LEGISLATIVE COUNCIL

Thursday 15 March 2012

The PRESIDENT (Hon. R.K. Sneath) took the chair at 14:16 and read prayers.

PAPERS

The following papers were laid on the table:

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

Disability Information and Resource Centre—Report, 2010-11

By the Minister for Communities and Social Inclusion (Hon. I.K. Hunter)—

South Australian Multicultural and Ethnic Affairs Commission—Report, 2010-11

MEMBERS' TRAVEL PROVISIONS

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:17): I table a copy of a ministerial statement relating to the Remuneration Tribunal Report on Parliamentary Travel made earlier today in another place by my colleague the Premier, the Hon. J. Weatherill.

CAVAN TRAINING CENTRE

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:18): I seek leave to make a ministerial statement on the subject of the capture of a Cavan escapee.

Leave granted.

The Hon. I.K. HUNTER: The last remaining youth who escaped from the Cavan Training Centre on the evening of Monday, 27 February was apprehended yesterday evening. The youth was located last night at about 9.30pm at a property at Oakden. The arrest was conducted without incident. I cannot make any further comments on his escape, as it may compromise current court proceedings.

An investigation into the escape is under way. I received an interim report from the investigation team last Friday, and a final report is due on Friday, 23 March 2012. I will assess that report when it is handed to me and undertake to release those aspects of the report that do not compromise security or that would breach the provisions of the Young Offenders Act.

QUESTION TIME

TOURISM COMMISSION

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:19): My question is to the minister for Tourism. Why did the South Australian Tourism Commission (which now has a part-time chief executive officer) conduct foreign exchange hedges at a loss of $418,000 in 2011, and why did it lose $731,000 on foreign exchange hedges in 2010? That is a total loss to the South Australian taxpayers of more than $1 million.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:19): I thank the honourable member for his question. I do not have the details to provide an answer here today. I will take the question on notice and bring back a response.

MEMBER OF PARLIAMENT, CRIMINAL CHARGES

The Hon. J.M.A. LENSINK (14:20): My question is to the Leader of the Government regarding the Labor member charged with child pornography. Given that the member's membership of the Australian Labor Party has lapsed, can the leader advise what is his status as a member of the Legislative Council?

The PRESIDENT: We are out of the barriers quick today. The honourable minister.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:20): That is an absolutely outrageous question, a disgrace.

MEMBER OF PARLIAMENT, CRIMINAL CHARGES

The Hon. J.M.A. LENSINK (14:20): By way of supplementary question, is the minister saying that it is not in the public interest?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:20): Absolutely shameful question, and the Hon. Michelle Lensink should be ashamed of herself.

The Hon. J.M.A. Lensink: I am not ashamed of myself.

CAVAN TRAINING CENTRE

The Hon. S.G. WADE (14:20): I seek leave to make a brief explanation before asking the Minister for Communities and Social Inclusion a question relating to the report on the Cavan escape.

Leave granted.

The Hon. S.G. WADE: Yesterday I asked the minister whether he would commit to publicly releasing the final report of the investigation into the Cavan escape. This was rejected by the minister in the following terms:

> I hope honourable members here will understand that any release of such a report that goes to the very intense matters of security of a detention centre should not be released publicly.

Only 45 minutes later in the other place the Premier committed the government to releasing the report, saying:

> We are going to release the report. The only caveat on that is, of course, the Young Offenders Act, which requires certain information not to be made public, but subject to that caveat we are more than happy to release the final report when it is delivered to the minister.

My questions to the minister are:

1. Why were you not willing to commit to public accountability when the Premier has committed to the release of the report?

2. Does the minister now admit that he is out of touch, not only with the expectations of the public but even his own government?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:21): I thank the honourable member for a very important question on a very important topic; it is shame that he has treated it in such a shabby manner. Once again, the Liberal opposition is being very selective in their quotes. Once again, they have neglected to inform the chamber of what I said in the media last Friday, which was that I would look at the reports and release publicly what I could. Any honourable member here who thinks that any minister of the crown should be releasing details that go to the security of a detention centre should have a very close look at themselves. I refer the member to my ministerial statements.

LIVESTOCK FEED INDUSTRY

The Hon. G.A. KANDELAARS (14:22): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about development to support agricultural production.

Leave granted.

The Hon. G.A. KANDELAARS: Driving through South Australia's landscape, you get a sense that we have had a reasonable harvest, and it has been a good season for a number of important agricultural industries. I understand that in addition to the direct work of growing livestock and broadacre crops, South Australia produces both fodder and feed grain, which is transported interstate and overseas. Can the minister inform the chamber about the recent boost to the livestock feed industry in South Australia?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:23): I thank the honourable member for his most important question. The member is correct that this is a great time of the year to be getting out into the regional areas and seeing the countryside. Broadacre crops and hay harvests are complete and farmers can assess how they have fared financially. Feed crops, such as hay, are often cut and left baled in the paddock from spring onwards, and cutting and baling the hay, while very hard work, seems to be one of the tasks on many properties that would provide a tangible, visible result of the year's work, and bringing bales under shelter before the rains also marks the turning of the season.

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: The honourable member opposite me indicates that hay baling and carting is not hard work. I want that to go on the record: that the Hon. David Ridgway does not believe that hay carting and baling is in fact hard work. He said that—

The Hon. R.L. Brokenshire: All farming is hard work.

The Hon. G.E. GAGO: That is exactly right. The interjection—which I won't acknowledge—by the Hon. Robert Brokenshire indicates that most farming is really hard work. The Hon. David Ridgway is completely out of touch. He is completely out of touch with farmers, completely out of touch. His aside remark was to say, 'It's all done in an air conditioned tractor'. That was his comment; that is what he thinks the hay carting season involves. He is a disgrace, and he is completely out of touch.

One of the industries in our region that is perhaps less known or celebrated is the livestock feed industry. Members may recall that I spoke last year of visiting a company in the Mid North which had new baling equipment for stock feed. I understand that in the 2011-12 financial year South Australia produced up to 2 million tonnes of the feed grains and almost 770,000 tonnes of the fodder that are destined for the mouths of livestock here in South Australia as well as interstate and overseas.

The growth in the pork and poultry industries in South Australia has also led to a significant increase in demand for manufactured livestock feed, and a number of our feed mills are running around the clock to help maintain the supply. Members will recall that in 2009-10 the SA government contributed $87,000 to the Regional Infrastructure Development Fund for a new feed mill in the Murraylands. A recent fire at one of these mills in the Mid North will no doubt put more pressure on the capacity of this growing sector in South Australia.

Today I am very pleased to inform members of the success of an application to the Regional Development Infrastructure Fund by Nitschke Chaff and Freight of just over $50,000 to assist with the cost of a power connection and augmentation as part of an expansion and automation of the existing chaff mill. This family owned and operated a business based at Greenock in the Barossa Valley and sought assistance as part of an over $800,000 project to automate the packing and palletising process, with the aim of nearly doubling the number of chaff bags that can be packed on a pallet and removing the need for manual handling of 25 kilogram bags.

The project, when complete, would include the building of a new shed to house automated production equipment and is expected to be complete by the end of 2012. The grant is directed to assist with the cost of the installation of an 11 kilovolt overhead mains, a 500 kilovolt amperes pad mount distribution transformer, and an 11 kilovolt underground main, as well as augmenting the electricity network to power the new baling and packing equipment.

Feed such as that provided by Nitschke's is an important element of the value chain for stock feed. The business manufactures and freights chaff products to local interstate customers, predominantly in the horseracing industry. The hay is grown on the family-owned 440-hectare property, with additional hay sourced from local farmers. The company runs its own deliveries of chaff to local and interstate customers.

The business helps to add value to the hay which it processes into chaff and which is sourced from many local farms, and its expanded capacity will require more raw hay for processing and shipping to clients. I am advised that the broader stock feed industry is currently expanding in South Australia following investment in intensive animal industries. This 100 year old business is in the process of expanding its export markets both nationally and overseas, and the move into new

markets is underpinned by greater reliability and quality assurance to be offered by its expanded processing facility.

As well as providing a broader range of chaff products to customers, this is obviously a positive and welcome initiative. The growth of the business is expected to result in the employment of three full-time equivalent positions over the next couple of years as well as creating an increased demand for hay product from local producers.

SALARY SACRIFICING

The Hon. R.L. BROKENSHIRE (14:30): Farmers are very hardworking, and I am pleased to hear that the Minister for Primary Industries is supporting farmers. I seek leave to make a brief explanation before asking another minister, namely, the Minister for Industrial Relations, questions regarding salary sacrifice.

Leave granted.

The Hon. R.L. BROKENSHIRE: I read with interest an article entitled 'Holden link a factor in salary tender's success', featuring a statement from the minister. The article explains that a company known as Maxxia had won sole contractor rights to provide salary sacrificing arrangements to approximately 30,000 of South Australia's 100,000 public servants.

For 12 years, there has been a panel of service providers for this system, comprising Remunerator and Maxxia, since 1998, and then Smart Salary was added to the panel in 2008. That panel has operated to provide salary sacrificing benefits to public servants, which can be a significant benefit to Public Service employees, particularly those in the health sector. I understand that, roughly speaking, the market share of the panel providers to date is 60 per cent Maxxia, 30 per cent Remunerator and 10 per cent Smartsalary.

The article attributes statements to the minister that Maxxia has been selected by the government after—and again I quote—a 'comprehensive procurement process and represented the best value proposition to government and employees using the service'. My questions are:

1. Why has the government decided to end 12 years of choice in panel providers when the trend nationwide is towards panels and not sole providers?

2. Is the minister aware that this decision now positions South Australia as the only state with a sole provider for these services?

3. What evidence can the minister present to the parliament that Maxxia had achieved the best relative performance standards and relative pricing points, including fees and brokerage, to justify the claims the minister made in the article?

4. While the minister investigates this issue, will he commit to the other panel companies being permitted to continue holding their significant customer base beyond 30 June this year until such time as the minister and his government have demonstrated the merits of the government's decision?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:33): On 29 August 2011, the government approved an open procurement process for the ongoing South Australian government salary sacrifice arrangements. The procurement was conducted by Public Sector Workforce Relations, with oversight from a portfolio steering committee with an independent chair and comprising representatives from Department of Treasury and Finance, Department of Health and Ageing, Shared Services SA and Public Service Workforce Relations.

There was an open market call from 13 October until 16 November 2011. Following a procurement process, a contract was entered into with Maxxia Pty Ltd as the sole external service provider for six years from 1 July 2012. The benefits and improvements in the new arrangements for all those employees currently salary packaging include:

- Lower fees. The salary packaging fee will be reduced.
- Simpler. For many people the need for paper claims will be eliminated. Management of salary sacrifice arrangements will become simpler.
- Service. Maxxia will be required to meet services standards for the management of salary packages. These performance standards will be communicated to each individual. A customer advocate will oversee Maxxia's performance and intervene where necessary.

Individual employees can also contact the customer advocate if they consider their customer service representatives have not met these commitments.

- Vehicle leasing. A vehicle lease continues as normal with the current provider. While the administration will be transferred to Maxxia at a later date, the current lease will operate until expiry. From 1 April, if an individual chooses to enter into a novated lease for a new General Motors Holden vehicle, Maxxia will provide access to preferential pricing.
- Taxation. The ability to salary sacrifice is a function of federal taxation provisions and requires accurate taxation reporting. Maxxia has well established processes and systems in place. In addition, a dedicated taxation specialist will be appointed to assist agencies with reporting requirements for salary sacrificing.
- There will be simplified payroll and taxation administration for public sector agencies and Shared Services SA.
- Maxxia will progressively transition the existing South Australian government salary sacrifice business of the two current unsuccessful service providers (Remunerator and Smartsalary). This will take place over the next few months and PSWR will coordinate the transition and implementation process in consultation with agencies and Shared Services SA.
- Maxxia has advised that it is committed to a significant increase in local resources pursuant to their appointment as the sole provider to South Australia. They have advised that they are presently recruiting an additional five customer education managers, who will undertake on-site activities, including induction sessions. These staff will be supported by an additional customer education coordinator and an additional customer service officer. This will bring Maxxia's total new resource team to seven within about the next 60 days.

SALARY SACRIFICING

The Hon. R.L. BROKENSHIRE (14:36): I have a supplementary question arising from the answer. Can the minister confirm to the house that he is satisfied that this is the best process: to have one provider only, based on the history of having one case management provider in WorkCover, and the backflip by the government?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:36): The whole process of this has gone through due process. There has been a very in-depth requirement for transparency and accountability so, naturally, as minister, I would support the end result.

AUSTRALIAN DANGEROUS GOODS CODE

The Hon. J.M. GAZZOLA (14:36): My question is to the Minister for Industrial Relations. Will the minister advise the council about a recent meeting hosted by South Australia regarding updates to the National Transport Commission's Australian Dangerous Goods Code for Road and Rail?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:37): On 27 and 28 February 2012, South Australia hosted the Transport of Dangerous Goods Maintenance Group meeting, which was attended by commonwealth and other state transport and safety jurisdictions. The meeting was chaired by the National Transport Commission and attended by representatives from the commonwealth Department of Infrastructure and Transport, the Australian Maritime Safety Authority, South Australia, Western Australia, New South Wales, Queensland and the Australasian Fire and Emergency Service Authorities Council.

The purpose of the meeting was to consider proposals to update the National Transport Commission's Australian Dangerous Goods Code for Road and Rail. The AGD Code has an important role in ensuring public safety through the safe transport of dangerous goods which have been classified due to their potential risks, including explosive, flammable, toxic and corrosive.

The ADG Code sets out requirements for transporting dangerous goods by road and rail and includes provisions for such things as vehicle requirements, documentation, segregation and storage, safety equipment, and procedures during transport and emergencies. The AGD Code is called up in the Dangerous Substances (Dangerous Goods Transport) Regulations 2008, which is law under the Dangerous Substances Act 1979 and regulates the transport of dangerous goods.

Because of South Australia's central location and its being the only jurisdiction that shares borders with five other states, dangerous goods transport is an important issue for this state. The requirements of the AGD Code as they relate to the transport of dangerous goods in South Australia are enforced by SafeWork SA occupational health and safety and dangerous substances inspectors, who perform a critical role in investigating accidents, incidents and complaints involving breaches of the dangerous substances regulations, as well as ensuring compliance through proactive campaigns such as roadside truck stops.

I had the pleasure in Ceduna of watching one of these roadside truck stops, and it was a very impressive campaign. These truck stops ensure that operators and drivers are meeting their safety obligations, including the safe transport of dangerous goods. The dangerous substance legislation is central to operators and drivers meeting their safety obligations and puts into sharp focus the important work of the various Australian jurisdictions, including SafeWork SA, in reviewing and providing technical advice on the ADG code to ensure the safety of our communities.

AUSTRALIAN DANGEROUS GOODS CODE

The Hon. M. PARNELL (14:39): I have a supplementary question. What rules will apply to the transport of dangerous radioactive waste from interstate over South Australian roads, given that state law has now effectively been overridden by the commonwealth?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:40): This is a quite complex issue. I will seek that answer from SafeWork SA.

WATER FLUORIDATION

The Hon. A. BRESSINGTON (14:40): I seek leave to make a brief explanation before asking the minister representing the Minister for Water questions on fluoride dosing.

Leave granted.

The Hon. A. BRESSINGTON: I have received a letter from a constituent which states, in part:

> About a month ago, my brother-in-law (who works in the water treatment industry) took a sample of his tap water from his house at Woodcroft (straight out of the kitchen tap) and out of curiosity, sent it in to his usual water testing chemist for a fluoride analysis. The results were received today and showed a level of 1.2 parts per million of fluoride in our drinking water. According to a SA government fact sheet on fluoridated water...the level of fluoride in our drinking water should be between 0.7 ppm and 1.0 ppm.

My questions are:

1. How often are fluoride levels tested for our public water supply?

2. How many times in the past three years have levels of fluoride exceeded the recommended level of 0.7 ppm to 1.0 ppm, and was the public alerted to this?

3. What detection mechanisms are in place to prevent the over-release of fluoride into our drinking water?

4. Are there any penalties involved when over-release occurs?

5. When were the monitoring protocols for fluoride dosing last revised?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:42): I thank the honourable member her important questions on fluoridation of tap water. I undertake to take the question to the Minister for Water and the River Murray in another place and seek a response.

CAVAN TRAINING CENTRE

The Hon. J.S. LEE (14:42): I direct my questions to the Minister for Youth in relation to the breakout from the Cavan youth training centre.

1. What has been the financial cost to taxpayers of the significant manhunt for the eight escapees from the Cavan youth training centre?

2. What advice has the minister received about the potential cost of implementing the security measures requested at Cavan, since and prior to the escape, by the Public Service Association?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:42): I thank the honourable member for her very important question. I understand that I have already been asked the question about the costs associated with the breakout and that I have taken that question on notice. If that is the case, I will refer that same response back to the honourable member when I receive it.

ABORIGINAL POWER CUP

The Hon. G.A. KANDELAARS (14:43): My question is to the Minister for Youth. Will the minister advise how the government is supporting young people through the Aboriginal Power Cup?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:43): I thank the honourable member for his important question, and I sincerely hope that, like me, they are very strong supporters of Port. The Aboriginal Power Cup is an early intervention program developed in response to key recommendations from the Break the Cycle report. It engages young Aboriginal people at risk through sporting activities and encourages them to continue with their education and make positive life choices.

I attended the launch of the 2012 Aboriginal Power Cup along with the Minister for Aboriginal Affairs and Reconciliation, Paul Caica, and in the presence of His Excellency the Governor, who is a patron of the program. The Aboriginal Power Cup involves individual and team-based activities. This raises awareness within the participants of the importance of personal health and wellbeing and self-worth, and promotes connections with communities and positive role models.

The focus for this year's Power Cup is transitions and personal identity. A young person's transition from adolescence into adulthood, along with their transition from school into work or further study, is a critical journey in their life. A significant part of this journey is a young person's connection to their culture, their community and the environment, as this helps to shape their identity. Building these connections and skills supports participants to navigate through these critical transitions from school to work and further study and beyond.

The Power Cup program requires participants to attend school on a regular basis during terms 1 and 2 and undertake all the required curriculum tasks. The program culminates in a carnival where participants compete in football games, participate in a career expo and attend various skills development and cultural workshops. Participants are selected to play in the grand final based on their successful completion of the curriculum tasks, as well as their performance on the field.

The 2011 Aboriginal Power Cup program was a fantastic success, with 280 students from 23 secondary schools taking part; 265 of these students were enrolled in the integrated learning SACE unit, with 213 (80 per cent) successfully completing. At this year's launch at Alberton Oval, home of the mighty Magpies, guests were entertained by Jack Buckskin and the Kuma Kaaru dancers. We also heard from two young women who, as successful participants of the 2011 Power Cup, are now participating in a school-based traineeship with Santos.

These traineeships allow young people to continue their education whilst gaining valuable skills, creating connections and maintaining relationships with positive role models. The Aboriginal Power Cup is another example of how the Weatherill Labor government is supporting young people to complete their studies, build their self-esteem and develop their skills into the future.

ABORIGINAL POWER CUP

The Hon. J.M.A. LENSINK (14:46): Can the minister advise what support the government provides by way of funding, from what program and whether it is from the Office for Youth?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (14:46): It is from the Office for Youth, but I will get the details and bring them back for the honourable member.

WORKCOVER CORPORATION

The Hon. T.A. FRANKS (14:46): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Workers Rehabilitation, a question on the WorkCover Corporation charter.

Leave granted.

The Hon. T.A. FRANKS: The WorkCover charter 2010-11, which was finally tabled in the House of Assembly on 26 July 2011, states that the government expects the WorkCover Corporation to achieve and maintain rates of rehabilitation consistent with at least 93 per cent of employees returning to work within 12 months of their injury, with 52 per cent returning within three years of injury. The WorkCover charter 2011-12, which was also tabled on 26 July 2011, does not state the rehabilitation and return-to-work rates expected by the government. The rehabilitation and return-to-work section is no longer contained in the WorkCover charter, although the charter does refer to a performance statement.

The WorkCover annual report for 2010-11 states that a new WorkCover charter, aligned with the WorkCover SA Strategic Direction 2011-16, came into effect on 1 July 2011. In this document, return-to-work targets are expressed as improvement in the return-to-work rates of 3 per cent each year, measured at 26, 52 and 104 weeks. My questions to the minister are:

1. Has WorkCover achieved the return-to-work targets in 2009-10 and 2010-11?

2. What is the minister and the Treasurer's assessment of the WorkCover board's performance against the charter and the performance statement to which they are meant to be accountable?

3. Can the minister explain why the return-to-work rates have been dropped from the 2011-12 charter?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:48): I thank the member for her very important question and acknowledge the keen interest the member has had in WorkCover over a long period of time. I will refer this to the Minister for Workers Rehabilitation and get an answer as soon as possible.

APPLE AND PEAR INDUSTRY

The Hon. T.J. STEPHENS (14:48): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries questions about the apple and pear industries in this state.

Leave granted.

The Hon. T.J. STEPHENS: I refer the minister to the comments of the chair of Apple & Pear Australia quoted in yesterday's *The Advertiser* regarding the struggling apple and pear industry requesting $21.9 million over four years from the government to support the industry. The industry itself is willing to commit $102.8 million, creating a total package of $124.7 million. These industries contribute $42 million to the South Australian economy each year, equating to $168 million over four years, and are crucial to the long-term viability of key South Australian regions. As floods are on their way and the industry has recently been hit with the revelation of cheap and nasty imports by supermarkets, as well as the reality that it cannot compete with cheaper labour costs overseas, my questions to the minister are:

1. Does the government support the South Australian fruit industry; if so, will it prove it by committing to this transitional support package?

2. Is the government still committed to fighting the WTO's ruling regarding the import of fire blight-prone New Zealand apples into this state?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:49): I thank the honourable member for his most important question. I understand from the PIRSA Food ScoreCard that, in 2010-11, the South Australian apple and pear industry had an estimated production of about 3,000 tonnes, which equated to a farm gate value of approximately $48 million. Apples are grown mainly around the Adelaide Hills, the Riverland and Limestone Coast. I am led to believe that South Australia represents about 10 per cent of the area planted to apples nationally, but it has some of the highest density new plantings in Australia. This

is a clear sign of our industry making moves to attempt to reposition itself and make itself more competitive.

I have been informed that the seasonal conditions this year have been reasonable and that this has resulted in a strong production result. It appears at this point in time that the supply is outweighing demand, leading to lower prices for our farms. Clearly, eating a South Australian apple a day will help support our farmers during this difficult time.

The industry is calling for a federal government funding package to help industry adapt to apple imports. This is in response to a World Trade Organisation ruling allowing for the importation of apples from New Zealand. I remind members that the importation of apples is a commonwealth government responsibility.

In response to industry concerns about the importation of New Zealand apples and the potential for plant diseases, the state government partnered with the Apple and Pear Association to develop a strategy for improving community understanding of plant health and improving on-farm biosecurity, and I think those efforts were very much appreciated by the apple and pear industry.

The industry is proposing that the federal funding will be used to improve its ability to compete with imported products. Apple and Pear Australia commissioned the Centre for International Economics to provide an economic assessment of the potential impact of imported apples from New Zealand to China and the US. The report states that the Australian apple industry is uncompetitive by international standards. Specifically, Australian growers lag behind international competitors on orchard productivity, product quality is inconsistent and the supply chain is highly fragmented.

The report also estimates that the immediate impact of increased import competition will be to lower the domestic market price. It suggests that the farm gate price will be around 21 per cent lower, wholesale prices 13 to 14 per cent lower and farm income up to 32 per cent lower. Apple consumption in Australia is predicted to be 17 per cent higher, with imports achieving a market share of around 22 per cent of the domestic production, estimated to climb by 11 per cent. So, as we can see, the government does support the fruit industry; it has done in the past and it continues to do so. We can see that the industry is facing very challenging times and we will continue to work with them to assist where we can.

APPLE AND PEAR INDUSTRY

The Hon. M. PARNELL (14:53): As a supplementary: when the minister said that eating a South Australian apple a day is good for you, how does she expect that South Australian consumers will know that they are eating a South Australian apple when we have no place-of-origin labelling in our food laws?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:54): At our federal ministerial meeting, the issue of food labelling and country-of-origin labelling has been discussed.

The Hon. M. Parnell: State of origin or place of origin.

The Hon. G.E. GAGO: I understand the member's frustration. It has been a long-standing issue that has been debated for quite some time. I am sympathetic to the honourable member's sentiments. I think it is something that we should be moving towards at a more rapid rate. It is an issue that needs to be coordinated nationally. South Australia is attempting to assist in expediting efforts in that direction.

We know that there are issues around labelling that are quite complex. I talked about this in here the other day in terms of a product: what part of the product needs to be labelled in terms of its country of origin? Is it the biscuit itself, is it the chocolate around the biscuit, is it the container that the biscuit comes in, is it the country where the thing was packaged together?

All of those issues are quite complex but, as I said, I am sympathetic to the honourable member's sentiments. Consumers expect more information, and their considerations are far more sophisticated these days. They want that information in order to make informed choices and they particularly want to support Australian and South Australian produce.

HEALTH AND COMMUNITY SERVICES COMPLAINTS COMMISSIONER

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:56): I table a copy of a ministerial statement relating to the appointment of an Interim Health and Community Services Complaints Commissioner made earlier today in another place by my colleague the Minister for Health, the Hon. Mr John Hill.

QUESTION TIME

NEW PRODUCT SUPPORT PROGRAM GRANTS

The Hon. J.M. GAZZOLA (14:56): I seek leave to make a brief explanation before asking the Minister for Tourism a question about the New Product Support Program grants.

Leave granted.

The Hon. J.M. GAZZOLA: As you know, Mr President, there are many wonderful tourism experiences to be had in South Australia. Sometimes, though, in order for these experiences to get off the ground some assistance is needed. Minister, will you tell the council about some of the initiatives recently funded by the New Product Support Program grants?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (14:57): I thank the honourable member for his important question. It is true that the South Australian Tourism Commission's New Product Support Program plays a very critical role in developing new tours and attractions in South Australia.

Today I am very pleased to inform members that new grants have recently been made available to develop two new tourism experiences. The SATC aims to develop new signature experiences in South Australia, and the New Product Support Program was developed to facilitate this. The New Product Support Program accelerates the commercial viability of strategically important new tours and attractions.

The SATC provides advice, collaboration, information and initial communication support. In 2010-11 the SATC provided financial and in-kind assistance to a range of businesses that developed commercially focused new tours and attractions. I am delighted to inform members of two support grants which have recently been approved.

The Imbala Jarjum (butterfly kids) is an Indigenous dance ensemble based in the Adelaide Hills. Currently, the group runs performances for school groups and festivals. The ensemble also owns and operates the Ancient Earth Aboriginal Art Gallery in the Adelaide Hills in the tourist town of Hahndorf. To meet the current market's needs the group has introduced some new interactive dance and workshop products so that visitors can enjoy an Aboriginal experience in the heart of the Adelaide Hills. The $5,000 grant will assist in promoting and marketing this important event.

The dance ensemble works to raise cultural awareness through a unique display of carefully choreographed traditional presentations with a contemporary influence. To complement the Ancient Earth Aboriginal Art Gallery, the ensemble has developed two dance performances: one is called *Imbala Jarjum Live* and the other evening performance is called *Tonight We Dance*.

In addition to the dance products, they have designed two specific workshops for visitors to enjoy by creating their own piece of art using traditional symbols and techniques with coloured sand and/or the opportunity to hand paint their own boomerang.

Another unique experience recently received funding as well, building on from the highly successful Adelaide Central Market tours: three new specialised Chinese tours are being developed. These tours are focused on delivering a high quality Chinese-speaking tourism product in the Central Market in the heart of Adelaide. The grant of $20,000 was provided as SATC believes that this project will further assist Adelaide to become 'China ready', which is critical to increase the state's appeal to one of our largest growing target markets. I am sure members will join me in wishing every success to these two new ventures.

CANNABIS LAWS

The Hon. D.G.E. HOOD (15:00): I seek leave to make a brief explanation before asking the Minister for Industrial Relations, representing the Minister for Mental Health and Substance Abuse, a question regarding cannabis use and laws in South Australia.

Leave granted.

The Hon. D.G.E. HOOD: The results of a very thorough international study published in March last year in the prestigious *British Medical Journal*, covering some 1,900 young people aged 14 to 24 years and tracked over a period of 10 years, has shown that cannabis use significantly increased the risk of psychotic symptoms and that people who smoked cannabis for six years or more are twice as likely to have psychotic episodes, hallucinations or delusions.

Another recent report by Dalhousie University in Canada, involving the reviewing of nine studies of some 50,000 people worldwide who had been involved in serious fatal car crashes, showed that drivers who used cannabis up to three hours before driving were twice as likely to cause a collision as those not under the influence of drugs or alcohol.

The Controlled Substances Act 1984 in South Australia provides that a simple cannabis offence must be dealt with by an expiation notice without requiring a court attendance, even for those growing cannabis plants. My question to the minister is: in view of the now overwhelming evidence of the link between cannabis use and both psychotic episodes and road trauma, does the minister regard the current law in South Australia as appropriate, particularly with respect to those growing cannabis plants?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:02): I thank the member for his very important question and will refer it on to the Minister for Mental Health and Substance Abuse for a quick response.

ABORIGINAL POWER CUP

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:02): By leave of the house, I took on notice a question by the Hon. Ms Lensink and I will now answer it briefly. On consulting my notes I can advise in relation to the Aboriginal Power Cup that the Attorney-General's Department entered a new funding agreement with the Port Adelaide Football Club for $97,920 annually until the year 2013. The Office for Youth manages the funding agreement and has oversight of the program.

MOUSE PLAGUES

The Hon. J.S.L. DAWKINS (15:03): My questions are directed to the Minister for Agriculture, Food and Fisheries:

1. What contingency does the government have in place to deal with the potential major mouse plague in South Australia this year, particularly regarding financial and human resources and equipment?

2. What dialogue, if any, has the state government had with the Australian Pesticides and Veterinary Medicines Authority regarding the licensing of on-farm mouse bait mixing stations?

3. Will the minister indicate what amount of commercial mouse bait is available in the state in the case of another mouse plague this year?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:03): I thank the honourable member for his questions. The Minister for Environment is the lead minister and agency in terms of formulating a response to mice. However, obviously I have a keen interest in these matters. As minister responsible for agriculture, food, wine and aquaculture, my main focus is in relation to biosecurity issues in terms of outbreaks or infestations, so that is usually the focus of my agency. The issue to do with mice is one that is mainly coordinated by the Minister for Environment.

Generally speaking, the agencies have plans ready to manage any outbreak or infestation. There are guidelines available in terms of managing efforts—human resources, equipment, machinery, whatever is needed—so there are usually plans in place to provide a framework of a response to manage these things. Those policies and procedures remain in place today. I am happy to refer those questions to the Minister for Environment in another place and bring back a more detailed response.

SIR CHARLES BRIGHT SCHOLARSHIP

The Hon. G.A. KANDELAARS (15:05): My question is to the Minister for Disabilities. Could the minister tell us about some of the young recipients of the Sir Charles Bright Scholarship?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:06): I recently had the pleasure of attending and awarding this year's Sir Charles Bright scholarships on 17 February at the Roma Mitchell Arts Centre, and I must say it was a very special day. I think the Hon. Kelly Vincent was there with us.

The Sir Charles Bright Scholarship provides to people living with a disability who undertake tertiary studies $1,500 to assist with the financial cost that such study might entail. The amount was recently increased due to the overwhelming interest in the fund and also the exceptionally high calibre of candidates applying for the scholarship.

One awardee, Ms Aurelia Young, aged 17, lives with juvenile rheumatoid arthritis and glaucoma. Ms Young is about to undertake studies in psychology at the University of Adelaide. Ms Young met the entry requirements with only 29 other South Australians by scoring 99.95 on her SACE tertiary entrance rank. Another worthy recipient, Mr Henry De Cure, was awarded a scholarship to pursue his interests in both journalism and sport. Henry is also an outstanding wheelchair tennis player and is aiming to compete in the Paralympics in London. These are just two examples of the young people presented with scholarships on this day.

Many of you will be aware of Sir Charles Bright's legacy for disabled South Australians and no doubt will be pleased he is still helping shape people's lives today through that legacy. He worked as a barrister for nearly 30 years until he was appointed a judge of the Supreme Court of South Australia in October 1963. He was also chair of the South Australian Health Commission and served as Chancellor of Flinders University (an excellent university, sir, as you no doubt know).

Following the signing of the United Nations Declaration of the Rights of Persons with Disabilities, Sir Charles chaired a committee with the important task of considering how this declaration affected South Australian law and policy. Following the release of the Bright reports in the 1980s, the state government committed to bringing about legislative changes to improve circumstances for people living with disability.

Sir Charles Bright's commitment to improve the lives of people with disability continues at a national and state level today. The National Disability Strategy and the South Australian government's Social Inclusion Board's 'Strong Voices' report are underpinned by the principles he promoted for inclusion, access and participation for people living with disabilities. Indeed, the move towards self-managed funding is borne out of Sir Charles' agenda of ensuring South Australians living with a disability have control of their own affairs and the dignity they deserve.

Each year, up to 20 scholarships are awarded to people studying in areas as diverse as electrical engineering, youth work, alternative health therapy, media studies and the arts. This diversity reflects the intent of the Sir Charles Bright Scholarship fund to assist people with disability to pursue their interests and career pathways in whatever field they wish.

As you can see, with this legacy Sir Charles had the foresight to see that providing people living with disabilities with choice and control of their own affairs should be the aim of governments. Sir Charles Bright was a champion for South Australians living with a disability, and the Weatherill government is pleased to be working towards his vision.

NUCLEAR VETERANS

The Hon. M. PARNELL (15:09): I seek leave to make a brief explanation before asking the Leader of Government Business, representing the Attorney-General, a question about nuclear veterans.

Leave granted.

The Hon. M. PARNELL: Members will by now be aware of the decision handed down by the Supreme Court in the UK last night, a decision that on a 4:3 majority found against the United Kingdom nuclear veterans in their campaign for compensation for illness, and in some cases death, brought about by their service in relation to nuclear testing, including nuclear testing in South Australia at Woomera and elsewhere.

The decision, as I said, was on the narrowest of margins. All of the judges expressed great sympathy for the veterans and their plight yet on legal grounds made their order in favour of the Department of Defence. My question is: what will the government now do to ensure that Australian service personnel who gave their health and, in some cases, their life in the service of their country in nuclear tests in South Australia will be compensated?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:10): I thank the honourable member for his important question. I will refer that question to the Attorney-General in another place and bring back a response.

PRINTER CARTRIDGE SCAM

The Hon. R.I. LUCAS (15:10): I seek leave to make an explanation before asking the minister representing the Minister for Finance a question about the 'cartridgegate' scandal and the Weatherill government's appalling performance in managing it.

Leave granted.

The Hon. R.I. LUCAS: Earlier this week, the procurement working group's made its final report. On the last page of that report, it stated:

> The State Procurement Board is also aware that an investigation being conducted by the Auditor-General has provided relevant background information to assist the investigation.

That statement by the procurement working group is in stark contrast to the minister's statement and, indeed, evidence that has been given to the Budget and Finance Committee over recent months. The minister's ministerial statement does not report in that fashion; rather, it states:

> The Auditor-General has been kept informed of the procurement working group's findings during the investigation.

In evidence taken over a number of meetings with the Budget and Finance Committee, a number of chief executive officers late last year all reported that they had had no contact at all from the Auditor-General or audit staff in relation to the 'cartridgegate' issue. For example, on 12 December last year, in response to a question as to whether there had been any contact from the Auditor-General's Office which would lead him to believe that he or his office were conducting an investigation into this issue, Steve Archer of PIRSA said, 'No, no contact to us at all.'

Again, as recently as 3 March this year, Mr Ray Garrand, the CEO of DFEEST, was asked a very similar question, and he indicated that there was no evidence. He also indicated, referring to the recent Auditor-General's management letter, which actually lists the areas the audit staff would concentrate on in the DFEEST portfolio, that the issue of 'cartridgegate', or the purchase of printer cartridges, etc., was not listed specifically in the audit management letter they had received.

I did note that, in interviews given by the Minister for Finance yesterday, when he was challenged on the issue as to whether this issue should be referred to the Auditor-General for investigation, he dismissed that option as being a very last century approach to management of these sorts of issues in the public sector. My questions are:

1. What discussions has the minister had with the Auditor-General or his staff about the 'cartridgegate' scandal, and what were the dates and nature of those discussions, if any, with the Auditor-General and his staff?

2. Has the minister been advised that the Auditor-General is conducting a full inquiry into 'cartridgegate' which involves audit staff questioning public servants involved in the 'cartridgegate' scandal? If he has not, what does the minister make of the statement that I have quoted from the procurement working group's final report, which claims that there is an ongoing inquiry by the Auditor-General's Office into this issue?

The PRESIDENT: The honourable member should get to his question.

The Hon. R.I. LUCAS: I am in it. This is the second question.

The PRESIDENT: All right; good.

The Hon. R.I. LUCAS: You should listen, Mr President. It would actually assist you if you listened.

The PRESIDENT: It was putting me to sleep.

The Hon. R.I. LUCAS: This is a question.

The PRESIDENT: I was getting bored.

The Hon. R.I. LUCAS: I am just filling in the time. There are four minutes to go yet, Mr President. The third question (before I was rudely interrupted by persons unnamed and unknown) is:

3. Can the minister clarify whether the $1.2 million figure reported by the procurement working group as the total value of purchases from the suspect companies includes any figure from any agency before 1 July 2009; and, if it does, what are the figures from each particular department and what are the totals of any pre-1 July 2009 figures included in that $1.2 million summary figure?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:15): I thank the member for his questions. I will forward them to the appropriate minister, the Minister for Finance, for a response.

FISHCARE VOLUNTEERS

The Hon. J.M. GAZZOLA (15:15): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about Fishcare volunteers.

Leave granted.

The Hon. J.M. GAZZOLA: Ensuring that the recreational fishing sector is kept up to date with fishing rules such as advice about size and catch limits is an important part of protecting fish stock. Minister, will you tell us more about the focus of Fishcare volunteers this year?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (15:16): I thank the honourable member for his most important question and his ongoing interest in this particular policy area. Fishcare volunteers are an integral part of the education and awareness initiatives of Primary Industries in regional South Australia.

Volunteering allows people to participate actively in all facets of society in a way that contributes to the spirit of democratic involvement. The Fishcare volunteers program was established in 1994 to spread the responsible fishing message. Currently, South Australia has more than 100 volunteers in the program from regions all around the state: Port Lincoln, Whyalla, Port Pirie, Yorke Peninsula, metro, Victor Harbor, the Riverland and the Limestone Coast.

Last year, from July to December, Fishcare volunteers spent over 3,000 hours undertaking volunteering activities and spoke to more than 10,000 recreational fishers during this time. The main role of a Fishcare volunteer is to help create better awareness amongst anglers and the wider community about fishing issues.

Fishcare volunteers are very knowledgeable. They patrol local jetties, boat ramps and fishing spots to help keep keen anglers up to date with the rules and regulations that apply to recreational fishing. Fishers and other interested community members are encouraged to have a chat to their local Fishcare volunteers. They also play a vital role in raising community awareness and spreading the sustainable fishing message to protect our fish stocks.

Easily recognisable in their blue uniforms, volunteers are regularly out and about. They provide a range of educational materials, including brochures and current measuring devices, to help you make the most of your fishing experience while doing it within the law. So far this year, volunteers have been active right around the state from Elliston in the west to Mount Gambier in the south and everywhere in between. Their busiest times have been spent in our gulfs promoting the rules for blue swimmer crabs and showing fishers the correct way to measure their crabs.

These volunteers have also attended other events such as the Port Adelaide Christmas parade, the Kingston street market and Christmas parade, Tunarama, the Make-A-Wish event at Port Hughes and many other events. The South Australian government recognises that certain services, such as PIRSA Fisheries, can be enhanced by the involvement of volunteers. The harnessing of people's time, interest and skills can provide benefits to the person volunteering, the project, the organisation and the community at large.

Fishcare volunteers are a great information resource for recreational fishers. I encourage everyone over the age of 18, who is interested in fishing and who has some spare time, to contact PIRSA Fishwatch for more information. If you have a passion for fishing in your local community, why not help spread the sustainable fishing message by signing up as a Fishcare volunteer?

ADDRESS IN REPLY

The PRESIDENT: I remind honourable members that His Excellency the Governor will receive the President and members of the council at 3.30pm today for the presentation of the Address in Reply. I now ask honourable members to accompany me to Government House in an orderly fashion.

[Sitting suspended from 15:20 to 16:10]

The PRESIDENT: I inform the council that, accompanied by the mover, the seconder and honourable members, I proceeded to Government House and there presented to His Excellency the Address in Reply to His Excellency's opening speech adopted by this council this day, to which His Excellency was pleased to make the following reply:

I thank you for the Address in Reply to the speech with which I opened the Second Session of the Fifty-Second Parliament. I am confident that you will give your best consideration to all matters placed before you. I pray that your deliberations will add meaning and value to the lives of our South Australian community.

STATUTES AMENDMENT (SHOP TRADING AND HOLIDAYS) BILL

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

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (16:11): I move:

That this bill be now read a second time.

I seek leave to have the detailed explanation of the bill and clauses inserted in *Hansard* without my reading it.

Leave granted.

The *Statutes Amendment (Shop Trading and Holidays) Bill 2012* will revitalise Adelaide by extending shop trading hours in the city and by identifying the Adelaide Central Business District as the Central Business District (CBD) Tourist Precinct. It will also create part day public holidays on Christmas Eve and New Year's Eve to recognise the importance of these special nights of celebration to the South Australian community.

The Bill amends shop trading and public holidays' legislation. These amendments reflect this Government's commitment to ensuring that Adelaide is a vibrant central meeting place for the South Australian community and for visitors to our State, while at the same time balancing the opportunities for workers to spend time with family and friends on special days of commemoration and celebration. The success of public holiday trading in the city centre on the recent New Year's Day and Australia Day public holidays and the recent tourist influx to Rundle Mall with the visit of cruise ships to our port emphasises the importance of ensuring that our State capital continues to attract locals to shop but also establishes itself as a prime tourist destination particularly at peak holiday periods.

South Australia's shop trading hours and public holiday legislation have long been used as political volleyballs with criticism over many years that the laws in these areas are outdated and inconsistent. The proposed changes will bring our law into the twenty first century while continuing to protect the interests of small retailers, retail workers and all workers in the state who are required to work on public holidays while the rest of us enjoy time off.

Shop trading and public holiday laws have also been criticised for being overly complex and difficult to understand. The Bill provides for a significant reduction in red tape as outdated procedures for receiving shop trading exemptions are streamlined.

Members will recall that on 7 November 2011, this Government announced its intention to extend shop trading hours on most public holidays in the central business district of Adelaide and to create part-day public holidays from 5:00 pm until 12:00 midnight on Christmas Eve and New Year's Eve. This Bill enacts that commitment.

There are many benefits for South Australia that will result from these changes, including the dramatic opening up of shop trading hours in the newly defined CBD tourist precinct. The Bill will see retailers in the CBD open on most public holidays, from 11:00 am until 5:00 pm, creating an atmosphere that will inject new life into Adelaide with significant flow on effects to surrounding restaurants, eateries and other establishments.

However, this Government also recognises the special significance of 25 December, Good Friday, and Anzac Day and the Bill ensures that shops will remain closed on those days, in recognition of South Australian community values and expectations.

These reforms will go a long way towards rejuvenating the CBD to create a vibrant cosmopolitan centre to visit and go shopping. The reforms will be further supported by the upgraded Adelaide Oval and other key developments outlined for the city. Once enacted, these amendments will ensure that South Australians and visiting tourists will view Rundle Mall as a central point in a city that is bustling with vitality and activity. By identifying the city centre as a tourist precinct for the purposes of shop trading laws, this government is further signalling its ongoing commitment to making Adelaide a tourist destination for the twenty first century. The combination of cultural attractions, good food and fine wine, and a unique shopping experience will combine to make Adelaide a must visit city on the Australian tourist map.

The legislation leaves unaltered the shop trading provisions applying to the suburbs in Adelaide. This fits with our understanding of the people of Adelaide, who want a vibrant, open, heart of the city, but want to preserve the best of our quiet, family friendly neighbourhoods.

And by doing so the legislation protects our local businesses like our independent supermarkets, or convenience stores, and their suppliers, from the pressures we see interstate of dominant businesses. There is no

doubt that one of the reasons we have the strongest independent supermarket sector in Australia, and a strong produce sector, is that the Government has stood strongly against the total deregulation for which some in our community have lobbied.

The opportunity for shops to increase trading is balanced by the prescription of part-day public holidays on Christmas Eve and New Year's Eve from 5.00 pm until 12.00 midnight. This recognises the importance of these nights for community celebration and family gatherings. The part-day public holidays will allow workers to access protections and penalty rates if they are required to work on these special nights. These provisions acknowledge the fact that while most of us are at home or out enjoying ourselves at those special times of the year, there are others who are serving us and looking after us, such as nurses, police, ambulance officers, firefighters and hospitality workers.

Prescribing part-day public holidays gives private sector workers the right to reasonably refuse to work on Christmas Eve and New Year's Eve pursuant to the National Employment Standards in the *Fair Work Act 2009* (Cth), providing them with the opportunity to spend that time with family, friends and loved ones, or be compensated appropriately should they choose to work.

The creation of these part-day public holidays also recognises this Government's commitment to the family, religious and cultural values that are very important to most South Australians at these special times of the year.

In addition, the opportunity has been taken to amend existing provisions of the *Shop Trading Hours Act* to significantly reduce administrative processes for businesses seeking exemptions to trade by extending the '14 day' maximum exemption period to '30 days'.

Currently shops are issued with multiple exemptions over Christmas and other holiday periods due to the 14 day limitation. In the last Christmas period over 300 retail premises were granted exemptions from the *Shop Trading Hours Act*. This Government recognises that the current processes that are required to apply for exemptions can be a hindrance to retailers and by streamlining and removing many of them, this Bill allows retailers to better use their resources in other areas during busy trading periods.

The Bill also allows the Minister to grant a single exemption to all, or a majority of shops, in a Prescribed Shopping District. This removes the requirement for non-exempt shops to individually apply for exemptions and allows the Minister to grant 'blanket' exemptions across Prescribed Shopping Districts at special times of the year, such as Christmas, for a maximum period of 30 days; again reducing red tape for both retailers and administrators.

All of these administrative amendments reflect the Productivity Commission's and the Competitiveness Council's recommendations to improve South Australian shop trading hours legislation, by significantly reducing the time and resources that non-exempt shop operators invest in applying for exemptions.

Overall, this Bill represents the dawn of a new era for South Australia's shop trading and public holiday legislation. It dramatically deregulates shop trading in the Adelaide CBD on most public holidays. It provides workers with protections and entitlements when requested to work on Christmas Eve and New Year's Eve. It will inject new life and vibrancy into our city. It will create a tourist precinct. It will reduce red tape for retailers.

This Bill stands as a symbol of the regeneration of the City of Adelaide. It values our community and the expectations we share about how we celebrate the days that are important to us and to our sense of citizenship. It acknowledges and supports the fact that those of us who are required to work while we celebrate these special days should be appropriately rewarded.

This is a Bill for a modern, vibrant, confident South Australia.

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 *Acts Interpretation Act 1915*

4—Amendment of section 4—Interpretation

Subclause (1) inserts a definition of *part-day public holiday* into section 4(1). The remaining subclauses delete the definition of *public holiday* and provide that a reference to a public holiday is a reference to both a public holiday and, subject to proposed new subsection (4), a part-day public holiday. Proposed new subsection (4) provides that if for the purposes of an Act or statutory instrument a business day, working day or other period is expressed as excluding a public holiday, the exclusion does not extend to a part-day public holiday (unless the Act expressly provides to the contrary).

5—Amendment of section 27—Provisions as to limitation of time

This clause inserts proposed new subsection (2a) which provides that a reference in subsection (2) to a public holiday does not include a part-day public holiday.

Part 3—Amendment of *Holidays Act 1910*

6—Insertion of section 3B

This clause inserts proposed new section 3B.

3B—Christmas Eve and New Year's Eve

Proposed section 3B provides that the part of the day from 5pm to 12 o'clock midnight on 24 December and 31 December will be a public holiday (a *part-day public holiday*).

7—Amendment of section 7—Payments and other acts on holidays, Saturdays or Sundays

This amendment is consequential.

Part 4—Amendment of *Shop Trading Hours Act 1977*

8—Amendment of section 4—Interpretation

This clause alters the name of the Central Shopping District to the Central Business District (CBD) Tourist Precinct, makes a minor technical amendment and amends the definition of *public holiday* (consequentially to other amendments).

9—Amendment of section 5—Exemptions

Subclause (1) extends the period for which an exemption may operate to 30 days instead of 14 days.

Subclause (2) amends section 5 to remove the prohibition on the Minister granting or declaring an exemption under the section that enables all shops, or a majority of shops, in the Metropolitan Shopping District to open pursuant to that exemption.

10—Amendment of section 13—Hours during which shops may be open

This clause amends section 13 of the Act to allow shops in the Central Business District (CBD) Tourist Precinct to be open from 11.00 am to 5.00 pm on public holidays (proposed subsection (2)), other than Good Friday, 25 December and until 12 noon on 25 April (proposed subsection (6a)).

Proposed subsection (5aa) enables shops in any shopping district to open on a part-day public holiday that falls on a weekday as if it were not a public holiday.

Proposed subsection (1) consolidates existing subsections (1) and (2) and the other amendments are consequential.

Debate adjourned on motion of Hon. T.J. Stephens.

SUMMARY OFFENCES (WEAPONS) AMENDMENT BILL

The House of Assembly agreed to the time and place appointed by the Legislative Council for holding the conference.

STATUTES AMENDMENT (COMMUNITY AND STRATA TITLES) BILL

In committee.

Clause 17.

The Hon. S.G. WADE: I am in somewhat of a dilemma, because the minister was right yesterday when she said that we had a difference in policy. Now the minister is saying that, in spite of that difference in policy, the government is willing to accept our amendment, but my dilemma is that, having reconsidered the policy—

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: We have not changed our position on the policy. If my call could be respected, what I was saying is that—

An honourable member interjecting:

The Hon. S.G. WADE: I appreciate, which is why I am turning to the chair. Having clarified the policy—quite clearly we have not changed our policy commitment—we have seen opportunities to improve the amendment. In that sense I am faced with the dilemma of persisting with a second-best amendment or allowing parliamentary counsel to complete its work and come back with an improved amendment. My dilemma is that the government is willing to accept this second-class amendment and not give the people of South Australia the best bill it could have, in my view.

In that context, I would suggest that, as good legislators, the better idea would be to report progress. I am told that the amendment will be ready to file very shortly. I presume that, if the government was attracted to this amendment, it will be attracted to the next one also because it is a better, more clarified and clearer amendment. I can certainly indicate to the committee that I am

ready to speak on the second reading on criminal assets. This committee may want to resume at that point, but I am very reluctant to put the committee in the situation of not having the best bill it could have.

The Hon. G.E. GAGO: I put on the record that the government's position is, as stated earlier on, that this amendment does go to a clear policy difference between the two parties. However, the Attorney-General has reconsidered his position, and we are now in a position where we are prepared to support the Hon. Stephen Wade's amendments as is.

I want to put on the record that this is a very shabby performance by the opposition. We made it very clear that this bill was a priority for this sitting week and that we wanted the committee stage completed this week. We have made officers available for briefings and information sessions. We have catered for the needs of members in a most significant way.

We now have even bent over backwards and the Attorney has agreed to support the amendments as is, and the opposition now has changed its mind yet again. It is very shabby treatment. We are wasting the time of good people. As I have said, I indicated very clearly that it was a priority that we needed to complete this by this week. All the resources and advice were made available to assist people in every way, and I think it is really shabby that the honourable member now wants to report progress and go onto something else. That would mean that this bill will be left unfinished this week and, as I have said, I think that is very poor performance.

The Hon. S.G. WADE: Mr Chairman, if I can respond to the minister, please. I believe the minister is misleading the committee. In the letter I have before me of the priorities advised us as of 5 March did not have this bill for completion this week. Also, while the minister is contemplating her position in that regard, I would also throw myself at the mercy of the committee and say that yesterday morning we filed amendments to facilitate the continuation of government business on a private members' business day—a day the government should not presume it has. We filed amendments. We did not have the opportunity to speak to crossbenchers. I apologised in moving them that I did not have the opportunity the speak to crossbenchers.

So, I take one lesson away from this. First of all, do not expect the Leader of the Government in this house to know what she has even asked for before she comes in and slates us, and also do not dare cooperate with the government to facilitate its program because you are just as likely to get slapped around the head for doing so.

The Hon. G.E. GAGO: The honourable member is quite right. I did not indicate that it would go to fruition, so I do stand corrected. However, it was indicated as a government priority for this week and indicated as our number one priority for today. As I have said, given the level of assistance and cooperation the government has demonstrated in relation to this, I still believe that it is a very shabby and poor performance.

Progress reported; committee to sit again.

CRIMINAL ASSETS CONFISCATION (PRESCRIBED DRUG OFFENDERS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 February 2012.)

The Hon. S.G. WADE (16:20): I rise to speak on behalf of the opposition on the Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill. This is another example of the government's mismanagement of its legislative program. Following so soon after the last bill, it is probably more than a pattern.

This bill was so urgent that, on the first day of sitting this year, with less than 24 hours' notice, the government suspended the standing orders of the House of Assembly to progress the bill. The opposition supported the suspension, and it passed the house in 24 hours. Yet, the following sitting week it was not even a priority for the government in this Legislative Council.

It was urgent enough to suspend standing orders in the house; it was not even urgent enough to be on the priority list in the Legislative Council. That reflects a government which is driven by spin, not outcomes. Its sense of urgency is driven by public relations, not public safety.

The Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill 2011 was introduced by minister Koutsantonis on 18 May 2011. The bill follows through with the ALP election pledge to confiscate the assets of repeat drug offenders to the point of bankruptcy, even when

confiscated assets had no connection to criminal activity. This bill before us is a reintroduction of the bill in the same form.

This council, in my view, is again debating legislation which is bad law: bad law driven by public relations spin rather than by evidence-based policy. It is also a significant affront to legal principles and basic fairness, and it does nothing to make South Australia a safer place.

The Liberal Party traditionally has no problem with targeting the profits of criminals. In this aspect, the policy that the government took to the last election affirms the law as it stands. It is a longstanding principle of common law that criminals are not entitled to profit from their crimes, and South Australia has well-developed legislative schemes to deprive criminals of the proceeds of crime and the instruments of crime.

I remind the council that it was the Liberal Party which led calls for unexplained wealth legislation in South Australia, calls that were taken up by the Rann government in due course. The Attorney-General said in a press release on 16 May 2011:

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

I make the point to the council that if a drug trafficker is using the proceeds of crime to create a lavish lifestyle, as the Attorney-General suggests, and they are getting away with it, either it is a failure of the government to use existing proceeds of crime legislation to confiscate those assets or there is a problem with the legislation and we should get it back into the parliament.

As I have said, the Liberal Party strongly and consistently continues to support legislation to confiscate the proceeds of crime, the instruments of crime and unexplained wealth. However, there is one aspect of this legislation that is novel, and we do not support it. We believe that it could, in fact, be counterproductive. The ALP policy commitment reads:

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

At least they are honest in their baldness. That issue goes to the heart of the legislation. This legislation moves away from the focus on the crime to authorise the state to confiscate people's lawfully acquired assets. The bill proposes to allow the confiscation of assets of commercial and repeat drug offenders to the point of bankruptcy, even when those assets have been lawfully acquired. Under the bill, if an offender has committed a single commercial drug offence or three or more specified drug offences within 10 years, they would be liable to be declared a declared drug trafficker and subject to the confiscation regime.

Western Australia and the Northern Territory have schemes similar to that proposed. In the last seven years of the scheme in Western Australia, 596 declarations have been made and $35 million confiscated. Given that these figures also include the proceeds of crime confiscated in these cases, it is not possible to know what proportion of that confiscation is related to the proceeds of crime, instruments of crime, unexplained wealth that I was referring to and how much relates to this element—that is, confiscation to the bankruptcy level.

In spite of the fact that we need to wind back that average, the average is only $59,000 per case. That suggests there is a significant number of relatively minor operators who are being subjected to legislation of this type in Western Australia. In the context of that $59,000, I remind the council that a number of primary offences under South Australian law already carry a fine of up to $500,000 and life imprisonment.

Confiscation to the bankruptcy level, because it lacks a nexus with the crime, is in fact moving more into the nature of a fine and, considering the level of penalty, one would ask if the government considers that the legislated penalty is not sufficient, why is it not increasing it? This is a move not to increase the standard penalties but to introduce what is basically an income-based fine.

The government has not given us a justification as to how this legislation will actually reduce drug trafficking. In fact, the bankrupting of drug offenders may actually have the opposite effect. It may increase drug offending because the offender, pushed to the point of bankruptcy, may well be pushed to the point of desperation and may again turn to crime. Considering that we, as a parliament, supported legislation in 2008 to disrupt and destroy criminal organisations, I do not know why we are pushing people into the arms of those organisations.

If you are bankrupted by this legislation and you also have a significant fine under criminal law, and your partner and the family is at home trying to support itself, where will that family turn? Where will the offender turn? I suggest they are very likely to turn to the criminal organisation they were originally associated with. You actually drive them deeper into the organisation; you are not giving them an opportunity of escape.

I also fear that confiscation to the point of bankruptcy will disproportionately affect children and other innocent people. We need to remember the risk that children in a crime family are in. Almost by definition a crime family is dysfunctional. The fact that members of the family are willing to maintain their lifestyle through criminal activity shows a disregard for law, and, as we see in many reports, that disregard for law is not just going to be in relation to their business enterprises. We have heard terrible stories about people involved in motorcycle gangs who display levels of domestic violence which are just incomprehensible.

So, the children and dependants (for example, wives, girlfriends, whatever) of members of outlaw motorcycle gangs are already at risk from the member of the gang themselves, but statistics show us that the risk of a child of an offender becoming an offender is acute. My understanding is that 40 per cent of prisoners in state prisons have an immediate relative—it may go as far as cousins, I think, but I am pretty sure it was not just the immediate family—have a member of the family who had been an offender.

I am reminded of the Justice Reinvestment Forum that the Hon. Tammy Franks, the Attorney-General and I co-hosted in this parliament last Friday and, as I understand it, a member of the Indigenous community reflected that, I think, for four generations every adult member of her family had served time in prison.

The point I am making here is that, as a parliament, when we are imposing fines of up to $500,000 and life imprisonment on the offender (and so be it; that is what justice requires) let us be careful that we actually do not exacerbate a chronic problem; we do not exacerbate a problem with the dependants and the children of offenders and actually increase the risk of them becoming offenders. Not only would that be a tragedy for them, it would be a tragedy for us.

They are much more likely to go out and engage in crime, and that means more victims, more people suffering at the hands of criminals in our community. It is almost as though the government wants to encourage crime in our community, because it is picking on a subgroup which is already at risk: they are at risk of harm to themselves and they are at risk of offending and causing harm to the rest us. I just cannot find the logic in the government's approach to this.

In any case, the fight against organised crime is far broader than drugs so, if the government thinks that it has got a whiz-bang solution to organised crime, then why just focus on drugs? Why does this legislation not apply to a whole raft of organised crime activities? The Law Society has commented on this bill, and it will not surprise the parliament that it has expressed its opposition in the strongest terms.

Now, I know that the government will throw up the usual suspects, and unless the Law Society is agreeing with them they will decry them, but this language that the lawyers are using I think is unusually strong and therefore it should cause this house to ponder. The Law Society says that it:

> ...considers the legislation to be inimical to a free society—

It is almost as bad as minister Wortley trying to say 'susceptibility'—

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

The Law Society in very detailed advice to members of this house raised a range of concerns. It said that its strong opposition includes factors such as legality. They believe that the bill may infringe the Kable principle. Secondly, they were concerned about a lack of nexus: there is no nexus between the offence and the assets seized. They were concerned about additional punishment. The scheme provides for a punishment over and above that for the actual offending.

They thought it was discriminatory because the bill discriminates against citizens who are legally industrious and acquire wealth. They thought that it was offensive because it attacked innocent parties: the seizures of the assets may deprive the citizen's family of the assets regardless of whether they are dependents. They also considered that it offended due process. The current assets confiscation legislation entitles citizens facing confiscation to appeal to a court. This bill does not even provide them with that right.

The Australian Lawyers Alliance also shared the Law Society's concerns. They said that the bill unfortunately bears witness to a further erosion of the rights and principles central to the administration of justice. Later in a submission it said that this bill represents a horrendous incursion into the rights of citizens, with legislation being drafted which essentially eases the burden upon the prosecuting authority to prove its case.

That is, if you like, the key policy plank of the bill. An element which I find just as offensive is the key financial plank of this bill and that is that this legislation says that we are going to change a long-established practice of this parliament that we will dedicate the proceeds of assets confiscation to the victims. To me that has wonderful symmetry.

Why would you not dedicate the proceeds of asset confiscation, proceeds of crime, instruments of crime and unexplained wealth to help victims? After all, they have suffered through crime. But, no, this government, after 10 years of mismanagement, has clause 36 in this legislation which proposes to establish a 'justice resources fund'. The fund's stated purpose is to provide for the provision of courts infrastructure, equipment or services.

That seems to be an indication—almost like a plea from the dark—of an Attorney-General who has not been able to carry the day in his own cabinet to have, if you like, normal government revenues dedicated to the capital and recurrent needs of the courts.

I met with representatives of the bar council last week and they were very keen to highlight to me the deficiencies that they see, particularly in our Supreme Court building. They believed that it was a significant impediment on the delivery of justice in South Australia, so it is not surprising to see that the fund has that focus. It is also meant to have the focus of the provision of programs and facilities within the justice system for dealing with drug and related crime.

This is clearly an attempt to cope with 10 years of Labor mismanagement. The assets seized under the bill will fund the Attorney-General's Department and other justice portfolio responsibilities. After 10 years of Labor mismanagement, our state finances are in such a parlous state and justice is such a low priority that the Attorney-General needs to set up a hypothecated fund which basically steals from victims.

Let me stress again: under existing criminal assets legislation, confiscated funds are put into the Victims of Crime Fund but, under this legislation, both that part of the confiscation that relates to proceeds of crime, instruments of crime and unexplained wealth, together with this additional confiscation, will go into this new justice resources fund.

I commend the Hons Dennis Hood and Robert Brokenshire for highlighting the government's failure to properly utilise the Victims of Crime Fund and I should also acknowledge the private member's bill that the Hon. Ann Bressington had last year, which was specifically addressing the issue of the maximum threshold.

A number of members of this house share my concern that the government is mismanaging the Victims of Crime Fund, and what is their response? To divert money away from it. To take money that traditionally would go towards alleviating the distress of victims of crime around South Australia and divert it into a fund which is basically a budget replacement fund. Money that would normally come from state revenues for general purposes is now going to come from this justice resources fund. It is basically robbing the victims to pay Treasury.

Legal stakeholders have also expressed concern that not only is this legislation bad policy, it may in fact be unconstitutional. It is their view that the legislation may offend the Kable principle as set out in Kable v the Director of Public Prosecutions (New South Wales) in 1996. There have also been similar conclusions drawn from the International Finance Trust Company Ltd. v the New South Wales Crime Commission in 2009.

To be fair, on this point the legal stakeholders and the government agree. The government also acknowledges the constitutional risk in its own bill. I quote from the second reading contribution of minister Gago, who stated:

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

The government talks about ameliorating the harshness of unconstitutionality. Given this government's record (and I would say reckless record) with constitutionally risky legislation, they

are not reassuring words. Let's remember that, in 2009, after the Supreme Court found that section 14(1) of the Serious and Organised Crime Act was unconstitutional, the Liberal Party urged the government to bring the legislation back to the parliament to make sure that it stayed within constitutional bounds, basically so that the police could get access to the tool as soon as possible.

But what did the government do? The government decided it would ignore the opportunity for expeditious parliamentary consideration and take it to the High Court. That involved the waste of hundreds of thousands of dollars and valuable time. In my view, even if the government wanted to try to expand the scope of the legislation and, if you like, test it in the High Court, it should have brought the bill back to the parliament and at least as an interim measure get the full scheme operating.

The Attorney-General has adverted to this legislation. I think it was in the debate on this legislation in the House of Assembly on 14 February. He, if you like, linked the Sentencing Considerations Bill with this legislation and said:

> ...if you are dopey enough to get involved in this stuff, you still have a 'Get out of jail free' card...You still have that card if you 'fess up and you start telling the people who can then prosecute other people. It adds to the incentive. For those people who want to stay out of gaol, the incentive is, do not do it. If you get caught, the incentive is you cough up and explain what is going on and you are not going to be touched by [assets confiscation] either.

It is amazing that a government who claims to be tough on crime is instead promoting a law which proposes to excuse criminals in relation to both their punishment and their asset confiscation.

The opposition has amendments filed which seek to amend the bill to remove the elements of the bill that it believes are harmful: those elements which are harmful to victims; those that are not based on good policy; those that we believe are unconstitutional; and those that serve no purpose in reducing crime. We will support the technical amendments, which finetune the existing regime.

I have a number of questions at the second reading stage to which I will seek a response. How many people does the government consider have charges that have been laid under the Controlled Substances Act for offences relevant to this bill? How many people do these charges relate to, and how many convictions has this resulted in?

The relevance of that is that this legislation, in relation to non-commercial quantities, will impact after a person has committed—I think it is on the third occasion that this penalty is available. How many people have been convicted of a commercial drug offence across the state and how many convicted offenders currently have two or more of the prescribed drug offences referred to in the bill? If the government does not have this information to hand I request that it be provided before the council moves into committee consideration.

The Hon. A. BRESSINGTON (16:44): I will only make a very brief contribution to this bill because I spoke on the previous bill in the previous session of parliament, on 13 September 2011. I would just like to say that this bill reminds me of the old convict days where starving people would go around stealing loaves of bread to feed their family and be whipped or have their hand cut off for stealing. In saying this, I bring up the first international conference on justice that I attended in WA. Mr Paul Meyer, who is a criminal lawyer in that state, discussed this very bill that is going ahead in Western Australia as well, but they do have the three strikes and you're out rule.

Mr Meyer gave the example of one of his clients. Let us keep in mind that we all know that there are many people who are doing it tough out there. Many people are losing their jobs and many people are actually losing their houses because they are defaulting on their mortgages because they cannot afford to pay. Mr Meyer's client was a father of four who had worked hard all his life. Some six months ago, he lost his job. He had a well-paid job which enabled his wife to be a stay at home mum. He was quite able to accumulate the asset that he has, which is his home. Then he lost his job and was out of work for six months, unable to find employment.

In that six-month period he has had a bit of part-time work here and there. Not having been in the workforce for many years, his wife was also unable to find work. Their children were going to a private school and they had to be pulled out of that school and sent to a state school. They had to cut corners and they were defaulting on their mortgage.

Mr Meyer's client was approached by a colleague from his previous workplace and asked to transport an amount of bagged marijuana in his car over the border for $3,000. He agreed to do that. He did not tell his wife what he was doing. He told her that he and his mate were going on a fishing trip, so she was absolutely unaware that he was engaging in illegal behaviour. He was

doing it for the $3,000 to catch up on his mortgage payment. They were caught. As Mr Meyer explains, under this legislation, he would have lost everything, and his wife and children would have been out on the street.

So I ask members here to consider the whole tough on drugs, tough on crime thing. Nobody could ever accuse me of being soft on drug dealers or any of that. I believe that if you do the crime, you do the time; but, as the Hon. Stephen Wade mentioned, let us keep the nexus between the crime and the punishment. None of the assets that this gentleman owned would ever have been accumulated through illegal conduct or illicit means. One mistake and you are gone, and so is your wife and family—on the street with nowhere to go and nowhere to live, left with your most basic possessions. It could be a washing machine and a dishwasher, if you are lucky enough to own one.

I believe with all my heart that if we want a system that is going to work then it cannot just be a law and order agenda because, if we just focus on law and order and ignore justice as the desired outcome, we are not doing ourselves or any citizen of this state a favour. We are not going to catch the Mr Bigs doing this sort of stuff. I told the Attorney-General that I believe that the so-called package to this SOCCA legislation is dragnet legislation. We are creating the possibility for people, ordinary every-day people, to be turned into criminals overnight.

I think we as legislators need to be very careful with what we are going to allow to occur in the government's law and order agenda in the name of catching the bikies and the Mr Bigs and what impact that will have on people who may make the wrong choices in times of hardship, but don't we all? Some of my decisions in the past as a single mum with four kids some people would now think were quite questionable as well, but you do what you do to put food on the table and keep a roof over your kids' heads.

Mr Meyer talked at the conference for an hour, breaking down this bill—and it is exactly the same as ours, except they had the three strikes and you are out. The other quick point I would like to make is that, as the Hon. Stephen Wade said, we are going to end up pushing people into crime if we are going to take this hard-nosed, unjust approach. I am all for law and order, but I would also like to see justice delivered at the end of this, that is, to put the bad guys in gaol and the other people caught up in the dragnet need some sort of defence and some way out of this.

I was interested, when I had a meeting with the Attorney-General, and we were not talking about this but about the sentencing bill and I said, 'So people who give evidence against these high-class criminals, these bikies, literally paint a target on their head when they finish dealing with the police', and the Attorney-General's response was, 'Well, that may well be, but that is the collateral damage.' I cannot reconcile myself to this mentality.

It was the same with my discussion with the Premier yesterday about the shop trading hours bill and the effect it will have on the non-government sector and the comment was, 'Costs mean just a reduction in services.' Just a reduction in services! What does that mean? Someone hanging on to their life by a thread is told, 'Look, you're going to have to ring back Monday; we don't have the funds to actually be able to pay our counsellors now on these long weekends, because it is double time and a half.'

We are losing our grip on this, all in the name of this government being able to get its SOCCA legislation through and its 'tough on crime' bills through before 2014 and be able to say, 'Look what we've done.' I will not be a part of this. I am not support these unreasonable bills, and I hope the Attorney-General will take the comments of the Law Society and what has been said in here today by the Hon. Stephen Wade, myself and others in the previous session to heart and realise that we actually expect more of ourselves than this. I leave that with you.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (16:53): I take this opportunity to make a few comments and to respond to some of the issues and questions raised during the second reading contributions. I thank honourable members for their second reading contributions, although clearly there is no support for this bill, which is very disappointing.

The bill does three things: it implements the election pledge of 2010 of the government in relation to the confiscation of assets of certain serious drug offenders; it confirms the result of the decision of the Full Court in the case of the DPP v George 2008 [SASC 330]; and, finally, it makes some minor drafting changes to the principal act thought desirable by parliamentary counsel.

The bill has been reintroduced after it was literally hacked to pieces in this house last year. The effect of the amendments tabled last year was not to improve the operation of the bill, as has been claimed. The effect of the amendments tabled by the Hon. Stephen Wade in 2011 was quite simply to delete all those parts of the bill dealing with the election policy, leaving only the other two very minor aspects of the bill unaffected.

The bill is a major measure. The bill is not only an election policy, it is an integral part of a series of linked measures that the government is presently taking to tackle the very real problems posed by the activities of organised criminal gangs. The bill should not be seen in isolation; rather it should be viewed as an important part of a wider series of linked measures the government is taking in this area. Honourable members may note that even the Law Society has given its qualified support to this series of measures, having regard to the gravity of the problem posed by organised criminal gangs.

The main policy of the bill has been well understood by those who oppose it. The original policy was to effectively bankrupt those drug dealers either convicted of a commercial serious drug offence or convicted of three or more minor but nevertheless still serious offences of trafficking, manufacturing or the like in relation to drugs. The property of such offenders would be liable for confiscation, whether or not the property represents the proceeds of crime. The bill is designed to remove a financial inducement for criminals to become involved in drug dealing. The policy in the bill reflects a more generous version of legislative schemes in force in Western Australia and the Northern Territory.

The simple answer to anyone concerned about falling within the bill and risking the seizure of their property is really simple: if you do not want to be captured by this bill, do not deal in serious and commercial drug dealing, or do not repeatedly deal in drugs. The message is really simple and it is really clear. These are very serious offences, and the penalty associated with it should reflect the level of seriousness of the offence. Even if a convicted drug dealer falls within the scope of the bill, there is still ample scope in the bill for the offender to avoid the confiscation of their property if they cooperate with the authorities. Such cooperation can play a major role in combating crime, especially in respect of serious and organised crime.

The bill was never designed to catch minor offenders, such as a student of previous good character who is cultivating a few cannabis plants to earn some extra income. The bill was always designed to catch only those involved in commercial and serious or repeated drug dealing. I repeat that it was intended to apply only to those convicted of commercial serious drug offence or those convicted of three or more minor but nevertheless still serious offences of trafficking, manufacturing or the like in relation to drugs.

I think that what we have seen here today in terms of second reading contributions is extremely disappointing and I think a real cop-out. There is an opportunity here to put in place a measure to assist in dealing with these serious offenders. It is one of a number of measures that are being considered, or have been considered, and I think that it is a real abdication of responsibility by those members and parties that are not going to support this bill.

Bill read a second time.

In committee.

Clause 1.

The Hon. S.G. WADE: Considering the minister has moved into committee, I presume she has got the answers to the questions I asked during the second reading stage. I seek those answers.

The Hon. G.E. GAGO: I do apologise; I meant to address those in my second reading summary. I have been advised that the figures that the honourable member has requested are not readily available. We would need to take those on notice and bring back a response as soon as it is available.

The Hon. S.G. WADE: I do not know how this committee can assess the comments that the minister made in summation that the application of this legislation would be very narrow and to very few people. We do not know how many people are charged with these offenses, we do not know how many people are at No. 2 ready for No. 3. I would have thought that, if the government had researched this as a matter of policy, that information would be available.

The Hon. D.G.E. HOOD: I indicate that Family First will support the legislation, but I think the Hon. Mr Wade has a point, that he does deserve to have his questions answered. We would be inclined to support his position unless the minister can provide answers to his question.

The CHAIR: What are we doing now?

The Hon. S.G. WADE: I am waiting for the minister to respond to Mr Hood's point. Even though he is indicating that he is inclined to support the government's bill, even members who would be inclined to support the government's bill deserve to do so on an informed basis. I would suggest that, if the government is not able to provide basic data about its bill, it should report progress and we could consider it on the next day of sitting.

The Hon. G.E. GAGO: Meaning no disrespect to the Hon. Denis Hood, the answer is the same. I have been advised that the figures are not readily available, and we would need some time to get that response.

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

The Hon. G.E. GAGO: Well, I am just giving you the answer. I have answered the question. That is the best that I can do, and I am in your hands.

The Hon. S.G. WADE: Perhaps I could ask another question so that the minister might come back with an answer, unless she is able to answer it now. In her summing up she claimed that the Law Society supports the government's integrated crime package—words to that effect.

The Hon. G.E. Gago: Qualified.

The Hon. S.G. WADE: Yes; indeed. I take it that the minister was saying that the Law Society has given qualified support to this bill.

The Hon. G.E. GAGO: I have been advised that the Law Society put out a media release that indicated qualified support to the series of measures that we were planning to put in place.

The Hon. S.G. WADE: I would ask the minister to bring in proof of that.

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: Well, honestly, I do not believe that is true. Let me remind the minister what the Law Society said. It said that this legislation—

The Hon. M. Parnell: Is inimical.

The Hon. S.G. WADE: It was inimical; that's right. It was not susceptible at all, it was inimical, or something; something that I know was very bad. They said it was draconian. The Australian Lawyers Alliance said that it was an attack on basic principles of justice.

The Hon. M. Parnell interjecting:

The Hon. S.G. WADE: The Hon. Mark Parnell reminds me of that wonderful second reading speech he gave on a previous occasion, where he quoted this paragraph from a letter of the Law Society to the Attorney-General dated 14 June 2001. The key paragraph states:

> The Bill is inimical to a free society which applies the rule of law and encourages the citizen to be self-sufficient. To say that it is draconian only tells a fraction of the story. A citizen should not be deprived of his or her lawfully acquired assets because he commits an offence.

I know that the Law Society is open to change its mind—we have a free society. But if the government is telling us that they have changed their mind, I would like to have confirmation of that. I take it that the minister cannot give that today and, considering that there are other matters upon which she has undertaken to come back to us, I suggest that we report progress—sorry, I do not suggest that at all.

The CHAIR: It is no good suggesting anything; you have to move something if you want to get anywhere.

The Hon. A. BRESSINGTON: Just to help out the Hon. Stephen Wade and the minister, I can say that I spoke with Ralph Bonig from the Law Society just this morning at about quarter past 10. We were discussing this bill, and it seems that the Law Society has not changed its position on the bill at all.

The Hon. S.G. WADE: The minister might reflect on the fact that she has misled this council twice in an hour.

The CHAIR: The Hon. Mr Wade might think that is the case but it might not be the case.

The Hon. M. PARNELL: I did not avail myself of the opportunity to make a second reading speech because I made a reasonable contribution last time. The Greens' position has not changed; we do not like this bill at all. We agree with the Law Society's position. It is bad law and does not warrant support.

If the government is keen to push ahead to a vote and see the bill voted down then we can do that, I do not mind. If the Hon. Stephen Wade wants to report progress he can do that as well. I guess the different view I have to that of the honourable member is that I cannot see that any answer the minister provides will change our view, so I am not as desperate to wait for that answer. I am happy to vote this bill down today. I think that is what it deserves.

The Hon. G.E. GAGO: I am happy to proceed.

Clause passed.

Clauses 2 to 3 passed.

Clause 4.

The Hon. S.G. WADE: I oppose this clause. This would be what I would call a relatively simple amendment in the sense that it would change the long title of the act. The fact that it is simple does not mean that it is not significant; it actually highlights the change in focus that this legislation will experience if this bill is passed. Deleting the clause would delete the words 'proceeds and instruments of crime' from the long title of the Criminal Assets Confiscation Act 2005—

The Hon. G.E. GAGO: Is this an amendment you are speaking to?

The Hon. S.G. WADE: Yes; [Wade-1] 1.

The Hon. G.E. GAGO: We have not received any amendments; there are no tabled amendments.

The CHAIR: They were tabled at 2.27pm today.

The Hon. S.G. WADE: I am happy for the minister to report progress.

The CHAIR: You keep mentioning it.

The Hon. S.G. WADE: I was not suggesting it, Mr Chairman. I have been rebuked in that regard. I am not allowed to use the word 'suggest'.

The CHAIR: You have been happy for the minister to do it, but you haven't got anywhere else. It is not an amendment; you are actually saying that you want clause 4 struck out.

The Hon. S.G. WADE: That is the effect—

The CHAIR: You need to speak to why you want it struck out; let members know why you want it struck out.

The Hon. S.G. WADE: The reason I want it struck out is that I want to retain the current focus of the Criminal Assets Confiscation Act on the proceeds and instruments of crime. What the bill proposes to do is to replace those words with the words 'criminal assets.' What that is doing is a harbinger of what the rest of the bill does, which takes away the focus from proceeds and instruments of crime and opens up this brave new world—for want of a better description—of confiscating legally acquired assets. As I said in my earlier remarks, it may be a simple amendment but it is clearly a test of this council's interest in the government's proposal.

The Hon. G.E. GAGO: I presume that the amendments that were tabled today are identical to those tabled in the last session. The Hon. Stephen Wade has indicated that they are, so I accept him at his word. This first amendment is very minor, but we are prepared to use this as a test for the support for the bill. I do not need to go through the arguments; I have already outlined them in the second reading summary in terms of our view about this and our disappointment in the lack of support and courage of members of this council.

The committee divided on the clause:

AYES (8)

Brokenshire, R.L.	Darley, J.A.	Finnigan, B.V.

AYES (8)

Gago, G.E. (teller)	Gazzola, J.M.	Hood, D.G.E.
Hunter, I.K.	Kandelaars, G.A.	

NOES (9)

Bressington, A.	Dawkins, J.S.L.	Lee, J.S.
Lensink, J.M.A.	Lucas, R.I.	Parnell, M.
Stephens, T.J.	Vincent, K.L.	Wade, S.G. (teller)

PAIRS (4)

Wortley, R.P.	Ridgway, D.W.
Zollo, C.	Franks, T.A.

Majority of one for the noes.

Clause thus deleted.

Clause 5.

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

Page 3—Lines 15 to 17 [clause 5(1)]—Delete subclause (1)

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

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

I understand that these amendments are consequential.

Amendments carried; clause as amended passed.

Clause 6 passed.

Clause 7.

The Hon. S.G. WADE: I oppose the clause. I understand this is consequential.

Clause deleted.

Clause 8.

The Hon. S.G. WADE: I oppose the clause. I believe this is consequential.

Clause deleted.

Clause 9.

The Hon. S.G. WADE: I oppose the clause. I believe this is consequential.

Clause deleted.

Clause 10.

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

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

I understand it is consequential.

Amendment carried; clause as amended passed.

Clause 11 passed.

Clause 12.

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

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

I understand it is consequential.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14.

The Hon. S.G. WADE: I oppose the clause. It is consequential.

Clause deleted.

Clauses 15 to 17 deleted.

Clause 18.

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

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

Despite

I understand that is consequential.

Amendment carried; clause as amended passed.

Clauses 19 and 20 passed.

Clause 21.

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

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

I understand it is consequential.

Amendment carried; clause as amended passed.

Clause 22

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

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

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

Amendments carried; clause as amended passed.

Clauses 23 to 32 passed.

Clauses 33 to 35 deleted.

Clause 36.

The Hon. S.G. WADE: I oppose this clause. I will be brief but, just for the sake of clarity, I suggest that this is not consequential because this is the clause where the government proposes to divert money away from victims of crime to backfill its budget black hole. This is establishing the proposed justice resources fund, money that would previously have gone to the Victims of Crime Fund. Under this proposal it will go to the justice resources fund. I urge honourable members to support this amendment so that victims of crime will not miss out on what they are entitled to.

The Hon. G.E. GAGO: The government supports this clause.

Clause deleted.

Clause 37 passed.

Clause 38.

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

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

I believe it is consequential.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendment.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (17:27): I move:

That this bill be now read a third time.

Bill read a third time and passed.

AQUACULTURE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 15 February 2012.)

The Hon. J.S.L. DAWKINS (17:28): I rise on behalf of Liberal members to indicate that the opposition will be supporting this bill. Given the hour of the day, my comments will be relatively brief. However, there are a few things that I think I need to point out in indicating our support for this legislation. First, the aquaculture bill of the South Australian parliament is the only one of its kind in this nation; in fact, I am not sure how many others there are in the world, but certainly South Australia was a leader in establishing an act for the aquaculture industry.

It was an initiative of the previous Liberal Government and one that I think is relatively well received within the industry in that they have their own act and they are not included under the Fisheries Act. While that bill has been in operation for just over a decade, it is time for that to be reviewed. It is something that generally the industry is keen to have reviewed and it is keen to update this act. I should reiterate the fact that they are very pleased to have an act that does cover the industry that is, in effect, farming of fish rather than the industries that are wild-catch fishery activities.

The Liberal Party has consulted quite widely in relation to this bill, and in addition to other meetings certainly the shadow minister for agriculture, food and fisheries in another place, Mr Adrian Pederick, member for Hammond, and I spent some time on Eyre Peninsula at the end of January, meeting with recreational fishers with representatives of aquaculture industry groups and enterprises, as well as other representatives of sectors within the wild-catch fishery sector.

We did that in concert with the local member for Flinders, Mr Peter Treloar. Because of other duties I had to return from the West Coast after a couple of days, but I had been involved in discussions in the areas of Tumby Bay, Port Lincoln and surrounding areas. Following my return to Adelaide, the members for Flinders and Hammond continued to consult on the bill and other related fishing industry matters, including marine parks, as they continued up the West Coast to Ceduna.

Subsequently I returned to Eyre Peninsula last week and spent three days with the member for Flinders, Mr Peter Treloar, in the area of Ceduna out to Fowlers Bay and back to places like Streaky Bay, Haslam and Smoky Bay. Smoky Bay I remember well as an area which, a decade or so ago, was a place with a lot of aquaculture activity. A lot at that stage was being conducted in backyard facilities within the residential community that is Smoky Bay.

At that time the then minister, the Hon. Rob Kerin, was approached for assistance to try to organise the aquaculture industry to be relocated in that community away from the residential area, so the aquaculture park was established. I remember playing a part in my support role to the Hon. Mr Kerin in his capacity as the minister for regional development at the time. It is good today to see that activity housed in that section away from the rest of the Smoky Bay community.

The member for Flinders also arranged for me to visit the community of Haslam, which is a little bit closer to Streaky Bay than Smoky Bay. Haslam, I think, is an area where we would hope the government might look seriously at doing something similar to what the previous government did in Smoky Bay. We have a situation where aquaculture is growing significantly in Haslam. There are a number of those aquaculture businesses operating out of residential properties in that community, and a number of local people are hopeful that some land adjacent to that community can be ceded perhaps to the council by the Minister for Environment, who I think is the holder of that land, so that some sort of similar aquaculture park could be established in that community.

Before moving away from the establishment of the original act, I should say that there has been significant interest from other jurisdictions into the way in which South Australia has regulated and worked with its aquaculture sector. I was reminded by my colleague the Hon. Michelle Lensink of the interest from New Zealand members of parliament who came here and sought out the Hon. Caroline Schaefer, our former colleague and the former minister for agriculture, food and

fisheries, or it might have been called primary industries at the time. Those people came here to see the way in which the aquaculture industry is formulated in this state, and they sought out our former colleague to seek her wisdom in relation to that.

Also, I can well remember, probably in late 1999, hosting some Victorian members of parliament who represented coastal seats. They were envious of the development that the aquaculture industry had made in this state. They were very keen to witness what was being done in South Australia through the then new Aquaculture Act, and I was pleased to host those members on Yorke Peninsula, where a number of aquaculture activities were getting up and going and doing very well, and also following that a number of enterprises on Eyre Peninsula.

While there is general support for the bill, there are a number of areas that some members of the community, some participants in aquaculture and other fishing matters, have raised with us. There is certainly some concern from recreational fishers about the need for waste to be cleaned up properly and not cause harm or inconvenience for other people who use our gulfs and oceans. Obviously, there is concern about the fact that fishing or aquaculture waste can attract sharks and other occupants of the ocean that are not always welcome when humans are around.

The Hon. J.M. Gazzola interjecting:

The Hon. J.S.L. DAWKINS: My colleague the Hon. Mr Gazzola is itching to respond, I think. He knows far more about these matters than I do. Certainly, other issues that were raised with us included the licence and lease fee cost increases for aquaculture operators in recent years. My request at this stage is that the minister might bring back in the committee stage some coverage of why the increases have been increased in the way they have for various aquaculture leaseholders. It would be helpful if she could do that so that we could then examine that further as the committee stage progresses.

I have had some examples given to me in recent times of the increases that have been charged to the leaseholders. They include one whose fees went up from $5,000 to $74,000 and another example where one went from $2,700 to $30,900 over a 12-month period. If the minister could bring back some explanation of the rationale and way in which those fees were determined, I would be grateful. I think that would help us in answering those queries but also putting it on record.

I think there is also a genuine wish among all the sectors—the recreational and professional wild catch fishing sectors and aquaculture operators—that disused aquaculture sites should be dismantled. There is a fund within some of the aquaculture sector, certainly within the oyster industry, that has been established to enable those disused and abandoned aquaculture sites to be dismantled by people who know what they are doing.

I have also been advised that in recent times PIRSA Fisheries has been establishing its own fund to do this. It charges fees to the participants to facilitate this fund. My query to the minister (and I would be grateful if she brings this back at the commencement of the committee stage or in her second reading summary) is why, when there is a fund established by the industry and at their own volition—and there is a track record of those participants doing the work, going out and cleaning up a site that has been disused—there would be a duplicate established by the department when that is already working very well.

With those few words, I once again indicate that the Liberal Party does support this bill. Once again, we are very proud on the Liberal Party side that we were the party that introduced the aquaculture act into this parliament. It is the only aquaculture act in Australia and, certainly to some extent, around the world. We are very proud of that act. We are also supportive of the ability to review and amend the act. With those words, I indicate again our support for the bill.

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

STATUTES AMENDMENT (SERIOUS AND ORGANISED CRIME) BILL

Adjourned debate on second reading.

(Continued from 1 March 2012.)

The Hon. D.G.E. HOOD (17:45): These are important matters, and perhaps it will assist the chamber if I make one speech on what is essentially a package of legislation that the government is attempting to put through this place at the moment. They are bills we know well; some of them have been on the *Notice Paper* for some time. They are the Serious and Organised Crime (Control) (Miscellaneous) Bill 2012, the Statutes Amendment (Serious and Organised Crime)

Bill 2012, the Statutes Amendment (Criminal Intelligence) Bill back from 2010, the Summary Offences (Weapons) Amendment Bill 2010, the Criminal Law (Sentencing) (Sentencing Considerations) Amendment Bill 2011, and the Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill 2012—although, of course, we have dealt with that one just a few moments ago.

Family First always supports measures to strengthen law and order in our community; by and large this is what this package does, and it has our support. In recent times there has been an escalation of gang violence in Adelaide, and this is indeed a most sad development. It has included a shooting in O'Connell Street, a bikie gang fight in Hindley Street in which a shot was fired, and the fatal shooting of the son of bikie Vince Focarelli during the fourth attempt on Vince Focarelli's life. Criminal gangs seem to be well established and regard themselves, in some cases, as being above the law. It is absolutely intolerable, and I am sure that is something all members of this chamber would agree with.

I am aware that much thought and consideration has gone into the format of the current bills. I need not repeat the history of previous legislation and the attitude of the High Court of Australia; we have seen these bills go through a number of twists and turns, if I can put it that way. It is hoped that these bills will overcome such difficulties and will result in an enforceable scheme that will enable the police to more effectively protect the community from the escalation of violence that we have seen in recent times and that, hopefully, we will not continue to see.

Looking specifically at the Serious and Organised Crime (Control) (Miscellaneous) Amendment Bill 2012, I intend to say a few words about the individual bills in this package. The Serious and Organised Crime (Control) (Miscellaneous) Bill enables the Commissioner of Police to apply to a court for an order that an organisation is a declared organisation. Where an eligible judge finds that members of an organisation associate for the purposes of criminal activity, and the organisation represents a risk to public safety and order, the judge may make an order that it is a declared organisation. This, combined with the provisions about control orders placed upon individuals, will make it much more difficult for criminals to associate in gangs for illegal purposes. It would be intolerable to take no action in circumstances where it is known that criminals associate in gangs for the purpose of criminal activity. Family First has no hesitation in supporting this bill.

Looking specifically at the Statutes Amendment (Serious and Organised Crime) Bill 2012, this bill makes numerous amendments to various acts that are required as a consequence of the Serious and Organised Crime (Control) (Miscellaneous) Bill. I need say no more about that at this particular time, other than it enjoys our support.

Looking specifically at the Statutes Amendment (Criminal Intelligence) Bill, that is something I imagine members in this place are very familiar with, given that it dates back to 2010. The concept of criminal intelligence brings into conflict the concept that courts should only act upon information where the person who is the source of that information comes forward and can be cross-examined. Where the police are dealing with criminal gangs, it is not always appropriate for this to occur and that is, indeed, the basis of the bill. Also, release of information may well prejudice ongoing investigations. The bill sets out procedures to enable courts to supervise this process and to ensure that certain information is kept confidential where this is necessary in the interests of justice. Family First supports this bill, and sees it as a necessary step in the fight against organised and very sophisticated crime networks.

Looking specifically at the Summary Offences (Weapons) Amendment Bill 2010, again, members in this place would be very familiar with this bill as it has some history in this place. The Summary Offences (Weapons) Amendment Bill broadens the restrictions on possessing and carrying weapons. Family First supports the view that a primary way to prevent violent crime is to restrict the ownership and possession of weapons in the community. Weapons take many forms, and this bill has been prepared in accordance with the current information as to the various types of weapons that are now available and used by offenders. It is always difficult to legislate to restrict items which may be used as weapons but which may also have an innocent use, and the Hon. Mr Wade has pointed out a number of those in the debate we have had in this place over the last several months.

Knives, of course, are in this category. This bill has detailed provisions as to when knives may be advertised, sold and carried and when they may not. A weapons prohibition order may be placed on a person who is a violent offender. The various measures comprised in this bill are beneficial. Any restrictions in freedoms resulting from the bill must give way to the greater good of seeking a community that is free of weapons.

Looking specifically at the Criminal Law (Sentencing) (Sentencing Considerations) Amendment Bill 2011, this bill I consider will be of assistance to all of us if we could consider some statements made in previous decisions of the courts. In the New South Wales Court of Criminal Appeal in the case of the Queen versus Thompson in the year 2000, Chief Justice Spigelman reviewed the state of the authorities in Australia that deal with the two-stage approach of arriving at a sentence in which an objective sentence is first determined and then adjusted by some mathematical value given to one or more features of the case, such as a plea of guilty or assistance to authorities.

There was judicial resistance to the very notion that a sentence in a criminal case should be mathematically calculated. One difficulty is that there are always many factors that influence the judicial discretion in sentencing, and it was seen as inappropriate to set out a starting point sentence, so to speak, and then list each of, perhaps, 20 considerations, or thereabouts, with a plus or minus amount for each particular aspect in considering the overall sentence.

On review of this issue by the South Australian Court of Criminal Appeal in the case of the Queen versus Place on 26 March 2000, the majority of the court noted:

> So long as the sentencing judge must, or may, take into account all of the circumstances of the offence and the offender, to single out some of those considerations and attribute specific numerical or proportionate value to some features, distorts the already difficult balancing exercise which the judge must perform.

The court referred to the 1979 South Australian decision of the Queen versus Shannon, which emphasised the importance of a guilty plea being taken into account in sentencing. The court in R versus Place 2002 said:

> Following Shannon, it became common practice for sentencing courts to state in general terms that a plea of guilty had been given weight in mitigation. Initially, however, sentencing courts did not quantify the specific reduction given in the recognition of a plea of guilty. Considerable scepticism existed amongst offenders and their advisors as to whether a plea of guilty was given appropriate recognition in mitigation and, in particular, whether the weight given in mitigation varied to any significant degree according to when the plea was entered and the subjective circumstances accompanying it. A comparison of similar cases was an inadequate response to the scepticism because of varying circumstances and the range of the discretion available to the sentencing judges. By 1991 the Court of Criminal Appeal was encouraging sentencing judges to identify the specific reduction given as a consequence of the plea of guilty.

It did become the norm in appropriate cases throughout Australia, and certainly in South Australia, for judges to specify the calculation of the penalty in a two-step process so as to indicate to the offender that he or she was in fact receiving a true discount by reason of a guilty plea or other cooperation with police.

In the case that I have mentioned, that is, the Queen versus Place, the court concluded that, whilst it was desirable and appropriate to set out the calculation of the reduction in sentence due to the guilty plea being entered, it was not an appealable error if this was not done. There remains the possibility that the High Court may yet decide that this approach is not correct.

The purpose of the Criminal Law (Sentencing) (Sentencing Considerations) Amendment Bill is to set out in clear legislation what discounts apply in specific circumstances. In effect, it seeks to enshrine in existing practice in legislation so that it is there for all to see—something we support. An offender will certainly be advised as to the consequences of an early guilty plea. The principles of sentence reduction for an early plea or cooperation with the police and the requirement for the calculation to be set out by the judge cannot be overturned by a decision of the High Court as to the general principles applicable to criminal penalties as allowed under this bill.

Looking specifically at the bill we have just dealt with, the Criminal Assets Confiscation (Prescribed Drug Offenders) Amendment Bill, it is a fundamental principle of an orderly society that crime must not pay. The advent of illicit drugs in our society has brought a challenge of this principle upon us. Trafficking illicit drugs can be extremely profitable. Drug traffickers are in the business to make money, that is why they are in the business. They do not care in many cases about the harm that drugs are known to cause both to individuals and to those who use them or to society as a whole.

It is our task to ensure, without any doubt, that when people consider embarking on the business of dealing in drugs that they are aware of the risk to their own freedom and, indeed, to their own finances. That consideration, together with consideration of the risk of a lengthy term of imprisonment, is the only real deterrent to such a person in many cases.

To state the converse, the best way to encourage drug trafficking in our society is to have lenient penalties such as suspended sentences and to allow career criminals to be confident that, over time, they have a good chance of making an overall financial gain that may indeed be very large as a result of their illegal activity. This bill addresses that very problem.

There are some in our society who would argue that people who commit crimes do not really consider the consequences of being caught and it is therefore pointless to prescribe significant penalties. My own view is that this may possibly apply to crimes of passion that occur in the heat of the moment but, here, we are dealing with criminals who make a calculated decision over time to embark on a course of conduct with a specific view to profit and usually that is their most significant motivation.

It is essential that we, as lawmakers, do all within our power to alter the calculation they make, so that the figures indicate that the chance of profit is outweighed by the risks that flow from being caught. Since the profits can potentially be very great, it necessarily follows that the penalties must also be quite substantial. This view is supported by research. I quote a key finding from the 2007 research paper by the Australian National Drug Law Enforcement Research Fund into the illicit drug trade in the United Kingdom:

> The dealers viewed imprisonment either as an occupational hazard or an unlikely risk. Larger enterprises were generally able to be handed over to employees or colleagues when imprisonment occurred and imprisonment was at times seen as an opportunity to grow drug businesses. In all, imprisonment did not loom large as a potential problem for most dealers. By stark contrast, most dealers were very concerned about asset seizures. The risk was mitigated by the establishment of legitimate businesses and by ensuring that cash and drugs were not stored together.

This bill is part of a scheme to impose penalties in the form of confiscation of assets of serious drug offenders. It corrects a failure in the law in that, as the law presently stands, there is some prospect that a career drug trafficker might keep some assets gained from drug trafficking even after being prosecuted for some offences.

It is rarely possible to gain the evidence to prosecute a drug trafficker for all offences he or she has committed. Rather, if he has been detected and successfully prosecuted for three serious offences, chances are that he has gained a substantial amount of wealth from other drug offences that have not been the subject of prosecution. This bill increases the situations in which confiscation orders can be made.

Let me be clear. I have no sympathy whatsoever for those who commit a series of drug trafficking offences. There is every likelihood that such people have accumulated wealth not only from the offences for which they have been convicted but also from other offences that have not been detected. They should not be given the benefit of the doubt in allowing them to keep assets where the source of that income is not absolutely clear.

I do not accept the arguments by some that these assets should not be confiscated when there could be arguments that those particular assets may have been acquired earlier by fair means or by unfair means.

Some have raised arguments about the families of serious drug offenders. Indeed, the Hon. Ms Bressington made, I think, some very compelling arguments about the impact on people. She gave one particular account of the impact on a particular person who would seem somewhat hard done by under that particular set of circumstances and I think all of us would have some compassion in those particular circumstances. I think it is somewhat academic now that that bill has largely been dealt with.

In the interests of time, I might leave it there. Let me just say my final few words, if I may. Family First supports this series of bills. They are of course done with the best intent. I think there is scope for them to be improved somewhat. All of that will be considered in the committee stage, but I would say that they certainly have our support.

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

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Second reading.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (17:59): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill makes miscellaneous amendments to Acts within the Attorney-General's portfolio concerned with the courts and the justice system, as follows:

Criminal Law Consolidation Act 1935

Section 258BA of the *Criminal Law Consolidation Act 1935* currently provides for the Director of Public Prosecutions to be able, with authorisation of the court, to serve on a defendant a notice inviting the defendant to admit specified facts. If a fact is formally admitted in response to the notice, the public is saved the cost of proving that fact. The section encourages the admission of facts that are not truly in dispute, in that an unreasonable failure to admit facts can be considered in sentencing, if the defendant is found guilty. The aim of the provision is therefore to prevent the wastage of public resources that can happen in a criminal trial where the prosecution is forced to call evidence to prove facts that the defendant does not seriously dispute.

The section is underused. One possible reason for this is that the Director must apply for a court order at a directions hearing. The Bill proposes to abolish that requirement. There is no harm or unfairness to an accused in being served with a notice to admit facts. If he or she genuinely disputes the fact, then the response to the notice will indicate that the fact is not admitted and the prosecution will still have to prove it in the ordinary way. Therefore, there is no need to occupy the court's time in dealing with the question of whether a notice should be authorised. There may also be some benefit in that notices could be issued earlier.

Criminal Law (Sentencing) Act 1988

Several amendments are proposed to the *Criminal Law (Sentencing) Act 1988*. First, a new section 9D is proposed. This would give the Environment Resources and Development Court an express power to convene a sentencing conference, at which representatives of the neighbourhood affected by the environmental offence may express their views about the impact of the offence and may negotiate with the defendant for appropriate reparations. The results reached by the conference can be taken into account by the Court in sentencing. If an agreement has been reached for reparations, the Court may adjourn sentencing for this to be carried out and, if it is, may take account of the reparations in sentencing. It would be in the Court's discretion whether to convene such a conference in a particular case. A similar provision exists in the New Zealand *Sentencing Act 2002*, s. 10. Proposed new section 19D would permit the Court to defer sentencing to allow time for the defendant to carry out actions agreed at the sentencing conference.

Section 33C deals with imprisonment for contempt. A problem has been noticed in the relationship between the *Criminal Law (Sentencing) Act 1988* and the imposition of a prison sentence as a punishment for contempt of court. Where a prisoner is convicted and sentenced to imprisonment for contempt of court, whilst already serving a sentence of imprisonment, a problem arises if the prisoner becomes eligible for parole for the earlier offence. If the Parole Board orders the release of the prisoner on parole he or she will not in fact be released, but will commence a new prison term for the contempt.

When the Parole Board determines whether or not to grant parole, it must take into account, amongst other things, the likelihood of the prisoner complying with the conditions of parole, the impact that the release of the prisoner on parole is likely to have on the registered victim and their family and the probable circumstances of the prisoner after release from prison or home detention. Consideration of these matters becomes an artificial process when the Board knows that the applicant for parole is likely to serve an additional term in prison for contempt immediately upon parole. In these circumstances, it is unclear whether the Board should assess the application for parole as though the applicant were to be released upon the making of the parole order, or whether the Board should assess the application by attempting to predict what the relevant circumstances of the applicant will be after he or she serves the sentence for contempt. The longer the sentence for contempt the more difficult it will be for the Board to assess that.

It is proposed to amend section 33C so that where a sentence for contempt is imposed upon a person already serving a term of imprisonment, the term imposed for contempt is to be interposed prior to the conclusion of the serving of the term of imprisonment first imposed. This will enable the Board to assess questions arising upon an application for parole to be dealt with at the relevant time.

Section 48 and 50 deal with the supervision of offenders, for example, as a condition of a bond or ancillary to a community service order. Section 50 authorises a community corrections officer to give the offender reasonable directions. One of these optional directions is a direction to obtain written permission before leaving the State. It is proposed that, rather than being an optional direction, this should be a mandatory condition of supervision, to be included among those fixed by section 48. It is considered that offenders under supervision should never leave the State without permission. It is also proposed to provide, by an amendment to section 50, that a community corrections officer must give reasonable directions to the offender about regular reporting. That is, it is not intended that in each case the officer should consider whether the particular offender ought to report regularly. It should be the rule that offenders are required to report regularly. The discretion should relate to the frequency and manner of reporting, rather than whether the offender reports or not.

A minor clarification is required to section 58, to ensure that an extension of time to complete community service can be granted even if the time originally allowed has expired.

It is proposed to amend section 70I of this Act, which deals with reconsideration by the court of an order for payment of a pecuniary sum, where the defendant has been unable to pay without hardship. The Act allows the court, on reconsideration, to remit or reduce the pecuniary sum, or to convert it to community service or make other orders. The amendment is designed to make clear that the court can, if it sees fit, make different orders in respect of different portions of the pecuniary sum. That is, the court might convert part only of the sum to community service hours, leaving the defendant to pay the balance of the sum, or it might reduce the sum and also impose a disqualification from driving, and so on. This is expected to be useful where the sum is large and, for example, converting it to the maximum allowable community service hours alone would be insufficient.

The Bill also proposes to amend section 71 to allow a fine to be imposed in lieu of a community service order, in the court's discretion, when the order is not completed. Presently, this is only possible, under section 71(8), if a court is satisfied that the person's failure to comply with an order is excusable because of obligations to attend paid employment gained since the making of the order. However, there may sometimes be other cases where the failure to complete community service is not due to a person's employment obligations but there are nevertheless proper grounds for the court to consider substituting a fine. The amendment will allow the court to revoke a community service order and substitute a fine, whatever the reasons for failure to comply with the order, if the court sees fit.

Director of Public Prosecutions Act 1991

Section 6A of this Act, at present, permits the Director of Public Prosecutions to delegate his or her powers under the Act, but not the powers conferred by any other Act. An example is the power under the *Listening and Surveillance Devices Act 1972* to approve the making of an application to the court by a police officer for a warrant authorising the use of devices. Another is the power to apply to a court to revoke an order for the transfer of a prisoner under the *Prisoners (Interstate Transfer) Act 1982*, where the prisoner has attempted to escape or has otherwise offended in the course of transfer. The Government considers that it would be convenient for the Director to be able to delegate such powers in the same way that he or she can now delegate the powers in the Act creating his office and the Bill so proposes. This provision is of general application, but it is not meant to override specific provisions in individual Acts that preclude delegation. For example, the Serious and Organized Crime (Unexplained Wealth) Act expressly provides by section 37 that the Director's functions under sections 9 and 12 cannot be delegated. This amendment is not intended to override that specific provision.

District Court Act 1991 and *Supreme Court Act 1935*

It is proposed to make a small change to the mediation powers of the Supreme and District Courts. At present, a judge can refer the parties to mediation whether or not the parties agree, but a master can only refer the parties to mediation if they consent. It is proposed that a master should be able to refer the parties, in the same way that a judge can do, even without consent. Referral can sometimes be useful despite the absence of consent. For example, a party might underestimate the prospects of resolving the case by negotiation. The referral will not compel anyone to make or accept any offer.

Enforcement of Judgments Act 1978

An amendment is proposed to section 7 of this Act to clarify the powers available to the sheriff when executing a warrant against land. Section 7 of this Act permits the court to issue a warrant of possession, authorizing the sheriff to take possession of real property. The warrant enables the sheriff lawfully to eject any person who is on the land and who is not entitled to be there. In the case of a warrant relating to personal property, it enables the sheriff to seize and take possession of the personal property. The section however varies in its expression. While it expressly states that, in the case of personal property, reasonable force may be used, it is silent about whether reasonable force may be used to eject persons when executing a warrant relating to land.

Probably, the better view is that the common law, which permitted such force, continues to apply and thus that it was not thought necessary to refer to this in the statute. However, an alternative argument is that the reference to force in one context could mean that the absence of such a reference in the other context discloses an intention that force should not be used. The Bill would amend s. 7(2) to remove any doubt about the authority to use reasonable force.

Environment Resources and Development Court Act 1993

Section 29 of this Act deals with costs, permitting the making of costs orders where costs have been wasted, for example, through avoidable adjournments or through the neglect or incompetence of a representative. It is proposed that the Court should also have a power to award costs where this is necessary in the interests of justice to redress unfair conduct by a party. There is an analogy with appeals to the Administrative and Disciplinary Division of the District Court, which is not ordinarily a costs jurisdiction but which may award costs if to do so is necessary in the interests of justice. The aim is to penalize parties who unfairly waste the time and costs of other parties by the way in which they conduct litigation.

It is also proposed to insert a new section 40A dealing with custody of litigants' funds. In the Magistrates Court Act, the District Court Act and the Supreme Court Act, provisions already exist giving responsibility to the Registrar for the custody of such funds and giving a guarantee of their safety, such liability to be satisfied from general revenue. In practice, the ERD Court has not received litigants' funds, but with the growth in the mining industry, there is a possibility that in future this might occur, for example, in a case under the *Mining Act 1971* for compensation in a native title matter, and accordingly a comparable provision is proposed.

Judicial Administration (Auxiliary Appointments and Powers) Act 1988 and *Youth Court Act 1993*

Section 3(1) of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* provides that appointments may be made to a 'specified judicial office … on an auxiliary basis.' Section 2 of the Act provides that 'judicial office' means, amongst other things, 'Judge of the Youth Court'. This Act would, therefore, appear to allow for auxiliary appointments to be made direct to the Youth Court.

The operation of section 3(1) of the *Judicial Administration (Auxiliary Appointments and Powers) Act* however sits somewhat uneasily with the scheme for appointments to the Youth Court set out in the *Youth Court Act 1993*. Section 9(3) of the *Youth Court Act* provides that, '[t]he Judges of the [Youth] Court are District Court Judges designated by proclamation as Judges of the Court.' This provision casts some doubt on how an appointment of an auxiliary judge to the Youth Court should be made.

The object of providing for auxiliary appointments is to promote flexibility, so the appointment of auxiliary judges to the Youth Court should not be restricted to those who are already appointed to the District Court but should include those who are eligible for appointment. The Bill would amend the Act to remove any ambiguity.

Justices of the Peace Act 2005

A justice of the peace may be appointed as a special justice, who may sit in the Magistrates Court or the Youth Court to hear minor matters. Such a person is bound by the Code of Conduct in the Regulations to notify the Attorney-General and the Court if charged with an offence (other than an expiable offence). Failure to do so may lead to disciplinary action. This notification would, for instance, enable the Court to decide not to roster the special justice to hear cases until the charges are disposed of.

The Bill proposes to go further and amend section 11 so that a special justice is automatically suspended from office upon being charged with an offence (other than an expiable offence) and ceases to be a special justice upon conviction for such an offence. This will mean that the special justice is not to hear any matters pending the disposition of the charges. If, however, this happens, the result of the proceeding is not to be affected.

The Bill proposes that the special justice could, however, apply to the Attorney-General to have the suspension lifted or to be reinstated in office. The Attorney-General will then be able to consider the gravity of the offence and, if persuaded that the person should be able to continue in office, to impose conditions.

Magistrates Act 1983

In the 2007 case of *O'Donoghue v Ireland*, there was a High Court challenge to an extradition, on the ground that the Commonwealth *Extradition Act 1988* could not validly impose a duty (in this case, the function of deciding whether a person is eligible for extradition) on state magistrates. The challenge failed, because the High Court found that it did not impose a duty, but rather conferred a power. It is proposed, however, to amend the *Magistrates Act* to insert a new Part 7 to make clear that the Governor has authority under this Act to enter into an agreement with the Governor-General for the purposes of the *Extradition Act 1988*.

Magistrates Court Act 1991

Section 42(1a) of the *Magistrates Court Act 1983* limits appeals against interlocutory judgments. It was substituted in its present form in 2005, after the decision in *Police v Dorizzi* (2002), in which the prosecution tendered no evidence following a ruling by the magistrate that CCTV tapes of the offence were inadmissible. The Supreme Court held that the prosecution had no right to appeal against that decision. It is clear from the Hansard debates about the 2005 amendment that the amendment was intended to enable the prosecution to make such an appeal, because the evidentiary ruling destroyed the prosecution case. However, in the case of *McIlvar v Szwarcbord* (2008), the Supreme Court held that the amendment did not achieve this effect. The Bill proposes to further amend section 3(1) to achieve what the Parliament intended. The new definition of 'interlocutory judgment' is designed to make it clear that an order or ruling relating to the admissibility or giving of evidence is a judgment and as such is appealable, subject to the constraints on appeal contained in section 42(1a).

Young Offenders Act 1993

Section 41A of the *Young Offenders Act 1993* specifies the process for conditional release of a young offender from detention, which varies according to whether or not the youth is a recidivist. The young offender must have served the required fraction of his or her sentence, being 2/3 for most young offenders but 4/5 for recidivists. The question has arisen whether the application can be made and considered before that period has elapsed, in anticipation that it is about to do so, enabling eligible youths to be released immediately on having served the required fraction of the sentence.

The section intends that this must be possible, as otherwise young offenders would have to remain in detention after having served the required fraction, while waiting for the Board to determine the application. To avoid doubt, however, it is proposed that the section should expressly state that an application can be determined within the last seven days before the youth is potentially eligible for conditional release.

These amendments are of a technical nature and are designed to overcome procedural or technical problems or to improve the operation of legislation affecting the courts.

I commend the Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 285BA—Power to serve notice to admit facts

Section 285BA currently provides a scheme for the DPP to serve on the defence a notice to admit specified facts. The court must currently authorise the DPP to do so and may, in granting such an authorisation, fix a time within which the notice is to be complied with.

The amendments provide a more flexible system allowing the DPP to serve such a notice without obtaining the permission of the court except in a case where the defendant is unrepresented. A right to ask the court for an extension of time within which to comply with the notice is provided.

Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*

5—Insertion of section 9D—ERD Court sentencing conferences

New section 9D makes a new procedure available to the ERD Court—a sentencing conference designed to negotiate action that the defendant is to take to make reparation for any injury, loss or damage resulting from the offence, or to otherwise show contrition for the offence.

6—Insertion of section 19D—Deferral of sentence following ERD Court sentencing conference

New section 19D contemplates an adjournment of the ERD Court following a sentencing conference to enable the defendant to take the action negotiated at the conference.

7—Insertion of Part 3 Division 4—Effect of imprisonment for contempt

New section 33C clarifies the effect of imprisonment for contempt. It provides that if a person is imprisoned for contempt of court—

- any sentence of imprisonment that the person has not yet begun to serve (and any non-parole period in respect of that sentence) will not commence until the expiry of the period of imprisonment for contempt; and
- any sentence of imprisonment that the person is then serving (and any non-parole period in respect of that sentence) ceases to run for the period of imprisonment for contempt.

8—Amendment of section 48—Special provisions relating to supervision

If a person is to be subject to the supervision of a community corrections officer, this amendment standardises the requirement that the person must not, during the period of supervision, leave the State for any reason except in accordance with the written permission of the CEO. Currently, section 50(1)(a)(iii) allows the community corrections officer to give reasonable directions to the person requiring the person to obtain the officer's written permission before leaving the State.

9—Amendment of section 50—Community corrections officer to give reasonable directions

The requirement to report to the supervising community corrections officer is made a statutory requirement rather than one left for the officer to impose.

10—Amendment of section 58—Orders that court may make on breach of bond

Currently section 58(3)(b)(i)(B) allows the court in appropriate cases to extend, by not more than 6 months, the period within which any remaining hours of community service under a bond must be performed. The amendment contemplates the court allowing a further period for the performance of community service even if the initial period within which the community service had to be performed has expired.

11—Amendment of section 70I—Court may remit or reduce pecuniary sum or make substitute orders

Section 70I deals with the powers of the Court faced with a debtor who has no means to pay a pecuniary sum. As currently constructed section 70I(3) contemplates the Court either remitting or reducing the sum, deferring payment or substituting an order for community service, disqualification or cancellation of licence. The substituted subsection provides the Court with the flexibility to divide up the pecuniary sum and deal with different amounts in different ways. This will enable the Court, for example, to impose a community service order for a portion of the pecuniary sum and defer payment of the remaining portion.

12—Amendment of section 71—Community service orders may be enforced by imprisonment

Currently, section 71(8) allows the court to convert a community service order into a fine (rather than imprisonment) on the basis that the person has the means to pay a fine without the person or his or her dependants suffering hardship only if the court is satisfied that the person's failure to comply with the order is excusable on the ground of the person's obligations to remunerated employment gained since the making of the order. The amendment removes that limitation.

Part 4—Amendment of *Director of Public Prosecutions Act 1991*

13—Substitution of section 6A

Section 6A currently allows the DPP to delegate to any suitable person any of the director's powers or functions under the Act. The substituted section also provides for delegation of functions or powers under any other Act. It also expressly contemplates subdelegation. This provision is subject to any Act expressly prohibiting delegation such as the *Serious and Organized Crime (Unexplained Wealth) Act* which expressly provides by section 37 that the Director's functions under sections 9 and 12 cannot be delegated.

Part 5—Amendment of *District Court Act 1991*

14—Amendment of section 32—Mediation and conciliation

Section 32(1) currently contemplates a Master appointing a mediator only with the consent of the parties. The amendment removes the requirement for consent.

Part 6—Amendment of *Enforcement of Judgments Act 1991*

15—Amendment of section 11—Authority to take possession of property

This is a technical restructuring of the provision allowing the sheriff to execute a warrant to take possession to ensure that the sheriff can enter land for the purposes of ejecting from the land any person who is not lawfully entitled to be on the land and use appropriate means and such force as may be reasonably necessary in the circumstances.

Part 7—Amendment of *Environment, Resources and Development Court Act 1993*

16—Amendment of section 29—Costs

This amendment adds to the power of the Court to make an order for costs, so that if the Court considers that a party to proceedings before the Court has engaged in misconduct, it may make an order for costs against that party in favour of any other party to the proceedings, but no order for costs is to be made unless the Court considers such an order to be necessary in the interests of justice.

17—Insertion of section 40A—Custody of litigant's funds and securities

This amendment replicates a provision in the District Court Act dealing with the same matter. It includes a Treasurer's guarantee for money or security in the Court's custody in connection with proceedings.

Part 8—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

18—Amendment of section 3—Appointment of judicial auxiliaries

Section 3 enables the Governor, with the concurrence of the Chief Justice, to appoint a person to act in a specified judicial office on an auxiliary basis. The person must be eligible for appointment to the relevant judicial office on a permanent basis or so eligible except for the fact that he or she is over the age of retirement. In some cases a person is only eligible for appointment to a judicial office if the hold some other judicial office. This amendment deals with that chain to ensure that eligibility to be appointed to that other judicial office is enough.

Part 9—Amendment of *Justices of the Peace Act 2005*

19—Amendment of section 11—Disciplinary action, suspension and removal of justices from office

This amendment adjusts what is to happen if a justice or special justice is charged with an offence. Currently under subsection (3), the Governor may, if of the opinion that conviction of the offence would show the justice to be unfit to hold office, by notice in writing, suspend the justice from office until proceedings based on the charge have been completed. The amendment provides that in addition, in the case of a special justice, if the charge is for an offence other than an expiable offence there is an automatic suspension from office unless the Attorney-General, on application, cancels the suspension. The Attorney-General is empowered to impose conditions specifying or limiting the official powers that the special justice may exercise.

Under subsection (5) currently if a justice is convicted of an offence that, in the opinion of the Governor, shows the convicted person to be unfit to hold office as a justice, the Governor may remove the justice from office. The amendment extends this to a case where the justice is found guilty but not convicted. The amendment provides that, in addition, in the case of a special justice found guilty or convicted of an offence other than an expiable offence the special justice is automatically removed from office unless the Attorney-General, on application, reinstates the special justice. Again, the Attorney-General is empowered to impose conditions specifying or limiting the official powers that the special justice may exercise.

Part 10—Amendment of *Magistrates Act 1983*

20—Insertion of Part 7—Exercise of powers under Commonwealth Acts

New Part 7 allows the Governor to make an arrangement with the Governor-General of the Commonwealth in relation to the performance of functions or the exercise of powers by a magistrate under a Commonwealth Act.

Part 11—Amendment of *Magistrates Court Act 1991*

21—Amendment of section 3—Interpretation

Judgment is defined to include interlocutory judgment. Section 42 deals with appeals against judgments and places certain constraints on appeals against interlocutory judgments. The new definition of interlocutory judgment is designed to make it clear that an order or ruling relating to the admissibility or giving of evidence is an interlocutory judgment and as such is subject to the constraints on appeal set out in section 42(1a).

Part 12—Amendment of *Supreme Court Act 1935*

22—Amendment of section 65—Mediation and conciliation

Section 65(1) currently contemplates a master appointing a mediator only with the consent of the parties. The amendment removes the requirement for consent.

Part 13—Amendment of *Young Offenders Act 1993*

23—Amendment of section 41A—Conditional release from detention

Section 41A(2) sets out provisions that apply to the release from detention of a youth other than a recidivist young offender. The amendment adds to these provisions that an application for release of the youth from detention may be determined by the Training Centre Review Board no earlier than 7 days before completion by the youth of at least two-thirds of the period of detention in a training centre to which he or she has been sentenced. A similar provision is added in respect of a recidivist young offender (except that the period is four-fifths rather than two-thirds because that is the period that must have been completed before release).

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

STATUTES AMENDMENT (COURTS EFFICIENCY REFORMS) BILL

Second reading.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for Tourism, Minister for the Status of Women) (17:59): I move:

That this bill be now read a second time.

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

Leave granted.

The primary focus of this Bill is reducing the backlog of criminal cases in the District Court and reducing delays in the finalisation of criminal matters, with the aim of improved court efficiency. The Bill predominantly focuses on the jurisdiction and procedures of the courts with further amendments to a range of Acts as proposed by various parties involved in the justice system, including the judiciary, to improve the general efficiency of the courts.

In recent years, there has been an increasing backlog of criminal cases awaiting finalisation in the District Court. This problem has been developing for some time and has become more acute over recent years, placing major pressures on the operation and resources of the court system and many other agencies, as well as contributing to South Australia's high rate of prisoners on remand.

Delays in finalising criminal matters in the court system are now commonplace, with matters routinely taking over 12 months, and in some cases 24 months or longer, from the time an accused is first charged until the trial takes place. Cases therefore continue to accumulate, leading to a backlog of matters pending, particularly in the District Court.

There are various and complex reasons for these problems, including, but not limited to: delays in the disclosure of evidence by the prosecution; late withdrawal and changes of charges; the substantial number of guilty pleas being entered at a late stage; courts over-listing cases based on the expectation that many will be resolved just prior to trial; and the increasing number of cases entering the criminal justice system.

There are some recent signs of minor improvements. According to the latest Courts Administration Authority Annual Report, in 2010-11 the increase in disposals in the District Court was greater than the increase in lodgements, as it was in the previous reporting year. However, there is still a substantial backlog of cases awaiting trial in the District Court and more needs to be done to make greater improvements.

If lengthy delays are allowed to continue, the trend will seriously erode public confidence in the criminal justice system. Long delays in getting criminal cases to trial increase the prospect of criminals escaping justice through attrition of victims and witnesses, add to the strain on victims and their families, increase the length of time people are kept on remand and means police, prosecution and forensic resources are devoted to preparing and processing cases unnecessarily for trial when those limited resources could be better allocated elsewhere. Delaying the finalisation of a criminal matter also weakens the deterrent effect because there is no immediate link between the offending and its consequences.

The efficient and effective operation of the criminal justice system is essential to maintaining public confidence in our legal system and is fundamental to maintaining peace, order and good government in our society.

In response to this increasing problem, in November 2005 the Chief Justice and Chief Judge requested His Honour Judge Paul Rice of the District Court to address '*how the trend towards an increasing number of cases in the criminal trial list and the steadily lengthening time between arraignment and trial (now averaging at least one year) can be reversed*'. The subsequent 'Rice Report' focussed on delays in pre-trial procedures and recommended a series of measures to address factors giving rise to the delays.

In October 2006 the then Attorney-General formed the Criminal Justice Ministerial Taskforce. At the relevant time, the Criminal Justice Ministerial Taskforce was chaired by the then Solicitor-General, now Justice, Chris

Kourakis QC and included representatives from various government and non-government agencies, as well as members of the judiciary in an observer capacity.

The first report of the Criminal Justice Ministerial Taskforce recommended a range of measures to address inefficiencies in the criminal justice system, particularly directed at reducing delays in criminal cases coming to trial, including increases to the jurisdiction of the Magistrates Court.

Several recommendations of Judge Rice and the Criminal Justice Ministerial Taskforce have already been implemented. These include measures designed to reduce the workload of magistrates to make way for more matters moving down from the District Court, specifically legislation making driving unregistered and uninsured offences expiable as well as amendments to the *Magistrates Court Act 1991* in late 2009 to increase the jurisdiction of Special Justices in the Petty Sessions division of the Court to deal with other minor offences.

Other significant recommendations of the Criminal Justice Ministerial Taskforce included:

- introduction of a sentence discount scheme to encourage early guilty pleas and accused cooperation; and
- modification of the committal processes and timeframes in relation to major indictable offences; and
- increasing the jurisdiction of the Magistrates Court to alleviate some workload from the District Court.

The Taskforce also identified the need to consider revised funding options to provide incentives for defence lawyers to identify and finalise potential early guilty pleas.

The recommendation for a sentence discount scheme to encourage early guilty pleas forms the basis of the Criminal Law (Sentencing) (Sentencing Considerations) Bill 2011, which was introduced last year and is to be dealt with separately by this Parliament.

A review of the Legal Services Commission, chaired by the Solicitor-General, is also well underway and is likely to lead to legislative change in the near future. Part of the review includes looking at the fee structure and considering possible modifications to the fee structure, which would create incentives for counsel to read and consider material and advise their clients accordingly in line with the proposed discounted guilty plea scheme.

Several of the recommendations of the Criminal Justice Ministerial Taskforce do not necessarily entail legislative reform but are aimed at cultural changes to both the system and the practices of key players. The courts have themselves put in place modifications to committal processes, trialing case conferencing in the Magistrates Court. The District Court began in 2011 a trial of special directions hearings for criminal matters. The objective of case conferencing and special directions hearings is to identify matters that can be resolved at an early stage rather than near the trial date or to narrow the issues at trial.

Early indications are that both initiatives are delivering positive results.

Further, in recognition of the need to deal with the time taken to finalise prosecution briefs and the flow-on effects that this, and prosecution disclosure, have on defence disclosure and time taken to resolve criminal matters or ready them for trial, the Government has asked the Honourable Brian Martin AO QC to chair a committee. The committee consists of members who are representatives of the Office of the Director of Public Prosecutions and South Australia Police, and will inquire into practices and procedures relating to the preparation and presentation of major indictable prosecution briefs.

Matters not proceeding as major indictable files and trials vacated as a result of *nolle prosequis* or late guilty pleas represent an inefficiency in the criminal justice system. Courts and lawyers are expensive and should not be involved in processes which do not advance matters. Accurate, informed and early decisions on charging in major indictable matters is crucial to the appropriate and efficient use of the court system and resources. Timely and effective prosecution disclosure, with a substantially completed brief, in a major indictable matter at a sufficiently early stage should mean a defendant knows the case they have to meet and whether they should be entering an early plea of guilty. The committee has been asked to make recommendations on changes to practices, procedures and legislation to achieve the following:

- Improve efficiency in the preparation of major indictable briefs;
- Facilitate timely and early disclosure of major indictable briefs; and
- Facilitate early and authoritative decision-making in relation to major indictable briefs by both the DPP and defence.

Reforms arising from the work of the committee would be expected to have a significant impact on time taken to finalise major indictable matters by guilty plea or trial in the superior courts.

The Chief Magistrate has also established a substantial inquiry into the processes of the Magistrates Court, to achieve similar aims in that jurisdiction. The Court Process Redesign Project is being steered by the court with a view to driving greater efficiencies to enable matters routinely heard in the Magistrates Court to be disposed of more efficiently.

Several recommendations of 2009-10 Thinker in Residence, Judge Peggy Hora (retired Judge of the Superior Court of California) in her report, 'Smart Justice: Building Safer Communities, Increasing Access to the Courts, and Elevating Trust and Confidence in the Justice System' (November 2010) are also implemented by this Bill, in particular her recommendations to increase the small claims jurisdiction and criminal jurisdiction of the Magistrates Court.

A wide range of other measures are currently being worked on or actively considered to improve access to justice and the effectiveness of the present system. These include amendments to the *Evidence Act 1929* in order to facilitate the giving of evidence by young children and mentally disabled persons. This important measure will also facilitate the effective progress and presentation of such cases within the criminal courts.

The measures in this Bill are designed to work in conjunction with the above projects to reduce the current delays in criminal cases coming to trial and to reduce the backlog of cases awaiting finalisation. Ultimately, the objective is to improve outcomes for victims of crime and meet community expectations for the timely dispensing of justice while maintaining appropriate checks and balances to protect the provision of substantive and procedural justice to defendants.

I stress that it is not intended that this Bill, by itself, resolve the diverse issues that lead to delays in the criminal justice system. The measures in this Bill are an incremental step in achieving that objective and must be seen as a piece of a much larger puzzle of the programs and proposals I have referred to, aimed at increasing the efficiency and speed of the justice system. In fact, there may be pieces to this puzzle that are yet to be identified and the Government welcomes input and suggestions from those who have an interest in seeing improvements made to the courts and the criminal justice system. Not all of the solutions will be legislative and not all need sit together in one piece of amending legislation.

It is again acknowledged that this Bill standing alone will not have a significant impact on the creation of system-wide efficiency. However that in itself is not sufficient reason to delay the introduction of these minor system improvements that have been recommended and supported by various players in the criminal justice system. As previously explained, it is intended that these reforms form part of a suite of measures to address the many and various causes of delays in the criminal justice system.

The Bill

The substance of the Bill was released for consultation in the form of a discussion paper in late 2010. 20 responses were received, including from the Chief Justice, Chief Judge and Chief Magistrate, the Office of the Director of Public Prosecutions, South Australia Police and the Commissioner for Victims' Rights. The key purpose of consultation in the form of a discussion paper was to identify any risks or procedural or operational issues with the proposals before seeking to draft a Bill. In this way, the Government has received the indispensable advice of the key users of the court system to devise a suitable package of reforms. Refinements have made to the proposals along the way as a result of the valuable input from these parties.

A number of interested parties, including the courts and legal profession, were also consulted on the form of the draft Bill. Submissions from these parties were considered by the Government in finalising the Bill.

The changes contained in this Bill will:

Make pre-trial rulings binding on a different trial Judge

The Bill provides that rulings made on any matter pursuant to section 285A of the *Criminal Law Consolidation Act 1935* in advance of trial are binding on the trial Judge irrespective of whether the rulings were made by the trial Judge. This will increase efficiency and timeliness in the criminal jurisdiction.

Provide for an appellant's presence at appeal to be satisfied by audio visual link

In 2006, the *Evidence Act 1929* was amended to insert Part 6C Division 4 (use of audio and audio visual links). The Division provides that evidence and submissions may be received by the court by audio visual or audio link where the required facilities exist (including for confidential communication between lawyer and client). It also introduced a default rule that most pre-trial remand proceedings in the Magistrates Court be conducted by audio visual link where the facilities are available. There are several exceptions to that rule, including the requirement for personal attendance at first appearances, committal proceedings where oral evidence is to be taken and inquiries into the defendant's fitness to stand trial.

The higher courts are in the process of increasing their use of audio visual links (video-conferencing) between the courts and prisons for criminal proceedings. This is happening administratively.

One proposal for increased use of video-conferencing that would require legislative change is to provide for an accused to be present during the hearing of their appeal by audio visual link from prison rather than in person in court.

Section 361 of the *Criminal Law Consolidation Act 1935* currently provides that an appellant is entitled to be present at an appeal to the Court of Criminal Appeal except for appeals on a question of law alone, applications for permission to appeal and other preliminary or incidental proceedings to an appeal, in which case the appellant may be present only with the permission of the Full Court or pursuant to Court rules.

As distinct from other hearings in which the accused might actually participate, it is fair to argue that attendance by audio visual link for appeals, in which there is no participation by the accused, is sufficient. By way of analogy, an appellant/applicant to the High Court has no right to be present during High Court appeals.

If all appellants witnessed their appeal hearings via audio visual link rather than in person in the courtroom, it may be possible to free up a courtroom in the Sir Samuel Way Building for the hearing of more jury trials.

The idea is that removing the existing legislative obstacle would enable the Court to issue a practice direction, when it is realistic, to direct that appellants attend appeals by audio visual link rather than in person. This could occur at such time as the Court is satisfied that this is administratively workable from the perspective of availability of video-conferencing facilities and Corrections staff.

Improve mechanisms for correcting technical errors in the sentencing process

In *Mallett v Police* [2007] SASC 102 doubts were raised by the Supreme Court about the ability for the Magistrates Court to bring a matter back on to correct a sentencing error. The case highlighted questions or limitations on the ability of courts to correct sentencing errors. These difficulties will be addressed by amending:

- section 9A of the *Criminal Law (Sentencing) Act 1988* to allow the court to invoke section 9A of its own motion (i.e. to make orders to rectify a sentencing error of a technical nature, whereas presently this power is only on application by the prosecution or defendant); and
- section 76A of the *Summary Procedure Act 1921* to make it clear that the time limit to set aside an order made in error and re-hear the matter does not apply where the court is acting of its own motion. This was the intention of the provision, however, the courts have not interpreted the provision as intended (e.g. *Police v Alikaris* [2000] SASC 163).

These amendments will reduce the need for costly appeals to correct errors of a technical nature, such as errors in calculating non-parole periods and taking into account time previously served.

Allow administrative extension of period for completing community service order

The Bill amends the *Criminal Law (Sentencing) Act 1988* to provide that the Minister for Correctional Services, and the Minister for Education and Child Development in the case of youths ordered to perform community service by the Youth Court, may extend the period of time during which an order for community service must be completed by up to 6 months where sufficient reason, such as illness, exists. The provision will not limit the power of the courts to vary the terms of a community service order, however it will save on court and Correctional Services' resources in those cases where an extension of time is warranted and could avoid the offender breaching the order.

Increase the maximum sentence of imprisonment that may be imposed by a Magistrate

Section 19(3) of the *Criminal Law (Sentencing) Act 1988* currently provides that a Magistrates Court (constituted by a Magistrate) does not have the power to impose a sentence of imprisonment that exceeds two years. The Court has power under section 19(5) of the *Criminal Law (Sentencing) Act 1988* to remand a defendant to appear for sentence in the District Court if the Court is of the opinion in any particular case that a sentence should be imposed that exceeds the limit prescribed by section 19(3).

The Bill will increase the maximum sentence of imprisonment that may be imposed in the Magistrates Court for a single offence from two years to five years. This amendment is critical to expanding the matters able to be dealt with for sentencing in the Magistrates Court, which is outlined below.

A further amendment will set a maximum sentencing limit for the Magistrates Court when sentencing for multiple offences. As it now stands, the sentencing jurisdiction of the Magistrates Court is and will remain effectively unlimited except by the number of offences being considered. This result is achieved by legal authority which says the sentencing limitation on the Magistrates Court applies to each offence separately.

While currently a Magistrate is limited to a maximum term of imprisonment of two years for a single offence, if imposing sentence for more than one offence, the Magistrate may impose a sentence greater than two years imprisonment. That is so whether the Magistrate sentences globally or individually. For example, should the sentencing limit be raised to five years and there are three offences of theft, effectively the limit on the power of the Magistrates Court to sentence would be 15 years. A maximum sentencing limit to apply to the Magistrates Court when sentencing for more than one offence will prevent the incongruous situation in the above example. The maximum sentencing limit of the Magistrates Court for more than one offence will be set at 10 years imprisonment.

Increase the criminal jurisdiction of the Magistrates Court

The Bill will enable Magistrates to impose sentence where a defendant has pleaded guilty to a major indictable offence in the Magistrates Court. Currently the Magistrates Court has jurisdiction to try and sentence for summary offences and minor indictable offences where an accused does not elect for trial in a superior court. Major indictable offences presently may only be finalised in the superior courts.

Allowing Magistrates to sentence for major indictable offences where the accused pleads guilty should lead to increased efficiency in the disposal of a criminal file and alleviate some of the delay that would be experienced should the matter be required to be finalised in the District Court. Currently, for example, where an accused pleads guilty to a major indictable offence at the committal stage, the matter must be committed by the Magistrates Court to a superior court for sentencing. This is so, even if the facts of the matter or the nature of the offending would suggest the appropriate penalty would be within the range able to be imposed by a Magistrate.

This amendment will mean the Magistrates Court will be able to impose sentence for a major indictable offence where the defendant has pleaded guilty and both the defendant and the Director of Public Prosecutions consent to the matter being sentenced in the Magistrates Court. The Magistrates Court will then determine and impose sentence itself unless the Court is of the opinion that the interests of justice require committal to a superior court.

The limits on the sentencing jurisdiction of the Magistrates Court will apply to offences dealt with in this manner. Without the proposed amendment in this Bill to increase the sentencing limit of the Magistrates Court, there is a risk of matters still requiring transfer to the District Court for sentence, where the appropriate penalty for the offending is outside the range a Magistrate can impose.

The power in section 19(5) of the *Criminal Law (Sentencing) Act 1988* to remand a defendant to appear for sentence in the District Court if the Court is of the opinion in any particular case that a sentence should be imposed

that exceeds the limit of the Magistrates Court will be available if the Magistrate considers the defendant may not be adequately punished, even with the proposed extended sentencing powers of the Magistrates Court.

There are efficiencies and other benefits to be gained in permitting the Magistrates Court to impose sentence in these circumstances. If a guilty plea is entered some way into committal proceedings the Court will already have some knowledge of the circumstances of the offending and the delays in waiting for a matter to be committed to a superior court for sentence can be avoided. In addition, where an accused is on bail and the matter is before a regional Magistrates Court, the matter can be dealt with in that community without the need for the defendant, and in some cases the victim, to travel long distances for a short hearing.

Although, it would be expected most guilty pleas will be entered at committal stage, the incidence of early pleas may in fact be greater with the introduction of the formal sentencing discount scheme. A feature of the guilty pleas sentencing discounts Bill currently before Parliament is that a significant discount will be available for guilty pleas entered prior to the defendant being committed for trial. In reality, a plea of guilty could be entered at the first appearance or indicated early and disposed of at a subsequent hearing. This would greatly reduce the court time and resources required for disposing of a major indictable offence.

An appeal against a sentence imposed by a Magistrate for a major indictable offence will be to the Court of Criminal Appeal, as is the case with major indictable offences sentenced before superior courts.

Increase the civil jurisdiction of the Magistrates Court

The Bill amends the *Magistrates Court Act 1991* to increase the civil jurisdiction of the Magistrates Court.

The increase was proposed by the Chief Magistrate in order to keep in line with other jurisdictions and improve access to justice.

The increase will also potentially have a positive impact on the criminal trial delays in the District Court by keeping more civil matters out of that Court, thus reducing the demand on District Court resources.

The monetary limits will be increased:

- from $6,000 to $12,000 for small claims; and
- from $40,000 (general claims) and $80,000 (motor vehicle injury and property claims) to $100,000 for all such claims.

A potential negative impact on the ability of parties to represent themselves in the enlarged small claims jurisdiction (in which the default rule is that parties represent themselves) must be weighed against the positive impacts of reduced cost of litigation and improved access to justice, with parties seeking to enforce their rights where otherwise the costs of doing so would outweigh the relatively small value of their claim. The impact on the parties as a result of lack of legal representation is ameliorated in any event by the Magistrate taking on an inquisitorial role in exploring the claim.

Allow expiation of offences in section 24 of the *Summary Offences Act 1953*

Section 24 of the *Summary Offences Act 1953* provides that a person who urinates or defecates in a public place within a municipality or town, elsewhere than in premises provided for that purpose, is guilty of an offence. The maximum penalty for the offence is currently a fine of $250. Offences against section 24 are summary offences and presently an accused person must be brought before the Magistrates Court for the charge to be dealt with.

Court statistics show that, for example, in 2008 there were 349 matters before the Magistrates Court where this offence was the major offence charged. There were findings or pleas of guilt in 335 of those cases, with the remaining matters withdrawn, dismissed or discontinued as the prosecution tendered no evidence. These matters are clearly non-contentious and it is unnecessary to devote valuable court resources to the finalisation of offences against section 24. Offences against section 24 are also relatively clear-cut offences, meaning it will generally be evident to police whether or not the offence was committed.

This Bill will amend section 24 to make the offences contained therein expiable. This avoids the need for police to bring a person accused of infringing section 24 before a Magistrate. The availability of expiation to dispose of this offence should be more cost effective and efficient for both the accused person and the court system.

Of course, a person issued with an expiation notice under section 24 may choose to be prosecuted for the offence instead.

Allow Youth Court Magistrates to sentence for major indictable offences

The *Youth Court Act 1993* is amended to allow Youth Court Magistrates to impose sentence for major indictable offences.

The Senior Judge of the Youth Court has argued strongly for this change. This issue is not one of reducing Youth Court waiting lists, which are not currently a cause of concern, rather of increased efficiency and reduced transportation costs. It is argued that it is a waste of court resources to send a Judge to a regional or remote court to deal with a guilty plea, even where this is a major indictable offence. If the parties do not need to wait for a Judge to be sent on circuit, uncontested cases could be disposed of earlier, increasing the effectiveness of the sanction imposed on the youth and saving youths, and potentially victims, the time and cost of travelling to the Youth Court in Adelaide or the nearest circuit court location.

In the case of Youth Court Magistrates, they will have the power to impose sentence for a major indictable offence where a defendant young person pleads guilty without requiring the consent of the prosecution or defendant.

A different approach to the issue of parties' consent is justified in the Youth Court. The concern is of youths refusing consent because they do not like a particular magistrate or to delay their matter, in the circumstance where the difference in sentencing power between Youth Court Magistrates and Judges is only one year, i.e. two years and three years, respectively. A different approach is also warranted because in the case of the Youth Court there is no remittance of a matter from a lower to a higher court, rather the matter stays within the Youth Court.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure is to commence of a day to be fixed by proclamation.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Building Work Contractors Act 1995*

4—Amendment of section 40—Magistrates Court and substantial monetary claims

Section 40 of the *Building Work Contractors Act 1995* provides that if proceedings before the Magistrates Court involve a monetary claim for an amount exceeding $40,000, the Court must, on the application of a party to the proceedings, refer the proceedings to the Civil Division of the District Court. This clause amends section 40 by changing the Magistrates Court limit to $100,000.

5—Transitional provision

The amendment made to the *Building Work Contractors Act 1995* will only apply to proceedings commenced following the commencement of the amendment.

Part 3—Amendment of *Controlled Substances Act 1984*

6—Amendment of section 32—Trafficking

7—Amendment of section 33B—Cultivation of controlled plants for sale

8—Amendment of section 33C—Sale of controlled plants

Under each of these sections of the *Controlled Substances Act 1984*, certain offences involving cannabis are to be prosecuted, and dealt with by the Magistrates Court, as summary offences. However, if the Court determines that a person found guilty of the offence should be sentenced to a term of imprisonment exceeding 2 years, the Court is required to commit the person to the District Court for sentence. Under the sections as amended by these clauses, the Court will be required to commit a defendant to the District Court for sentence if it determines that he or she should be sentenced to a term of imprisonment exceeding 5 years.

9—Transitional provision

The amendments to the *Controlled Substances Act 1984* apply to the sentencing of a person following the commencement of Part 3 whether the relevant offence occurred before or after that commencement.

Part 4—Amendment of *Criminal Law Consolidation Act 1935*

10—Insertion of section 285AB

This clause inserts a new section.

285AB—Determinations of court binding on trial judge

Proposed section 285AB makes it clear that a determination or order made by a judge of the court in proceedings dealing with charges laid in an information is binding on a judge of the court presiding at the trial of the defendant, whether the trial is the first or a new trial following a stay of proceedings, discontinuance of an earlier trial or an appeal. This principle does not apply if the trial judge considers that it would not be in the interests of justice for the determination or order to be binding or if the determination or order is inconsistent with an order made on appeal.

11—Amendment of section 361—Right of appellant to be present

Section 361 of the *Criminal Law Consolidation Act 1935* provides an appellant with the right to be present on the hearing of an appeal, despite the fact that he or she is in custody, unless the appeal is on a ground involving a question of law alone. The section as amended by this clause will provide that an appellant's entitlement to be present at the hearing of an appeal will be satisfied if there is an audio visual link between the appellant and the court.

12—Transitional provision

The amendments to the *Criminal Law Consolidation Act 1935* are procedural rather than substantive.

Part 5—Amendment of *Criminal Law (Sentencing) Act 1988*

13—Amendment of section 9A—Rectification of sentencing errors

Section 9A of the *Criminal Law (Sentencing) Act 1988* authorises a court that imposes a sentence on a defendant, or a court of coordinate jurisdiction, to make any orders required to rectify an error of a technical nature made by the sentencing court in imposing the sentence. The court may also make orders necessary to supply a deficiency or remove an ambiguity in a sentence. Currently, such orders can only be made on application by the Director of Public Prosecutions or the defendant. Under subsection (1) as recast by this clause, the court may also make the required orders on its own initiative. The subsection as recast also explicitly allows for such orders to be in respect of the purported imposition of a sentence.

14—Amendment of section 19—Limitations on sentencing powers of Magistrates Court

Under section 19 of the *Criminal Law (Sentencing) Act 1988*, the Magistrates Court cannot impose a sentence of imprisonment that exceeds 2 years. As amended by this clause, section 19 will allow the Court to impose a maximum sentence of imprisonment of 5 years for a single offence and 10 years for more than 1 offence.

An amendment is also made to subsection (4) to reflect the fact that, as a consequence of proposed amendments to the *Summary Procedure Act 1921*, the Magistrates Court will have the power to sentence a person for a major indictable offence if the offence is admitted by the defendant.

15—Amendment of section 50A—Variation of community service order

The amendment made to section 50A by this clause gives the Minister for Correctional Services the power to extend the period within which a person is required to complete the performance of community service. The Minister can do this if satisfied that the person will not complete the community service in the time required under the order or bond and that sufficient reason exists for the person not being able to complete the community service in the required time.

There is currently a power under section 50A for a court, on the application of the Minister or a person sentenced to perform community service, to vary the terms of the order or vary or revoke any ancillary order.

Under the section as amended, the period within which community service must be performed cannot be extended by a period of more than 6 months, or periods that, in aggregate, exceed 6 months.

If the Minister extends the period, the order or bond will be taken to have been amended accordingly. The Minister is required to notify the probative or sentencing court if he or she exercises his or her powers under the section.

16—Amendment of section 70L—Community service orders

Under section 70L, an authorised officer who is satisfied that a youth required to pay a pecuniary sum does not have, and is unlikely to have within a reasonable time, the means to satisfy the debt may make a community service order. The officer must also be satisfied that the youth or her or his dependants will suffer hardship.

The section as amended by this clause will allow a person required to perform community service in accordance with the order of an authorised officer to apply to an authorised officer for an extension of the period within which the community service is to be completed.

17—Transitional provisions

The amendments to sections 9A, 50A and 70L of the *Criminal Law (Sentencing) Act 1988* are procedural rather than substantive.

The amendment to section 19 applies to the sentencing of a person by the Magistrates Court following the commencement of Part 5 whether the relevant offence occurred before or after that commencement.

Part 6—Amendment of *Domestic Partners Property Act 1996*

18—Amendment of section 3—Interpretation

Under the definition of *court* in the *Domestic Partners Property Act 1996*, 'court' means the Supreme Court or the District Court or, if an application under the Act relates to property valued at $80 000 or less, the Magistrates Court. This clause amends the definition by increasing the relevant amount from $80,000 to $100,000. This means that if an application relates to property valued at $100,000 or less, 'court ' will mean the Magistrates Court.

19—Transitional provision

The amendment to the *Domestic Partners Property Act 1996* will only apply to proceedings commenced following the commencement of the amendment.

Part 7—Amendment of *Magistrates Court Act 1991*

20—Amendment of section 3—Interpretation

Under the definition of *minor statutory proceeding* in the *Magistrates Court Act 1991*, an application under the *Retail and Commercial Leases Act 1995* is a minor statutory proceeding unless it involves a monetary claim for more than $12,000. This clause amends the definition by increasing the relevant amount to $24,000 so that, under the definition as amended, an application under the *Retail and Commercial Leases Act 1995* will be a minor statutory proceeding unless it involves a monetary claim for more than $24,000.

This clause also amends the definition of *small claim* so that a small claim is a monetary claim for $12,000 or less. Currently, a small claim is a claim for $6,000 or less.

21—Amendment of section 8—Civil jurisdiction

Section 8 of the *Magistrates Court Act 1991* provides that the Court has jurisdiction to hear and determine an action for a sum of money where the amount claimed does not exceed $80,000 in the case of a claim relating to the use of a motor vehicle or $40,000 in any other case. Under the section as amended, the Court will have jurisdiction to hear and determine an action for a sum of money where the amount claimed does not exceed $100,000.

22—Amendment of section 9—Criminal jurisdiction

Under section 9 of the *Magistrates Court Act 1991* as amended by this clause, the Court will have jurisdiction to determine and impose sentence on a defendant who admits a charge of a major indictable offence. However, the Court cannot sentence a person who admits a charge of treason, murder or an attempt or conspiracy to commit, or assault with intent to commit, treason or murder.

23—Amendment of section 42—Appeals

An appeal in relation to a sentence passed on the conviction of a person of a major indictable offence is to be to the Full Court of the Supreme Court with the permission of the Full Court.

24—Transitional provision

The amendments made to sections 3 and 8 of the *Magistrates Court Act 1991*, which affect the civil jurisdiction of the Court, do not apply in respect of proceedings commenced before the commencement of the amendments.

The amendments to sections 9 and 42 of the *Magistrates Court Act 1991*, relating to the Court's criminal jurisdiction, apply in relation to the sentencing of a person by the Court following the commencement of Part 7 whether the relevant offence occurred before or after that commencement.

Part 8—Amendment of *Mining Act 1971*

25—Amendment of section 67—Jurisdiction relating to tenements and monetary claims

Under section 67 of the *Mining Act 1971*, the Warden's Court currently has jurisdiction to determine a monetary claim for up to $40,000. Under the section as amended by this clause, the Court will have jurisdiction to determine a monetary claim for not more than $100,000.

26—Transitional provision

The amendment to the *Mining Act 1971* will only apply to proceedings commenced following the commencement of the amendment.

Part 9—Amendment of *Opal Mining Act 1995*

27—Amendment of section 72—Jurisdiction relating to tenements and monetary claims

Under section 72 of the *Opal Mining Act 1995*, the Warden's Court currently has jurisdiction to determine a monetary claim for up to $40 000. Under the section as amended by this clause, the Court will have jurisdiction to determine a monetary claim for not more than $100,000.

28—Transitional provision

The amendment to the *Opal Mining Act 1995* will only apply to proceedings commenced following the commencement of the amendment.

Part 10—Amendment of *Retail and Commercial Leases Act 1995*

29—Amendment of section 69—Substantial monetary claims

Section 69 of the *Retail and Commercial Leases Act 1995* requires the Magistrates Court to refer a proceeding involving a monetary claim for an amount exceeding $40,000 to the District Court if a party to the proceeding applies for the referral. Under the section as amended by this clause, the Court will be required to refer a proceeding to the District Court on application if the amount claimed exceeds $100,000.

30—Transitional provision

The amendment to the *Retail and Commercial Leases Act 1995* will only apply to proceedings commenced following the commencement of the amendment.

Part 11—Amendment of *Summary Offences Act 1953*

31—Amendment of section 24—Urinating etc in a public place

The offence of urinating or defecating in a public place is not currently expiable. This clause amends section 24 of the *Summary Offences Act 1953* by inserting an expiation fee of $80.

Part 12—Amendment of *Summary Procedure Act 1921*

32—Amendment of section 76A—Power to set aside conviction or order

Section 76A of the *Summary Procedure Act 1921* authorises the Magistrates Court to set aside a conviction or order on its own initiative or on application of a party. An application to set aside a conviction or order must be made within 14 days after the applicant receives notice of the conviction or order. Subsections (1) and (2) are recast by this clause to remove any perceived ambiguity as to whether the 14 day limit applies in relation to the Court exercising the power to set aside a conviction or order on its own initiative.

33—Amendment of section 103—Procedure in Magistrates Court

Under section 103 of the *Summary Procedure Act 1921* as amended by this clause, if a defendant charged with a major indictable offence admits the charge before it proceeds to a preliminary examination, the Magistrates Court may either determine and impose sentence on the defendant or commit the defendant to a superior court for sentence. The Court's discretion operates subject to new section 108(1), which provides that if a defendant admits a charge of a major indictable offence, and the Director of Public Prosecutions for the State or the Commonwealth and the defendant consent, the Court is to determine and impose sentence itself unless the interests of justice require committal to a superior court.

34—Amendment of section 105—Procedure at preliminary examination

Section 105 of the *Summary Procedure Act 1921* deals with the procedure to be followed at the preliminary examination of a charge for an indictable offence. Currently, if a defendant admits the charge, whether in writing or in person, the Magistrates Court is to commit the defendant to a superior Court for sentence. Under the section as amended by this clause, the Court may determine and impose sentence on the defendant (in the same way as a charge of a summary offence) or commit the defendant to a superior Court for sentence. The Court's discretion operates subject to section 108(1), to be inserted by clause 35, which provides that if a defendant admits a charge of a major indictable offence, and the Director of Public Prosecutions for the State or the Commonwealth and the defendant consent to the defendant being sentenced by the Court, the Court is to determine and impose sentence itself unless the Court is of the opinion that the interests of justice require committal to a superior Court.

35—Amendment of section 108—Forum for sentence

This clause inserts a new subsection into section 108. Under the proposed subsection, if a defendant admits a charge of a major indictable offence, and the Director of Public Prosecutions for the State or the Commonwealth and the defendant consent to the defendant being sentenced by the Court, the Court is to determine and impose sentence itself unless the Court is of the opinion that the interests of justice require committal to a superior Court.

36—Amendment of heading to Part 5 Division 5

37—Amendment of section 114—Procedural provisions of Criminal Law Consolidation Act

The amendments made by these clauses are consequential on the proposal to give the Magistrates Court the power to determine and impose sentence where a defendant has admitted a major indictable offence.

38—Transitional provisions

The amendment to section 76A of the *Summary Procedure Act 1921* applies in respect of convictions and orders made before or after the commencement of the amendment.

The amendments to sections 105 and 108 of the *Summary Procedure Act 1921* apply in respect of the procedure to be followed if a defendant admits a charge of a major indictable offence following the commencement of Part 14 whether the relevant offence occurred before or after that commencement.

Part 13—Amendment of *Unclaimed Goods Act 1987*

39—Amendment of section 3—Interpretation

This amendment to the definition of *Court* in the *Unclaimed Goods Act 1987* has the effect of increasing the jurisdiction of the Magistrates Court so that it can determine a question affecting unclaimed goods of a maximum value of $100,000. The current maximum is $80,000.

40—Transitional provision

The amendment to the *Unclaimed Goods Act 1987* will only apply to proceedings commenced following the commencement of the amendment.

Part 14—Amendment of *Youth Court Act 1993*

41—Amendment of section 14—Constitution of Court

Section 14(3) of the *Youth Court Act 1993* provides that the Court, when constituted of a Magistrate, may not impose a sentence of detention for more than 2 years. Under the section as amended by this clause, the Youth Court may be constituted of a Magistrate when sitting to determine and impose sentence on a defendant who has admitted a charge of a major indictable offence.

42—Transitional provisions

The amendments to the *Youth Court Act 1993* apply in respect of the sentencing of a person by the Youth Court following the commencement of Part 14 whether the relevant offence occurred before or after that commencement.

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

CORRECTIONAL SERVICES (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly agreed to amendments Nos 3 and 4 made by the Legislative Council without any amendment; and disagreed to amendments Nos 1, 2, 5 and 6 as indicated in the following schedule:

No. 1. Clause 14, page 6, line 21 [clause 14(2), inserted subsection (4)(b)]—

After 'suspected' insert: on reasonable grounds

No. 2. Clause 22, page 10, line 32 [clause 22, inserted section 35A(3)(a)]—

Delete 'who represents the prisoner' and substitute:

acting in his or her professional capacity

No. 5. Clause 41, page 15, after line 13—After subclause (2) insert:

(3) Section 67—after subsection (7) insert:

(7a) The Governor must, not more than 30 days after refusing to order that a prisoner be released from prison on parole, notify the prisoner in writing of—

(a) the refusal; and

(b) the reasons for the refusal; and

(c) any matters that might assist the prisoner in making any further application for parole.

(7b) Despite subsection (7a)(b) and (c), the Governor is not required to disclose to the prisoner any reason or matter if any such disclosure is likely to give rise to a significant risk to public safety.

No. 6. Clause 49, page 19, line 1 to page 20, line 5 [clause 49, inserted sections 76A and 76B]—

Delete sections 76A and 76B and substitute:

76A—Apprehension etc of parolees on application of CE or police officer

(1) If the CE or a police officer suspects on reasonable grounds that a person who has been released on parole may have breached a condition of parole, the CE or police officer may apply to—

(a) the presiding member or deputy presiding member of the Board; or

(b) if, after making reasonable efforts to contact the presiding member and deputy presiding member, neither is available—to a magistrate,

for the issue of a warrant for the arrest of the person.

(2) A warrant issued under this section authorises the detention of the person in custody pending appearance before the Board.

(3) A magistrate must, on application under this section, issue a warrant for the arrest of a person or for the arrest and return to prison of a person (as the case may require) unless it is apparent, on the face of the application, that no reasonable grounds exist for the issue of the warrant.

(4) If a warrant is issued by a magistrate under this section—

(a) the CE or police officer (as the case requires) must, within 1 working day of the warrant being issued, provide the Board with a written report on the matter; and

(b) the warrant will expire at the end of the period of 2 working days after the day on which the report is provided to the Board; and

(c) the presiding member or deputy presiding member of the Board must consider the report within 2 working days after receipt and—

(i) issue a fresh warrant for the continued detention of the person pending appearance before the Board; or

(ii) cancel the warrant, order that the person be released from custody and, if appearance before the Board is required, issue a summons for the person to appear before the Board.

(5) If a warrant expires under subsection (4)(b) or a fresh warrant is not issued under subsection (4)(c)(i), the person must be released from detention.

(6) The Board may, if it thinks there is good reason to do so, by order, cancel a warrant issued under this section that has not been executed.

Consideration in committee.

The Hon. I.K. HUNTER: I move:

That the Legislative Council does not insist on its amendments opposed by the House of Assembly.

I can inform members that the government in the lower house has opposed four of the six amendments put forward by this house to the Correctional Services (Miscellaneous) Amendment Bill 2011. In relation to amendment No. 1, section 28(4)(b), the government has opposed this amendment as it does nothing to strengthen the wording of the original bill. In relation to amendment No. 2, section 35A(3)(a), the government has opposed this amendment as it could potentially be misused by those not acting in the interests of the prisoner.

In relation to amendments Nos 3 and 4, section 66(2)(aa) and section 66(2)(ad), the government has accepted these amendments as they improve arrangements in relation to those who breach parole conditions, not allowing them the privilege of automatic parole. In relation to amendment No. 5, section 67(7a) and (7b), the government has opposed this amendment as it was never the intention of the act to provide reasons to the prisoner for their refusal of release by the Governor in Executive Council

In relation to amendment No. 6, section 76A, the government has opposed its amendment as it significantly waters down the intention of the original bill, which was proposed to improve procedures around issuing warrants and ensuring SAPOL has the powers to prevent crimes from occurring through suspected breaches of parole conditions. The government looks forward to resolving the difference in positions through the deadlock conference process.

The Hon. S.G. WADE: I would urge the council to insist on its amendments. They were well argued and well structured. The minister has moved that we do not insist, and I urge councillors to reject that suggestion.

Motion negatived.

GRAFFITI CONTROL (MISCELLANEOUS) AMENDMENT BILL

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

At 18:04 the council adjourned until Tuesday 27 March 2012 at 14:15.