business commissioner?

The Hon. G.E. GAGO: I have been advised that, being an agency of the Crown, it provides for clarity, especially for application of the Public Finance and Audit Act, the Freedom of Information Act and also the Public Sector (Honesty and Accountability) Act.

The Hon. R.I. LUCAS: Can I clarify the minister's answer? Is it intended to convey the answer that the small business commissioner and his or her operations will be subject to the Freedom of Information Act and will be subject to audit by the Auditor-General under the Public Finance and Audit Act?

The Hon. G.E. GAGO: I have been advised, yes.

Clause passed.

Clause 5.

The Hon. T.J. STEPHENS: The clause uses the term 'commercial dealings'. This is a lot broader than the Victorian legislation, which uses 'unfair market practices'. If the commissioner is there as a mediator there must be a dispute and alleged unfair practices. Commercial dealings, on the other hand, could involve anything from a completely legitimate and amicable business deal to almost extortion, and we think this is ridiculous. Why does the government want to broaden the scope of the commissioner to such an extent?

The Hon. G.E. GAGO: I am advised that this definition was broadened in relation to commercial dealings. I am advised that it was used because it allows greater flexibility for the commissioner to investigate complaints or to assist in their resolution, as compared to the Victorian legislation which uses unfair market practices. It allows the commissioner to assist the parties to preserve their commercial dealings through the timely resolution of disputes. The expression of commercial dealings is also common to other functions and this ensures consistency across the commissioner's functions.

The Hon. T.J. STEPHENS: If the minister says that the commissioner is there merely as a mediator, then why not reduce the scope to the extent of the Victorian legislation and keep it to only unfair practices?

The Hon. G.E. GAGO: I have been advised that that was a government policy decision.

The Hon. T.J. STEPHENS: In the use of the term 'fairly and in good faith' there is no explicit definition of this. Why was it changed from the original draft of 'fairly, honestly, reasonably and in a cooperative manner,' given that you are merely promoting just a mediator here?

The Hon. G.E. GAGO: I have been advised that it should be made clear to the council that the wording in clause 5(2) is not an enforcement power; it is a broad statement encouraging parties to business transactions to act cooperatively, objectively, fairly and reasonably in their dealings with each other. The law is very similar with the word 'reasonably'. It is one of the great leverage points of the law. In this instance, however, it is simply a statement of what the commissioner encourages in business-to-business transactions but it is not an enforcement power.

The statutory definition of good faith may be included in an industry code at some time in the future but the wording in clause 5(2) is not a defined statutory duty which is to act in good faith, and we need to be very clear about this. A concise definition of what it is to act in good faith is something that will be looked at should it require any potential industry code in the future.

The Hon. R.I. LUCAS: In relation to paragraph (a)—'to receive and investigate complaints by or on behalf of small businesses'—I take it that 'on behalf of small businesses' is there to allow advocates, including members of parliament, to advocate on behalf of small businesses in the first instance with their agreement, but, secondly, can I ask the government: does paragraph (a) allow a member of parliament or, indeed, any other advocate to claim to be advocating on behalf of small

businesses without the express agreement of particular small businesses? That is, as a third party, take an issue up with the small business commissioner and indicate that they are speaking on behalf of the small businesses within that particular industry?

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

The Hon. R.I. LUCAS: I assume the answer no was to the second question. In relation to the first question—that is, does it allow for members of parliament, for example, with the agreement of small businesses, to act and advocate on their behalf?—I am assuming the answer to that is yes.

The Hon. G.E. GAGO: I am advised yes.

Clause passed.

Clause 6.

The Hon. R.I. LUCAS: Did the government consider in clause 6 a provision which exists in a number of other pieces of legislation that any ministerial direction to the commissioner, in addition to being included in the annual report, must also be tabled within a certain number of sitting days (six sitting days) of the issuing of that direction? If it did consider that as an option, why did the government reject that as an option?

The Hon. G.E. GAGO: I have been advised it is considered to be a sufficient safeguard.

Clause passed.

Clause 7.

The CHAIR: There is a clerical error in subclause (3) at line 32 which reads 'Parliament of the State' and it should be 'Parliament of a State'. I intend to make that clerical correction to the bill.

The Hon. T.J. STEPHENS: The Minister for Small Business has stated that parliament would have oversight of the agency via scrutiny of the annual report. Will there be any kind of performance review of the commissioner conducted annually or after any other prescribed period of time?

The Hon. G.E. GAGO: I have been advised that the appraisal or scrutiny will be made through the annual report and there has been no specific policy decision made in respect of any further, for instance, performance review of the commissioner at this point.

The Hon. T.J. STEPHENS: If I have got this right, we could be appointing somebody—again, I put on the record that I hope it is someone with extensive small business experience, not perhaps an ex-treasurer or somebody like that—for five years on $250,000 a year and all they have to do is come up with a glossy annual report and there is nothing that anybody can do about it.

The Hon. G.E. GAGO: The annual report is obviously a very important public accountability document and it is a process that is consistent with other positions.

Clause passed.

Clauses 8 and 9 passed.

Clause 10.

The Hon. T.J. STEPHENS: The Minister for Small Business expects the operating costs to be around $1.3 million annually, at the most. Can you guarantee this figure?

The Hon. G.E. GAGO: I have been advised that it is an indicative figure. It is one that we believe is achievable, but obviously guarantees cannot be made because you cannot predict all of the challenges or situations that might occur over time.

The Hon. T.J. STEPHENS: Just on that, can you give me again the breakdown of the staff that you would expect in that office? I think I have heard or seen that number before.

The Hon. G.E. GAGO: I understand that the minister has indicated that it would somewhere between five and seven, but the exact level of detail has not been resolved at this point in time, I understand.

The Hon. R.I. LUCAS: Is there already a transitional office called something like 'transitional office' for the small business commissioner which is operating within one of the government departments and agencies? If it is, what number of staff is within that office, what has

been their role and will they be the staff that will automatically transfer to the small business commissioner's office?

The Hon. G.E. GAGO: I have been advised that there is no office for a small business commissioner, that a small project team of three was derived to do work around putting this proposal together.

The Hon. R.I. LUCAS: And will those staff go into the office?

The Hon. G.E. GAGO: I do not believe that decision has been made at this point in time.

Clause passed.

Clause 11 passed.

Clause 12.

The Hon. R.I. LUCAS: I raised this in the second reading and the minister responded and we discussed this issue at clause 1. The minister indicated that the powers under the Fair Trading Act, section 77, were exactly the same as clause 12 of the bill. When one looks at section 77 of the Fair Trading Act, there are legal notions of reasonableness in the powers under the Fair Trading Act, which do not exist under the proposed bill. For example, under the Fair Trading Act, in essence, the person demanding the information must have a reasonable requirement to do so. The person who is resisting the provision of information can use this notion of reasonableness to refuse.

In this bill, there is the word 'reasonable' in relation to a reasonable time, but it does not relate to the issue of the demanding of information; that is, this particular bill does not use the notion of reasonableness in terms of what information can be demanded and does not provide that similar defence for someone who wishes to argue against the information that is being provided. Can the minister indicate whether that is a key difference between section 77 of the Fair Trading Act in relation to the provision of information and clause 12 of the bill?

The Hon. G.E. GAGO: I have been advised that these powers are designed to support the more general functions of the small business commissioner, that the information must be required for the performance of the commissioner's functions such as it must be reasonable to require it for that purpose.

The Hon. R.I. LUCAS: There is no indication of reasonableness in clause 12, and the minister cannot refer to any words there which refer to it being reasonable in terms of the type of information that needs to be required. It has to be within the terms of the performance of the commissioner's functions, that is true, but the minister was earlier waxing lyrical about the importance of the word 'reasonable' in terms of defending an earlier clause of the bill.

It is a notion that exists within section 77 of the Fair Trading Act. It does not exist in clause 12, other than that there has to be a reasonable time specified in the notice. In section 77 there is a restriction placed on the commissioner in terms of the information that he or she demands. There is no similar restriction under clause 12. There is a much wider and unfettered power in clause 12 of this bill for the commissioner to demand information than compared to section 77, contrary to the indication given by the minister in response to my earlier question.

The Hon. G.E. GAGO: I have been advised that it is not unfettered power because it is ultimately subject to judicial review.

The Hon. R.I. LUCAS: Respectfully, that is a nonsense, and the minister knows it. Yes, it is subject to judicial review but that is not the issue I am raising. Everything is potentially subject to judicial review, but that is not the issue I have raised in relation to this. It is clear by that answer, based on advice, that the minister does not have a specific response to my assertion, which is quite clear from a reading of section 77 of the existing Fair Trading Act that it is a restricted power compared to the unrestricted and unfettered power, other than the general protection of potential judicial review.

The notion of reasonableness is not within this particular power to require information, and this is the power that this commissioner will have: to demand tax records, profitability records, indeed anything that he or she wishes in relation to the performance of the functions of the act.

Clause passed.

Clause 13 passed.

Clause 14.

The Hon. T.J. STEPHENS: During consideration in detail in the other place the Minister for Small Business could not give detail of the fee model for usage of the commissioner as he had not yet read it. Can that detail now be provided?

The Hon. G.E. GAGO: No, I have been advised that it has not been completed.

Clause passed.

Schedule 1.

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

Clause 14, page 11, after line 34 [clause 14, inserted section 28F]—After subsection (2) insert:

(2a) If a Minister initiates a proposal for regulations prescribing an industry code or provisions of an industry code under this section, the Minister must, before the regulations are made, consult with each organisation that the Minister considers to be representative of an industry likely to be affected by the code or provisions.

I move this amendment on behalf of my colleague, the Hon. Mr Hood. I will brief on this again, but this an important amendment that the Hon. Dennis Hood has put to the chamber. Basically this amendment enforces consultation before the codes of conduct are finalised and in their development and drafting, and to me that is really important.

The Hon. Ann Bressington spoke about disallowing regulations, and we have been involved in that before. Most of the time when we have had to move disallowance of regulations, for example, the pig fees, we had to do that because there was no consultation; it was just done through the bureaucracy. This amendment enforces consultation with all industry sector groups. I commend the amendment to the committee.

The Hon. G.E. GAGO: We support this amendment. It refers and applies to section 28F, page 11 of the bill, and seeks to further clarify the way a regulation concerning an industry code will be initiated, and seeks to ensure that the minister consults before a regulation is developed with the appropriate industry representative or representatives. The government always intended that there would be a transparent approach to the development of industry codes and that they would be developed with relevant stakeholders. This now clarifies that position and therefore we support the amendment.

The Hon. T.J. STEPHENS: The opposition supports the amendment.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

Clause 14, page 11, after line 41 [Schedule 1, clause 14, inserted Part 3A]—

After inserted section 28F insert:

28G—Application of Part to franchising.

(1) If the regulations declare that franchising is to be taken to be an industry for the purposes of this Part and that franchisors and franchisees are to be taken to be participants in the industry, this Part applies to a franchisor whether carrying on business in or outside this State, but only in relation to a franchisee carrying on business in this State.

(2) In this section, franchisor and franchisee have the meanings assigned by the regulations.

As I indicated in my second reading contribution, my amendment seeks to limit the application of the proposed part 3A of the Fair Trading Act, which provides for the industry codes and penalties for breaching them, and where it applies to cases involving a franchisee carrying on a business in this state.

I move this amendment in response to the concerns of the franchisors based in South Australia who fear that the proposed South Australian code of conduct, which everybody accepts will be different from the national code, will apply not only to their dealings with South Australian franchisees, as per the intention of the bill, but also to their dealings with franchisees interstate. This would place them at significant disadvantage to those based interstate and would provide an incentive for them to relocate their headquarters, taking jobs and profits with them.

There can be no doubting that the intention of the bill is to regulate businesses based in South Australia. While this is not the explicit intention the Crown Solicitor talked of in his advice on my amendment sent to the minister, it nevertheless implies the bill's intent to capture conduct of South Australian businesses, regardless of whom they are dealing with or where they are based.

Further, as I stated in my second reading contribution, Mr Stephen Giles (partner in the prominent legal firm Norton Rose Australia) has pointed out in rebuttal to the Crown Solicitor's advice that, contrary to the Crown Solicitor's assumption, in almost all franchise agreements the applicable law is the law of the franchisor state, meaning that this bill will have effect feared by franchisors through its normal application, even if the concerns about its extraterritorial application are unfounded. I commend my amendment to the committee.

The Hon. G.E. GAGO: The government opposes this amendment. The concern with the amendment is that it will deny or restrict the benefit of these reforms in some instances, primarily in relation to prospective franchisees. This amendment has unintended consequences and will create a loophole that may be exploited by dubious franchisors. Most importantly this amendment is unnecessary as section 4A of the Fair Trading Act 1987 sets out the need for relevant connection with South Australia; that is, the extraterritorial application of the act. I referred to that earlier on.

Given this fact, the amendment is unnecessary and adversely affects intended beneficiaries of the reforms. The government therefore opposes the amendment. In addition, the notion that a franchisor will leave South Australia because of this legislation is without foundation. Similar arguments were made by the opponents of the then proposed federal franchising code in the late nineties and the sector has experienced considerable growth since then.

The bill will instil confidence in the South Australian franchising sector and will encourage greater investment by potential franchisees who will be given the comfort that this bill provides in its current form.

The Hon. T.J. STEPHENS: I rise to indicate support for the Hon. Ann Bressington's amendment. Having met with some of those franchisors that are South Australian grown and of whom we are extremely proud, I am fearful how they are going to react to this, so if they can take some small comfort out of the Hon. Ann Bressington's amendment then the Liberal Party will certainly support that.

The Hon. A. BRESSINGTON: I just have a question for the minister. She mentioned in her response that there were unintended consequences from this amendment. Can she give some examples of those unintended consequences?

The Hon. G.E. GAGO: I have been advised that the loophole involves that prospective franchisees will be excluded because of the requirement for them to be actually carrying on a business, and prospective franchisees are not carrying on a business; they are looking to carry on a business. So, they are going to not be covered.

The Hon. M. PARNELL: The Greens will not be supporting this amendment. We are satisfied that the existing provisions in section 4A in relation to extraterritorial application of these provisions will suffice, and we do not think this new provision adds any value. As the minister has described, if there are unintended consequences, if there is the ability for unscrupulous operators to avoid their obligations under the legislation, we should avoid putting such clauses into our legislation.

The Hon. J.A. DARLEY: I will not be supporting the amendment.

The Hon. K.L. VINCENT: I will be supporting it.

The Hon. R.L. BROKENSHIRE: I understand what the Hon. Ann Bressington's amendment is but, with investigations we have done and advice we have received, we have the same opinion as the Hon. Mark Parnell.

Amendment negatived; schedule as amended passed.

Title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (18:06): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT BILL

Consideration in committee of the House of Assembly's message.

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

That the House of Assembly's amendment be agreed to.

Motion carried.

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

Second reading.

The Hon. G.E. GAGO (Minister for Regional Development, Minister for Public Sector Management, Minister for the Status of Women, Minister for Consumer Affairs, Minister for Government Enterprises, Minister for Gambling) (18:09): I move:

That this bill be now read a second time.

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

Leave granted.

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

The changes to the Act and Regulations proposed in this Bill are wide ranging and considered necessary to enhance public safety and the safety of staff, and improve the security and effectiveness of operations in prisons and community corrections. There is a particular focus on parole.

The changes proposed will make parolees more accountable for their actions by strengthening processes for offenders who have breached their parole order and are considered to present a high risk to the community. The changes will also improve the sharing of appropriate information between Correctional Services, the Department of Health, the Parole Board, and SAPOL about prisoners and parolees.

All references to 'Manager' in the Act and Regulations replaced with 'Chief Executive'

The Act currently assigns a range of powers to the 'Manager' of a correctional institution. These arrangements are no longer considered appropriate and the reference to 'Manager' has been amended to 'Chief Executive'. This will appropriately place the responsibilities for the administration of correctional institutions and allow the Chief Executive to delegate any power to relevant staff within the prisons, including the Manager.

Extending the criteria under which police may remove a prisoner from correctional facilities

Currently the Act provides for the removal of a prisoner from a correctional facility for the investigation of an offence if that prisoner is suspected of having committed an offence or have been charged with an offence.

The limitations imposed by the current wording exclude the removal of prisoners from custody for a range of investigations including interview as potential witnesses, as anti-corruption whistleblowers or as informants.

The Bill therefore provides an amendment to extend criteria for a prisoner's removal from custody to include for the purposes of assisting in the investigation of offences.

The amendment will further strengthen policies that contribute to improved public protection and will strengthen law enforcement processes.

Transfer the responsibility for the setting and review of prisoner allowances to the Chief Executive of the Department for Correctional Services.

Prisoner allowances and remuneration arrangements are entirely operational considerations and should be separated from Government Policy.

The Bill therefore shifts the responsibility from the Minister for Correctional Services (with approval from the Treasurer) to the Chief Executive.

This is consistent with arrangements in most Australian jurisdictions.

Prevent a discharged prisoner depositing money into a prisoner's account and to establish a Prisoner Amenities Account

Presently, released prisoners can deposit monies into the accounts of other prisoners. Anecdotal evidence suggests that this is often done to pay back outstanding unlawful debts, such as drug dealing or standover or manipulative-type tactics.

To restrict payments for unlawful dealings and protect offenders discharged from prison being manipulated to provide funds to other prisoners, the Bill prevents a discharged person from depositing any money into another

prisoner's account for 12 months following release from prison. This will allow the discharged person to retain their own finances, and will assist with their reintegration into the community.

Further provisions are included to formally establish a Prisoner Amenities Account where any surplus derived from prisoner canteen sales and other sources relating to prisoners will be deposited and used for prisoner activities.

Currently such arrangements exist through departmental procedures.

The surplus is used to purchase equipment and other goods for prisoners. Some recent examples are the purchase of table tennis tables, footballs, basketballs and other sports equipment, also guitar strings and picks for prisoners.

Include the Health and Community Services Complaints Commissioner as privileged mail

This amendment was initiated by the Health and Community Services Complaints Commissioner.

Currently the Act provides for certain mail to and from a prisoner to be declared privileged mail and therefore immune from scrutiny by authorised officers of the department.

Currently mail between the following entities are included under the Section:

the Ombudsman; or

a Member of Parliament; or

a Visiting Tribunal; or

an inspector of the correctional institution; or

a legal practitioner.

The Bill appropriately adds the Health and Community Services Complaints Commissioner as an additional listed Agency under the Section to enable prisoners the legislative right to have private and confidential written correspondence with the Office of the Commissioner.

Strengthen the arrangements for visitors to prisoners, in particular for child sex offenders and visitor identification

Currently the Act does not detail the minimum standards for visits other than the frequency of visits for both sentenced and remand prisoners.

Accordingly, a new provision has been included in this section which will formally incorporate non-contact visits into legislation as a minimum standard to ensure the safety and security of the prison. A non-contact visit means the prisoner is behind a glass barrier and no contact can take place between the prisoner and visitor.

This section is further amended to provide for prisoners convicted of child sex offences to not be permitted to be visited by anyone under-aged. It is considered that this amendment will further enhance the protection of under-aged persons if they visit a correctional facility.

In addition, visitors to a correctional facility will be legislatively required to provide such evidence as the Chief Executive thinks appropriate to determine the person's identity.

In response to comments received during the consultation phase, to allow a degree of flexibility and ensure that persons who would have difficulties consistently providing personal identification, the Chief Executive (or delegate) can waiver this requirement in genuine cases.

There is also a provision to prevent a discharged prisoner from visiting other prisoners within 12 months after their discharge. This measure is going to significantly contribute to increased security within the prison system. In the past, discharged prisoners have visited other prisoners who were then caught with contraband introduced into prison.

This will significantly reduce the frequency of such visits being used for inappropriate purposes and protect those discharged from prison being influenced by others to bring contraband into the prisons.

The Chief Executive can approve such visits where a genuine case exists.

Monitoring, recording and use of recordings of prisoner telephone calls

The use of telephones is not currently provided under the *Correctional Services Act*.

With the emergence of new technologies, all prisoner telephone calls, with the exception of privileged calls (e.g. to the Ombudsman's Office, legal representatives, the Health and Community Services Complaints Commissioner, a Member of Parliament, a Visiting Tribunal, an inspector of the correctional institution and other agencies determined by the Chief Executive) are now monitored and recorded and the recording is available to Correctional Services' staff and SAPOL.

While formal advice has confirmed that the departmental procedure for the recording of calls is legitimate it is considered that consistent with other jurisdictions, these arrangements should be contained in the Act.

The content of prisoner telephone conversations is regularly used for intelligence purposes both in relation to matters involving the correctional facility and in regards to general community safety.

The introduction of illicit drugs (and mobile telephones and weapons) into a prison to carry higher penalties

Currently the introduction of illicit drugs into a prison carries a maximum penalty of two years imprisonment.

The introduction of illicit substances into South Australian prisons is a considerable issue there have been instances of visitors trying to introduce drugs. There are also occurrences where those substances are thrown over the prisons' perimeter fence, in a tennis ball for example.

The Bill provides for an increased maximum penalty to five years imprisonment to deter such offending and bring the maximum penalty in line with community expectation.

In addition, the introduction of other items prescribed by the Regulations will also carry higher penalties than the current maximum of six months imprisonment. It is the intention to specifically prescribe mobile telephones and weapons. This is due to these items having the potential to cause significant issues within the prison system.

As a result, the introduction of these items into a prison will attract a maximum penalty of five years imprisonment. This is again, in keeping with community expectations.

The Bill also repeals the defence in subsection (2) to a charge of an offence of introducing into a correctional institution without the permission of the manager an item prohibited by the regulations if the defendant proves that he or she had reasonable grounds for being in possession of the item and at no time had any intention of parting with possession of it while within the institution.

Prisoners who have their parole order cancelled will be required to serve the remainder of their sentence unless the Parole Board makes a fresh decision to release the prisoner on parole

Currently the Parole Board can automatically cancel parole for a breach of a *designated* condition of a parole order. In that case the prisoner must serve the remainder of their sentence unless the Parole Board approves renewed parole release.

If a parolee breaches any other condition of their order, the Parole Board may cancel the parole order and may direct that person to serve a further period of imprisonment of up to six months.

The Bill removes the distinction between ‘designated conditions' and non-designated conditions' of parole, to make the breach of any parole condition subject to a Board decision both in relation to parole cancellation and re-release.

The Presiding Member of the Parole Board suggested this change and is entirely supportive.

At times, a parolee's breach of a normal condition of parole might be considered far more serious than breaching a designated condition due to the nature of the breach and the background or offending history of the offender. For example, a parolee drinking alcohol to excess where his/her prior serious offending involved alcohol abuse.

Parolees will serve the remainder of their sentence in cases where the Parole Board has cancelled the parole order.

An analysis of prisoner numbers has determined that some prisoners will serve longer periods in prison following a cancellation of their parole order, but it is considered that the additional prisoners can be absorbed within the projected prisoner growth forecast.

This is a good amendment as it is particularly relevant for prisoners who pose an ongoing risk of reoffending.

Improve pre-release arrangements for prisoners serving life sentences

The Bill provides for the Parole Board to include a condition of parole for life-sentenced prisoners to undertake pre-release and reintegration activities at a facility under the operation of the Department for Correctional Services or an appropriate ‘parole hostel'.

Applications for release to parole require a significant amount of consideration particularly in relation to assessing risk to the community.

The prisoner must have taken adequate steps to address their offending behaviour.

The Parole Board forwards recommendations for life-sentenced prisoners' release to parole to His Excellency, the Governor in Executive Council for consideration.

His Excellency may, on receiving the Board's recommendation, order that the prisoner be released from prison on parole for a specified period or the Governor in Executive Council may refuse the application.

Life sentenced prisoners who are not approved for parole transfer back to secure custody.

The Bill has an extra provision that enables the Parole Board to consider including a condition of the parole release that the prisoner participate in reintegration activities prior to release on parole to the community. The pre-release activities would occur at a facility operated by the Department for Correctional Services such as the Adelaide Pre-release Centre.

This will address any concerns about the increased risk of escape from a less secure environment if prisoners perceive that their parole application is likely to be unsuccessful and the expenditure of valuable resources on pre-release activities when life-sentenced prisoners are ultimately not released to parole and transfer back to secure custody.

The amendment will not change the decision-making for release to parole for life sentenced prisoners. The Parole Board would still make a recommendation to the Governor and the Governor would still maintain the decision for release. The proposed amendment gives the Parole Board the option to include pre-release activities for up to one year at a designated site as a condition of parole. Should the parolee not perform the reintegration activities satisfactorily, it would be deemed a breach of parole and the Board could return the parolee to secure custody.

Electronic monitoring as an optional condition of parole

To strengthen public safety it has been included in the Bill that electronic monitoring be provided as an optional parole condition for the Parole Board to consider including for an offender during a period of parole.

Electronic monitoring is a valuable tool currently used by the Department for Correctional Services for rigorously supervising offenders in the community.

Electronic monitoring is currently used for those prisoners on post-prison Home Detention and Intensive Bail Supervision. Post-prison Home Detention is for those prisoners that satisfy the strict criteria to serve the last part of their period of imprisonment on Home Detention, largely or entirely subject to electronic monitoring as a condition. Intensive Bail Supervision is court ordered Home Detention Bail, of which the vast majority have electronic monitoring as a condition.

Disclosure of offending as an optional condition of parole

There is a need to strengthen the requirement for convicted child sex offenders to disclose the nature of their previous offending to prospective employers.

This is to prevent these offenders using their place of employment to engage in further sexual offending against children who may be associated with the place of employment, such as the employer's children.

To provide that a report requested by the Parole Board about a prisoner or person on parole be prepared by the Chief Executive

Currently the Act provides that the Parole Board is to obtain a report from the supervising community corrections officer when considering discharging a parole order, varying or revoking parole conditions, or considering cancelling release on parole for a breach of parole conditions.

These provisions have been particularly problematic when the offender's supervising community corrections officer has changed and the current community corrections officer is not the most experienced person with that offender. In such a case a report may be better prepared by another departmental person.

The Bill enables the Parole Board to request reports about prisoners or parolees from the Chief Executive. The relevant delegated staff member on behalf of the Chief Executive can then appropriately prepare the report for the Parole Board.

The Chief Executive of the Department being able to issue a warrant for the arrest and imprisonment of a parolee

Currently the Parole Board is notified of a parole breach and a request for a warrant is forwarded to the Board, and the Board then issues a warrant.

This current provision restrict the issuing of the warrant to the Parole Board. This means the issuing of the warrant can be delayed if it is requested on weekends or out of hours. Parole Board members are appointed on a part-time basis and there is no expectation that they work out of hours or on weekends.

The Bill provides the authority to issue a warrant to include the Chief Executive of the Department for Correctional Services.

The CE must then, within two working days, provide the Parole Board with a report on the matter.

The Bill also authorises the person to be detained in custody pending determination. The Presiding Member or Deputy Presiding Member must, within five working days of the person being detained, consider the report and review the warrant.

The Presiding Member or Deputy Presiding Member will have discretion to confirm the warrant and order the person continue to be detained pending appearance before the Parole Board, cancel the warrant and order the person be released from custody or issue a summons for the person to appear before the Board at a later date.

It is not anticipated that the amendment will result in an increase in prisoner numbers; it merely extends the authority to suspend a parole order and issue a warrant to include the Chief Executive.

When parolees are returned to custody on a Parole Board warrant as a consequence of reported breaches of parole, the Board has to consider the necessary action. The provisions in the Bill do not change this process.

Arrest of parolee by a police officer

The provision is not intended to provide SAPOL staff with the authority to arrest a parolee who has committed a technical parole breach on every occasion, but where there is reasonable cause to suspect the parolee has breached their parole order and poses an imminent and serious threat to public safety. In these circumstances, it is important that SAPOL officers have the ability to arrest that parolee.

To allow sufficient time for the warrant to be obtained and all necessary consideration to be given, the Bill provides for a parolee who is arrested under this provision to be detained for up to 12 hours.

Within that 12 hours, the Presiding Member or Deputy Presiding Member of the Parole Board or the Chief Executive of the Department (in the absence of such a Member) must be notified of the person's arrest, review the circumstances of arrest and take clear action. The person may be ordered to be detained pending appearance before the Parole Board, be released from custody or issued a summons to appear before the Board at a later date.

Powers of search and arrest of non-prisoners

The Act currently has provisions for the power of search and arrest of non-prisoners. Currently this is limited to persons and vehicles entering a prison.

To strengthen those provisions, the Bill removes all doubt that the powers of Correctional Officers to search persons and vehicles extends to other areas of the gazetted prison reserve, including visitor car parks. This will allow visitors to be searched prior to entering a prison to further restrict the introduction of contraband.

The Chief Executive of the Department for Correctional Services to release information on prisoners and offenders in certain circumstances

Section 85C of the Act governs the release of information relating to a prisoner or offender and affords penalties for those that breach the Sections of the Act.

Provisions to maintain confidentiality to protect prisoner and offender information are necessary.

There are situations when public interest however may outweigh the prisoner or offender's need for confidentiality. For example, when a prisoner has escaped custody or when a parolee has had a warrant issued for breaching their parole order and releasing information about the offender would assist in the offender's arrest, thereby further protecting the public.

The Bill provides for the Chief Executive of the Department for Correctional Services to release information about a prisoner, probationer or parolee if the person poses a serious risk or threat to public safety.

SAPOL to be supplied with approved residential addresses for persons on parole and the conditions of their parole orders

Currently there is no provision in the Act for South Australian Police to be automatically notified of the approved residential address of offenders on parole and the parole conditions set by the South Australian Parole Board.

In certain cases this has resulted in Police being unaware that a person was subject to parole supervision and the conditions of the parole order. This can potentially result in the Police not being able to effectively contribute to the proper management and supervision of parolees.

For example, a person on parole may have a condition imposed that prohibits them from being on licensed premises. In such a case where Police become aware of a person effectively being in breach of their parole conditions immediate action could be taken to notify Correctional Services and the Parole Board which would then allow for appropriate action to be taken.

It is not intended that a person on parole who may have breached a condition of their parole order would automatically be arrested. However, ensuring that SAPOL has relevant information on persons on parole contributes to increased public safety and better monitoring of the parolee's compliance with the conditions of their orders.

The Bill therefore compels the Board to notify the Commissioner of Police on the place of residence of a parolee and the conditions of the parole order.

Better sharing of information between Health staff and Correctional Services staff about prisoners for the proper management of a prisoner

SA Prison Health Services is under the Department of Health. Processes and procedures to appropriately share information between SA Prison Health Services and the Department for Correctional Services have been significantly strengthened over the past few years.

However, State Coroners have continued to recommend that the Department for Correctional Services and the SA Prison Health Service, in so far as is considered necessary for the proper management of a prisoner, develop protocols and procedures for the sharing of information regarding the medical histories and clinical presentations of individual prisoners in Department for Correctional Services' custody.

It has further been recommended by the Coroner to introduce such legislation to overcome confidentiality considerations in respect of the implementation of such protocols and procedures.

To entirely respond to the recommendations, the Bill requires staff operating under the *Health Care Act 2008* and/or the *Mental Health Act 2009* to disclose relevant health information with Correctional Services.

As the Chief Executive of the Department for Correctional Services has sole responsibility for the custody of prisoners in this State, the amendment is required to enable the rightful exercise of that responsibility by allowing all relevant information about a prisoner's health to be shared to enable proper management of prisoners.

Issuing of a weapon to specially trained Correctional Officers

Currently the Act is silent on the issuing and use of weapons by Correctional Officers.

In practice a small group of highly trained staff are issued with a firearm which they predominantly carry when they undertake high risk prisoner escorts. The authority is derived from the *Summary Offences Act 1953* without any legislative provision or regulation contained in the *Correctional Services Act*.

The Bill provides for the Chief Executive to authorise an officer or employee of the department to carry a prescribed weapon while on duty.

Correctional Services' dogs

Currently the Act is silent on the use of Correctional Services' dogs.

Passive Alert Detection dogs are used by Correctional Services and whilst their use is widely accepted it remains unlegislated. This could potentially result in persons objecting to being subject to a check by a Passive Alert Detection dog.

At the time the Act was originally passed there were no Correctional Services' dogs in existence. These highly trained dogs are now used more extensively, particularly for drug detection purposes.

Consistent with arrangements in other jurisdictions it is therefore considered necessary to have appropriate legislative provisions in place that provide for the use of these specially trained Correctional Services' dogs.

The Bill provides for the purpose for which a Correctional Services' dog may be used (for example to search for prohibited items, to undertake a scanning search of persons in a Correctional Services' facility, or a visitor for drugs, to search for prisoners or to restrain a prisoner).

Prisoner compensation quarantine funds

The Bill also inserts new Part 7. This Part sets out a scheme for the quarantining of prisoner compensation. The operation of the scheme is as follows: if a prisoner is injured in a correctional institution and he or she receives a compensation payment for damages from the State, the amount of damages awarded to the prisoner is paid by the State to the CE to be held in a prisoner compensation quarantine fund. A victim of a criminal act by the prisoner may, within the specified quarantine period, give notice to the CE of the commencement of legal proceedings for the recovery of damages against the prisoner in respect of the criminal act by the prisoner. If the victim obtains an award of damages in respect of the proceedings, the CE may pay money out of the fund in respect of the award of damages. Provision is also made for creditors to notify the CE of, and be paid out in respect of, any judgment debt against the prisoner

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Correctional Services Act 1982*

4—Amendment of section 4—Interpretation

These amendments relate to the definitions under the Act.

5—Amendment of section 5—Victims Register

References to 'the Chief Executive Officer' are substituted with 'CE' throughout the Act.

6—Amendment of section 7—Power of Minister and CE to delegate

7—Amendment of section 9—CE's annual report

8—Amendment of section 22—Assignment of prisoners to particular correctional institutions

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

10—Amendment of section 24—CE has custody of prisoners

11—Amendment of section 25—Transfer of prisoners

These are consequential amendments.

12—Amendment of section 27—Leave of absence from prison

References to 'member of the police force' are substituted with 'police officer'.

13—Amendment of section 27A—Interstate leave of absence

These amendments are consequential.

14—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc

The amendment to section 28(2) is consequential.

The amendment to section 28(4) extends the circumstances in which the CE must release a prisoner into custody of a police officer to include where the prisoner is suspected of having knowledge or information that might assist in the prevention or investigation of an offence.

15—Amendment of section 29—Work by prisoners

16—Amendment of section 30—Prison education

These are consequential amendments.

17—Amendment of section 31—Prisoner allowances and other money

Some of these amendments are consequential. Another amendment provides that the CE will fix allowances and rates of bonus payments for prisoners, and removes the requirement that the approval of the Treasurer be obtained.

The amendments that insert new subsections (5b) and (5c) provide that a person who has been released from prison may not, without the approval of the CE, within a period of 12 months of the person's release from prison, give money to a prisoner or deposit money in any account kept in the name of a prisoner (and require the CE to make reasonable efforts to return money given in contravention of new subsection (5b) to the person who made the payment).

18—Substitution of section 32

This amendment inserts new sections 32 and 32A.

32—CE may sell items of personal use to prisoners

Proposed section 32 provides that—

- the CE may sell any items of personal use or consumption that the CE thinks fit to prisoners;
- withdrawals of money from any account held in the name of a prisoner, at the discretion of the CE in accordance with section 31, may be made for the purchase of items for sale under this section;
- the CE is authorised in selling items under this section, to set prices that, in the opinion of the CE, reflect the costs associated with selling the items and, if a surplus arises from time to time, to retain the surplus and deposit it in the account established under section 32A.

32A—Prisoner Amenity Account

Proposed section 32 provides that—

- the Prisoner Amenity Account is established;
- the CE will be responsible for the administration of the account;
- the account will consist of any surplus deposited from time to time under section 32(3)(b) and any other money that the CE thinks may be appropriately deposited in the account from time to time;
- the CE may apply any money standing to the credit of the account towards the provision of amenities to prisoners.

19—Amendment of section 33—Prisoners' mail

Some of these amendments are consequential. Another amendment provides that a letter sent by a prisoner to the Health and Community Services Complaints Commissioner cannot be opened.

20—Amendment of section 33A—Prisoners' goods

This is a consequential amendment.

21—Amendment of section 34—Prisoners' rights to have visitors

Some of these amendments are consequential. Another amendment applies the following restrictions to a visit to a prisoner (including a remand prisoner):

- a person may not visit a prisoner unless the person provides such evidence as the CE thinks appropriate as to the person's identity;
- a person who visits a prisoner may see and speak with the prisoner but is not permitted to touch the prisoner, unless the visit is part of a contact visiting program approved by the CE;
- a person who has been released from prison may not, without the approval of the CE, within a period of 12 months of the person's release from prison, visit a prisoner;
- a person under the age of 18 years may not, without the approval of the CE, visit a prisoner if any part of the imprisonment for which the prisoner was sentenced is in relation to a child sexual offence.

22—Insertion of section 35A

This amendment inserts new section 35A, which provides that the CE may monitor or record a communication between a prisoner and another person and prescribes procedures relating to the monitoring or recording of communications under the section.

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

24—Amendment of section 37—Search of prisoners

25—Amendment of section 37AA—Drug testing of prisoners

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

27—Amendment of section 37B—Authorised officers

28—Amendment of section 37C—Revocation of release

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

30—Amendment of section 39A—Delivery of property and money to prisoner on release

31—Amendment of section 39B—Manner in which former prisoner's personal property is to be dealt with

32—Amendment of section 42A—Minor breach of prison regulations

33—Amendment of section 43—CE may deal with breach of prison regulations

34—Amendment of section 44—CE may refer matter to Visiting Tribunal

35—Amendment of section 45—Procedure at inquiry

36—Amendment of section 46—Appeal against penalty imposed by CE

37—Repeal of section 49

38—Amendment of section 50A—Prisoner must comply with conditions to which temporary leave of absence is subject

These amendments are consequential.

39—Amendment of section 51—Offences by persons other than prisoners

One of these amendments is consequential. Another amendment increases the maximum penalty for the offence of delivering to a prisoner, or introducing into a correctional institution, a controlled drug or an item of a kind prescribed by the regulations to imprisonment for 5 years. A further amendment repeals the defence in subsection (2) to a charge of an offence of introducing into a correctional institution without the permission of the manager an item prohibited by the regulations if the defendant proves that he or she had reasonable grounds for being in possession of the item and at no time had any intention of parting with possession of it while within the institution.

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

This amendment provides that section 66(1), which provides for automatic release on parole for certain prisoners, does not apply to a prisoner if any part of the imprisonment for which the person was sentenced is in respect of an offence committed while the prisoner was on parole (the prisoner having been released on parole following application by the prisoner to the Board).

41—Amendment of section 67—Release on parole by application to Board

These amendments are consequential.

42—Amendment of section 68—Conditions of release on parole

This amendment allows the Governor to make the release on parole of a prisoner serving a sentence of life imprisonment subject to a condition that, for the period of up to 1 year commencing on the day on which the prisoner is released, the prisoner must—

- reside at specified premises (including premises declared under the Act to be a probation and parole hostel or a prison); and
- undertake at specified places such activities and programs as determined by the Board from time to time to assist in the reintegration of the prisoner into the community.

The amendment also provides that the release on parole of a prisoner may be subject to a condition that the prisoner be monitored by use of an electronic device.

A further amendment provides that the release on parole of a prisoner serving a sentence of imprisonment for a child sexual offence must be subject to a condition requiring the prisoner, on making an application for employment, to provide the prospective employer with a report about the prisoner's criminal history.

43—Amendment of section 71—Variation or revocation of parole conditions

This amendment transfers the responsibility for providing a report to the Board in relation to a person under the supervision of a community corrections officer from the officer to the CE.

44—Amendment of section 72—Discharge from parole of prisoners other than life prisoners

This amendment is consequential.

45—Repeal of section 73

This amendment repeals section 73 to remove the requirement that the Board automatically cancel the parole of a person who breaches a designated condition of his or her release on parole.

46—Amendment of section 74—Cancellation of release on parole by Board for breach of conditions

Some of these amendments are consequential. Another amendment removes the 6 month limit applying to the period for which the Board may direct a person who has breached a condition of his or her parole to serve in prison. A further amendment provides that any period for which a person is detained in custody or in prison after breaching a condition of parole is to be counted as or towards the period that the person is liable to serve in prison under this section (and any date on which the sentence is to be taken to have commenced will be fixed accordingly).

47—Amendment of section 74AA—Board may impose community service for breach of conditions

These amendments are consequential.

48—Amendment of section 75—Automatic cancellation of parole on imprisonment for offence committed while on parole

This amendment provides that any period for which a person is detained in custody or in prison after committing an offence while on parole is to be counted as or towards the period that the person is liable to serve in prison under this section (and any date on which the sentence is to be taken to have commenced will be fixed accordingly).

49—Substitution of section 76

This amendment substitutes section 76 and inserts new sections 76A and 76B.

76—Apprehension etc of parolees on Board warrant

Proposed section 76 is in substitution of existing section 76 which relates to the apprehension of parolees on a warrant of the Board. Proposed subsection (1) provides that the presiding member or deputy presiding member of the Board may, if he or she suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole, summon a person to attend before the Board or issue a warrant for the arrest of the person (for the purpose of bringing the person before the Board).

Proposed subsection (2) provides a member of the Board (other than the presiding member or deputy presiding member) may, if he or she holds the relevant suspicion, summon a person to attend before the Board or apply to the presiding member or deputy presiding member, or a magistrate, for the issue of a warrant for the arrest of the person.

The remaining subsections provide for procedures relating to warrants.

76A—Apprehension etc of parolees on warrant of CE

Proposed section 76A provides that the CE may, if the CE suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole, issue a warrant for the arrest of the person. Such a warrant authorises the detention of the person in custody until the end of 5 working days after the CE has provided a report on the matter to the Board (which must be provided within 2 working days of the issuing of a warrant). The presiding member or deputy presiding member of the Board must consider the report and either issue a fresh warrant for the continued detention of the person (for the purpose of bringing the person before the Board) or cancel the warrant and order the release of the person (and the member may issue a summons for the person to appear before the Board).

76B—Arrest of parolee by police officer

Proposed section 76B provides that a police officer may, without warrant, arrest a person who has been released on parole if the police officer suspects on reasonable grounds that—

- the person has, while on parole, breached a condition of parole; and
- the person presents an imminent and serious risk to public safety.

Proposed subsection (2) sets out procedures relating to the arrest of a person under the section.

50—Amendment of section 77—Proceedings before Board

51—Insertion of Part 7

This amendment inserts new Part 7 which prescribes a scheme for the quarantining of prisoner compensation. If a prisoner is awarded damages for a claim against the State for a civil wrong that occurred while the claimant was a prisoner and that arose out of and in connection with his or her detention in a correctional institution, the State must pay the amount of the award of damages to the CE. The CE holds the amount in a prisoner compensation quarantine fund. A victim of a criminal act by the prisoner may, within the specified

quarantine period, give notice to the CE of the commencement of legal proceedings for the recovery of damages against the prisoner in respect of the criminal act by the prisoner. If the victim obtains an award of damages in respect of the proceedings, the CE may pay money out of the fund in respect of the award of damages. Provision is also made for creditors to notify the CE of, and be paid out in respect of, any judgment debt against the prisoner.

52—Amendment of section 82—Unauthorised dealings with prisoners prohibited

53—Amendment of section 83—CE may make rules

54—Substitution of section 84

55—Amendment of section 85—Execution of warrants

56—Amendment of section 85A—Exclusion of persons from correctional institution

These amendments are consequential.

57—Amendment of section 85B—Power of search and arrest of non-prisoners

Some of these amendments are consequential. The amendment inserting new subsection (14) provides that, to avoid doubt, a reference in section 85B to a correctional institution includes a reference to all of the land identified in a proclamation under section 18(1) relating to the institution.

58—Amendment of section 85C—Confidentiality

Subclause (1) amends section 85C to use the term 'disclose' in substitution for 'divulge'. Another amendment allows for disclosure of information if, in the opinion of the CE, it is necessary to disclose the information in order to avert a serious risk to public safety. A further amendment requires the Board, in respect of a prisoner released on parole, to notify the Commissioner of Police of—

- the place of residence of the parolee; and
- the conditions to which the release on parole is subject.

59—Insertion of section 85CA

This amendment inserts new section 85CA.

85CA—Disclosure of health information

Proposed section 85CA provides that the following persons must disclose to the CE such personal information about a prisoner as is reasonably required for the treatment, care or rehabilitation of the prisoner:

- the Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Health Care Act 2008*;
- the Chief Executive of the administrative unit of the Public Service that is, under a Minister, responsible for the administration of the *Mental Health Act 2009*.

60—Amendment of section 85D—Release of information to registered victims etc

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

These amendments are consequential.

62—Insertion of sections 86A and 86B

This amendment inserts new sections 86A and 86B.

86A—Prison officer may carry prescribed weapon

Proposed section 86A provides that the CE may authorise an officer or employee of the Department to carry a prescribed weapon while on duty for purposes specified by the CE. Subsection (2) requires an officer to comply with any requirements of the CE in relation to the handling, storage and responsible use of the weapon.

86B—Use of correctional services dogs

Proposed section 86B provides that the CE may authorise an officer or employee of the Department to use a correctional services dog at a correctional institution or probation and parole hostel to assist in the maintenance of the good order or security of the institution or hostel. Subsection (2) lists some of the purposes for which a correctional services dog may be used.

63—Amendment of section 88B—Evidentiary provisions

One of these amendments is consequential. The other amendment inserts an evidentiary provision relating to correctional services dogs.

64—Amendment of section 89—Regulations

These amendments are consequential.

Schedule 1—Related amendment and transitional provision

The Schedule provides for a related amendment and a transitional provision for the purposes of the measure.

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

SMALL BUSINESS COMMISSIONER BILL

The House of Assembly agreed to the amendment made by the Legislative Council without any amendment.

At 18:40 the council adjourned until Tuesday 8 November 2011 at 14:15.