LEGISLATIVE COUNCIL

Tuesday 4 September 2012

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

TAFE SA BILL

His Excellency the Governor assented to the bill.

APPROPRIATION BILL 2012

His Excellency the Governor assented to the bill.

SENATE VACANCY

His Excellency the Governor, by message, informed the Legislative Council that the Governor-General of the Commonwealth of Australia, in accordance with section 21 of the Constitution of the Commonwealth of Australia, had notified him that, in consequence of the resignation on 14th day of August 2012 of Senator Mary Jo Fisher, a vacancy has happened in the representation of this state in the Senate of the Commonwealth.

The Governor has advised that by such vacancy having happened the place of a senator has become vacant before the expiration of her term within the meaning of section 15 of the constitution, and that such place must be filled by the houses of Parliament, sitting and voting together, choosing a person to hold it in accordance with the provisions of the said section.

The PRESIDENT: I inform the council that, having conferred, I have arranged to call a joint meeting of the two houses for the purposes of complying with section 15 of the Commonwealth of Australia Constitution Act on Wednesday 5 September 2012 at 10.15am. A formal notice will be distributed to all the members of the parliament.

STATUTES AMENDMENT (NATIONAL ENERGY RETAIL LAW IMPLEMENTATION) BILL

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) (14:21): I move:

That the sitting of the Legislative Council be not suspended during the continuation of the conference with the House of Assembly on the bill.

Motion carried.

ANSWERS TO QUESTIONS

The PRESIDENT: I direct that the following written answers to questions be distributed and printed in *Hansard*.

ABORTION PROCEDURES

213 The Hon. D.G.E. HOOD (25 March 2009) (Fifty-First Parliament, Third Session).

1. Is the Minister for Health aware of any complaints or information regarding children being born alive as the result of a failed abortion procedure within the state within the last 10 years; and

2. If so, what happened to the child or children in question?

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): The Minister for Health and Ageing has been advised:

Failed abortion procedures resulting in continuing pregnancies are rare. Over a 10-year period, the Department for Health and Ageing is aware of five women giving birth to live (full-term) children subsequent to an earlier abortion procedure during the same pregnancy.

The Department for Health and Ageing does not have any further information on these children.

ANNUAL LEAVE

18 The Hon. R.I. LUCAS (30 June 2010) (First Session). For each Department or Agency then reporting to the Deputy Premier—

1. What is the estimated annual leave liability as at 30 June 2010 in days and dollars?

2. What is the highest annual leave entitlement that has not been taken for any employee, as at 30 June 2010, in days and dollars?

3. (a) What funding, as at 30 June 2010, was held in accounts controlled or administered by the Department or Agency to fund annual leave; and

(b) What were the names of the accounts and total funds held in these accounts as at 30 June 2010?

4. (a) What policies, and monitoring of these policies, are in place to ensure that there is not a build up of annual leave liability within the Department or Agency; and

(b) Are employees required to take annual leave after a certain level of entitlement has accrued?

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): The Deputy Premier has advised:

1. to 4. As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

DEPARTMENTAL EXPENDITURE

33 The Hon. R.I. LUCAS (30 June 2010) (First Session). What was the actual level for 2009-10 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general Government sector) then reporting to the Deputy Premier?

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): The Deputy Premier is advised:

As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

DEPARTMENTAL EXPENDITURE

41 The Hon. R.I. LUCAS (30 June 2010) (First Session). What was the actual level for 2009-10 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general Government sector) then reporting to the Minister for Education?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development has been advised:

There were no agencies reporting to the minister that were classified as non-general Government sector.

DEPARTMENTAL EXPENDITURE

43 The Hon. R.I. LUCAS (30 June 2010) (First Session). What was the actual level for 2009-10 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general Government sector) then reporting to the Minister for Families and Communities?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

In relation to the South Australian Housing Trust (SAHT), recurrent expenditure in 2009-10 amounted to $706.3 million, and was underspent by $40.2 million, compared to the revised budget of $746.5 million.

Capital expenditure in 2009-10 amounted to $311.4 million, and was underspent by $81.1 million, compared to the revised budget of $392.5 million.

SAHT is a Public Non-Financial Corporation and is not within the general Government sector.

HomeStart Finance is a Public Financial Corporation. It does not have an expenditure budget allocated through the State Budget per se and therefore the question of over or under expenditure is not applicable. It is recommended that the member be referred to HomeStart Finance's published annual report.

DEPARTMENTAL EXPENDITURE

48 The Hon. R.I. LUCAS (30 June 2010) (First Session). What was the actual level for 2009-10 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which are classified in the general Government sector) then reporting to the Deputy Premier?

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): The Deputy Premier has advised:

As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

PUBLIC SERVICE EMPLOYEES

78 The Hon. R.I. LUCAS (30 June 2010) (First Session). For the period between 1 July 2009 and 30 June 2010, will the Deputy Premier list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

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): The Deputy Premier has advised:

1. & 2. As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

PUBLIC SERVICE EMPLOYEES

88 The Hon. R.I. LUCAS (30 June 2010) (First Session). For the period between 1 July 2009 and 30 June 2010, will the Minister for Families and Communities list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I have been advised of the following:

Positions abolished for period 1 July 2009 to 30 June 2010:

Position Title	Classification	Total Employment Cost	Count
Director, Strategic Policy & Intervention	SAE1	$182,530.47	1
Project Manager	ASO8	$114,206.38	1
Manager Asset Planning & Project	MAS2	$107,884.22	1
Manager Management Accounting	MAS3	$116,281.82	1
Manager Strategic Information	ASO8	$114,206.38	1
Project Consultant	ASO7	$105,813.63	1
Manager Human Resources	ASO8	$114,206.38	1
Management Analyst	ASO7	$105,813.63	1

Position Title	Classification	Total Employment Cost	Count
Franchise Manager Ageing	ASO8	$114,206.38	1
Principal Audit Manager—IT	ASO8	$114,206.38	1
Director Volunteering	SAE1	$172,934.98	1
Implementation Manager	ASO8	$114,206.38	1
Area Manager	RN04	$107,978.83	1
Project Officer	RN03	$102,015.72	1
Aboriginal Service Consultant	ASO7	$105,813.63	1
Clinical Advisor—Personal Support	RN03	$102,015.72	1
Project Officer DCSA Business Services	RN03	$102,015.72	1
Principal Planning Officer	ASO7	$105,813.63	1
Manager Youth Justice	MAS3	$116,281.82	1
Manager Young Offenders Program	MAS3	$116,281.82	1
Senior Policy Officer FSA Executive	ASO7	$105,813.63	1
Manager Foster Care	MAS2	$107,884.22	1
Project Officer Service Development	ASO7	$105,813.63	1
Manager Planning & Projects	ASO7	$105,813.63	1
Manager Aboriginal Affordable Housing	MAS2	$107,884.22	1
Manager Business & Customer Services	ASO7	$105,813.63	1
Place Manager Playford	ASO8	$114,206.38	1
Senior Project Officer Community Partnership and Growth	ASO7	$105,813.63	1
TOTAL		$2,838,291.44	28

For the former Department for Families and Communities, a total of 28 positions with a total estimated cost of $100,000, or more, were abolished for the period between 1 July 2009 and 30 June 2010, as listed below:

For the former Department for Families and Communities, a total of 41 positions were created with a total estimated cost of $100,000, or more, for the period between 1 July 2009 and 30 June 2010. Of these positions 17 were of an ongoing nature and 24 of a temporary nature, as listed below:

Positions created for the period 1 July 09 to 30 June 2010 (Ongoing):			
Position Title	Classification	Total Employment Cost	Count
Manager Strategic Policy & Intervention	MAS3	$114,843.87	1
Principal Assessment Officer	ASO7	$105,813.63	1
Account Manager Human Resources	ASO7	$105,813.63	1
Manager System Solution	ASO7	$105,813.63	1
Project Manager State Recovery	ASO7	$105,813.63	1
Chief Project Officer, Community Services	ASO7	$105,813.63	1
Nurse Education Facilitator	RN03	$102,015.72	1
Senior Policy Officer FSA Executive	ASO7	$105,813.63	1
Manager Business Intelligence & Data Warehouse	ASO7	$105,813.63	1
Manager Workforce Development, Practice Development	ASO7	$105,813.63	1
Executive Officer Remote Indigenous Housing	ASO7	$105,813.63	1
Compliance Officer HSA Financial Accounting	ASO7	$105,813.63	1
Principal Project Manager Housing ICT	ASO8	$114,206.38	1
Manager Projects Property Services	MAS3	$116,281.82	1
Principal Project Manager Housing ICT	ASO8	$114,206.38	1
Principal Project Officer Carers *	ASO7	$105,813.63	1
Manager Strategic Projects Ageing *	ASO8	$114,206.38	1
SUBTOTAL		$1,839,710.48	17
Positions created for the period 1 July 09 to 30 June 2010 (Temporary):			
Position Title	Classification	Total Employment Cost	Count

Positions created for the period 1 July 09 to 30 June 2010 (Ongoing):			
Position Title	Classification	Total Employment Cost	Count
Operational Manager—APY Lands Community Program	ASO8	$114,206.38	1
Management Analyst	ASO7	$105,813.63	1
Project Officer Personal Support and Development	RN03	$102,015.72	1
ACAT Team Leader—Project	ASO7	$105,813.63	1
Principal Planning Officer FSA	ASO7	$105,813.63	1
Principal Aboriginal Policy Officer	ASO7	$105,813.63	1
Project Leader Family Thriving Project	AHP4	$113,035.83	1
Principal Project Officer Practice Development	ASO7	$105,813.63	1
Project Officer Service Development	ASO7	$105,813.63	1
Regional Manager—APY Lands	ASO7	$105,813.63	1
Manager Housing Services Elizabeth	ASO7	$105,813.63	1
Manager Housing Services Salisbury	ASO7	$105,813.63	1
Manager Housing Services Modbury	ASO7	$105,813.63	1
Franchise Manager Business Operations Housing	ASO8	$114,206.38	1
Project Manager Housing Services	ASO7	$105,813.63	1
Principal Evaluation Officer	ASO7	$105,813.63	1
Building Contracts Manager	ASO7	$105,813.63	1
Program Manager Aboriginal Employment Outcomes	ASO7	$105,813.63	1
Manager Special Projects Urban Strategy and Development	ASO7	$105,813.63	1
Program Manager—Housing Outcomes	ASO7	$105,813.63	1
Senior Project Manager Urban Strategy and Development *	ASO7	$105,813.63	1
Program Manager Urban Strategy and Development *	ASO7	$105,813.63	1
Program Manager Urban Strategy and Development *	ASO7	$105,813.63	1
Senior Project Manager Urban Strategy and Development *	ASO7	$105,813.63	1
SUBTOTAL		$2,559,736.91	24
TOTAL		$4,399,447.39	41

Of the 41 positions, six are externally funded as highlighted with an (*) asterisk.

CONSULTANTS AND CONTRACTORS

108 The Hon. R.I. LUCAS (30 June 2010) (First Session). For the year 2009-10—

1. Were any persons employed or otherwise engaged as a consultant or contractor, in any department or agency reporting to the Deputy Premier, who had previously received a separation package from the State Government; and

2. If so—

(a) What number of persons were employed;

(b) What number were engaged as a consultant; and

(c) What number engaged as a contractor?

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): The Deputy Premier is advised:

As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

CONSULTANTS AND CONTRACTORS

116 The Hon. R.I. LUCAS (30 June 2010) (First Session). For the year 2009-10—

1. Were any persons employed or otherwise engaged as a consultant or contractor, in any department or agency reporting to the Minister for Education, who had previously received a separation package from the State Government; and

2. If so—

(a) What number of persons were employed;

(b) What number were engaged as a consultant; and

(c) What number engaged as a contractor?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development has been advised:

For the period 2009-2010, the Department for Education and Child Development is not aware of any persons employed or otherwise engaged by the department as a consultant or contractor, who had previously received a separation package from the State Government within the last three years.

There were no employees employed or otherwise engaged as a consultant or contractor at the SACE Board of South Australia who had previously received a separation package from the State Government in the last three years.

MINISTERIAL TRAVEL

128 The Hon. R.I. LUCAS (24 November 2010) (First Session). Can the Deputy Premier state—

1. What was the total cost of any overseas trips undertaken by the Deputy Premier and staff since 2 December 2009 up to 1 December 2010?

2. What are the names of the officers who accompanied the Deputy Premier on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the Deputy Premier's office budget, or by the Deputy Premier's Department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

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): The Deputy Premier has advised:

1. to 5. As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

MINISTERIAL TRAVEL

136 The Hon. R.I. LUCAS (24 November 2010) (First Session). Can the Minister for Education state—

1. What was the total cost of any overseas trips undertaken by the minister and staff since 2 December 2009 up to 1 December 2010?

2. What are the names of the officers who accompanied the minister on each trip?

3. Was any officer given permission to take private leave as part of the overseas trip?

4. Was the cost of each trip met by the minister's office budget, or by the minister's department or agency?

5. (a) What cities and locations were visited on each trip; and

(b) What was the purpose of each visit?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Early Childhood Development has been advised:

On 11 June 2010 to 22 June 2010 the former Minister for Education visited Italy and the United Kingdom. From 11 to 16 June the minister visited Rome, Bologna and Reggio Emilia in Italy with the objective of examining the two most significant approaches to early childhood development in Italy—Montessori and Reggio Emilia.

From 16 to 21 June the minister visited the United Kingdom, principally London, with the objective of visiting sites with strong early childhood and school practices, and to meet with education researchers and policy makers to discuss their perspectives on recent United Kingdom education policy.

The minister flew to Italy via Perth to attend the MCEECDYA meeting on 10 June 2010. The flights to Perth are covered in the total cost figure.

The minister was accompanied by Mr Simon Blewett, Chief of Staff and Mr Jadynne Harvey, Ministerial Adviser. The minister was also accompanied by Mr Nicola Sasanelli, Special Envoy, Higher Education, Research and Technology Transfer (Europe) on the Italy portion of the trip.

The total cost of flights, accommodation and expenses for the trip was $43,654.75.

Part of the cost of the trip was met from the Minister's Parliamentary Travel Allowance and the remainder of the cost of the trip was met from the minister's office budget, save that the Department of Premier and Cabinet provided for Mr Sasanelli's accommodation and expenses, and contributed towards the costs of Mr Sasanelli's flights.

LONG SERVICE LEAVE

143 The Hon. R.I. LUCAS (24 November 2010) (First Session).

1. What is the estimated long service leave liability as at 30 June 2010 in days and dollars?

2. What is the highest long service leave entitlement that has not been taken for any employee, as at 30 June 2010, in days and dollars?

3. (a) What funding, as at 30 June 2010, was held in accounts controlled or administered by the department or agency to fund long service leave; and

(b) What were the names of the accounts and total funds held in these accounts as at 30 June 2010?

4. (a) What policies, and monitoring of these policies, are in place to ensure that there is not a build up of long service leave liability within the department or agency; and

(b) Are employees required to take long service leave after a certain level of entitlement has accrued?

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): The Deputy Premier has advised:

As I was appointed Deputy Premier in February 2011, I will only provide a response for this period in the capacity as Attorney-General.

DEPARTMENTAL EXPENDITURE

224 The Hon. R.I. LUCAS (7 July 2011) (First Session). Can the Deputy Premier advise the actual level for 2010-11 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general government sector) then reporting to the Deputy Premier?

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): The Deputy Premier has advised:

This question does not apply to the Attorney-General's Department.

DEPARTMENTAL EXPENDITURE

233 The Hon. R.I. LUCAS (7 July 2011) (First Session). Can the Minister for Environment and Conservation advise the actual level for 2010-11 of both capital and recurrent expenditure underspending (or overspending) for all departments and agencies (which were not classified in the general government sector) then reporting to the minister?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Water and the River Murray has been advised:

SA Water's actual level of recurrent expenditure in 2010-11, including all operating expenditure, depreciation and borrowing costs but excluding income tax equivalent payments, was $897 million against an original budget of $1.021 billion, an underspend of $124 million.

The underspend was primarily due to the approved carryover of unused temporary water purchases ($54 million), a decrease in recoverable works expenditure offset by a reduction in income ($19 million), lower electricity usage and charges ($17 million) and a reduction in depreciation and borrowing costs ($29 million).

SA Water's actual level of capital expenditure for 2010-11 was $693 million against an original budget of $887 million, an underspend of $194 million, which is primarily due to:

- Project spend deferred into outer years—Adelaide Desalination Project ($175 million), Christies Beach Wastewater Treatment Plant Upgrade ($15 million) and Adelaide Airport Stormwater Scheme ($5 million).

The above underspends were partially offset by:

- the North-South Interconnection System Project expenditure brought forward $44 million; and
- the removal of Water Security Contingency, as this was not required to be utilised ($29 million).

PUBLIC SERVICE EMPLOYEES

285 The Hon. R.I. LUCAS (7 July 2011) (First Session). For the period between 1 July 2010 and 30 June 2011, will the Minister for Transport list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Transport and Infrastructure is advised:

1. For the period 1 July 2010 and 30 June 2011, twenty positions with a total estimated cost of $100 000, or more, have been abolished, fourteen of these are due to the integration of TransAdelaide into the Department for Transport, Energy and Infrastructure (DTEI).

Abolished:

Department/Agency	Position Title	#TEC
DTEI	Executive Director, Safety and Regulation Division	$255,686
DTEI	Director, Finance	$206,505
DTEI	Manager Business Support	$127,322
DTEI	Manager Project and Business Partnership	$134,772
DTEI	Operations Manager	$134,772
DTEI	Manager Accreditation and Licenses	$134,772
DTEI	* Fleet and Depot Manager	$131,010
DTEI	* Principal Consultant	$127,322
DTEI	* Manager Customer Information and Business	$127,322
DTEI	* Manager Compliance	$127,322
DTEI	* Contract Manager	$127,322
DTEI	* Contract Manager	$127,322
DTEI	* Manager Infrastructure and Facility	$127,322

Department/Agency	Position Title	#TEC
DTEI	* Manager Business Support	$127,322
DTEI	* Manager Integrated Service Planning	$127,322
DTEI	* Manager PT Infrastructure	$127,322
DTEI	* Principal Policy Officer	$127,322
DTEI	* Project Director	$127,322
DTEI	* Contract Services Manager	$134,772
DTEI	* Manager Transport Analysis	$134,772

#TEC reflects salaries, payroll tax, superannuation and other related employment costs.

*These positions were abolished as a result of the integration of the former TransAdelaide into DTEI.

2. For the period 1 July 2010 and 30 June 2011, sixty five positions with a total estimated cost of $100 000, or more, have been created, forty one of these are due to the integration of TransAdelaide into DTEI.

Created:

Department/ Agency	Position Title	#TEC
DTEI	Project Director, Facilities Management	$178,972
DTEI	Business Transition Coordinator	$178,972
DTEI	Operations Coordinator	$178,972
DTEI	Principal Architect	$131,010
DTEI	Coordinator Specialist Services	$131,010
DTEI	Senior Project Manager	$131,010
DTEI	Senior Project Manager	$131,010
DTEI	Senior Project Manager	$131,010
DTEI	Portfolio Finance Officer	$127,322
DTEI	Manager Policy	$127,322
DTEI	ICT Integration Manager	$127,322
DTEI	ICT Service Manager	$127,322
DTEI	Enterprise Workforce Planning Manager	$127,322
DTEI	Principal Project Officer	$127,322
DTEI	Senior Advisor Ports and Logistics	$127,322
DTEI	Safety Manager Rail Projects	$127,322
DTEI	Division Accountant	$127,322
DTEI	Road Safety Engineering Unit Manager	$115,833
DTEI	Project Manager	$115,833
DTEI	Project Manager	$115,833
DTEI	Senior Project Manager	$115,833
DTEI	Project Manager	$115,833
DTEI	Manager Rail Regulation and Reform	$134,772
DTEI	Manager Rail Safety	$134,772
DTEI	* Director, Rail Operations	$178,972
DTEI	* Director, Business Enterprise	$296,680
DTEI	* Director, Engineering and Maintenance	$206,505
DTEI	* Director, Projects	$224,403
DTEI	* Director, Rolling Stock	$178,972
DTEI	* Director, Asset Management	$178,972
DTEI	* Director, Integrated Transport Services	$194,804
DTEI	* Rail Engineering Manager	$131,010
DTEI	* Engineering Manager	$131,010
DTEI	* Fleet and Depot Manager	$131,010
DTEI	* Manager Track and Civil	$131,010
DTEI	* Manager Finance	$127,322
DTEI	* Manager Business Relations	$127,322
DTEI	* Integration Manager	$127,322
DTEI	* Manager Safety and Risk Interface	$127,322

Department/ Agency	Position Title		#TEC
DTEI	*	Rail Safety Accreditation Manager	$127,322
DTEI	*	Manager Industrial Relations	$127,322
DTEI	*	Project Director	$127,322
DTEI	*	Customer and Community Engagement Manager	$127,322
DTEI	*	Customer Contact and Information Manager	$127,322
DTEI	*	Manager Business Improvement	$127,322
DTEI	*	Operational Readiness Manager	$127,322
DTEI	*	Manager Operations and Maintenance Contracts	$127,322
DTEI	*	Land Services Manager	$127,322
DTEI	*	Manager Customer Information and Business Development	$127,322
DTEI	*	Projects Contract Manager	$127,322
DTEI	*	Risk and Compliance Manager	$127,322
DTEI	*	Rail Rules Manager	$127,322
DTEI	*	Manager Signalling Engineering	$127,322
DTEI	*	Signals and Communication Manager	$127,322
DTEI	*	Manager Rail Maintenance	$127,322
DTEI	*	Director Business Development	$127,322
DTEI	*	Manager Electrical Engineering	$115,833
DTEI	*	Manager Rolling stock and Engineering	$115,833
DTEI	*	Senior Signalling Design Engineer	$115,833
DTEI	*	Manager Capital Projects	$115,833
DTEI	*	Distribution Engineer	$115,833
DTEI	*	Manager Safety and Risk	$134,772
DTEI	*	Manager Accreditation and Licensing	$134,772
DTEI	*	Manager Train Operations	$134,772
DTEI	*	Director Research	$134,772

#TEC reflects salaries, payroll tax, superannuation and other related employment costs.

*These positions were created as a result of the integration of the former TransAdelaide into DTEI. These positions/roles existed in the former TransAdelaide prior to integration.

PUBLIC SERVICE EMPLOYEES

288 The Hon. R.I. LUCAS (7 July 2011) (First Session). For the period between 1 July 2010 and 30 June 2011, will the Minister for Families and Communities list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I have been advised of the following:

1. In relation to the former Department for Families and Communities, the following positions with a total estimated cost of $100,00 or more were abolished between 1 July 2010 and 30 June 2011:

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Disability SA	Executive Director, Office for Disability and Client Services	$219,383
Department for Families and Communities—Domiciliary Care SA	Executive Director	$208,838
Department for Families and Communities—Corporate	Director, Office for Problem Gambling	$141,362
Department for Families and Communities—Domiciliary Care SA	Director Client Services	$169,343
HomeStart Finance—Treasury and Risk	Manager, Treasury and Risk	$135,100 ^
Department for Families and Communities—Families SA	Manager	$117,715

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Housing SA	Manager, Officer Social Housing Co-ordinator	$117,715
Department for Families and Communities—Housing SA	Manager, Homeless and Community Programs	$117,715
Department for Families and Communities—Housing SA	Manager, Customer Services Unit	$115,614
Department for Families and Communities—Families SA	Project Leader, Family Thriving Project	$114,429
HomeStart Finance—Treasury and Risk	Manager, Lending Policy and Compliance	$111,200 ^
Department for Families and Communities—Families SA	Principal Aboriginal Consultant	$110,593
Department for Families and Communities—Housing SA	Project Leader	$109,214
Department for Families and Communities—Corporate	Principal Program Officer PSC	$107,117
Department for Families and Communities—Corporate	Principal Policy and Project Officer	$107,117
Department for Families and Communities—Corporate	Principal Project Officer HACC Administration	$107,117
Department for Families and Communities—Corporate	Donated Goods Project Manager	$107,117
Department for Families and Communities—Domiciliary Care SA	ACAT Team Leader Project	$107,117
Department for Families and Communities—Domiciliary Care SA	Executive Projects Manager	$107,117
Department for Families and Communities—Families SA	Principal Policy Manager	$107,117
Department for Families and Communities—Families SA	Principal Policy and Program Officer	$107,117
Department for Families and Communities—Families SA	Principal Aboriginal Policy Officer	$107,117
Department for Families and Communities—Housing SA	Project Manager	$107,117
Department for Families and Communities—Housing SA	Manager, Business Support	$107,117
Department for Families and Communities—Housing SA	Manager	$107,117
Department for Families and Communities—Housing SA	Manager	$107,117
Department for Families and Communities—Housing SA	Manager	$107,117
Department for Families and Communities—Housing SA	Principal Project Officer SAAP	$107,117
Department for Families and Communities—Housing SA	Program Manager	$107,117
Department for Families and Communities—Housing SA	Program Manager	$107,117
Department for Families and Communities—Housing SA	Building Contracts Manager	$107,117
HomeStart Finance—Retail	Quality Assurance Manager	$105,850 ^
Department for Families and Communities—Housing SA	Director, Affordable Housing Innovation Unit (This position was never filled)	-
TOTAL		$3,822,177

^ Range maximum

2. Created:

In relation to the former Department for Families and Communities, the following positions with a total estimated cost of $100,00 or more were created between 1 July 2010 and 30 June 2011:

* Commonwealth funded:

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Housing SA	Development Manager *	$115,614
Department for Families and Communities—Corporate	Principal Project Officer, ACAP Program *	$107,117
Department for Families and Communities—Corporate	Operation Change Manager, ACAP *	$107,117
Department for Families and Communities—Corporate	Operation Change Manager, Access2HC *	$107,117
Department for Families and Communities—Corporate	Principal Project Officer HACC Admin *	$107,117
Department for Families and Communities—Corporate	Principal Project Officer HACC Admin *	$107,117
Department for Families and Communities—Community and Home Support SA	Senior P/O Outcome Measurement *	$107,117
Sub Total		$758,316

Growth funded:

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Families SA	Principal Social Worker #	$114,429
Department for Families and Communities—Families SA	Principal Social Worker #	$114,429
Department for Families and Communities—Families SA	Project Director #	$109,214
Department for Families and Communities—Families SA	Service Development Manager #	$107,117
Sub Total		$445,189

** Funded by the Social Inclusion Board:

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Families SA	Manager, Community Protection Panel **	$117,715
Sub Total		$117,715
HomeStart Finance:		
HomeStart Finance—People and Strategy	Strategy Manager	$156,700 ^
HomeStart Finance—Treasury and Risk	Manager, Risk and Compliance	$117,010 ^
Sub Total		$273,710

DFC funded:

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Community and Home Support SA	Director, Intake and Assessment (SAES)	$184,858
Department for Families and Communities—Community and Home Support SA	Director, Domiciliary Care (SAES)	$148,362
Department for Families and Communities—Community and Home Support SA	Director, Funds Management (SAES)	$141,362

Department/Agency	Position Title	TEC Cost
Department for Families and Communities—Housing SA	Program Manager	$117,715
Department for Families and Communities—Corporate	Manager, Media and Communication	$115,614
Department for Families and Communities—Corporate	Manager, Strategic Projects (Temporary 23 May 2011 to 30 Dec 2011)	$115,614
Department for Families and Communities—Housing SA	Manager, Public and Private Rental Program	$115,614
Department for Families and Communities—Housing SA	Manager, Access Project (Temporary 10 Jan 2011 to 23 Jun 2013)	$115,614
Department for Families and Communities—Housing SA	Project Team Leader (Temporary 13 Sept 2010 to 11 Mar 2013)	$115,614
Department for Families and Communities—Families SA	Principal Clinical Psychologist (Temporary 1 Jan 2011 to 28 Aug 2011)	$114,429
Department for Families and Communities—Families SA	Principal Psychologist (Temporary 13 Jun 2011 to 16 Dec 2011)	$114,429
Department for Families and Communities—Corporate	Business Change and Transition Manager (Temporary 6 Dec 2010 to 6 Jun 2012)	$107,117
Department for Families and Communities—Corporate	Manager, Problem Gambling	$107,117
Department for Families and Communities—Corporate	Donated Goods Project Manager (Temporary 1 Jul 2010 to 30 Jun 2011)	$107,117
Department for Families and Communities—Community and Home Support SA	Manager, Directorate Support	$107,117
Department for Families and Communities—Families SA	Principal Aboriginal Policy Officer	$107,117
Department for Families and Communities—Families SA	Directorate Business Manager (Temporary 28 Mar 2011 to 28 Dec 2012)	$107,117
Department for Families and Communities—Families SA	Principal Officer—Practice Development (Temporary 18 Apr 2011 to 14 May 2012)	$107,117
Department for Families and Communities—Families SA	Manager, Business Planning and Development (Temporary 9 May 2011 to 18 May 2012)	$107,117
Department for Families and Communities—Housing SA	Manager, Strategic Development	$107,117
Department for Families and Communities—Housing SA	Principal Policy Officer	$107,117
Department for Families and Communities—Housing SA	Lead Business Analyst (Temporary 13 Sep 2010 to 5 Oct 2013)	$107,117
Department for Families and Communities—Housing SA	Lead Business Analyst	$107,117
Sub Total		$2,684,629
TOTAL		$4,279,559

^ Range maximum

PUBLIC SERVICE EMPLOYEES

291 The Hon. R.I. LUCAS (7 July 2011) (First Session). For the period between 1 July 2010 and 30 June 2011, will the Minister for Health list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): The Minister for Health and Ageing has been advised of the information contained in the attached table.

This information relates to the period 1 July 2010 and 30 June 2011 for the portfolios of Health and Mental Health and Substance Abuse.

Abolished Positions—TEC $100,000 or more:

Department/Agency	Region	Position Title	TEC Cost	Comments
Health—Corporate		Director—Major Projects	$152,655	Resigned; Salary + all on costs during said period
Health—Corporate		Director—Major Projects	$228,170	Contract expired: Salary +leave entitlements+ on costs
Health—Corporate		Regional Director of Workforce	$364,394	as part of Workforce FTE exec savings; ETP + Salary + leave entitlements + on costs
Country Health SA		Senior Budget Officer Lower North	$163,661	Resigned; Salary + all leave accrued + all on costs during said period
Country Health SA		Senior Network Clinician	$193,064	TVSP offered + Salary + all on costs
Central Northern Adelaide Health Services	as part of Adelaide Health Service	Executive Director Mental Health	$216,020.90	position abolished and moved into Central Office Salary + all on costs during said period
Central Northern Adelaide Health Services	as part of Adelaide Health Service	Chief Executive Officer	$331,185	Resigned; Salary + all on costs during said period
Royal Adelaide Hospital	as part of Adelaide Health Service	Director Biomed Engineering	$101,742	clinical positions
Lyell McEwin Hospital	as part of Adelaide Health Service	General Manager	$295,683.81	contract terminated position redesigned
The Queen Elizabeth Hospital	as part of Adelaide Health Service	Manager Biomed Engineer Services	$313,634.24	TVSP + Salary + all on costs
Southern Adelaide Health Service	as part of Adelaide Health Service	Consultant Obstetrics and Gynaecologist Reproductive Medicine	$161,232.78	clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Senior Registrar Medical Practitioner	$105,330.60	clinical positions
SA Dental Service	as part of Adelaide Health Service	General Manager, Service	$155,475.84	clinical positions
SA Dental Service	as part of Adelaide Health Service	Medical Practitioner	$119,902.24	clinical positions

Created Positions—TEC $100,000 or more:

Department/ Agency		Position Title	TEC Cost	Comments
Health—Corporate		Director, Health Reform and Legislation	$129,393	Position created in relation to establishing the new Local Health Networks (12 months only) Salary to date + on costs

Department/ Agency		Position Title	TEC Cost	Comments
Children, Youth & Women's Health Services		Dental Visiting Orthodontist	$264,094.01	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Medical Consultant	$235,395.31	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Torrens House Senior Medical Practitioner	$161,133.61	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Regional Education Director	$120,243.35	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Director Clinical Practitioner	$120,243.35	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Paediatric Training Medical Officer	$113,260.81	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Medical Practitioner	$113,260.81	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Clinical Psychologist	$104,113.53	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		Emergency Mgmt Coordinator	$100,108.87	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		RN4 Pain Services Nurse	$100,108.87	figures are top increment and also include compulsory 9% employer super component
Children, Youth & Women's Health Services		RN4 Pain Services Nurse	$100,108.87	figures are top increment and also include compulsory 9% employer super component
Central Northern Adelaide Health Services	as part of Adelaide Health Service	Director Area Health	$165,840.90	Area Directors that were created as part of the Adelaide Health Service formation
Central Northern Adelaide Health Services	as part of Adelaide Health Service	Director Area Health	$158,346.30	Area Directors that were created as part of the Adelaide Health Service formation
Royal Adelaide Hospital	as part of Adelaide Health Service	Senior Medical Scientist	$120,130.87	All of the positions are clinical positions
Royal Adelaide Hospital	as part of Adelaide Health Service	Thoracic Community Registrar	$169,671.77	All of the positions are clinical positions

Department/ Agency		Position Title	TEC Cost	Comments
Royal Adelaide Hospital	as part of Adelaide Health Service	Geriatric Medical Registrar Community	$128,169.32	All of the positions are clinical positions
Royal Adelaide Hospital	as part of Adelaide Health Service	Staff Specialist	$183,226.30	All of the positions are clinical positions
Lyell McEwin Hospital	as part of Adelaide Health Service	Consultant—Nuclear Medicine	$128,178.79	All of the positions are clinical positions
Lyell McEwin Hospital	as part of Adelaide Health Service	Senior Med Practitioner	$150,994.03	All of the positions are clinical positions
Lyell McEwin Hospital	as part of Adelaide Health Service	Head CT	$134,580.57	All of the positions are clinical positions
Lyell McEwin Hospital	as part of Adelaide Health Service	Head General	$128,527.65	All of the positions are clinical positions
The Queen Elizabeth Hospital	as part of Adelaide Health Service	Consultant	$129,065.61	All of the positions are clinical positions
Lyell McEwin Hospital	as part of Adelaide Health Service	Ophthalmologist	$121,980.04	All of the positions are clinical positions
Repatriation General Hospital	as part of Adelaide Health Service	Senior Consultant	$134,275	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Consultant Surgeon/Lecturer	$183,765.49	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Psychiatry Trainee	$109,913.56	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registrar	$136,491.61	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registrar	$101,372.62	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registrar	$112,914.37	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registered Medical Officer Registrar	$105,794.39	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registrar	$119,956.77	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registered Medical Officer Registrar	$137,581.25	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registrar	$112,938.12	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Registrar	$107,960.54	All of the positions are clinical positions

Department/ Agency		Position Title	TEC Cost	Comments
Southern Adelaide Health Service	as part of Adelaide Health Service	Registered Medical Officer Registrar Palliative Care	$124,906.83	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Senior Medical Practitioner	$177,320.37	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Consultant	$145,711.61	All of the positions are clinical positions
SA Dental Service	as part of Adelaide Health Service	Consultant Psychiatrist	$225,225.05	All of the positions are clinical positions
SA Dental Service	as part of Adelaide Health Service	Clinical Director	$269,156.48	All of the positions are clinical positions
SA Dental Service	as part of Adelaide Health Service	Community Respiratory Physician	$164,734.07	All of the positions are clinical positions
SA Dental Service	as part of Adelaide Health Service	Senior Registrar	$141,734.39	All of the positions are clinical positions
SA Dental Service	as part of Adelaide Health Service	Senior Medical Practitioner	$115,997.99	All of the positions are clinical positions
SA Dental Service	as part of Adelaide Health Service	Senior Medical Practitioner	$126,168.46	All of the positions are clinical positions
Southern Adelaide Health Service	as part of Adelaide Health Service	Senior Medical Practitioner	$120,662	All of the positions are clinical positions

PUBLIC SERVICE EMPLOYEES

293 The Hon. R.I. LUCAS (7 July 2011) (First Session). For the period between 1 July 2010 and 30 June 2011, will the Minister for Environment and Conservation list—

1. Job title and total employment cost of each position with a total estimated cost of $100,000 or more, which has been abolished; and

2. Each new position with a total cost of $100,000 or more, which has been created?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Sustainability, Environment and Conservation has been advised:

Between 1 July 2010 and 30 June 2011 positions with a total employment cost of $100,000 or more:

1. Abolished:

Department/Agency	Position Title	TEC Cost
Department of Environment and Natural Resources	Principal Consultant	$114,842
	Senior Botanist	$112,601
	Manager, Volunteer Strategy	$116,929
	Director NRM Investment	$141,362
	Interim Deputy Regional	$114,842
	Snr Project Officer	$114,842
	Chief Information Manager	$116,929
	Senior Project Officer	$114,842
Department for Water	Manager, Stormwater	$120,451

	Commissioner for Water Security	$152,392
	Director, Water Licensing & Compliance	$185,095
	Director, Infrastructure & Business	$185,095
	Principal Scientist Monitoring	$113,043
	Manager, Strategic Projects	$107,103
	Program Leader, Water Sciences	$106,653
	Manager, Water Systems Reform	$111,196
	Director, Strategy	$127,226
Environment Protection Authority	Nil	N/A
Zero Waste SA	Nil	N/A
SA Water Corporation	Security Manager	$114,327
	Emergency Mgmt Engineer	$133,623
	Manager Customer Strategy	$119,354

2. Created:

Department/Agency	Position Title	TEC Cost
Department of Environment and Natural Resources	Regional Manager, Alinytja Wilurara	$140,310
	Regional Manager—Kangaroo Is	$141,362
	Regional Manager—SA MDB	$175,000
	Regional Manager—SA Arid Lands	$155,000
	Regional Manager—Adelaide and Mt Lofty	$197,801
	Regional Manager—Nth & Yorke	$172,181
	Regional Manager—South East	$155,000
	Regional Manager—Eyre	$155,000
	Director Stakeholder Mgt	$157,673
	Dir, Regional Integration	$150,354
	Principal Advisor Ecological Analysis	$112,601
	RaIN Facilitator	$114,842
	Principal Policy Officer	$114,842
	Dir, Legislation, Policy and Planning	$151,000
	Dir, Volunteers and Visitor Services	$141,362
	Principal Project Officer	$114,842
	Snr Policy Off—Visitor Mgt	$114,842
	Snr Project Officer	$114,842
	Principal Policy Off—Marine Projects	$114,842
	Mgr, Performance and Strategy	$112,601
	Mgr, Program Integration	$114,842
	Director Public Land Mgt & Operations	$155,000
	Manager, Boards & Committees	$116,929
Department for Water	Manager, South East Water Policy	$105,191
	Manager, Urban Water Policy & Economics	$130,800
	Principal Hydrologist	$102,623
	Executive Director, Policy & Urban Water	$179,375
	Director, State Research Coordinator	$141,362
	Director, Water Planning	$177,325
	Director, National Water Reform & Economics	$164,000
	Chief Information Officer	$158,875
	Director, Murray Darling Basin Policy & Reform	$160,746
Environment Protection Authority	Project Manager	$105,192
	Senior Consultant	$105,192

Zero Waste SA	Nil	N/A
SA Water Corporation	Strategic Procurement Category Manager	$163,500
	Contracts Manager	$130,800
	Senior Procurement Specialist	$125,350
	Senior Procurement Specialist	$125,350
	Senior Procurement Specialist	$125,350

In regard to the Department of Environment and Natural Resources, note that:

- 16 of the positions created are fixed contract only (10 of these relate directly to the NRM integration project); and
- a number of positions will be abolished once new Regional Team Managers are in place (i.e. Regional Conservator and Deputy Regional Conservator positions).

CONSULTANTS AND CONTRACTORS

307 The Hon. R.I. LUCAS (7 July 2011) (First Session). For the year 2010-11—

1. Were any persons employed or otherwise engaged as a consultant or contractor, in any department or agency reporting to the Minister for Education, who had previously received a separation package from the State Government; and

2. If so—

(a) What number of persons were employed;

(b) What number were engaged as a consultant; and

(c) What number engaged as a contractor?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development has advised:

A list of individuals who have been engaged as contractors by the Department for Education and Child Development for the year 2010-11 has been identified from the procurement database. This list did not include the following:

- the engagement of companies such as universities, school uniform suppliers, ICT suppliers etc.
- commitments made by corporate business units within their $11,000 purchase delegation
- commitment made by schools and preschools within their $110,000 purchase delegation.

The department has advised that they are not aware of any person employed or otherwise engaged as a consultant or contractor that had previously received a separation package from the State Government within the last 3 years.

This information has also been checked against the payroll system and none were identified as previously having received a separation package from the State Government in the last 3 years.

There were no employees employed or otherwise engaged as a consultant or contractor at the SACE Board of South Australia who had previously received a separation package from the State Government.

APY LANDS, DISABILITY SERVICES

319 The Hon. K.L. VINCENT (27 July 2011) (First Session). Can the Minister for Disability advise—

1. (a) What specific disability support services the government delivers on the APY Lands;

(b) In which communities are these services provided; and

(c) How many people receive each service?

2. (a) How many people on the APY Lands are waiting for a Disability SA service; and

(b) When will their specific service needs be met?

3. (a) What proportion of public housing built in South Australia's remote Aboriginal communities over the last two years has been purpose-built to accommodate people with disabilities; and

(b) What specific design features have been incorporated into these properties?

4. (a) How many people from the APY Lands have had to relocate to urban or regional centres, including Alice Springs, because they have not been able to access appropriate disability support services in their home community; and

(b) What support, if any, does the government provide these people to enable them to undertake return-to-community visits?

5. (a) How much funding did the Department of Families and Communities expend in the last financial year delivering disability support services to people on the APY Lands; and

(b) How much funding has been allocated to continue this work in the current financial year?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I have been advised:

1. Disability Support Program

The Disability Support Program supports people with disability in the APY Lands to integrate into community life and live independently in their communities. The services provided include day activities, support for clients and their families/carers, intensive support for people with complex needs and a carer service for a person with high support needs.

The Disability Support Program functions in Amata, Fregon, Kalka, Mimili, Indulkana and Pipalyatjara.

In 2010-11 services were provided through the Disability Support Program to 40 clients.

Home and Community Care Program:

The Home and Community Care (HACC) program provides support for people with a disability to assist them to live independently in their homes and their community of choice. The services provided under the program include daily meals Monday to Friday, blanket laundering and local transport.

HACC services are provided in all the main communities: Amata, Mimili, Pukatja, Fregon, Indulkana, Pipalyatjara and Kalka.

In 2010-11 approximately 40 people with disability were provided with a service through the HACC program.

APY Lands Allied Health Service:

The APY Lands Allied Health Service provides visiting physiotherapy, occupational therapy and speech therapy services to people with disability, and those who are aged. The service provides assessment, intervention, training, and practical advice and support, supporting clients to maintain functional independence in their own environment in the areas of communication, mobility, mealtimes and activities of daily living. The service also supports families/carers as they assist the person to live as independently as possible.

Services are provided to all communities including Amata, Fregon, Indulkana, Kalka, Kanpi, Kenmore Park, Mimili, Nyapari, Pipalyatjara, Umuwa, Wallattina and Watarru.

Allied Health Service clinicians visited the APY Lands seven times in 2010-11 and saw 90 clients. The available records do not designate whether the service was provided because the client was aged or had a disability.

Case management support for people with disability:

The NPY Women's Council is funded to provide case management to people with a disability to maximise their independence and participation in the community through working with the individual, family and/or carers in care planning and/or facilitating access to appropriate services; and family support and respite services for families caring for a person with disability, enabling them to continue in their caring responsibilities.

The program is provided in all of the main communities: Amata, Mimili, Pukatja, Fregon, Indulkana, Pipalyatjara and Kalka.

The program provided support to 30 clients in 2010-11.

Supported accommodation in Alice Springs:

The Northern Territory Government is funded to provide supported accommodation to Aboriginal clients from the APY Lands.

Five clients were provided with supported accommodation in 2010-11.

2. At 31 July 2011, eight individuals were waiting for services from the APY Lands Allied Health Service.

The expected wait for services was three to six months. In most cases the 'wait' is due to an appointment cancellation or because a referral has only been received recently. Once a consultation with the therapist occurred the appropriate action/follow-up would generally have occurred immediately.

3. New public housing is built so that it can be easily adapted for disability modifications if required. Over the two years prior to July 2011, there were no requests to provide purpose built public housing to accommodate people with disability in South Australia's remote Aboriginal communities.

The new housing construction program delivers houses and designs which comply with the National Building Code of Australia. This ensures that properties are adaptable and easily modified for people with disability. New dwellings are constructed with wide hallways and doors (wheelchair accessible), accessible showers, provision for handrails, and tap-ware which is easily turned on and off. Upgraded properties are also retro-fitted with accessible fixtures and fittings.

Where existing residents require modifications to their homes, requests are managed as in all public housing, with disability modifications completed as far as practicable. In regional and remote areas, this is undertaken in partnership with Country Community Health providers who assess and advise on modifications required.

4. As at September 2011, the APY Lands Community Programs Disability Support Coordinator was aware of one disability client for whom residential care in Alice Springs was arranged following a case conference, responding to the decision of the Public Advocate. Under the Intergovernmental Agreement with the Northern Territory and Western Australian Governments, the Department for Communities and Social Inclusion (DCSI) funds the NPY Women's Council for case management services. The Council also supports clients to undertake return to community visits.

5. During 2010-11, the former Department for Families and Communities (DFC), now the Department for Communities and Social Inclusion (DCSI) expended $1,673,008 delivering disability support services to people with a disability on the APY Lands. A further $145,562 was expended on the provision of Allied Health Services—a proportion of this for people with a disability.

In 2011-12, $1,897,507 was allocated to the delivery of disability support services to people with a disability on the APY Lands. A further $157,000 was allocated to the provision of Allied Health Services—a proportion of this for people with disability.'

LAND MANAGEMENT CORPORATION

328 The Hon. D.G.E. HOOD (14 September 2011) (First Session).

1. Will the Minister for Infrastructure explain why the Land Management Corporation was allowed to enter into a joint venture (Soho) at Mawson Lakes (Technology Park) with Holcon Pty. Ltd., a subsidiary of Connor Holmes, in contravention of Government policy?

2. Will the Minister explain why the terms of this joint venture were so favourable to Holcon which receives 65 per cent of any profit and makes progress payments on land as development proceeds?

3. What is the status of this joint venture?

4. Why has this joint venture not been publicised by the Land Management Corporation as has been the case with other joint ventures?

5. Is it true that this joint venture was not successful and one of the options being considered by the Land Management Corporation is to wind up the joint venture?

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): The Minister for Transport and Infrastructure has been advised:

1. There has been no policy precluding the Land Management Corporation (LMC) from entering joint venture arrangements.

The Soho Joint Venture was approved by State Cabinet and the Parliament's Public Work's Committee (see Public Works Committee Report 207).

The SOHO project was a small pilot project aimed at encouraging the development of 12 innovative small office home office (SOHO) dwelling units and 12 small commercial units on land owned by LMC at Technology Park, Mawson Lakes.

2. The profit share ratio was determined through commercial negotiation in the context of the risk profile, given that Holcon Pty. Ltd carried the borrowing risk for the building finance. The land was released and paid for as the project units in each stage were sold to minimise the risk to LMC. The residual land remained with LMC unencumbered by the development until it was released by LMC for the next stage.

3. Stages one and two of the Joint Venture, which comprised two dwellings and two office units, was not well received by the market with one dwelling remaining for sale two years after completion. The current status of the Joint Venture is that the residual land was sold and settled on 30 September 2011 at market value based on offers from two builders. It is now intended to terminate the Joint Venture when final accounts are completed and audited.

4. This was a very small joint venture that was marketed within the context of the development of Technology Park adjacent to the much larger joint venture LMC was involved in at Mawson Lakes. Given the eventual limited market appetite for the product it would have been inappropriate to heavily publicise or market the product. The SOHO joint venture was subject to the full scrutiny of the Parliament's Public Works Committee, which has received regular reports on the project's progress since approval.

5. Given the circumstances referred to above, LMC is intending to wind up the joint venture.

LAND MANAGEMENT CORPORATION

329 The Hon. D.G.E. HOOD (14 September 2011) (First Session).

1. Will the Minister for Infrastructure explain why the agreement between the Land Management Corporation and AV Jennings Properties Ltd. dated 13 January 2011 only requires AV Jennings to pay a percentage of the land sale price to the Land Management Corporation for each allotment once it is sold and settled?

2. Will the Minister confirm whether this payment is made only when that allotment is sold and settled with no final date by which all money for the Penfield land must be paid (i.e. no sunset date), thereby transferring all of the commercial risk on the development to the South Australian taxpayer? What controls have been placed on AV Jennings from taking a long period of time to sell this land?

3. Is there anything to prevent AV Jennings from undercutting the market (and landowners who have paid full market rates upfront, in some cases buying land from the Land Management Corporation) at the expense of the South Australian taxpayer who will only receive a percentage of the land sale price when each allotment is sold and settled?

4. What guarantee is there that the taxpayer will receive the best return on its assets?

5. Was the Minister provided with a net present value analysis of the AV Jennings offer?

6. Is it true that another offer was received with a fixed date by which all money would be paid (well before the 15 years anticipated by AV Jennings)?

(a) How did AV Jennings compare with this and other offers; and

(b) Did Treasury analyse the other offers?

7. If a net present value analysis of the AV Jennings offer was prepared, what assumptions were made about—

(a) the number of allotments;

(b) the sale prices;

(c) the escalation rate on the sales prices;

(d) the sales rate;

(e) the interest rate and the inflation rate;

(f) what discount rate was used;

(g) what risk factor was assumed;

(h) whether the offer was stress tested for a fall in the market; and

(i) whether we can see this comparative market?

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): The Minister for Transport and Infrastructure has been advised:

1. In order to address the difficulty experienced by developers in obtaining finance for the purchase and development of land as a consequence of the global financial crisis and the subsequent tightening of lending by the major Australian banks, the Land Management Corporation (LMC) offered the Penfield land for sale with three alternative land payment options. As noted in the answer to Question on Notice 322, AVJennings nominated a development deed approach, with payments comprising a significant development fee (paid on execution of the agreement) and a percentage of the revenue from the sale of each allotment.

2. The payment is through the development fee described above and on the sale of each allotment, without a sunset date.

3. The rate of development is controlled through undertakings in the development deed. The development deed obliges AVJennings to develop allotments in accordance with an approved schedule, with advice provided to LMC on the price of allotments prior to the release of each stage.

4. While there is no guarantee that the Development Deed will provide the best return to the State, it was assessed as providing the best overall return which also reflected the highest net present value when compared with other offers.

5. Yes.

6. Yes.

(a) The AVJennings offer provided the best overall return and also reflected the highest net present value when compared with other offers.

(b) The offers received were analysed by LMC's finance team and the analysis was provided to the LMC Board. LMC Board papers are also provided to the Department of Treasury and Finance.

7. In order for offers to be considered all tenders were required to provide the details as described in this question. The provision of such information by private sector tenderers is considered as commercial-in-confidence and as a consequence it would be inappropriate to disclose that information.

PAPERS

The following papers were laid on the table:

By the President—

Members of Legislative Council Travel Expenditure, 2011-12
Register of Members' Interests, June 2012—Registrar's Statement
Ordered—That the Statement be printed. (Paper No. 134)
Auditor-General—Report on the Adelaide Oval Redevelopment pursuant to section 9 of the *Adelaide Oval Redevelopment and Management Act 2011* for
1 January-30 June 2012

By the Minister for Agriculture, Food and Fisheries (Hon. G.E. Gago)—

Terrorism (Preventative Detention)—Report, 2011-12
Report by the Minister pursuant to sections 83C(1) and 83C(3) of the Summary Offences Act regarding the Return of Authorisations issued to Enter Premises
Report issued under section 57(3) of the Criminal Law (Forensic Procedures) Act by the Police Complaints Authority—Annual Compliance Audit, 1 February 2011 to
31 January 2012
Regulations under the following Acts—
Aquaculture Act 2001—Risk Licence Fees
Co-operatives Act 1997—General
Electricity Act 1996—General
Gas Act 1997—General
Liquor Licensing Act 1997—
Dry Areas—
Long Term—
Barmera-Berri
Normanville
Plans of Dry Areas
General
Mutual Recognition (South Australia) Act 1993—Temporary Exemptions—Synthetic Cannabis Products
Opal Mining Act 1995—General
Public Corporations Act 1993—Lotteries Commission—Tax and Other Liabilities—Revocation
Roxby Downs (Indenture Ratification) Act 1982—Local Government Arrangements
Small Business Commissioner Act 2011—Fee for Mediation
Subordinate Legislation Act 1978—Postponement of Expiry 2012
Trans-Tasman Mutual Recognition (South Australia) Act 1999—Temporary Exemptions—Synthetic Cannabis Products
Rules of Court—
District Court—District Court Act 1991—
Criminal and Miscellaneous—Amendment No. 13
Supreme Court—Supreme Court Act 1935—
Civil—Amendment No. 19
Corporations—Amendment No. 7
Criminal—Amendment No. 30
Report and Determination of the Remuneration Tribunal No. 4 of 2012—Travelling and Accommodation Allowances—Ministers of the Crown and Officers and Members of Parliament
Statistical Returns by the Commissioner of Police issued pursuant to section 83B of the Summary Offences Act 1953

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

Report, 2010-11—
Pika Wiya Health Advisory Council Inc.
Reports, 2011—
Flinders University
Flinders University—Financial Statements

Report of actions taken following the Coroner's findings of 4 November 2011 into the deaths of Kunmanara Kugena (Female), Kunmanara Windlass, Kunmanara Peters, Kunmanara Kugena (Male), Kunmanara Gibson and Kunmanara Minning

Regulations under the following Acts—

Controlled Substances Act 1984—Synthetic Cannabis—Controlled Drugs

Mental Health Act 2009—Inpatient Terminology Variation

South Australian Public Health Act 2011—

Cervical and Related Cancer Screening—Notification of Test Results

Notifiable and Controlled Notifiable Conditions.

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

District Council By-laws—

Wattle Range—

No. 1—Permits and Penalties

No. 2—Moveable Signs

No. 3—Roads

No. 4—Local Government Land

No. 5—Dogs

Wudinna—

No. 1—Permits and Penalties

No. 3—Local Government Land

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

Dog Fence Board—Report, 2010-11

Properties held by the Commissioner of Highways—Report, 2011-12

Regulations under the following Acts—

Animal Welfare Act 1985—General

Correctional Services Act 1982—Chief Executive Terminology Variation.

Education Act 1972—General

Harbors and Navigation Act 1993—Restricted Areas—Goolwa—Port Bonython—West Beach

Motor Vehicles Act 1959—Statutory Write-off Definition

National Parks and Wildlife Act 1972—Parking

Witness Protection Act 1996—Non-disclosure of Former Identities

Approvals to Remove Track Infrastructure for the period 1 July 2011—30 June 2012

NATURAL RESOURCES COMMITTEE

The Hon. G.A. KANDELAARS (14:28): I bring up the report of the committee on the bushfire tour 2012 case study, Mitcham Hills on 17 February 2012.

Report received.

The Hon. G.A. KANDELAARS: I bring up the report of the committee on the review of the natural resources management levy arrangements.

Report received.

FISHING SUPER TRAWLER

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) (14:29): I table a ministerial statement made today by the Hon. Paul Caica on the FV *Margiris*. Because of the level of public concern—and I know that members in this chamber would have a broad interest in this topic—I will read it out.

Today the South Australian government has written to the federal Minister for Fisheries, the Hon. Senator Joe Ludwig, urging the commonwealth government not to allow the FV *Margiris* to operate in the Small Pelagic Fishery. As members would be aware, the arrival of the FV *Margiris* in South Australian waters late last week has attracted a great deal of controversy.

The South Australian government understands that there is widespread concern among commercial and recreational fishers, conservation groups and local communities about the

proposed operation of this vessel and its potential impact on local fisheries, and marine life in particular, in commonwealth waters adjacent to South Australia.

I want to assure the South Australian community that this vessel does not have permission and will not be granted permission by the South Australian government to operate in South Australian waters. I understand the vessel is seeking to operate under a commonwealth fishing permit in commonwealth waters adjacent to South Australia and as well as other commonwealth waters, targeting jack mackerel, blue mackerel and redbait. Approval of this venture rests obviously entirely with the commonwealth government.

If the vessel is granted approval to operate in these areas, the government would have serious concerns about the potential risks of the ship's operation to threatened, protected and endangered marine species, as well as localised depletion of the small pelagic fisheries and the potential impact on fish species that are commercially important to this state.

In particular, significant concerns have been raised with the state government about the potential for large quantities of sardine bycatch to occur. This would place in jeopardy the sustainability of our sardine fishery, which obviously makes a very significant contribution to our state, and particularly to the tuna fishery as well. Of significant further concern is the potential for this vessel to damage the reputation of our state's premium, clean, green seafood industry, which is highly valued and recognised across the world.

We understand that this is the largest vessel to ever seek authority to operate in Australian waters. The nets are 300 metres in length and the vessel can process over 250 tonnes of fish in a single day. This ship has the cargo capacity of 6,200 tonnes, making it effectively a fish factory on water.

We acknowledge that the federal environment minister (Hon. Tony Burke) has recently announced new conditions on the management regime for the Small Pelagic Fishery that requires the operators to take all reasonable steps to ensure that listed threatened species, listed migratory species, cetaceans and listed marine species are not killed or injured as a result of trawling operations. However, these conditions are only interim and do not give any certainty to the South Australian community that our important marine life and seafood industry will not be impacted.

The government is also aware of speculation that the operators of this vessel are considering setting up a base in Port Lincoln. I can advise that the government has not received any information to that effect. The government indeed would be very concerned if that were the intent of the owners.

The presence of this immense trawler in our region highlights the importance of establishing marine parks to protect our marine environment and the unique life within it, and by better protecting our marine environment we are securing the future of our state's vital fishing industry.

OLYMPIC DAM EXPANSION

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) (14:34): I table a ministerial statement made today by Premier Jay Weatherill on BHP Billiton.

QUESTION TIME

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:45): I seek leave to make a brief explanation before asking the Minister for Forests a question regarding a government minister saying he won't break the law.

Leave granted.

The Hon. D.W. RIDGWAY: On the 27th of last month—that is, just over a week ago—state Treasurer Jack Snelling said, and I quote, 'The government has already made it clear that it can't interfere with log contracts.' More poignantly, on 16 August, the Treasurer said, and again I quote:

ForestrySA have an independent board. Like most government enterprises, they operate at arm's length from government and they have a statutory obligation to run their business on a commercial basis.

That same day, the Treasurer tightened the noose around his own neck when he said, and I quote again:

> What I'm saying to you is I'm not going to break the law. The law is quite clear, the government can't interfere in the commercial operations of ForestrySA...

My questions to the minister are:

1. What section of the act prohibits the minister from directing commercial operations of ForestrySA?

2. What clause in that section would the minister have broken if the minister had directed the board of ForestrySA?

3. What is the legal penalty for breaking the law? Is it a gaol term?

4. Has the government offered to reset the log price on a capped volume of 360,000 cubic metres of log from ForestrySA to the South-East timber producer Carter Holt Harvey?

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) (14:47): I thank the honourable member for his questions. Carter Holt Harvey (CHH), as members would be aware, are seeking to renegotiate the terms of their contract with ForestrySA. My understanding is that they currently operate two sawmilling facilities, two particle board facilities, a moulding plant, a log preservation operation—

The Hon. D.W. Ridgway: Can you answer the question? I didn't ask about the size of their operation.

The PRESIDENT: Order!

The Hon. D.W. Ridgway: Well, we've got to start off on the right foot, Mr President. Answers will be what we need this time around in the lead-up to Christmas.

The PRESIDENT: Order!

The Hon. D.W. Ridgway: Not waffle, not sawdust.

The Hon. G.E. GAGO: All these matters are relevant to answering this question. I am happy to take as long as is needed to listen to the member's interjections while I try to make sure that this answer is comprehensively responded to, not just some glib yes/no response.

The Hon. D.W. Ridgway: Glib! Well, get on with it if it is going to be comprehensive.

The Hon. G.E. GAGO: Well, the honourable member should listen and not interject. They employ about 1,000 people and they have been arguing that their Australian sawmills are running at a loss and that they would close their mills unless contractual positions on their log price would be renegotiated. The high Australian dollar and the historically high level of structural timber imports and low housing starts in Australia are affecting all timber millers, not just CHH, and we believe these issues will correct themselves over time and do not warrant log price adjustments over the longer term.

Members would be well aware that the government has sought to offer assistance to CHH. In June ForestrySA made an offer for a long-term discounted price on sawlog. That offer was rejected as ForestrySA had done all it could to be consistent with its own charter which ensured that it acted in a commercial nature. The government then entered into direct negotiations, for which the Treasurer has had responsibility. As a result, we offered a rebate based on the amount of sawlog that CHH has been taking from ForestrySA, which had the effect of giving CHH the discounted price that it sought for two years. This was offered on the basis of consistent advice from all government and independent experts who informed us that the current difficulties in the market are temporary.

Mr Hart again rejected that offer. He essentially reiterated his position and, as negotiations progressed, Mr Hart decided to tell CHH employees at Mount Gambier that, as a result, it was likely that he would have to close the mills. Despite this, a further offer was provided, which included a provision for a capital upgrade of the sawmills in Mount Gambier. This offer included a component linked to the reinvestment in the mills to increase their efficiency, something that Mr Hart had previously refused to commit to. This was an offer of significant funding, equivalent on a per capita basis to the funding that we provided for GMH, and Mr Hart then again rejected that offer.

It should be made clear that the sale of the forward rotations has in no way contributed to the issues facing CHH, and CHH is in fact not suggesting that the forward sale has contributed to these issues either; and that the issues facing CHH are other factors, as I have alluded to, which include the dumping of cheap imported timbers on the market, the high Australian dollar, etc.

In relation to the first part of the member's question, I am happy to refer that to the Treasurer. They are comments that the honourable member attributed to the Treasurer. I am sure the Treasurer would appreciate an opportunity to respond to that in the context he would have provided.

As we know, ForestrySA does have a commercial charter, and it is required to make decisions in the interests of that commercial charter. It has considered the proposal put forward by CHH, and its board made the decision that that was not in the interests of ForestrySA. In fact, their view was that it would not only have a significant adverse impact on their commercial arrangement, but it would likely have a flow-on effect, although it is accepted that CHH is one of our largest timber buyers. Nevertheless, it is highly likely that if a discount was given to them all of our other buyers would have come to us and demanded a similar discount as well.

So, the board made that decision in light of those matters, and I certainly support and stand by that decision. I certainly commend the Treasurer for his extraordinary efforts to negotiate a reasonable and sound proposal to CHH which, indeed, has the long-term interests of forestry at heart.

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:53): I have a supplementary question arising out of the minister's non-answer. As the Minister for Forests, can she tell us which section of the act—an act for which she is responsible—prohibits the minister from directing ForestrySA?

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) (14:53): I have already answered the question. The comments were in relation to a response made by the Treasurer and, as I said, I am sure that he had contextual parameters in which he made those comments. As I said, ForestrySA is an independent body. It has a charter to run on a commercial basis. I stand by and support its decision, and I certainly support and congratulate the efforts of the Treasurer.

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:54): I have a further supplementary question. Can the minister explain how, if ForestrySA stands alone, the government can offer a reset of the log price even for a two-year period?

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): As I outlined, it was not a rebate or a discount on the log price; it was an assistance package to CHH—it was not a discount on the log price.

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:55): I have another supplementary. Will the minister explain why the CHH last open letter talked about a reset of the log price offered by the government?

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) (14:55): The Hon. David Ridgway comes into this chamber day in and day out with inaccurate and incorrect information—he is notorious for it.

THEVENARD PORT FACILITIES

The Hon. J.M.A. LENSINK (14:55): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about the Port of Thevenard.

Leave granted.

The Hon. J.M.A. LENSINK: In July this year the Mayor of Ceduna expressed his disappointment when the Port of Thevenard missed out on critical commonwealth regional

development funding which would have provided for a new fishing loading facility, and construction would have provided up to 170 local jobs. My questions to the minister are:

1. Has she met with the Mayor of Ceduna to offer assistance with this application for commonwealth regional development funding?

2. What work has her department undertaken to provide any assistance and will it provide assistance with future funding rounds 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) (14:56): I thank the honourable member for her questions. The South Australian government was extremely disappointed—and I am sure I have actually spoken on this issue in this place before and outlined the government's support, including financial support for this project, but I think the honourable member must have been asleep at the time. Not to worry; the Hon. Michelle Lensink often nods off in this place, but I am happy to go through it all again.

As I said, I am sure that I have already expressed disappointment that this project did not receive RDA funding in the second round. This was a project that the South Australian government supported. It provided significant state funding to assist it. I cannot remember the exact amount now but it is on the record. The council was well aware of that support and we certainly recommended that project to the federal government during that round. I recall, I believe, that I received a presentation from the council around its proposals and, as I said, this was a project that the South Australian government supported. We thought it was a very sound proposal that offered some very strategic leverage for that district. We had put money forward as part of the funding program and I was extremely disappointed that it did not go ahead.

I have written to the mayor expressing that disappointment and urging him, if they were to reconsider resubmitting their proposal—and I am not sure whether that is a good thing or not. There has certainly been no evidence to date that failed projects in the past get up in the next round. It is usually advisable that the council reposition its project in some way to try to perhaps leverage it in a different direction. In any event, that is a matter for the council. As I said, I do not think there are any examples of previous failed projects that have got up in later rounds. Nevertheless, we have indicated that, if the council did propose to put that forward, we would certainly encourage him to be writing again to the South Australian government to receive assistance.

FRUIT FLY

The Hon. J.S.L. DAWKINS (14:59): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question regarding fruit fly.

Leave granted.

The Hon. J.S.L. DAWKINS: As members know, South Australia has long had an international reputation for its fruit fly free status, which is imperative for a horticultural sector that is integral to the state's economy. PIRSA released a media statement on 23 August that states as follows:

> Biosecurity SA says it will continue to remain vigilant and maintain ongoing surveillance efforts to ensure South Australia retains its fruit fly free status.

It further states:

> Biosecurity SA continues its efforts on fruit fly surveillance and in combating minor fruit fly outbreaks that have occurred largely in the metropolitan area.

My questions are as follows:

1. Will the minister indicate if funding dedicated to fruit fly surveillance and containing fruit fly outbreaks in South Australia will be increased to allow Biosecurity SA to achieve these aims?

2. What assurances of protection can the minister give to the people of the Riverland and South Australia in the event of an outbreak of fruit fly in that region?

3. Given the previous high detection rate of the random fruit fly quarantine roadblocks that were set up earlier this year, will the minister commit to increasing the number of quarantine roadblocks, both random and mobile, operating during peak tourist periods around the state?

4. What will the minister do to minimise the risk of outbreaks emanating from other interstate routes leading into 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) (15:01): I thank the honourable member for his questions and his ongoing interest in this very important issue. In terms of funding for fruit fly, our funding remains the same, and that has proved adequate. The indication is that our current biosecurity standards are very high and are capable of protecting the interests of our fruit industry here in South Australia.

South Australia's fruit fly protection remains very strong, with our roadblocks and signage along key entry points, which include the Riverland. Legal requirements remain for all commercial consignments entering South Australia, whereby importers must be registered with Biosecurity SA and transporters must forward all manifests for commercial consignments of fruit and vegetables and other plant material to Biosecurity SA prior to consignments entering the state.

A number of measures are being taken to ensure that South Australia remains fruit fly free, including the Pinnaroo quarantine station, which is one month ahead of schedule. Biosecurity SA's quarantine staff are aware of the risks of fruit fly entering South Australia. We are well aware of those, and this season's fruit fly community awareness campaign will continue to make sure that we make very clear the protections outlined on posters at various entry points and tourism outlets.

That is a message reminding people that fruit fly is in their hands and that people can help make a big difference. PIRSA also appreciates the high community support that it gets from people. Their support is very welcome. My understanding is that, obviously, with some of the changes happening in Victoria, we continue to work collaboratively with our trading partners across the borders.

Biosecurity SA and the government will obviously continue to monitor carefully deliberations in Victoria and, for that matter, in other states as well. I am advised that the immediate impact on South Australia of those changes is negligible as Biosecurity SA will continue to remain vigilant and continue with the aggressive program that we currently have in place and maintain those ongoing surveillance efforts to ensure that our fruit industry remains fruit fly free.

I just note that I have been advised that there has not been a fruit fly breakout in the Riverland since 1991 despite hundreds of fruit fly outbreaks actually occurring in the Eastern States. I think that is a real testament not only to the efforts of our PIRSA inspectors but also to the South Australian public and the degree of vigilance and caution that they take in ensuring that our state remains fruit fly free.

FRUIT FLY

The Hon. J.S.L. DAWKINS (15:05): As a supplementary question, will the minister rule out any repeats of the attempts to close the night shifts at the Yamba and Ceduna quarantine stations and the consideration of moving the Ceduna station to the border with Western 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) (15:06): The government has no intentions of making any changes to our current roadblock arrangements to the best of my knowledge. I have indicated in this place several times before—but it always takes a few times to get it across to the opposition—that a report was conducted in relation to the best way to conduct and model some of our fruit fly outposts. We believe that the current arrangements are efficient and effective and, while they continue to be efficient and effective, we do not contemplate any changes.

EYRE PENINSULA

The Hon. G.A. KANDELAARS (15:07): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about development on Eyre Peninsula.

Leave granted.

The Hon. G.A. KANDELAARS: The Eyre Peninsula has some remarkable country and is known for its high-quality produce, including as the site of our great grain producing areas. Can the minister advise the chamber about a recent grant to support grain infrastructure for the grain industry?

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) (15:07): I thank the honourable member for his important question. The Eyre Peninsula has a very proud history as one of our bread baskets, with cereal crops being one of the mainstays in the region. It is also an extraordinarily beautiful part of our state, with wonderful agricultural landscapes and fabulous coastlines and some of the best seafood in the world.

Like most commodities, cereals such as wheat are ordinarily shipped in bulk, and the silos and grain storage facilities are a feature of the rural landscape in many places across our state. I am very pleased to advise the chamber that a grant to the cooperative company Free Eyre will be used to strengthen one of those facilities on the Eyre Peninsula. The company which aims to harness business opportunities arising from the Eyre Peninsula's agricultural base and add value to the produce from the area has developed a grain accumulation and storage arm and built a bulk handling facility in the central Eyre Peninsula.

The $21,911.50 grant—it is quite remarkable that we got it down to 50¢—has been made towards the $56,000 project to provide mains electricity connection to the main machinery shed on the site and is set to include two electricity poles, wiring, connectors and associated fittings. The project will reduce reliance of the business on costly diesel fuel and reduce carbon emissions, noise pollution and occ health and safety issues for employees, supporting improved operating expenses.

This lower cost structure is expected to help EPS to maintain its competitive position and continue to deliver Eyre Peninsula farmers higher grain prices and lower grain storage and handling charges. The business was established as a joint venture between Free Eyre and 19 local farmer investors to address the lack of competition or service provision within the Eyre Peninsula agribusiness sector.

Free Eyre is the Eyre Peninsula's farmer-owned and controlled rural investment company, and I understand the company has established businesses in a range of areas relevant to the Eyre Peninsula, including FE Energy, FE Fibre, a wool broking and supply chain arm, and FE Fertiliser. In addition I am advised that the EP Storage contains strong connections with Australia's grain marketing company, Emerald Group Australia, through EP Grain, which is a joint trading venture between Free Eyre and Emerald Group Australia.

This storage site currently has a fixed bunker storage capacity of 100,000 tonnes, with space for future expansion if required, and features a weighbridge, testing laboratory for grains and silo bag management systems for flexible storage of bulk and segregated grain varieties. As it is certified as a Grain Trade Australia (GTA) registered bulk handling facility, grain stored at the site by farmers can be shipped through the remainder of the supply chain to port, providing an alternative storage option. I understand that this project was completed in August 2012. I certainly congratulate this organisation on achieving that outcome.

FORESTRYSA

The Hon. R.L. BROKENSHIRE (15:12): I seek leave to make a brief explanation before asking the Minister for Forests a question regarding the future of forestry in the South-East of South Australia.

Leave granted.

The Hon. R.L. BROKENSHIRE: I understand that many sawmills are now concerned about the future of supply at a reasonable cost when it comes to log supply via ForestrySA and subsequently the privatisation of ForestrySA. I noticed a letter to the editor in the most recent *Sunday Mail* by Dr Jerry Leech concerning the log supply with Carter Holt Harvey and the privatisation of ForestrySA. Dr Leech says:

> A union has said that a 30 per cent reduction in saw log prices was necessary for CHH to remain viable.

He goes on to explain that the implications of a 30 per cent reduction in log price with CHH would see ForestrySA sales of $125 million last year drop by $37.5 million, which in turn he estimates would see ForestrySA's equivalent value become $100 million. Dr Leech then explains, importantly:

> If CHH gets a reduction in saw log price or log term contract, then the Campbell Group can argue that its bid should be reduced. If it doesn't, then CHH could pull out of the South-East. The government now has little room to move. He has eliminated the other bidders and it is a catch 22.

I note that the CFMEU is now running radio advertisements supporting its position for locked-in log prices, and in fact occupied the ALP head office recently to protest its point. The Treasurer has reportedly made a $27 million Holden-style offer to keep Carter Holt Harvey in the South-East. My questions to the minister are:

1. Is the minister, as Minister for Forestry, concerned about the ramifications of a reduction in sawlog prices to CHH, causing it to move into markets that are currently different markets being looked after by other millers in the South-East and, if so, has the government considered the ramifications of this issue?

2. Has the government shot itself in the foot by announcing a successful bidder before financial close, leaving it in, as Dr Leech says, a catch-22 situation?

3. Does the government accept that the log supply and sale price issues are closely linked, given the price implications if a price reduction is guaranteed?

4. Has Carter Holt Harvey therefore got the government in what one could describe as a perfect storm of the government's own making?

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) (15:14): I thank the honourable member for his questions. I believe that some aspects of those questions have already been answered, but I am happy to go through them again.

As I said, CHH has been seeking to renegotiate the terms of its supply contracts. It sought to receive a discount on its log prices and approached ForestrySA. ForestrySA considered that, and my understanding is that ForestrySA did offer a discounted price to CHH on sawlog price, which CHH rejected. I have already outlined that they rejected that for commercial reasons, and the board had made a final decision on that.

It was then that the government intervened, and I have already outlined the negotiations made by this government around a support package to assist CHH. The cost of that was about the same price as discounted log for two years. There were other aspects that I have already raised in this chamber around the provision of capital upgrade to the sawmills, including reinvestment in the mills, improvement of efficiencies, and a whole range of things that this government tried to work on with CHH in terms of a deal that would really invest in the long-term future of the sawmill. A number of offers were made—and I have outlined those—which were rejected by CHH. That is obviously a decision it has made.

I have already said that the issue was based on the government believing that the position CHH is in is a temporary matter and is to do with industry issues. I have already outlined those: the dumping of cheap, imported timber onto our markets; the high Australian dollar; and a local global slowdown in the housing construction industry. We have seen a number of factors operating that we believe will correct themselves over time, and we believe we will see this industry back on its feet. The government's view is that it does not warrant log price adjustments over a long period of time.

I have already put on the record that the sale of the forward rotations asset has nothing to do with the problems associated with CHH. We believe that these problems exist irrespective of the ownership of these forests. I have already said that the sale of forward rotations is in no way contributing to the problems of CHH, and not even CHH is suggesting that the forward sale has contributed to these issues. Even the union leadership—Michael O'Connor and Brad Coates, I am advised—has made it clear that the forward sale process has not contributed to the issues facing CHH. They are the result of other factors, and we believe that these things are often cyclic and will resolve themselves in the future.

As I said, this government has already sought to provide generous assistance to CHH. Obviously, we are very committed to preserving the sustainability of the forest industry in the South-East, and we are very committed to ensuring that we preserve jobs in that industry as well.

The PRESIDENT: The Hon. Mr Brokenshire has a supplementary.

FORESTRYSA

The Hon. R.L. BROKENSHIRE (15:19): Notwithstanding the minister's answer and the importance of ensuring that Carter Holt Harvey survive and grow in the South-East, can the minister assure this house that any decisions made by the government will not have an adverse

impact on other millers in the South-East with respect to offers to CHH that could jeopardise the other millers and eat into their viability?

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) (15:20): This government is committed, as I have already said, to the sustainability of the forestry industry in this state and particularly the South-East, and that means all of the forestry industry, not just the large players. We know that CHH is a very large player in the game at the moment, but we are very committed to the long-term sustainability of the forestry industry right across the state and particularly in our South-East. With all the decisions that we make, we have that foremost in our minds, when we consider any decision pertaining to the forestry industry.

The PRESIDENT: The Hon. Mr Brokenshire has a further supplementary.

FORESTRYSA

The Hon. R.L. BROKENSHIRE (15:20): Can the minister assure the house that any final offer to Carter Holt Harvey will protect other millers, given the answer the minister gave to the house about the problems with imported log also—

The PRESIDENT: Without the explanation.

The Hon. R.L. BROKENSHIRE: —will protect them from Carter Holt Harvey actually moving into their marketplace?

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) (15:21): I have already answered the question. I have said that any decisions or considerations that this government make we make with the foremost thought in our mind the overall consideration and importance of the long-term sustainability of the forestry industry in this state and, obviously, the South-East, particularly, is a main player in that.

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:21): I have a supplementary question. Why won't the government offer a long-term solution to Carter Holt Harvey if they are interested in the long-term sustainability of the industry?

The PRESIDENT: Hardly a supplementary question.

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) (15:21): They don't listen. They just nod off over there. They are away there in noddy land. I have already outlined that we believe the causes of Carter Holt's problems are cyclic and short term. We believe they will right themselves.

Why on earth would we jeopardise our ForestrySA organisation—a commercial business—to commit to the long-term setting of log price when we believe that it is highly likely this problem will resolve itself in the short term? The honourable member is asking this government to be irresponsible and foolish. We have already outlined what we believe the problems are. We have provided a very sound and responsible assistance package to address the current issues that are before CHH, and that is a responsible use of public money.

The Hon. D.W. RIDGWAY: I have a further supplementary question.

The PRESIDENT: I'm not going to allow this to keep going. The Hon. Mr Ridgway.

FORESTRYSA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:23): Given the unfortunate decision of BHP last week, is the minister expecting the South Australian economy to recover, the housing market to recover in two years and the Australian dollar to go back to what it has historically been—

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: —within two years?

The PRESIDENT: Order! The Hon. Mr Gazzola.

The Hon. D.W. RIDGWAY: So, she's not prepared to answer that question?

The PRESIDENT: You are asking the minister for an opinion. The Hon. Mr Gazzola.

LOCAL GOVERNMENT DISASTER FUND

The Hon. J.M. GAZZOLA (15:23): My question is to the Minister for State/Local Government Relations. Minister, will you provide an update to the chamber about the state/local government review into the Local Government Disaster Fund?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:23): I would like to thank the member for his very important question. Members will recall that, late last year, terms of reference for a review of natural disaster funding arrangements between state and local government were developed. The terms of reference for the review were jointly determined by myself and the President of the Local Government Association, Mr Kym McHugh. As members will recall, the need for the review has been triggered by recent drawdowns on the fund owing to a series of natural disaster events that occurred in late 2010 and early 2011.

I am pleased to advise that a discussion paper has now been prepared. This means that the state government and the Local Government Association can consult with councils, state government agencies and other relevant interested parties. The discussion paper was prepared by a dedicated group of staff from my Office for State/Local Government Relations, the Department of Treasury and Finance, SAFECOM and the Local Government Association (LGA).

The discussion paper canvasses the idea of developing new procedures that are more consistent with natural disaster funding arrangements with the states and territories. The consultation period starts this week and will run to the beginning of November. Once the consultation period has concluded, the working group will report to me, the Treasurer and the president of the LGA. My officers have been in discussion with the Local Government Association today about writing to councils and disseminating the discussion paper forthwith. If any member or interested party would like a copy of the discussion paper, please feel free to contact my office.

OUTER HARBOR GRAIN TERMINAL

The Hon. J.S. LEE (15:25): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question about Viterra's broken shiploader.

Leave granted.

The Hon. J.S. LEE: On 30 August ABC radio reported that the shiploader at the Outer Harbor grain export terminal, operated by Viterra, broke down on 22 July this year. The mystery breakdown of the shiploader has occurred only 30 months after the new $150 million state-of-the-art deep sea grain terminal at Outer Harbor was officially opened. According to the report in *The Advertiser* on 10 August, repairs were carried out after the first breakdown on 16 July but the shiploader broke again shortly afterwards. Four ships have been affected by the closure and forced to load at Viterra's other ports.

Mr Darren Arney, CEO of Grain Producers SA, spoke to ABC radio that growers are concerned in that there is not really a time line around when this will be repaired and whether it will be repaired in time for harvest. Mr Arney also said that PIRSA's budget has been cut in previous years, that there are issues around research and development and that there are issues around transport and logistics. My questions to the minister are:

1. Has the minister done a risk assessment in terms of the impact of Viterra's broken shiploader on SA grain exports?

2. Since the state government has reported that it is going to be able to fill the gap created by the shelving of the Olympic Dam expansion with things such as our agricultural sector, has the minister consulted with Viterra regarding a repair time line in time for harvest?

3. What measures has the minister put in place to address the concerns of South Australian grain growers to ensure that there is continuity of exports?

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) (15:28): I thank the honourable member for her most important questions. Members would be aware, I am sure, that there was a major breakdown of the shiploader at the 30 month old Outer Harbor grain exporting terminal that I understand occurred in July. It is now expected to be out of service for some time. I am told that Viterra provided notice to grain exporters of a force

majeure and have redirected ships to load export grain cargoes at other South Australian grain ports so that the grain exporting program is not affected.

The most recent PIRSA estimate for the 2012-13 grain crop production is 6.9 million tonnes, which is near the long-term average, and this follows the 7.9 million tonnes in the 2011-12 grain crop. The new season grain crop is expected to commence mid to late September, peaking during November-December in the Port Adelaide capture zone. Viterra, I am advised, is assessing the damage and, once that is completed, the company will be able to provide an estimate of the time required to prepare the loader.

I am advised that the breakdown is not expected to impact on grain grower receivals for the new season's crop at this stage and if, for some reason, Viterra is not able to have it completed within that period, I have been advised that Viterra will revert to managing grain exports in the same way as it did three years ago prior to the commissioning of that new terminal.

Viterra has reported exporting record volumes of grain through the Australian grain export terminals, and I am told that the record-breaking grain export program has left sufficient storage capacity to accommodate the new 2012-13 season crop. Outer Harbor provides sufficient storage to cater for just-in-time shiploading, with Inner Harbor catering for around 300,000 tonnes of grain grower deliveries annually, and obviously the breakdown of the shiploader will require changes to the logistics of managing export cargoes until the shiploader is back online.

Smaller vessels can be loaded, I am advised, at Inner Harbor, but the loss of the ability to load the larger vessels at Outer Harbor will potentially cause congestion. There is some capacity for other ports to be used to top up larger vessels to part fill at lower capacity ports. There are also issues around grain growers transporting their own grain to port, but I believe that these arrangements have been put in place. As I said, we are expecting that the grain loader will be back in action for the next grain season.

OLYMPIC DAM EXPANSION

The Hon. M. PARNELL (15:31): I seek leave to make a brief explanation before asking the Minister for Regional Development a question about a plan B for the South Australian economy post-Olympic Dam.

Leave granted.

The Hon. M. PARNELL: Yesterday we had further confirmation that a significant expansion of the Olympic Dam mine is no longer likely in the short to medium term. For years this government has talked up the Olympic Dam project and poured an enormous amount of attention, resources and money into it. This has come at a significant opportunity cost internally, within the Public Service as well as in the wider community.

While the government has been overwhelmingly focused on this one mining expansion project, other job-rich economic opportunities have not received the attention they deserve. A more prudent economic strategy requires a diversified approach, with adaptivity and resilience built in. My questions to the minister are: firstly, with the apparent shelving of this project, what is your plan B, if any, for the South Australian regional economy? Secondly, will the government now stop pouring our precious resources into this project, including the millions it has spent on the cross-government Olympic Dam Task Force and, if not, why not?

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) (15:32): I thank the honourable member for his important question. It is most important that we do not have the opposition and other minor parties and Independents talking down South Australia. I have said in this place that it is really important that we talk up our economy. There are many very positive things happening in South Australia and many positive things on our horizon, and I think it is a real shame to focus just on the Olympic Dam project and to insinuate that basically the state is in crisis because that project is being reconsidered.

Firstly, the Olympic Dam project has not been cancelled: it is being reconsidered, and negotiations are still under way and will continue. Secondly, our mineral resources and other mining advances do not involve just the Olympic Dam proposal. In 2002, there were four mines in South Australia. Today we have 20 major mines operating. They are either approved or under construction. This is a fivefold expansion—

Members interjecting:

The Hon. G.E. GAGO: The opposition scoff, but they basically did nothing for mining development and advancement in this state. It is under the leadership of this Labor government that we have had a fivefold expansion in the space of 10 years. This government has had a fivefold expansion of our mining opportunities, while when the former government was in power I do not believe one new mine opened up under its watch.

There are also 30 mining projects in the pipeline, so the value of our mineral and petroleum exports today totals more than $4 billion in the 12 months to June 2012. They are really important facts to recall: that industry is very active, is still growing and is still generating a great deal of wealth and opportunity for this state.

We have also set a number of major planks for this government, including work to advance our manufacturing sector. This government has identified that as a major priority to focus our attention on, and a great deal of work is being built up around that. We realise that we cannot just have a one-speed economy and that it is most important that, with advanced manufacturing, which is a very high employer, we concentrate and focus our efforts there. That is an area where a great deal of work has been attached.

Our SA agribusiness sector has many success stories, and a great deal of good work continues there. One of our other planks has to do with premium quality food and wine from a clean environment. Again, that advances our agribusiness sector. It is most important that we position ourselves in the marketplace. I have just returned from China, which has a burgeoning economy. It has a burgeoning middle class who are extremely interested in our premium quality primary produce, in particular our food and wine.

They are particularly very focused on our biosecurity and other quality credentialling, and I was involved in a number of important discussions about that. That is an area which, again, holds many opportunities for this state. We are currently doing very well and there is significant opportunity for future growth and development.

Of course, I would not be able to sit down without mentioning tourism and how successful tourism has been as a significant economic driver here in South Australia. Tourism is growing in South Australia. The trends are showing very positive signs of overall growth. In many growth areas we are significantly above national averages. Again, tourism is an area that offers a great deal of economic opportunity. It mainly involves small to medium-sized businesses. We know that there is a significant number of people employed in that area, and we know how important jobs are to our economy.

YOUTH TRAINING CENTRE

The Hon. G.A. KANDELAARS (15:39): My question is to the Minister for Communities: will the minister inform us about the new youth training centre that he recently opened?

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers) (15:39): I would like to indulge the members of the opposition, but I shall not on this occasion. The Adelaide Youth Training Centre at Goldsborough Road at Cavan was commissioned late last week. The new building is in close proximity to the existing Cavan Youth Training Centre at Jonal Drive and of course it replaces, after 40 years, the old Magill Training Centre, which will be decommissioned.

The Adelaide Youth Training Centre will provide an environment for young men and young women to get the support and the educational opportunities that they need to make a fresh start in their lives. There are five 12-bed residential units with a capacity for 60 young people. I am advised that all the units have a kitchen, a laundry, social activity areas, multipurpose rooms, courtyards and, of course, a staff office. A key feature of the Adelaide Youth Training Centre is the education centre, which incorporates three general learning areas, an art room, woodwork and metalwork workshops, cooking facilities, a library and a hairdressing training room. Education is at the centre of the campus, both figuratively and also in terms of concept; it is what the centre is about.

Another key feature of the training centre is the health centre, where residents of the training centre can receive appropriate health care, including dental services. As the new centre will focus on community reintegration, a community centre, which includes a visiting area for family visits and a multifaith room, is another important aspect in the new Adelaide Youth Training Centre. There are both indoor and outdoor recreational facilities provided at the new centre. In addition, the new structure at the centre will provide a new service approach, which will also operate at the existing Cavan Youth Training Centre at Jonal Drive.

This new approach will incorporate a new behaviour management framework, an operational model and a new staffing structure, some of the key features of which include a single staffing and management structure across both training centres. Co-locating government providers, including health and education, to work alongside youth workers integrating both rehabilitation and educational outcomes and services is a new approach, as is also the establishment of an assessment and case coordination team responsible for a new assessment and accommodation unit assignment process and, finally, the introduction of a proactive behavioural support approach that uses an incentive system to manage and encourage pro-social behaviour by children and young people.

The state government is committed to providing a safer community, and I am confident that the Adelaide Youth Training Centre is a safe and secure facility that the community can have great confidence in. The government has considered the safety of the community as paramount, and that is why the Adelaide Youth Training Centre contains some state-of-the-art security systems. Security measures include closed-circuit television surveillance systems, a 5.5 metre perimeter wall and metal detection systems. The wall also has an anticlimb barrel on top.

The state government recognises that the need to give young offenders the best possible chance to turn their lives around is at the core of what we do at this training centre. Every chance for every child is a key priority for the Weatherill government, and education is a powerful tool in helping young people to stop and think about their choices and improve their lives.

There is also an element of restorative justice in the way that we will be dealing with these young people, because we will be asking them to think about the impact of their offending, the impact of their offending on the community, the impact of offending on those people that they have hurt, and to deal with those issues and to come to a position where they may decide to make some sense of restitution either to their victims or to the community in general.

Building the new AYTC gives us the opportunity to put education at the centre of our care for these young offenders. Fundamentally what we would like to see is young people turning their lives around and not reoffending. I am confident that the new Adelaide Youth Training Centre will create the environment to enable that to happen. I should also acknowledge that the new Adelaide Youth Training Centre has been warmly welcomed by the spokesperson for the opposition and also by the Public Service Association and other key stakeholders.

The Hon. S.G. Wade: Better very late than never!

The Hon. I.K. HUNTER: It is better late than never that the honourable member for Morialta comes to this party and now commends the government for what we have done with the centre. I am very pleased for the support of the opposition in this matter. It is better late than never, as the Hon. Mr Wade remarks, but at last the opposition recognises that this government is the government that has delivered this new centre, and again, we have delivered an excellent centre that will focus on turning around the lives of young offenders. I understand that Mr Peter Christopher from the Public Service Association on radio FIVEaa said:

> The new facility will provide not only a better standard of accommodation but more modern facilities.

I understand that he also said that it will provide a better and safer work environment for our employees. I understand that Pam Simmons, the Guardian for Children, said this:

> It is almost incomparable the difference in size—

that is, between Magill and the new training centre—

> Magill screamed at you humiliation and disrespect whereas this environment talks about, or tells you more about education, rehabilitation and respect and it makes a very big difference.

Providing a safe and secure environment is necessary for the protection of young people, our staff, visitors and also the community. The security initiatives at the Adelaide Youth Training Centre are reasonably unobtrusive (except for the 5.5 metre high wall), the main focus being to guide and proactively manage children and young people in our care. The key features, as I mentioned, are:

- the perimeter wall—a continuous secure perimeter around the entire centre monitored by a central control room;
- the secure perimeter, as I mentioned earlier, includes a 5.5 metre high solid wall with an anti-climb drum; and

- physical security elements, including anti-dig barriers, sterile no-go zones and demarcation lines.

We are confident that, going forward, this new centre will offer us a better and alternative way of treating young people in our care.

ANSWERS TO QUESTIONS

SUICIDE PREVENTION

In reply to the **Hon. R.L. BROKENSHIRE** (22 March 2011) (First Session).

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): The Minister for Mental Health and Substance Abuse has provided an answer to questions I, IV and V. The Minister for Education and Child Development has provided an answer to questions II and III. They have been advised:

1. The Australian Bureau of Statistics has calculated the suicide rate for South Australia as 12.8 per 100,000 from 1995 to 2005 and as 12.1 per 100,000 from 1999 to 2008. The suicide rate for each individual year is not available.

2. The Suicide Postvention Guidelines were developed by the government and non-government school sectors in collaboration with Child and Adolescent Mental Health Services and SA Police. They were developed in response to a tragic cluster of seven youth suicides that occurred in the Eastern suburbs of Adelaide in 2006-07. The SA Youth Welfare Advisory Committee with representation from each of the above groups was formed in 2007 to support the guidelines' development and has continued to meet since that time.

The Suicide Postvention Guidelines were initially distributed to all schools in 2008. A second edition with updated information was distributed in 2010. A key feature of the guidelines is a process of relevant information sharing across the three school sectors to better protect vulnerable young people and their families.

The SA Youth Welfare Advisory Committee has monitored the responses made by since 2007. Feedback from principals of affected school communities is that the guidelines have provided positive assistance in ensuring that essential postvention actions are undertaken quickly and with sensitivity and that this has helped protect the wellbeing of the school community. In particular the guidelines ensure that intensified consideration is given to students already identified as being vulnerable.

The school sectors have not experienced a cluster of youth suicides since 2006-07. The contribution of the application of the Suicide Postvention Guidelines to this circumstance cannot, however, be asserted with any certainty.

3. The Department of Education and Children's Services (DECS) has not funded any other agency or organisation to provide training on the Suicide Postvention Guidelines but has, through its own officers, provided postvention training to key personnel in leadership and support roles in schools. Catholic Education provided one on one briefings to their principals on the Guidelines and updated that briefing when the 2010 Guidelines were released. The Association of Independent Schools South Australia (AISSA) has also conducted briefings of principals and other school leaders and uses the resource as the basis for providing advice to individual schools.

Prior to their first release in 2008 the three school sectors held a joint briefing on suicide postvention with senior directors from DECS, Catholic Education and the Association of Independent Schools of SA. Representatives from SA Police and Child and Adolescent Mental Health Services also attended this briefing.

4. It would be very difficult for the Department of Health alone to collect accurate data about the suicide rate in South Australia, as often those who suicide have no contact with the public health system. There are also difficulties in determining what deaths are suicides, as often it may only be determined by the Coroner, often some time after the person's death. The difficulties in measuring suicide rates were the subject of much consideration as part of a 2010 Senate inquiry report, titled 'The Hidden Toll: Suicide in Australia'.

5. The Department of Health has requested reports from the Australian Bureau of Statistics and the National Coroners Information System about metropolitan and regional suicide data, which it will use to develop the South Australian Suicide Prevention Strategy.

6. Suicide is a serious issue and there are various ongoing suicide prevention initiatives occurring in regional South Australia, several of which are run by non Government organisations funded by the State Government. Community capacity building is central to improving mental health and wellbeing, particularly in rural and remote areas. This involves encouraging the community to talk about suicide and recognise and assist community members who may be at risk. In addition, Relationships SA is funded to provide mental health first-aid training in regional areas. A series of forums in country areas are being held throughout July 2011 to enable rural communities to have input into the development of the South Australian Suicide Prevention Strategy.

DISABILITY SA CLIENT TRUST ACCOUNT

In reply to the **Hon. K.L. VINCENT** (19 May 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

On 25 May 2012, I announced the revision of the initiative after months of consultation and feedback from the disability community and advocacy groups. This revised policy was outlined in the 2012-13 Budget.

Under the revised arrangements Disability Services clients, who were receiving a client trust funds management service before 1 April 2011, will continue to receive these services.

From 1 April 2011, the Department for Communities and Social Inclusion (DCSI) ceased accepting new clients into its client trust fund management service.

Individuals who became clients of Disability Services after 1 April 2011, and who are unable to manage their day-to-day funds because of the severity of their disability, continue to have a choice in who administers their funds. For example, they may elect to apply to the Guardianship Board to use the services of the Public Trustee, a family member or other appropriately authorised providers of trustee services.

The decision to cease providing client trust fund management services to new clients after 1 April 2011 has not been reversed. The basis for this decision is that the management of client trust funds is not a core function of DCSI and is more appropriately provided by the Public Trustee or other trust administrator, who specialises in this area.

RADIOACTIVE WASTE

In reply to the **Hon. S.G. WADE** (28 September 2011) (First Session).

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): The Berri Barmera Council has expressed concern about the transport of nuclear waste through the Riverland. Commonwealth Legislation regulates the management of radio active waste. On 14 March 2012, the *National Radioactive Waste Management Bill 2010* passed the Federal Parliament. The bill renders any state or territory legislation regulating radioactive waste as ineffective. It is pleasing to note that the Federal Minister for Resources and Energy, the Hon Martin Ferguson has committed to consult with any local councils who may be affected by the application of the *National Radioactive Waste Management Bill 2010*.

RESIDENTIAL LAND RELEASES

In reply to the **Hon. D.G.E. HOOD** (10 November 2011) (First Session).

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): The Minister for Housing and Urban Development has been advised:

The Lightsview land development project is a joint venture between the former Land Management Corporation, now the Urban Renewal Authority (URA), and CIC Australia covering 85 hectares at Fosters Road, Northgate. When complete the development will comprise about 1,670 separate allotments that will accommodate about 2,200 dwellings. A retirement village comprising 155 dwellings and a 110-place aged care facility are also being developed on an additional 6 hectares within the project.

The project has been an outstanding success, creating a great urban environment that is proving highly popular with a wide range of home buyers, with 620 allotments sold and 558 settled (at end February 2012) since sales commenced in April 2008.

Lightsview has also performed exceptionally well in the current market when compared to similar developments. This performance includes 160 allotment sales and 162 settlements during the 12 months prior to February 2012.

A major success of the project has been the delivery of the State Government's 15 per cent affordable housing policy. The Joint Venture is delivering the policy through a range of innovative affordable housing types being made available at house and land prices below $319,000. A total of 118 affordable dwellings have been sold to date and the Lightsview Joint Venture was recently awarded both a National and South Australian Urban Development Institute of Australia Award for Affordable Development.

One of the reasons Lightsview sales remain strong is the wide diversity of land and housing products that are available. There are currently 12 allotment types available ranging in price from $114,000 to premium allotments priced at $475,000 which have direct lake and park frontage. The average allotment price to date is $202,000 with the range of allotment types spread throughout the development.

1. The land has not been sold to a developer. The Lightsview project is a land development joint venture arrangement between the URA and CIC Australia. Both parties contribute working capital on a 50/50 basis and similarly share the net profits on an equal basis. The URA separately receives progressive land payments sourced from a percentage of land sales, distributed directly from allotment settlements. The land is therefore transferred directly from the URA to the purchaser of the allotment.

2. The total costs to undertake the Lightsview development is approximately $120,000 per allotment. Of this amount the costs to subdivide and landscape the land is in the order of $70,000 per allotment, which is around 35 per cent of the average sale price for each allotment. The remaining costs per allotment comprise technical and design consultant and project management fees of approximately $17,000; rates and taxes of $17,000; and selling, marketing and community development costs of $16,000.

3. The percentage of the average allotment price that goes to the Lightsview Joint Venture development as profit is 14.25 per cent, which is considered to be at or below the profit margin for a comparable land development project.

HOUSING SA ANNUAL REPORT

In reply to the **Hon. R.L. BROKENSHIRE** (29 November 2011) (First Session).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

Approximately $6,740,000 of the total customer debt relates to charges for property damage.

FAMILIES SA

In reply to the **Hon. A. BRESSINGTON** (14 February 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Education and Child Development is advised:

For reasons of confidentiality, there are significant limits to the specific detail that can be provided in response to this question.

I can advise that this family is known to Families SA.

Families SA has been working to support the family and to protect the children, and will continue to do so.

The *Children's Protection Act 1993* makes clear a set of Fundamental Principles which must be considered as part their determinations for a child's best interests.

In relation to case review and monitoring, the State Government has a range of effective processes in place. In addition, monitoring processes within the Department for Education and Child Development and external bodies working in the public interest are able to review Families SA cases. External agencies include the Office for the Guardian of Children and Young People, the Child Death and Serious Injury Review Committee, and the Health and Community Services Complaints Commissioner.

PUBLIC SERVICE EMPLOYEES

In reply to the **Hon. R.I. LUCAS** (14 February 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Water and the River Murray has been advised:

1. The terms of the separation package accepted by the individual, included the following restrictions of trade:

- The employee not applying for, accepting, engaging in, or remaining in any employment whatsoever (whether as an employee, trainee or apprentice) in the South Australian public sector, whether or not remunerated or otherwise and whether temporary, casual, contract, ongoing or by appointment, for a period of 3 years from the date on which the employee's resignation takes effect;
- the employee agreeing that he or she or any associated entity, will not enter any contract to provide services to a public sector agency for a period of 3 years, whereby the employee is to personally perform all or a substantial part of the work to be performed under that contract;
- the employee agreeing that he or she will not for a period of 3 years, perform the same or similar work functions for a third party, in respect of work required under a current contract to be provided by that third party to a public sector agency.

2. The employee separated from the former Department of Water, Land and Biodiversity Conservation on 5 September 2003.

3. The individual informed the employment agency that they had separated from Department of Water, Land and Biodiversity Conservation on 4 September 2003 and, as such, on 4 September 2006—three years later to the day—the individual was re-engaged through the agency to commence work in Department of Water, Land and Biodiversity Conservation. Unfortunately, the individual was mistaken in stating to the employment agency that they had separated on 4 September 2003 as they had actually separated from Department of Water, Land and Biodiversity Conservation one day later, on 5 September 2003.

The Department of Treasury and Finance advised that their current interpretation of the exact day that an individual may be re-employed after taking a separation package from the State Government is that is should occur the day after the conclusion of the three year period, not the day of conclusion of the three year period. In this case, given the actual separation date of 5 September 2003, current interpretation suggests that re-engagement should have occurred on 6 September 2006. The exact interpretation of the policy at the time of hiring the individual is not known.

Although technically incorrect based on current policy interpretation, given the individual's declaration of a mistaken separation date to the employment agency and issues of interpretation around the exact conclusion of the three year period, this administrative error was made with the intent of adhering to existing policies.

As a result of this administrative error, the individual was re-employed no more than two working days earlier than current interpretations of the policy would consider appropriate.

4. The terms of the re-engagement were for the employment agency to provide the services of the individual to undertake a discrete piece of work, on a full time basis for three months, at a set hourly rate.

5. The public servant responsible for hiring the individual has been directed to relevant State Government policies. In addition, Departmental human resource processes have been updated to reduce the possibility of this occurring in future; this included updating the Department's Recruitment and Employment Policy.

6. The services provided by the individual were of an engineering nature related to asset management planning. The contract with the employment agency was for the period 4 September 2006 to 15 December 2006.

The contractor was subsequently engaged on similar terms for the periods:

- 21 March 2007—21 December 2007;
- 31 January 2008—2 April 2008; and
- 19 May 2008—1 December 2010.

7. The contract entered into with the employment agency was based on an annual salary of $74,730, which was paid on an hourly rate based on the number of hours actually worked.

COUNTRY FIRE SERVICE

In reply to the **Hon. J.A. DARLEY** (14 March 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Emergency Services has advised:

I am advised the CFS was not informed of any burn off in Victoria. Under typical weather patterns, South Australia would not experience the smoke conditions that arose on 11 March. Victoria was undertaking numerous burns on that day, with many based around the Grampians and Western Districts of Victoria. The burn off in mention happened near Portland.

Whilst the weather patterns were irregular, CFS is working with its interstate counterparts to finalise a notification system for when weather patterns would direct smoke into South Australia and vice versa. Since this event, a concerted effort has been made to ensure there have been notifications between States regarding prescribed burns.

The CFS website obtains information from its operational information system database, which is based on an incident event generated from the SA Computer Aided Dispatch (SACAD) system. This information is then forwarded to other social media sites such as Facebook and Twitter.

CFS relies on information from Brigades to inform the community. In this instance, volunteer officers provided the information as they became aware of the situation. This led to a media release being distributed, with the media given access to a spokesperson.

APY LANDS, DISABILITY SERVICES

In reply to the **Hon. K.L. VINCENT** (4 April 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): I am advised:

The job titles of the clinicians who visit the Lands are:

- Senior Occupational Therapist
- Occupational Therapist
- Senior Physiotherapist
- Physiotherapist
- Senior Speech Pathologist.

All the clinicians have qualifications in the relevant areas of physiotherapy, occupational therapy and speech pathology.

The clinician team visits the Lands at least six times each year and it has been usual for an additional trip to occur as well. In addition, a Senior Occupational Therapist provides phone support to clients, carers, medical staff and others throughout the year between the scheduled visits.

EYRE PENINSULA

In reply to the **Hon. D.W. RIDGWAY (Leader of the Opposition)** (4 April 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Water and the River Murray has been advised:

Under *Water for Good*, the State Government is required to prepare Regional Demand and Supply Statements for each Natural Resources Management region throughout the State by 2014.

The Regional Demand and Supply Statements are the State Government's key strategy to ensure that long-term water security solutions for each region are based on a thorough understanding of the state of all local water resources, the demand for these resources and likely future pressures.

Tumby Bay falls into the Eyre Peninsula region. The annual review of the Eyre Peninsula Demand and Supply Statement was released on 13 April 2012. The annual review was based on the best available information, provided by a range of organisations including, but not limited to, Local Government, the Resources and Energy Sector Infrastructure Council, the Australian Bureau of Statistics, the Department for Water, SA Water, the Department of Planning, Transport and Infrastructure and the Department for Manufacturing, Innovation, Trade, Resources and Energy.

Upon review of the demand-supply projections, under a worst-case scenario of high population growth, demand for drinking quality water is not projected to exceed supply until 2023-24.

Therefore, at this stage it is considered that there is sufficient water to meet demand in the Eyre Peninsula. However, in keeping with the *Water Industry Act 2012*, the assumptions underlying the projections will be reviewed in twelve months' and, should anything change, such as less water being available from the prescribed wells areas or increased demand from population growth or mining, the timing for the demand-supply projections and associated Independent Planning Process will be adjusted accordingly.

PAROLE APPLICATIONS

In reply to the **Hon. A. BRESSINGTON** (5 April 2012).

The Hon. I.K. HUNTER (Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for Disabilities, Minister for Youth, Minister for Volunteers): The Minister for Correctional Services has been advised:

1. As of Tuesday 8 May, there are no applications before Executive Council.

2. 3 working days.

3. Executive Council considers submissions for which Cabinet has made a recommendation. These submissions are presented to Cabinet by the Minister for Correctional Services upon a recommendation for release being received from the Parole Board of South Australia.

4. Executive Council takes advice from recommendations made by Cabinet.

5. Yes, when it is necessary to do so.

DRUG AND ALCOHOL SERVICES

In reply to the **Hon. A. BRESSINGTON** (17 May 2012).

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): The Minister for Mental Health and Substance Abuse has been advised:

1. Tender evaluation panel members' names are not publicly disclosed in order to maintain the probity of the procurement process. By not disclosing the details of tender panel members, the Department for Health and Ageing protects members from undue influence (perceived or actual) from potential respondents in respect of the evaluation of tender responses. Ensuring probity in procurement operations is a key objective of the *State Procurement Act 2004*.

2. The tender evaluation panel included people with clinical expertise in drug treatment, non-government contract management and drug and alcohol policy.

3. Drug and Alcohol Services South Australia were represented on the tender evaluation panel.

4. An SA Health procurement consultant with tender assessment expertise was available to the panel at all stages. Details of the job titles of the tender evaluation panel are not publicly disclosed in order to maintain the probity of the procurement process.

DRUG AND ALCOHOL SERVICES

In reply to the **Hon. D.G.E. HOOD** (17 May 2012).

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): The Minister for Mental Health and Substance Abuse has been advised:

1. Yes.

2. The primary documentary means by which the policy objectives of drug treatment programs are communicated is through The South Australian Alcohol and Other Drug Strategy 2011-2016 (the Strategy). This whole-of-government strategy aligns with the objectives of South Australia's Strategic Plan and those outlined in national agreements, such as the National Drug Strategy 2010-2015; the Council of Australian Governments' National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes and the National Partnership Agreement on Preventive Health.

3. The Minister for Mental Health and Substance Abuse is not aware of any instances in which Drug and Alcohol Services South Australia employees have given advice or made decisions contrary to approved clinical practice. The management and resolution of any incidents involving breaches of policy or alleged misconduct is the responsibility of SA Health.

4. Drug and Alcohol Services South Australia does record the number of clients for whom the current course of treatment has ended, and the reason for the cessation of the treatment. Such reasons may include: that the immediate goals of the treatment plan have been fulfilled; that a client has ceased treatment against advice, without notice, or refused to comply with treatment rules or conditions; or that a client has been incarcerated or has died.

As the honourable member may appreciate, there is substantial stigma associated with being drug dependent and the clients with whom Drug and Alcohol Services South Australia is in contact are frequently marginalised and often difficult to contact. In such circumstances, resources are not redirected away from direct treatment to routine attempts to follow-up former clients of substitution treatment programs in order to ascertain their drug use status at that point in time.

Furthermore, the nature of drug addiction is such that a single treatment episode is rarely sufficient to achieve complete abstinence. Those familiar with other forms of addiction, such as to tobacco smoking, will be aware that it is not uncommon for successful self-changers to make up to around fourteen attempts before they become successful long-term abstainers, with relapses occurring frequently. Follow-up studies indicate similar patterns of multiple quit attempts for heroin and other illicit drugs.

SAME-SEX YOUTH SERVICES

In reply to the **Hon. T.A. FRANKS** (4 April 2012).

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations): The Minister for Health and Ageing has been advised:

The Second Story, through the Women's and Children's Health Network, provides a comprehensive, youth health service for young people between the ages of 12-25 years, who are:

- under the Guardianship of the Minister (or who have been under the Guardianship of the Minister and are now 18-25 years of age)
- Aboriginal and Torres Strait Islander
- vulnerable due to complex social and environmental factors impacting on their health and wellbeing, inclusive of vulnerability related to sexual identity

Services available for same sex attracted young people include:

- medical and nursing services, including health assessment and treatment, health education about safe sex, and sexual health screening for young gay men and men who have sex with men

- group programs to explore issues identified by young people, including sexual identity, coming out, understanding health issues and sexual health and same sex attraction in greater depth, and learning strategies to effectively manage social and emotional issues
- one-to-one counselling
- peer training and peer education programs for young people to be trained as peer leaders or volunteers to work with other young people

DEPUTY STATE CORONER'S REPORT

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (15:46): I table a copy of a ministerial statement relating to the response to the Deputy State Coroner's report made earlier today in another place by my colleague the Hon. John Hill.

STRATHMONT 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) (15:46): I seek leave to make a personal explanation in regard to a statement I made in the House of Assembly Estimates Committee.

Leave granted.

The Hon. I.K. HUNTER: Sir, on the 25th day of June when asked by the member for Morialta how many clients, if any, at the Strathmont Centre were subject to community detention orders, I stated that I had advice that there were four people currently under section 32 orders and one who was on licence from the court.

Having had the opportunity to read the question more closely in *Hansard* and on a very strict interpretation of the question, I am advised that the answer is in fact one, not four. There is one person living at Strathmont under licence from the court, which is closest to a community detention order, which is what I was asked.

INDEPENDENT COMMISSIONER AGAINST CORRUPTION BILL

In committee.

(Continued from 28 June 2012.)

Clause 5.

The Hon. G.E. GAGO: I seek the chamber's indulgence to address questions raised by the Hon. Mr Wade, the Hon. Ms Bressington, the Hon. Mr Parnell and the Hon. Mr Brokenshire during the second reading and clause 1 of the committee stage. I will first address the questions raised during the second reading contributions and then go on to the others.

There has been quite a lot of comment about the definition of corruption. We have made it clear that corruption is a criminal act that is capable of prosecution, meaning that it is an offence that already exists and is known to our criminal law. Conduct that falls below this threshold will be dealt with as misconduct or maladministration.

There also seems to be some confusion about how the ICAC and the OPI will operate. The purpose of the OPI is to receive, assess and refer complaints. The commissioner is the chief executive of the OPI. The OPI, under the directions of the commissioner, will advise complainants of any referral or progress of their matter, but the commissioner will not make public statements about matters under consideration, except in circumstances set out in clause 23.

On the appointment of the commissioner, the Hon. Ms Bressington has referred to an ability to appoint an acting or deputy commissioner until the first commissioner is appointed. This suggestion displays some misunderstanding of this position in its development. It is of paramount importance that the first commissioner be appointed in a timely manner, that he or she be involved in the establishment of the OPI and the commissioner's office.

Critical issues, such as the drafting of communication policies and the developing of reporting procedures must be done under the guidance of the first commissioner, not an acting or deputy commissioner. The government rejects the suggestion that an acting or deputy commissioner could be appointed to undertake this role.

The Hon. Ms Bressington in her second reading speech foreshadowed amendments to the Whistleblowers Protection Act, similar amendments to the ICAC Bill. These amendments have been filed and will be subject to debate later. I do not wish at this stage to put on the record the government's commitment to refer the legislation scheme of the whistleblowers act to the commissioner within his or her first 12 months of appointment.

This scheme is in need of review, and it is the government's position that that actual review will best be conducted by the independent commissioner against corruption. The other questions raised by the Hon. Ann Bressington will be dealt with during the remainder of the committee stage.

The final issue in terms of general comments is the assertion made by the Hon. Mr Wade that the government has not consulted with the Local Government Association, a repetition of the same assertion made in the other place by the Leader of the Opposition. I am sure the Hon. Mr Wade is now well aware that the government has always consulted. and continues to consult, extensively with the Local Government Association about this bill, and it is disappointing that the Hon. Mr Wade would put forward such an allegation without first checking the accuracy of this.

I will now address some of the specific questions on notice, one by Mr Wade as to whether the government intends the Local Governance Panel to continue to operate once the ICAC Bill has been passed. The government has no intention of interfering with the operation of the Local Governance Panel. The purpose of this bill is to add another layer of integrity mechanisms to the state and not take away any existing mechanisms. The government understands that the Local Governance Panel will continue to operate, especially in relation to the conduct that may not be captured by the code of conduct, and also perhaps have a role in alternative dispute resolution for matters arising under the code or otherwise, and that the Local Government Association supports the continuing of this role.

The Hon. Mr Wade asked about the budget for the ICAC and OPI. I am advised there is a global budget of $32 million over five years, which includes implementation costs. The precise allocation of that budget to the various functions of the ICAC and OPI will be determined by the commissioner once he or she is appointed.

He also asked about the FTE for the ICAC and OPI. I am advised that the commissioner will assess the FTE requirements at the time of his or her appointment and make any arrangements that they deem necessary to successfully implement the ICAC and OPI. The Hon. Mr Wade asked about the estimated budget for investigative and educational preventative roles of the ICAC. I am advised that the budget lines for these functions will be a matter for the commissioner's determination when they are appointed. The Hon. Mr Wade asked about the estimated number of investigators to be employed directly by ICAC. I am advised that the number of investigators is a matter to be determined by the commissioner upon their appointment.

The Hon. Mr Wade asked about the estimated additional cost of the expanded role of the Ombudsman. I am advised that it is not possible to predict how much change there will be to the role of the Ombudsman, particularly in the first 12 months of the operation of the OPI. The Ombudsman is a member, and has attended meetings, of the Public Integrity Reform Consultative Group and the Public Integrity Reform Working Group. The project director has advised the Ombudsman that it is intended to outpost a member of staff to the Ombudsman's office and to explore IT solutions to reduce any impact on the resources of that office.

Project staff have already attended at the Ombudsman's and the Police Complaints Authority's offices to examine policies, procedures and systems to identify implementation processes and solutions. The project director has every intention of working closely with the Ombudsman to ensure that the impact on his office is minimal and that cost-effective solutions are identified as early as possible. It is also useful to note that the past two annual reports from the Ombudsman noted that over 60 percent of the approaches received by his office were dealt with by the provision of advice or by referral to a more appropriate body.

The creation of the Office of Public Integrity means that for the most part these inquiries will now be made to that office rather than to the Ombudsman. The Hon. Mr Wade asked why, given the expanded role, the Ombudsman's funding for the 2012-13 year had actually been reduced. I repeat that the scope of this expanded role cannot be measured at this time, but I note that at the time of the 2012-13 state budget the reduction in the Ombudsman's budget in 2012-13 was due mainly to the allocation of savings targets to that office.

The Hon. Mr Wade asked for the actual budget funding and staffing levels of the Government Investigations Unit in 2011-12 and 2012-13. In 2011-12 the GIU had the following budgeted and ongoing staffing levels: one MAS3; two ASO-7 senior investigators; four ASO-6 investigators; one ASO-3 office administrator. The total salary, including on-costs, for the above positions was set at $786,733 for 2011-12. The GIU budget forms part of the CSO budget.

In 2011-12 the GIU had the following additional actual staffing levels: two ASO-6 investigator temporary contracts for children in state care and a 0.4 ASO-2 secretary temporary contract for children in state care. The additional salaries associated with that totalled $407,430. In 2012-13 all functions within the CSO are being examined in relation to operational efficiency. The Hon. Mr Wade followed up by asking whether variations had been made to the budget of the unit as a consequence of the bill, and I am advised no variation has been made to the anticipated workforce and budget of the GIU as a result of the Independent Commission against Corruption.

The following questions were asked by the Hon. Mark Parnell. We were asked to provide a detailed response to the LGA 7 June submission outlining why the Attorney-General did or did not take up the LGA suggestions, and I would like to read into *Hansard* this response provided to us and other members by the LGA on 17 July 2012:

> The LGA has reached agreement with the Attorney-General on a number of amendments to the ICAC bill. You will note that there are also a couple of areas where the LGA has sought assurances from the minister for comments on *Hansard* that will assist in the interpretation of various clauses and in one instance a commitment to conduct a review of the operations of the code, 12 months after its coming into operation. I am therefore writing to advise you of the current position the LGA has taken in relation to its original submission on the bill. Please find attached a copy of key areas of the LGA's original submission and the outcomes that have been agreed to date.

I understand that each member received a copy of these outcomes. I make four further comments. One of the issues raised by the LGA was in relation to the amendments to the Public Finance and Audit Act. The LGA has agreed that the requested amendment is not necessary because the LGA will be provided with a copy of any report under section 32(3)(a).

The second point is to answer the following question posed by the LGA: what action will the Minister for State/Local Government Relations take if council fails to implement a recommendation from the Ombudsman to impose a penalty on a council member? An answer to this question is not possible at this stage as this is entirely dependent on the circumstances of each matter. I am advised that the various procedures provided under section 273 of the Local Government Act will be available to the minister.

Another question was asked by the LGA in relation to proposed section 263B of the Local Government Act. The LGA asked what action the minister may take if the council does not lodge a complaint against a member of the District Court as required under section 263B(2). The answer is similar to before in that it will be dependent on the circumstances of each case.

I am advised that a council's failure to take action may be deemed a failure by that council to discharge a responsibility under the act. My final point in relation to local government is to note that the government will commit to reviewing the practical operation of the amendments to the Local Government Act within 12 months of the commencement of the code of conduct.

A question was asked about the capture of a person by this regime who might have been accused of embezzling money in a private or corporate situation and who then becomes elected as a member of parliament. The act applies to corruption, misconduct or maladministration in public administration. Those last three words are the key: the conduct complained of must be 'in public administration'. Criminal conduct that has no link with public administration is not under the jurisdiction of ICAC.

The final questions were asked by the Hon. Robert Brokenshire. Why not direct to ICAC instead of via OPI? Careful consideration was given to the way the OPI and the ICAC should operate. The public presence where all complaints could confidentially be made is needed, together with the ability for ICAC and the resources of the ICAC to be directed to matters concerning corruption in public administration.

In this model, OPI staff will make an assessment of the complaint and make recommendations as to whether and by whom the complaint should be investigated. The commissioner is not bound by the recommendations of the OPI. All matters assessed as possible corruption in public administration will be dealt with by the commissioner or referred to SAPOL or some other law enforcement agency.

To what degree will the commissioner have full oversight? The commissioner will have full oversight of investigations concerning allegations of corruption in public administration that are conducted by the commissioner's office. If an investigation is referred to SAPOL or other law enforcement agencies, the agency will oversee its own investigation.

If the commissioner refers a matter of misconduct or maladministration to an inquiry agency, the commissioner may give directions or guidance and, in rare circumstances, may decide to exercise the powers of the inquiry agency. Steps may be taken by the commissioner if they are not satisfied that the inquiry agency has duly and properly taken action in relation to a referred matter.

What is the expected staffing, both seconded and permanent? I have already answered those questions in relation to the Hon. Stephen Wade. What is the annual budget into the forward estimates? I am advised the following: $8.894 million for 2012-13, $7.333 million for 2013-14, $6.830 million for 2014-15, and $6.973 million for 2015-16.

What is the indicative salary bracket for the commissioner? It is envisaged that the commissioner's salary will be similar to that of a Supreme Court judge. The bill clearly signals the government's intention to appoint someone who either is or could reasonably expect at some stage to be a sitting judicial officer. Does the government intend to advertise the position within the state and nationally and internationally? I am advised that the government intends to canvass the whole of Australia for potential candidates for the position.

Will the government announce an interim commissioner for six months or some other interim period? In my opening remarks, I referred to the Hon. Ms Bressington's suggestion about appointing a deputy or acting commissioner to oversee implementation before the first commissioner is appointed, and a response to that is already on the record.

Will there be only an annual report or will the OPI and ICAC be required on a more regular basis to publish statistics on complaints it has received and how it has dealt with those complaints? The commissioner must prepare an annual report for tabling in parliament. The required content of the report is set out in clause 43(2) of the bill. Under clause 40 the commissioner will also be able to prepare a report setting out matters arising in the course of the performance of the commissioner's functions that the commissioner considers to be in the public interest to disclose.

Does the government contemplate any secondment at all of Anti-Corruption Branch police officers in the early stages or is the government going to take a wait and see approach? The government will not be involved in any decisions about secondment. The commissioner will be responsible for assessing the need for seconded police officers.

What rationale was there for the police ombudsman's name change? The name change was considered in consultation with the Police Complaints Authority. The change is to more clearly define and reflect the emphasis of the office on public integrity.

Did the government consider any other changes to the Police Complaints Authority structure in the overall context of the proposals the government has put to us within the ICAC bill? I am advised that no other changes were contemplated. The police ombudsman will continue to function as an investigative agency alongside ICAC and will refer matters that raise issues of corruption to ICAC.

What is the rationale for including the word 'incompetence' in the definition of 'maladministration' in 45(4)(b)? The definition is intended to give the ICAC at least as much scope to investigate maladministration as the ombudsman who may investigate any administrative act. Incompetence is a usual unprofessional conduct concept. Systemic incompetence is a serious matter and it leads to wider problems and lack of public confidence in public administration.

What criminal penalty will apply for someone found to have conducted maladministration in public administration? The definition of maladministration does not include criminal behaviour. Corruption is a criminal behaviour in public administration. Maladministration is subcriminal behaviour.

Can the minister confirm that, in general, this bill does not criminalise corrupt conduct, rather that it adds new criminal penalties for failure to comply with the commissioner's directions—in other words, there are no substantive anti-corruption offences created by this bill? I am advised that that is correct.

Can the minister explain to the committee what provisions the government has within the content of the ICAC bill to ensure that it does not become a 'lawyer's picnic'? I am advised that the bill provides quite properly for legal representation. In some circumstances a person may want to seek legal advice and/or representation; however, it is important to remember that this legislation is all about the investigation of complaints about corruption, not prosecutions where legal advice and representation would be in most cases necessary.

Finally, the Hon. Mr Brokenshire asked how the commonwealth privacy laws and state privacy principles interact with the bill. I have been advised that an act or practice required or authorised by or under law is an exception to a number of the Information Privacy Principles and the National Privacy Principles. The SA privacy principles also allow for a person to disclose personal information about some other person where the disclosure is required by or authorised under a law. Clause 48 of the bill provides:

> ...no obligation to maintain secrecy or other restriction on the disclosure of information applies for the purposes of a complaint , report or investigation under this Act, except an obligation or restriction designed to keep the identity of an informant secret.

Such an exception also exists under the Whistleblowers Protection Act 1993. The government also received the following questions from the ombudsman's office. Why does the obligation to refer a disclosure to the Anti-Corruption Branch under section 5(5) of the Whistleblowers Protection Act 1993 and section 18 of the bill need to coexist? Why was section 5(5) not repealed? I am advised that as it is the intention that the ICAC as soon as practical review the whistleblowers legislation, it was considered appropriate not to amend the reporting provisions in that act at this time.

In what circumstances will ICAC seek to exercise the ombudsman's powers as envisaged by subclause 35(5)? The short answer is that it remains to be seen. It must be emphasised that there is no intention for this power to be used regularly. The power exists for the rare circumstance when the ICAC may wish to investigate a systemic problem of misconduct or maladministration. The inclusion of this power is not a reflection on the ability of the Ombudsman or his office to carry out their functions.

The Hon. S.G. WADE: I would like to ask some questions coming out of the minister's answers given at clause 5. I note that in response to a question in relation to the budget for the ICAC for 2012-13, the minister chose to advise that the budget over five years was $32 million. I subsequently noted that, in answer to a question from Mr Brokenshire, the minister gave a precise figure of $8 million-plus in relation to 2012-13. Considering that we have a precise budget allocation for 2012-13, I take it that we do actually have a precise FTE allocation for the ICAC and the OPI, so I reiterate the questions I put on Thursday 28 June 2012 as to what is the FTE allocation for the ICAC and for the Office for Public Integrity.

The Hon. G.E. GAGO: We are happy to take the Hon. Stephen Wade's question on notice and bring back the detail for what the current FTEs are. However, the Hon. Stephen Wade needs to be aware—as I have said in my answers to questions—that once the commissioner is appointed, the commissioner may then choose to appoint and change staff accordingly, and that will be a matter for the commissioner.

The Hon. S.G. WADE: I appreciate that, minister, and that is why I asked for an indicative budget for this financial year only.

The CHAIR: The Hon. Mr Brokenshire?

The Hon. R.L. BROKENSHIRE: I have a question for the minister based on the answers regarding the annual budgets and the fact that the budgets are projected to decrease over a three or four-year period. Is that due to start-up costs? What is the reason for the budget actually decreasing into the third or fourth year?

The Hon. G.E. GAGO: I have been advised that, in relation to the first couple of years, it is likely that that will reflect the one-off start-up costs. That then will not be required in outgoing years. However, in relation to any other details about the fluctuations of those figures, I would need to take that on notice.

The Hon. A. BRESSINGTON: Will the minister advise if this reduction in the budget over this time frame is based on the experience of other states or is just purely speculative?

The Hon. G.E. GAGO: I have been advised that this model is not the same as any other state. We have designed a model for our ICAC and we have anticipated funding accordingly and,

as I said, some of the decreases at the outset I am advised are likely to reflect one-off start-up costs, but any other details about why there is movement in those out years I would have to take on notice.

The Hon. A. BRESSINGTON: I am just a little confused because if we are going to do costings for an ICAC for staff and we are going to do those projections over a period of three to four years, it has to be based on something factual not just something imaginary that we think might happen. There has to be a basis for it somewhere, some evidence that decreasing the budget as we go along is going to see the best possible outcomes for the people of this state. I am sorry, but I just do not understand how you can come to that particular conclusion based on what appears to be no facts.

The Hon. G.E. GAGO: I have already stated that the budgeting for this ICAC is based on the South Australian model. The costings were predicted based on the model that is before us. I have already said to you that, in terms of the details of why these figures are fluctuating and defluctuating and that it goes up again in the forward years, some of it is due to the one-off start-up costs; other detail I will have to take on notice. I think the Premier has also made a statement and has gone on record to say that if it is determined—once the commissioner has been appointed—that further funds would be required then appropriate funding would be made available. I do not think we can do better than that.

The Hon. S.G. WADE: I would just like to highlight the fact that this is the clause that deals with the definition of corruption, misconduct and maladministration. The bill as proposed sets a high threshold for corruption in that it focuses the commissioner on criminal conduct in public administration. This corruption threshold is higher than the thresholds in the international definition, the New South Wales ICAC bill, and the bill that I have tabled in this place, which is also identical to the bill the Leader of the Opposition has tabled previously. They all define corruption to cover what the government calls misconduct and maladministration.

In broad terms, the Liberal opposition's bill defines 'corrupt conduct' as relating to the honest or impartial exercise of an official function by a public officer or public authority, a breach of public trust or the misuse of information acquired in the course of his or her official functions if the conduct would constitute a criminal offence, grounds for disciplinary action under any law, a substantial breach of a parliamentary code of conduct or grounds under any law for removing a public officer from office whether or not proceedings for an offence, disciplinary action, breach of the code or removal from office can still be taken.

The government bill focuses on the first criminal level. Setting the bar so high means that there is a real risk that there might be a very small window between having a strong enough case to justify an ICAC investigation or examination and the need to refer to a prosecuting body, SAPOL or the police ombudsman. The bar being so high also severely impairs the capacity to deal with emerging risks and would leave South Australia with a reactive ICAC rather than an early detection and prevention ICAC. Thirdly, having the bar so high is not consistent with interstate ICACs and the international definitions.

The government was of course reluctant to introduce an ICAC, and we believe that the definition in this clause is yet another demonstration of its reluctance to introduce a fully fledged ICAC. Whilst we are not proposing to amend the threshold at this stage, we are disappointed that the government has missed the opportunity to commit to a fully fledged ICAC.

The opposition considers the educative and preventive functions of an ICAC are important. The government's original model included neither. We are glad that both are in this bill. At a later time, in moving to amend clause 35, I will be seeking the support of the council to allow the ICAC to deal with emerging corruption.

Clause passed.

New clause 5A.

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

Page 11, after line 37—After clause 5 insert:

5A—Parliamentary privilege

(1) Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

(2) However, if publication of information would, apart from the privileges, immunities or powers, be in contravention of section 54, the information may only be included in a record of proceedings, or a report, of the Legislative Council, the House of Assembly or a parliamentary committee if its inclusion is authorised by resolution of both Houses of Parliament.

This amendment addresses concerns that the bill may in some way affect parliamentary privilege. The amendment inserts a clear statement that privilege is not affected by the operation of this bill. There is, however, a need to ensure that the use of parliamentary privilege does not operate against the policy of this bill, namely, to keep the investigation process confidential.

The purpose of subclause (2) is to ensure that, in the rare circumstance of a member of parliament disclosing information under privilege that would otherwise be protected by the operation of this bill, that disclosure cannot be published without resolution of both houses. This will ensure that a person's reputation is not affected by the reporting of any matter under parliamentary privilege and that parliamentary privilege cannot be used as the means by which the identity of a person the subject of an ICAC investigation can be made public.

The Hon. S.G. WADE: As the minister acknowledged, this issue was raised by the opposition in the House of Assembly. The Attorney asserted that the government had no intention to affect parliamentary privilege and the Attorney undertook to consider the issues between the houses. The opposition welcomes the fact that the government has tabled a series of amendments explicitly protecting the parliament.

I stress that in raising the issue the opposition has no intention of protecting parliament or parliamentarians from scrutiny in relation to corruption, misconduct or maladministration. On the contrary, our goal is to preserve parliament's role in fighting corruption. Having been a member of this place for a relatively short time, I know that we are doubly vigorous in relation to our own members in terms of ferreting out possible corruption, misconduct or maladministration.

Parliaments in the Westminster tradition have served as a check on corrupt government practices, and parliamentary privilege is a tool to that end. In seeking to expand the extraparliamentary integrity infrastructure, the opposition does not want to inhibit parliament's well-established role in this domain. The modern significance of parliament in fighting corruption was particularly highlighted by the Fitzgerald Royal Commission in Queensland in 1989.

Both the government and the opposition have amendments on file which include subclause (1), which preserves the privileges of the parliament; if you like, the toolkit to tackle corruption. The government seeks to qualify the privilege by saying that, if a matter contravenes section 54, it cannot be published without the consent of both houses of parliament. The opposition is of the view that that provision is undesirable. Parliament is in the best position to manage parliamentary privilege and to supervise the conduct of its members.

If a member of this parliament acts in a way that undermines the operations of the ICAC through abuse of parliamentary privilege, parliament has the power to take action against that member. Should there be an exceptional need for a matter to be removed from the record, a house may make that provision at the time. There is no need for a default suppression of matters that could possibly be considered as contravening section 54.

I also think that the provision is unworkable. Who would identify that a matter contravenes section 54? Once a contravention is identified, how would each house move to consider whether or not to authorise its disclosure? Could the publication of the notice of the resolution and the debate on the resolution up to the vote itself be published? I think that the government's proposed proviso is so broad and so unworkable that it will act as an effective ban masquerading as a check.

Clause 5A(2) in the government's proposed amendment means that the government will effectively have the right to veto whether a matter is allowed to be published. The government proposes that the oversight committee be government controlled—and by definition it controls the lower house. In contrast, our amendment protects privilege, including the established mechanisms to supervise parliamentary privilege.

I urge the committee to vote against the government's amendment and instead lend its support to my latter amendment, [Wade-1] 1, which affirms our responsibilities as legislators to govern this place. I therefore move:

Page 11, after line 37—After clause 5 insert:

5A—Parliamentary privilege unaffected

> Nothing in this Act affects the privileges, immunities or powers of the Legislative Council or House of Assembly or their committees or members.

The Hon. M. PARNELL: In relation to the two options that are before us in relation to the parliamentary privilege clause, the Greens will be supporting the simpler, shorter Liberal version, which simply seeks to ensure that there is nothing in the act that affects the privileges, immunities or powers of members of parliament or their committees.

The Hon. A. BRESSINGTON: I will also be supporting the Liberal amendment over the government amendment. As to the rationale behind that, I am often told that there are only five or six people out there who ever bother to read *Hansard*, or whatever. However, it has been a longstanding expectation that *Hansard* is not altered in any way and that the houses do not interfere with the recordings of *Hansard*, and that has obviously been in place for a very long time for a very good reason.

I can recall uproar when we censored *Hansard* with the Hon. Sandra Kanck wanting to put on the record various means of how people could commit suicide when we were dealing with a euthanasia bill. I know that that left a bitter taste in many people's mouths—that we were seeing a form of censorship creeping into the parliament that had never been there before.

I do respect the fact that people expect that the *Hansard* is a true and accurate record, and I also support the concerns that the Hon. Stephen Wade raised about how would we know that we have contravened that particular section of the bill and who would be the adjudicator of that? I believe that we are responsible enough in here to self-monitor and for every member of parliament in here to be acutely aware when we are breaching parliamentary privilege or crossing a line.

I will be supporting the Hon. Stephen Wade's amendment over the government's amendment.

The Hon. R.L. BROKENSHIRE: Privilege is something that is important to the parliament, and the opportunity of having parliamentary privilege. On this particular clause, first, I would be surprised if MPs knew about reports to the independent commissioner against corruption in any case, particularly with some of the things that we will be debating later where the government is very much cautious about potential sledging (which I understand) and damaging situations to individuals. I would be surprised if there were very many occasions, if any, where MPs were aware of issues before an ICAC.

If that is the case, then I trust the individual MP to actually use their initiative. I think we are in a dangerous area if we start to play around with parliamentary privilege, because we set a precedent for other situations. You could have a situation where, eventually, there would be a number of instances where members were not allowed to use parliamentary privilege from the point of view of their not being reported. On this occasion we will support the Liberal amendment.

Hon. G.E. Gago's new clause negatived; Hon. S.G. Wade's new clause inserted.

Clause 6.

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

Page 13, after line 2 [clause 6(4)]—After paragraph (b) insert:

> and
>
> (c) as far as is practicable, deals with any allegation against a Member of Parliament or member of a council established under the Local Government Act 1999 before the expiry of his or her current term of office.

The local government councillors and state parliamentarians will be subject to the ICAC Bill and, unlike other possible subjects, the tenure of councillors and parliamentarians is subject to their re-election. If an ICAC investigation is not resolved at the time of an election and the investigation become public knowledge, there are two potential risks to informed democratic decision making. First, candidates are at risk of having to go to an election under a cloud and electors are at risk of having to go to a vote without all relevant information before them.

This amendment proposes that the bill be amended to require the ICAC to give priority to cases involving elected officials, with a view to investigations being resolved within electoral cycles wherever possible. I stress that this amendment does not direct the commissioner. First, it sits in a clause which relates to the manner in which the commissioner undertakes their role and, secondly, it relates to prioritisation of tasks and goals as far as practicable. I commend the amendment to the committee.

The Hon. G.E. GAGO: The government declines to support this amendment.

Amendment carried.

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

Page 13, after line 2—After subclause (4) insert:

(5) For the purposes of exercising his or her functions under subsection (1(d) or (e), or for reviewing a legislative scheme under subsection (3), the Commissioner—

(a) may conduct a public inquiry; and

(b) may regulate the conduct of the inquiry as the Commissioner thinks fit,

(and, for the avoidance of doubt, the inquiry will not be a proceeding for the purposes of section 53).

The purpose of this amendment is to provide the commissioner with discretion to inquire into the practices, policies and procedures of an inquiry, agency or public authority; facilitate the conduct of educational programs; and review a legislative scheme, such as the whistleblowers legislation, by conducting public examinations and hearings. The purpose of this amendment is to provide the commissioner with discretion, not direction, so it is a discretionary power.

The Hon. S.G. WADE: The opposition's reading of section 53 is that without this amendment the ICAC commissioner might well have problems, or at least doubt, and so we will be supporting the amendment.

Amendment carried; clause as amended passed.

Clause 7.

The Hon. S.G. WADE: I think it would facilitate the consideration of these amendments by the committee if we reported progress for a brief period. I am in discussions with the Hon. Mr Brokenshire and would like to have the opportunity to do that without the committee progressing.

The Hon. G.E. GAGO: The government does not support reporting progress at this stage. These amendments have been before us for some time and there has been ample opportunity. The parliament has not sat for the past seven weeks, and I think it is outrageous that on our first day back after such a break the Hon. Stephen Wade needs time to negotiate with Family First. It is an outrageous proposition and an abuse of this chamber.

The Hon. S.G. WADE: I will, if I continue to be taunted, expose some of the behaviour of the government in relation to this matter at a later date. In the meantime, the Hon. Mr Parnell is apparently seeking the call and I am happy to leave that motion for a later stage in the debate.

The Hon. M. PARNELL: Clause 7 relates to the commissioner and includes the most important issue in relation to the appointment of the commissioner. The bill, as drafted, simply provides that the commissioner is appointed by the Governor. The appointment is for a term not exceeding seven years. There are provisions that relate to reappointment, but with the proviso that a person cannot hold office for consecutive terms that exceed 10 years.

I think the key issue for us now is in relation to the method of appointment. In dealing with that question, issues are raised about the respective responsibilities and powers of the executive arm of government versus the legislative arm of government. On the one hand, we have people fulfilling important statutory functions who are appointed by the Governor—in other words, it is an act of the executive arm of government—but we also have important statutory officers who are perhaps still appointed by the Governor but on the recommendation of both houses of parliament.

Into that latter category fall officeholders such as the Ombudsman and the Electoral Commissioner. In the former category, those who are simply appointed by the Governor on executive recommendation, are people like the police commissioner, for example, so one of the things we have to resolve is where the role of this ICAC commissioner more accurately fits. Does it fit within that class of persons where some level of parliamentary scrutiny is required, or should it fit within the executive prerogative?

There are three models before us when dealing with this clause. One is the model that I have mentioned, which is the government's option, which is simply appointed by the Governor. The Hon. Ann Bressington has a model which requires the insertion of the words 'on a recommendation made by resolution of both houses of parliament'; in other words, that would trigger a parliamentary

process. The Hon. John Darley has a third alternative which, as I understand it, still involves the parliamentary Statutory Officers Committee having a look at the nominations or candidates, if you like, but does not involve a resolution of both houses of parliament. As I understand it, they are the three models that we are looking at.

In terms of finding precedents for how this has been handled, if we look at the Hon. Ann Bressington's model because that, I think, is going to be the first amendment that we look at, as I understand it, the parliamentary appointment process has only been followed twice before. As I understand it, the most recent was in 2009, when Mr Richard Bingham was appointed to the office of ombudsman, and there was one which, I understand, might have even been some 10 years earlier, I think in relation to the electoral commissioner.

I had to go back through the *Hansard* to try to get a handle on how the process worked, and it seems that it is fairly straightforward. We have the Statutory Officers Committee. They produced a report, and I will use the example of the Ombudsman. In fact, the fact that it is entitled 'Second report', I think is probably evidence that it was only the second time that they had done it. So, the first one, sometime earlier, must have been the Electoral Commissioner and the second one was the Ombudsman.

This report, which was tabled in the Legislative Council on 7 April 2009, sets out the process that was followed. In a nutshell, the six members of that Statutory Officers Committee participated in the selection process but only in a fairly limited extent. They certainly had a certain oversight role in relation to what I might call the headhunting process, but they were certainly not the committee that actually interviewed all the potential applicants. So, whilst they might have supervised the process, they only really got to see the last person standing at the end of the process.

Referring to that second report of the Statutory Officers Committee, in a nutshell, they interviewed the last person nominated and then they agreed that that was a person who should be put before the parliament. We then had, on 7 April, a motion from the leader of the government at that time, the Hon. Paul Holloway, who moved the following:

> That a recommendation be made to His Excellency the Governor to appoint to Mr Richard Bingham to the office of the Ombudsman and that a message be sent to the House of Assembly transmitting this resolution and requesting its concurrence thereto.

In fact, this is the document I had thought to refer to in relation to the process. I will not read out the whole process but, effectively, the minister's remarks conclude:

> A short list of applicants prepared by the panel was referred to the committee for consideration. The committee interviewed the recommended candidate, and the committee unanimously resolved to recommend the appointment of Mr Richard Bingham as Ombudsman. I commend the resolution to the council.

It was a fairly brief government contribution. The only other contribution to the debate was made by the Hon. Robert Lawson, who was a member of the Statutory Officers Committee. He commended the report that was presented by the minister and he warmly commended Mr Bingham on his appointment. The only other observations that were made were, if you like, some parting shots at the process which involved, as I understand it, public servants getting the job ad wrong which resulted, I think, in some duplication and confusion around the appointment.

That is the only example of that process having been used. The reason I go through that is I understand that the government's concern around having the parliament involved in the selection of a position like this is that it can potentially dissuade people who would otherwise be very suitable candidates. At one level, I think we can all understand how that works.

If you are in a job that you like, that you enjoy, and you decide to throw your hat into the ring for a different position, the last thing you want is for the person who you are applying to for a job to contact your existing employer and they then find out that you were seeking to jump ship. We have all perhaps experienced that where you have gone for a job and said, 'Please don't ring my current employer. They don't know I am looking elsewhere. If I am not successful, I would like to stay where I am please.'

I think part of the concern of the government, as I understand it, is that the more people who are involved in the shortlisting process and the selection process, the more opportunity there is for word to get out about who was on the shortlist, who might have put their hand up for it, and that could cause problems for a person's career if they are subsequently not the person who is finally appointed. I think we can understand how that works.

Whilst I accept that as an issue, I think what we need to do is drill down a little bit about if we were to accept the Hon. Ann Bressington's amendment that involves parliamentary scrutiny, what would that mean on the ground? I have explained the process for the Statutory Officers Committee but we also have to have a look at the act that sets up that committee, the Parliamentary Committees Act. What that act says is that if the Hon. Ann Bressington's amendment is to pass inserting those words 'on a recommendation made by resolution of both houses of parliament', the insertion of those words in this act will trigger the involvement of the Statutory Officers Committee because the functions of the committee are described as follows, 'to inquire into, consider and report on a suitable person for appointment to an office under an act vacancies in which are to be filled by appointment on the recommendation of both houses.' That is the trigger.

I think the important clause in the Parliamentary Committees Act that does give me some comfort in relation to the 'leakage' potential is subsection (2) of section 15I in the Parliamentary Committees Act. What that says is:

> Matters disclosed to or considered by the Committee for the purposes of determining a suitable person for appointment to a statutory office must not be made the subject of public disclosure or comment.

So, there is a provision built into the Parliamentary Committees Act which is designed to prevent those people involved in this committee process from disclosing to the world at large who was on the shortlist, who was interviewed and things like that.

I guess the issue then becomes: can we trust the people on that committee, can we trust the various staffers who might work for those members of parliament? I guess if we are going to be complete, we also have parliamentary staff. I would suggest that there is no difficulty at all in relation to parliamentary staff. They deal with confidential matters of state all the time. I am not aware of a single example of where something has leaked out as a result of parliamentary staff inappropriate disclosure.

When it comes to the actual members of this committee, the current membership—and I just remind members and for the benefit of *Hansard*—entails three members from the Legislative Council and three members from the House of Assembly. From this chamber we have the Hons John Darley, Gail Gago and Stephen Wade; from the other place we have the Hon. Steph Key, Mr Lee Odenwalder and Mr Tim Whetstone. It is a very small pool of people who will be privy to the shortlist.

Pulling all that together, what the Greens need to balance up is the risk for suitable people not to be candidates for this position because they are afraid of the process and they are afraid of the implications if their potential candidacy leaked out compared to the other competing priority which is that this position is one of the utmost faith for the people of South Australia. It is a very serious position and I think the status of this position will be advanced if it clearly has the support of the representatives of the people as reflected through the membership of the parliament.

Having pulled all those things together and having appreciated the discussions I have had with the Attorney and the Attorney's staff, the Greens are inclined to support the Hon. Ann Bressington's amendment and we are inclined to support that in preference to the Hon. John Darley's amendment which, whilst it does involve that committee of six (the Statutory Officers Committee), does not involve the final sign-off by both houses of parliament, therefore it misses that final step of having the people's representatives agreeing in parliament that the person who has been put forward is in fact the person we want to manage our system of integrity and anti-corruption in this state. With those words, the Greens are inclined to support the Hon. Ann Bressington's amendment.

The Hon. A. BRESSINGTON: I move:

Page 13, line 4 [clause7(1)]—After 'Governor' insert:

, on a recommendation made by resolution of both houses of parliament,

In moving this amendment, I will also speak to amendment [Bressington-4] 1, which replaces [Bressington-2] 6, as it is consequential. As I detailed in my second reading speech, I am not comfortable with the government alone appointing the independent commissioner against corruption. I simply do not have enough faith in this government to not appoint a loyalist in the role. It goes without saying that a partisan appointment, be it for the first time or subsequent commissioners, would significantly undermine the effectiveness and public confidence in the independent commissioner against corruption.

Currently, the bill provides that the commissioner is to be appointed by the Governor on instruction from the executive. The bill offers little guidance as to the qualifications and qualities of the successful candidate, except to require seven years of legal practice or that he or she be a former judge of a state, territory or commonwealth court. Additionally, serving judicial officers or members of parliament are rightfully excluded. Beyond this, however, the executive government is free to appoint whom they please. While criticism will surely result from a partisan appointee, we cannot dismiss the possibility if this process remains.

Given the status and powers of the commissioner, it is my position that the person appointed to be the commissioner should have the support of the entire parliament and not just the party with the majority in the House of Assembly. To achieve that, this amendment seeks to utilise the existing mechanism for the appointment of the Ombudsman and the Electoral Commissioner for the appointment of the independent commissioner against corruption. Essentially, the Joint Parliamentary Committee or the Statutory Officers Committee, rather than the executive, becomes responsible for overseeing the candidate selection process.

The committee authorises the advertisement for the position, appoints a suitably qualified selection panel and then receives the panel's shortlist of candidates. From there, the committee further interviews the nominated candidates and scrutinises their credentials and, if suitably impressed, reports to both houses of parliament its recommendation. The parliament can then debate the merits of the recommended candidate and, presumably, if they have got past the bipartisan committee, such debate will most likely reflect members' hopes for them before resolving to recommend the candidate's appointment to the Governor.

Only through the scrutiny of a multiparty parliament can people be assured that the commissioner is truly independent and has no loyalty to this government or any other government. This would create symmetry with the process for the removal of a commissioner, which requires resolution by both houses of parliament.

This parliament has long recognised the need for such bodies as the Ombudsman and the Electoral Commissioner to enjoy the support of the parliament and not just the government. Given its proposed scope and powers, this is clearly also needed for the independent commissioner against corruption, something that every other state has recognised to a varying degree and hence legislated for.

Whilst I have previously sent members details of interstate appointment procedures for their respective commissioners, for the benefit of the record I shall briefly overview each state's legislated parliamentary involvement in the appointment process. In Queensland, with its unicameral legislature, before nominating a person for appointment as one of the five commissioners to the Governor, the Attorney-General is required by section 228 of the Crime and Misconduct Act 2001 to first consult with the bipartisan Parliamentary Crime and Misconduct Committee or, and I quote:

> ...if there is no parliamentary committee at the relevant time, the Leader of the Opposition and the Leader in the Legislative Assembly of any other political party represented in the Assembly by at least 5 members.

If the minister consults the parliamentary committee about the proposed appointment, again, I quote:

> ...the minister may nominate a person for appointment as a commissioner only if the nomination is made with the bipartisan support of the parliamentary committee.

That is effectively a right of veto to the parliament and the opposition. In New South Wales, section 5A of the Independent Commission Against Corruption Act 1998 prevents the appointment of a commissioner until the multiparty parliamentary joint committee, the Committee on the Independent Commission Against Corruption, has considered their candidacy and resolved not to veto their appointment.

While the Independent Broad-based Anti-corruption Commission is yet to be established in Victoria, the enabling act (the Independent Broad-based Anti-corruption Commission Act 2011) has been passed and, similar to New South Wales, section 14 prevents the appointment of the commissioner until the parliamentary joint house committee (to be known as the IBAC Committee) has considered their candidacy and resolved not to veto their appointment.

As this committee is yet to be established, my office contacted the office of the shadow minister for the anti-corruption commissioner who confirmed this committee will be bipartisan so, again, it is a right of veto for the parliament. These arrangements will not apply to the first

IBAC commissioner; however, the Victorian Premier will consult with the Leader of the Opposition before the appointment of that commissioner.

Western Australia has opted for a similar model to Queensland, with section 9 of the Corruption and Crime Commission Act 2003 preventing the Premier from recommending to the Governor that a person be appointed commissioner until consulting with the parliamentary standing committee on the anti-corruption commission or, if there is no is standing committee, the Leader of the Opposition and the leader of any other political party with at least five parliamentary members in the house, and may only recommended a candidate to the Governor who, and I quote:

> ...if there is a standing committee, has the support of the majority of the standing committee and bipartisan support.

Tasmania stands alone in not providing its parliament with the right of veto. Nonetheless, the Integrity Commission Act 2009 compels the relevant minister to consult with the bipartisan parliamentary joint standing committee on integrity prior to a candidate being appointed as either a board member or the chief commissioner of the Integrity Commission.

However, even Tasmania will stand tall in comparison to us if this amendment does not go through, for this parliament will not even be consulted and we will presumably learn of the successful candidate after the media reports it, similar I suppose to the recent appointment of the Chief Justice and several magistrates—not that I am suggesting that there were partisan appointments amongst those.

Instead of this, South Australia, through my amendment, can have the most transparent and accountable appointment process of all the states. Not only will our parliament be consulted and have the right to veto a candidate, but the parliament, through the bipartisan Statutory Officers Committee, will scrutinise every stage of the candidate's selection from the advertisement through to the selection panel and then, ultimately, the candidates themselves.

This is how it should be. We have waited a long time for an ICAC, and the people of this state are cynical enough about how this government does business. I believe that, in order to create a level of confidence in this body that is going to be created, we should take every step possible to reassure the South Australian public that this parliament has had an oversight to this process at every available opportunity.

I am aware that the Hon. John Darley MLC has filed an alternative amendment which proposes that the government's preferred candidate is considered by the Statutory Officers Committee alone and can only be appointed with the support of that committee. Whilst it is obviously an improvement on the bill as it currently stands, I do not believe that this amendment will provide or promote public confidence in this ICAC.

First, under my amendment, the entire selection process will be transparent and accountable to this parliament through the Statutory Officers Committee. The advertisement will be authorised by the committee, the candidate assessment panel will be appointed by the committee and they will be accountable to the committee for their scrutiny. In the previous two appointments through this process, the assessment panel has comprised comparable interstate officeholders to the position being considered, with the electoral commissioner for Tasmania on the panel to assess candidates for the South Australian Electoral Commissioner and the commonwealth Deputy Ombudsman on the panel for the South Australian Ombudsman. Such credentialled panel members cannot be guaranteed if we leave this appointment to the government.

The most significant difference between the two amendments is that mine requires resolution by both houses of parliament whereas, as I stated, the Hon. John Darley's amendment only requires support from the committee. While the honourable member himself is on the committee, no other member from a minor party or Independent from either house has representation on that committee. As such, Family First, the Greens, Dignity for Disability and the Independents will have no opportunity to express any concerns they may have about the preferred candidate. I commend my amendment to the committee, and I urge members to support an open and transparent process for the appointment of a commissioner for ICAC.

The Hon. S.G. WADE: I thank honourable members for their contributions—and very relevant they have been. I suggest to the committee that my contribution is particularly relevant because I am a member of a parliamentary group which aspires to government. I should stress to this committee that my parliamentary group, the Liberal opposition, is extremely concerned.

This is perhaps the clause that is most concerning for us in the whole bill because not only do we appreciate that all our members will be subject to an ICAC in the discharge of their duties as a member of parliament but we also hope that the people of South Australia will entrust in us the duty of government in the not too distant future. In that context, we are acutely aware of the influence that this body could have not only on the governance of the state of South Australia but on each of us personally. I would ask members to consider that as they consider the opposition position.

It is extremely important that the ICAC has the confidence of the people of South Australia. It is doubly important that those people who participate in the political process have confidence that they are not being subjected to a body which is in some way influenced by partisan considerations. We think it is important enough to make sure that our electoral system is so secure by having the Electoral Commissioner endorsed by this parliament. We think it is so important that our complaints processes are protected by being endorsed by this parliament and yet the government wants us to have an ICAC commissioner appointed personally by the government. It is absolutely extraordinary.

I am passionately supporting Ann Bressington's amendment not only as a member of parliament but as a person who aspires to be a member of the government. The independence of the commissioners is vital to the integrity of the ICAC. Let me remind you of words out of the mouths of Labor members which doubly underscore that point. In August 2007, in opposing an ICAC, then attorney-general Michael Atkinson asserted that a majority government could stack the composition of any ICAC.

The then attorney-general said that an ICAC could be stacked by a government, and what we have here is a government that says, 'No, no, trust us. Our former attorney-general might have warned you and the people of South Australia about the risk of being stacked by a future government, but not us. It was just a vain flight of fancy by our former attorney-general.' I actually believe Atkinson on that point. The member for Croydon was rightly highlighting a serious threat to the integrity of this ICAC, and it is a shameful reflection on the Attorney-General and this government that they should propose to put up an ICAC without that sort of protection.

I appreciate that other ICACs have other mechanisms to ensure the bipartisan nature of the commissioner, but I am not aware of a model which does not even doff the hat at the need for bipartisanship. This is the arrogance of a government that has been in far too long. This is the arrogance of a government that has fought against an ICAC tooth and nail, year after year after year; now they want to sabotage it before it is even established. Likewise, in 2009 then premier Rann claimed that a national ICAC, like a national crime authority, would guarantee independence from any administration.

Now, they are nice words but what is he saying—'guarantee independence from any administration'? Surely what he is suggesting is that a state-based government would appoint a person that it was comfortable with. What former premier Rann is telling us from the political grave is that you cannot guarantee the independence of an ICAC from an administration without specific measures. He suggested a national ICAC. That was not accepted by the other AGs. The risk is still there. This parliament needs to act to protect the integrity of an ICAC, the integrity of the governance system of this state.

The experience of this opposition is that this government does not respect the need for bipartisan support for key appointments. It is well known for 'jobs for the boys', and it is only my respect for the institutions involved that prevent me from going into details. Suffice to say that, without this amendment, the opposition would be very concerned about the ongoing independence of the ICAC.

The government made much of its backdown in accepting the independent nature of the proposed commission, but without this amendment it might as well delete 'Independent' from the long title. Let us be clear, there is nothing dramatic about the Hon. Ann Bressington's amendment; it merely requires the parliamentary confirmation process for the commissioner's appointment that we apply to other key appointments, like the Ombudsman and the Electoral Commissioner.

My strong concern is that the government's aggressive behaviour today in pressuring parliamentarians at the death knell reflects its desperation to make sure that it maintains the privilege of a partisan appointment. The government will no doubt say that this process will unnecessarily slow the process. I beg to differ. All it will force the government to do is two things: first, it will force the government to make an unimpeachable appointment; and, secondly, it will

force the government to consult prior to announcing an appointment to ensure that it will receive parliamentary support.

On this point the government and I do not differ. I agree that a potential appointee would not be comfortable with their name going forward to a parliamentary resolution without the confidence that it will be supported, but that candidate only needs to have the assurance of the Attorney-General that he has consulted the parliamentary groups and that the parliamentary resolution will be supported, the name can then go public.

So if it does two things it can rapidly have assurance that an appointment will be made in parliament in due course. I urge the members of the Legislative Council to support the Hon. Ann Bressington's amendment. I believe that without it you are not getting an ICAC, you are getting a CAC!

The Hon. R.L. BROKENSHIRE: I have listened to this debate, I have also had new information put to me in recent times and I have discussed this matter with my colleague. I can understand why the Hon. Ann Bressington is moving this amendment, and I respect her immensely for her intent with this amendment. There are two sides to this debate with respect to this particular clause, and I suggest that this clause is probably one of the standout clauses when it comes to the issue of the whole thrust of ICAC.

On the one side having multipartisan support for the independent commissioner against corruption is very important and on the other side, and equally as important, is ensuring that we actually get the best possible person for the job and that there is nothing put in the way of that person applying, namely, that they may actually have their name bandied around and then end up damaging their career because they did not get the appointment. You therefore have a situation where they decide not to apply because of the nature of the requirements around them applying—then we do not get the best commissioner.

Given that there are a lot of other clauses to be debated in this bill, I would foreshadow and/or move, based on your guidance, that this clause be recommitted to give us a little more time to deliberate on the positives and the negatives of this clause, because it certainly has some strong justifiable debate from what the Hon. Ann Bressington and the Hon. Stephen Wade have put up. There is the other side that, particularly in light of new information given to us that I do not want to put on the public record, it needs a little more deliberation. I would move to recommit this clause and proceed with the rest, with the concurrence of the committee.

The Hon. G.E. GAGO: Given the comments of the Hon. Robert Brokenshire (and he has indicated that he wants this clause recommitted), the government supports that. We are keen to make sure that all matters and issues are explored as thoroughly as possible. Given that, at this point the government will put forward its debate and considerations around this clause at the time of recommittal.

The Hon. R.I. LUCAS: I rise to speak to this particular issue because I believe it is, as my colleague the Hon. Mr Wade has indicated, absolutely fundamental to the importance of the bill before us. I have not entered the debate thus far because it has been more than capably handled by my colleague, but I do feel strongly about this. There has been a suggestion that the government may well be changing the minds of some members in this chamber in relation to the issue, and that would be a tragedy for those who genuinely support an independent commission against corruption in South Australia.

As the Hon Ms Bressington and the Hon. Mr Wade have outlined, we have had a well-established procedure in this parliament for positions which are deemed to be important in terms of being supported by, originally, both sides of politics—the government and the opposition (and of course we now have a number of other parties represented as well). As the Hon. Mr Wade has indicated, we have deemed it absolutely critical that the position of Electoral Commissioner, and others like that, be seen to be independent so that they can be effective. Those positions need to have the support of the government, the parliament and, in particular, the opposition as well.

I cannot see how anybody could distinguish the importance of the independence of this particular position—not just the importance of independence but the perception of independence as well—in relation to the effectiveness of the proposed ICAC. We in the Liberal Party have been long-term supporters of the ICAC. The government in latter days has come to support it, and we welcome that changed position, but as long-term supporters of the ICAC it has always been on the basis that this was going to be genuinely independent.

It was always on the basis that it would be with the support from the government and the alternative government. Governments, believe it or not, come and go (perhaps for those of us in the opposition not as frequently in recent years as we might have wished), and it is critical that both the government and the alternative government in particular have confidence in the independence of the ICAC.

As we go through the details of the committee stages of the bill, members—other than those who are actively engaged in the debate on the bill—probably will not realise potentially the impact the ICAC will have on them. Those who are currently ministers, in particular, even though they are not actively engaged in this bill, potentially if re-elected after the next election, will be in a position where, with the operations of the ICAC and with anyone who makes a complaint about actions that have been taken by a minister, they will want to be very confident in the independence of the ICAC.

Similarly, if there is a change of government, an alternative government, and members on this side of the chamber are elected ministers, the operations of the ICAC could potentially have a very significant impact on future careers, future decisions; future actions that might be taken by that ICAC might have an impact on ministers and governments. That is why it is so essential for an ICAC to be not only independent but perceived to be independent by everyone—that is, that there is support from both sides.

I am not sure what this other information is that the Hon. Mr Brokenshire has become aware of only today that is causing him to further reflect on the position, but I welcome the fact that he is not rushing to a decision today and that there will be the opportunity for further discussions with him and with any other members in relation to this issue.

There are many examples, and the reality is that it is probably not productive to put some of them into the public arena. I know that the Hon. Mr Wade has indicated that, and I certainly have not so far—and my current intention is not to put them in the public arena either—but the reality is that there are issues which all members ought to be aware of in relation to this. They just support the argument that there should be bipartisan support for the ICAC and the appointments in relation to that.

If, on reflection, the current model can be improved then let us listen to the debate in terms of how it might be improved. If the concern is in relation to the timing, then what are those concerns and are there proposals which might still meet the fundamental principle of independence and perceived independence, yet still allow the ICAC to be up and operational as soon as humanly possible?

Just on that, I support the position put by the Hon. Ms Bressington and supported by the Hon. Mr Wade. I would hope, given the position that the Hon. Mr Brokenshire has indicated, that he is prepared to further reflect on this and that a number of us are in a position to be able to speak to the Hon. Mr Brokenshire and the Hon. Mr Hood—and, indeed, anyone else who is still considering their position on this—to again emphasise the critical importance of this position being independent.

I guess my last point is that the Hon. Mr Brokenshire, having been a minister in a former government, is aware of the critical nature of some of these powerful positions, in particular, in the former government, of the role that was adopted by the then auditor-general in relation to various inquiries. This is obviously going to be much more significant in terms of staffing, resources and potential power in relation to corruption inquiries—as we have seen in other states and jurisdictions—than even the very powerful Auditor-General's role.

As I said, from his time in government the Hon. Mr Brokenshire would be aware of the concerns about various processes in relation to Auditor-General's inquiries. I am sure there will be the same concerns from a number of people about the processes adopted by the ICAC; that will be inevitable in terms of its operation. That is why it is critical that everyone, as we start the ICAC process, should be comfortable and confident that there has been bipartisan support in the first place for the appointment of the person who will be responsible for the operation of the ICAC.

The Hon. K.L. VINCENT: Very briefly, when the debate first began I was inclined to reject the Hon. Ms Bressington's amendment; however, having listened to the debate I am becoming more inclined to support it. I have not yet reached a firm position on this, but I guess for me it comes down to issues of objectivity. While, of course, there are benefits from having both houses of parliament scrutinise this position to ensure that it does have objectivity in terms of who is appointed to it, I also believe that objectivity necessitates a certain distance from parliament if the

ICAC is going to be truly independent of parliament. I have not yet reached a firm position, but at this point I am willing to support the amendment so that we go into deadlock and have more discussion on this very important issue.

The Hon. S.G. WADE: I think the Hon. Kelly Vincent speaks for a number in reflecting the fact that for a number of members it is a balancing act between the need for independence and the need for discretion, and I think it would be fair to say that members are not comfortable with either position: they are not assured that the Bressington amendment will provide enough checks for discretion; on the other hand, they are not comfortable that the government acting alone in appointing a person ensures independence.

I would encourage members in that context to, if you like, do what we often do—that is, put our foot in the door to say to the government that we are serious about discussing this matter. Whether it is in the form of a recommittal, whether it is in the form of a deadlock conference, we have very successfully recrafted bills in recent months and years through both the recommittal and the deadlock conference process. I would urge the committee to support the Hon. Ann Bressington's amendment at this stage, fully anticipating recommittal or a deadlock conference.

We need to ask: is the government's carte blanche appointment of an ICAC commissioner acceptable? I urge the committee to say it is not. The Hon. Ann Bressington's position, in my view, is a better starting point than the government's.

The Hon. G.E. GAGO: Given that the amendment is now going to be put, I just need to make sure that the government's comments are on the record. The appointment of an independent commissioner against corruption by the Governor is consistent with the process for all other state commissioners who are appointed for a limited term. The appointment process suggested by this amendment applies only to the Ombudsman and the Electoral Commissioner, both of whom are appointed until the age of 65. This is an important distinction.

The commissioner is appointed for a term of seven years and cannot serve for longer than 10. The positions are not analogous. The analogous positions are the police commissioner and the DPP, both of whom are appointed under the same process as included in this bill.

The bill makes no secret of the type of person the government hopes to appoint to the role of commissioner. Indeed, one of the government amendments yet to be moved (government amendment No. 5) clearly signals this government's hope to attract a judicial officer to the role. Members will also be aware that clause 9 allows the Governor to apply the Judges' Pensions Act to the commission.

As the Hon. Mark Parnell pointed out, one of our concerns is that this provision could restrict applicants to the role, given that it is likely that they could be in employment while indicating their desire for another position, and that could be quite prejudicial to their current position. In these circumstances, as I said, this appointment process is consistent with all other state commissioners appointed for a limited term and it is for these reasons that the government opposes this amendment.

The committee divided on the amendment:

AYES (12)

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

NOES (7)

Darley, J.A.	Finnigan, B.V.	Gago, G.E. (teller)
Gazzola, J.M.	Hunter, I.K.	Kandelaars, G.A.
Wortley, R.P.		

PAIRS (2)

Lee, J.S.	Zollo, C.

Majority of 5 for the ayes.

Amendment thus carried.

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

Page 13, lines 7 and 8 [clause 7(2)]—Delete 'consecutive terms (including any term as Deputy Commissioner)' and substitute:

terms (including any term as Deputy Commissioner or Acting Commissioner)

The government proposes that the maximum term of appointment, including the position of deputy, be 10 years. This is what the opposition regards as a clarifying amendment, one of a series which tightens the legislation to achieve that goal.

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

Amendment carried.

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

Page 13, after line 15—After subclause (3) insert:

(3a) If a person is a judicial officer immediately before being appointed to be the Commissioner—

(a) the conditions of the appointment should not be less favourable to the person than the conditions of his or her judicial office (when viewed from an overall perspective); and

(b) for the purposes of determining the person's entitlement to recreation leave, sick leave, long service leave or any other kind of leave under this or another act, the appointment may, at the option of the person, be taken to be a continuation of his or her service as a judicial officer.

The purpose of this amendment is to send a very clear signal to judicial officers that, if they are minded to consider an appointment as the independent commissioner against corruption, their current entitlements will not be forgone as a consequence of such an appointment. The calibre of the commissioner is of paramount importance to the successful implementation of this public integrity reform, and we need the best possible person to accept the appointment of commissioner.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 8.

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

Page 14, lines 24 and 25 [clause 8(3)]—Delete 'consecutive terms (including any term as Commissioner)' and substitute:

terms (including any term as Commissioner or Acting Commissioner)

The opposition regards this amendment as consequential on amendment No. 3 [Wade-1].

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

Amendment carried; clause as amended passed.

Clause 9.

The Hon. S.G. WADE: In relation to clause 9, I ask the government: are we talking about a person-specific instrument, that is, one that will be issued for each incumbent?

The Hon. G.E. GAGO: Yes; I have been advised that that is so. It is specific for each appointment.

The Hon. S.G. WADE: Is it possible under clause 9(1) for the Governor's instrument to be used as an inducement to incumbents in terms of the application of the act during their term of service rather than at appointment?

The Hon. G.E. GAGO: The advice I have received is that that is not what this provision tried to do. However, the advice I have received is that it does not necessarily preclude that from occurring but we would need additional advice to check it out, so we are happy to take it on notice.

The Hon. S.G. WADE: I thank the government for indicating that. Considering that the committee has already indicated an interest in the recommittal of an earlier clause, there is time for that. In thanking the minister could I also ask her to consider 92A in the same context? It does raise the risk of a condition being used as leverage on an incumbent, so if the minister could seek advice on both clauses.

The Hon. G.E. GAGO: We will take it on notice.

Clause passed.

New Clause 9A.

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

Page 16, after line 10—After clause 9 insert:

9A—Acting Commissioner

(1) The Governor may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—

(a) no person is for the time being appointed as the Commissioner or the Commissioner is absent from, or unable to discharge, official duties; and

(b) no person is for the time being appointed as the Deputy or the Deputy is absent from, or unable to discharge, official duties.

(2) The terms and conditions of appointment are to be determined by the Governor, except that the person may not act as the Commissioner for more than six months in aggregate in any period of 12 months.

(3) The person appointed to act as the Commissioner is a senior official for the purposes of the Public Sector (Honesty and Accountability) Act 1995.

Could I preface my remarks by indicating to the government that I appreciate that the government is not attracted to using the acting commissioner arrangements as a prelude to an ongoing appointment to the ICAC commissioner, and I assure the committee that that is not the only purpose. It is not hard to think of circumstances in which an acting commissioner might be appropriate: for example, the incumbent might need to deal with a health issue and take a break from service and an acting commissioner might be appropriate. By the same token, there might already be a deputy commissioner in place and the government might be very comfortable in appointing a deputy commissioner as acting commissioner for a period.

I should stress that the opposition does not see this amendment as linked to the process of appointment of a commissioner. The opposition is keen to both facilitate the operation of the ICAC by providing for acting appointments and to ensure that acting appointments are not used to circumvent other aspects of the bill. We have already passed, with government support, a change to clause 7 which made sure that the terms of service, including a deputy commissioner and acting commissioner, are counted in terms of the maximum term. I commend this to the committee and to the government as a management tool that will assist the effective discharge of the roles of the ICAC.

The Hon. G.E. GAGO: The government rises to support this amendment.

New clause inserted.

Clauses 10 to 15 passed.

Clause 16.

The Hon. A. BRESSINGTON: I move:

Page 18, after line 4—After subclause (3) insert:

(4) While a Public Service employee is assigned to the Office, directions given to the employee by the Commissioner prevail over directions given to the employee by the chief executive of the administrative unit of the Public Service in which the employee is employed to the extent of any inconsistency.

In doing that, I also speak to [Bressington-2] 6 as it proposes an identical amendment to the Ombudsman Act 1972. The Office for Public Integrity is to be comprised of public sector employees assigned from an administrative unit likely to be the Attorney-General's Department. This is not an unusual arrangement, with the Ombudsman's office (amongst others) staffed in this way. My office

contacted the Ombudsman (Mr Bingham) to ensure that reliance on secondment of staff had been an effective management tool for his office.

The Ombudsman reported that it has worked well and offers several advantages to his staff, namely, career advancement opportunities. However, he did identify that it had on occasion created a perceived conflict of interest for these employees for, while seconded employees are of course answerable to the Ombudsman, they also remain answerable under the Public Sector Act 2009 to the chief executive of the administrative unit from which they hail.

In the context of the office of public integrity, a conflict of interest could be perceived if the office of public integrity hears an allegation of corruption, misconduct or maladministration relating to the Attorney-General's department. This perceived conflict could, of course, potentially undermine the perceived independence and integrity of the office of public integrity.

To address this, I propose to amend clause 16(3) of the bill to state that directions given by the commissioner to public servants assigned to the office of public integrity prevail over directions given to the employee by the chief executive of the administrative unit of the Public Service in which the employee is employed, to the extent of any inconsistency.

When I conveyed my intention to amend the bill, the Ombudsman saw value in doing so, but stated however that, if it was to be amended for the office of public integrity, the Ombudsman Act 1972 should also rightly be amended, given their similar nature. As such, I have also had an amendment drafted to amend section 12 of the act, which is [Bressington-2] 5, and I urge other members of the council to consider this.

As I have said before, I believe this ICAC bill to be probably one of the most important bills that we will debate in this place. It has been long awaited, and if there are any potential glitches that can be seen now, then I believe those glitches should be dealt with before this ICAC is established and a review process is undertaken some years down the track.

The Hon. G.E. GAGO: The government rises to support this amendment.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 17 passed.

Clause 18.

The Hon. S.G. WADE: In a letter that the Ombudsman sent to me on 26 June 2012, in which he indicated he would also provide a copy to the Attorney-General, he raised a query with respect to clause 18. The letter states:

> The third issue is the requirement under subsection 5 of the Whistleblowers Protection Act 1993 for public officers to whom a whistleblower disclosure is made to refer a disclosure which relates to fraud or corruption to the ACB. It appears to me that this provision effectively duplicates the requirement under clause 18 of the bill for matters involving corruption, misconduct or maladministration to be reported to the Office of Public Integrity. It would be helpful to have some explanation on the public record as to why both obligations need to coexist. Alternatively, it may be that section 5, subsection 5 of the Whistleblowers Protection Act 1993 should be repealed as from the date when the ICAC act commences operation.

I ask the minister: does the government agree that there is a duplication of reporting responsibilities and does the government think that both reporting obligations should coexist?

The Hon. G.E. GAGO: The government has already answered this question, but I am happy to repeat it. I did that at the beginning of the committee stage today. I am advised that it is the intention of ICAC as soon as practicable to review the whistleblower legislation and it was considered appropriate not to amend the reporting provisions in that act at this time.

The Hon. S.G. WADE: Considering the whistleblowers act is scheduled for amendment later, if we, on consideration, differ, we can do that in the schedule stage.

Clause passed.

Clauses 19 to 22 passed.

Clause 23.

The Hon. A. BRESSINGTON: I move:

Page 20, after line 37—After paragraph (c) insert:

(ca) if an allegation against a person has been made public and, in the opinion of the Commissioner following an investigation or consideration of a matter under this Act, the person is not implicated in corruption, misconduct or maladministration in public administration—whether the statement would redress prejudice caused to the reputation of the person as a result of the allegation having been made public;

As I stated in my second reading speech, one of my concerns in establishing an ICAC is the potential for an innocent person's reputation to be irrevocably damaged by being the subject of an ICAC investigation, or even by being associated with an ICAC investigation. While there will be a prohibition on publishing details of an allegation being considered or investigated by the ICAC, the reality is (and some members would be acutely aware of this) that the rumour mill and the interstate press are not suppressed.

To provide a mechanism to restore the reputation of an innocent person, this amendment inserts a new subclause (ca) in clause 23—Public statements, to encourage the commissioner to make a public statement if an allegation against a person has been made public and, in the commissioner's opinion, an investigation has cleared the person of wrongdoing and making the statement would redress the prejudice caused to the reputation of the person caused by the allegation being made public.

Whilst clause 23 already enables the commissioner to make such a statement, the existing subclauses are seemingly encouraging a statement during the course of the investigation which, by necessity, will be circumspect due to no findings having been reached and the potential to adversely affect a potential prosecution. Instead, my amendment focuses the commissioner's attention post investigation on determining whether a public statement should be made to clear a person's reputation if the allegation against them has been made public.

Recognising that this will not always be appropriate, the amendment retains the commissioner's discretion as to whether or not such a statement be made. However, where a person's reputation should be restored, the commissioner should be in no doubt that he or she has the power and the support of this parliament to do so.

The CHAIR: The Hon. Mr Wade.

The Hon. S.G. WADE: Does the government want to go first?

The CHAIR: I have given you the call. I am the boss here, okay. The Hon. Mr Wade.

The Hon. S.G. WADE: Sir, that will be the last time I try to defer to the minister. In fact, I almost have to check myself because I was actually going to stand up and say something nice. What I was going to say was that this amendment is typical of numerous amendments—in the sense that the Hon. Ann Bressington and I have put forward—which have benefited from a sustained discussion with the Attorney-General and his office.

Considering that I was driven to make some criticisms of the government's behaviour earlier in the debate, I thought it was relevant that I might pay tribute to the government in the fact that there was a bit of surprise expressed by some members earlier that there seemed to be a remarkable amount of unanimity on a number of his amendments. Significantly, that is because the government has constructively engaged with members about potential amendments to try to find the commonality.

We found this with the weapons bill, that once we got to deadlock conference we realised that there was actually a fair amount of commonality on the policy. If we sat down and talked about the form of the amendments, with the assistance of parliamentary counsel, the time of this committee could be saved.

So, I thank the officers of the government and the Attorney-General for the hours they have put in dialoguing with both the opposition and other members on the amendments because I can assure you that it has saved many hours of consideration of this committee and, to be frank, the possibility of interminable disagreements between the houses and deadlock conference. We will still have disagreements, I am sure, that may well find themselves in a deadlock conference, but I think that the process of giving South Australia better legislation has been significantly improved by the process that has been adopted in this case.

Referring directly to the Hon. Ann Bressington's amendment, this is one of the amendments that were redrafted through discussion. The opposition supports the amendment because, in our view, consistent with our approach to other crime and corruption bills, we are keen to maximise the protection of the innocent. This amendment ensures that the commissioner can act

to make a statement to indicate that a person is not implicated in corruption, misconduct or maladministration. It is a 'can': it is a discretion; it is in the hands of the commissioner and we consider that the bill is strengthened by this change.

The Hon. R.L. BROKENSHIRE: Family First supports the Hon. Ann Bressington's amendment. We think that it is a sensible amendment. First, allegations should not become public if this bill works properly. I put on the public record that I would hope and trust that they will not become public from the point of view, as I said earlier, of sledging people. I acknowledge that the government has increased the penalties that are prescribed—which I understand the government's amendment is trying to lift and which we support the government on as well—for publishing that an investigation is underway.

You might argue that reasons are hard to foresee as to how this would ever become public, but it is certainly humanly possible. A matter may become public via the rumour mill, Twitter and so on. So, given that it will be important that there is a positive obligation on the commissioner to consider issuing a public statement if a person has been cleared, then we support this.

I note that the wording in it actually says 'should make a statement', so my understanding is that it will not be absolutely mandatory that the commissioner must make it. However, for the purposes of this clause and supporting it (and I understand that the government supports it, too; and for the commissioner to read this at some stage), I would hope that the commissioner would look after and clear those individuals.

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

Amendment carried; clause as amended passed.

Clauses 24 to 26 passed.

Clause 27.

The Hon. R.L. BROKENSHIRE: We do have some amendments regarding public hearings. I put on the public record that I have discussed this clause with the Attorney, and, based on those discussions and some other matters that we will be debating further into the bill and some commitments the Attorney has indicated the government would look at, we will not move those amendments.

Clause 27 passed.

Clauses 28 to 32 passed.

Clause 33.

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

Page 26, lines 41 and 42 [clause 33(3)]—Delete subclause (3)

This amendment was suggested by the Law Society. The Law Society proposes that section 33(2) should be amended to allow the Supreme Court to require the commissioner to give an undertaking as to damages as a consideration of granting an injunction. Injunctions can be financially harmful, and the Supreme Court should have the power in appropriate cases to require an undertaking. I commend the amendment to the council to allow the Supreme Court that discretion.

The Hon. G.E. GAGO: The government supports the amendment.

Amendment carried; clause as amended passed.

Clause 34 passed.

Clause 35.

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

Page 27, lines 11 to 13 [clause 35(1)]—Delete subclause (1) and substitute:

(1) The Commissioner must, before referring a matter to an inquiry agency, take reasonable steps to obtain the views of the agency as to the referral.

The act requires that the ICAC cannot refer a matter to an inquiry agency or a public authority without consulting the agency or authority. In our view this requirement is vague, and whether or not it has been fulfilled may well lead to disputation and unnecessary delay. This amendment proposes that the bill should require the ICAC to merely take reasonable steps (I do not mean

'merely' in terms of dismissing them as light), and if they take reasonable steps they should be assured that they can proceed.

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

Amendment carried.

The Hon. S.G. WADE: I will interpose with another question from the Ombudsman (and I ask the forgiveness of the minister in advance if, like my previous query, it has been answered in her earlier statement). In a letter the Ombudsman sent to me on 26 June 2012, with a copy to the Attorney-General, he raised a query with respect to clause 35(5). I will give two separate excerpts, as follows:

> The second issue is clause 35(5) of the bill, which in effect entitles the commissioner to take over a matter which is under investigation by my office and to exercise the powers of the Ombudsman in relation to that matter. The Attorney-General has stated at a recent forum that I attended that he expects that this power will be very rarely, if ever, used.

Later in the letter, the Ombudsman states:

> Against this background it would be helpful to have a clearer understanding of the circumstances in which the commissioner might seek to exercise the Ombudsman's powers as envisaged by subclause 35(5).

The Hon. G.E. GAGO: The government has answered this question already today. I will answer it again. The short answer is that it remains to be seen. It must be emphasised that there is no intention for this power to be used regularly. The power exists for the rare circumstance when the ICAC may wish to investigate a systemic problem of misconduct or maladministration. The inclusion of this power is not a reflection on the ability of the Ombudsman or his office to carry out their functions.

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

Page 27, after line 34 [clause 35(5)]—After paragraph (e) insert:

> (ea) the Commissioner may, if of the opinion that the conduct the subject of the matter may develop into corruption in public administration, conduct an examination or require a person to produce a document or thing as if the Commissioner were conducting an investigation into corruption in public administration; and

The opposition considers that this bill delivers an ICAC-lite, but rather than seek to recast it into our preferred model we have decided to support the establishment of the ICAC and to promote its evolution over time. The bill has a series of amendments which highlight the different approach of the opposition and the government. There is a series of amendments that highlight that this government is trying to set up an ICAC-lite.

The first such amendment was the Hon. Ann Bressington's amendment to require parliamentary concurrence with the appointment of the commissioner. In my view, this amendment is another key amendment. As I said in my comments on clause 5, this bill proposes a high threshold for corruption in that it focuses the commissioner on criminal conduct in public administration. As I said in my comments on clause 5, that is an exceptionally high threshold and not consistent with the thresholds applied in other ICACs around Australia. It is not consistent with the international definition, and it is not consistent with the Hon. Mr Brokenshire's bill or my leader's bill in relation to an ICAC.

Setting the bar so high means that the scope of the ICAC operation is too narrow and the ICAC is likely to be more reactive rather than having an early detection and prevention focus. Let us remember that the government was reluctant to introduce an ICAC, and this is yet another demonstration of its ongoing reluctance to have a full-blooded ICAC. Whilst the opposition is not proposing to amend the threshold at this stage or to recast the commission, this amendment simply seeks to amend the bill to ensure that the commissioner can use their powers to deal with emerging risks before they become criminal and harder to detect. The government is not oblivious to this risk. In his second reading speech in the other place, the Attorney-General said:

> Despite the primary object of the ICAC being to investigate corruption in public administration, having the authority to act on conduct amounting to maladministration and misconduct is necessary. This is because conduct amounting to maladministration or misconduct may be indicative of an increased risk of corruption or may be evidence of an incipient culture of corruption.

The government's response is to allow the commissioner to stand in the shoes of an integrity agency and take over any matter using the powers of that agency, but one has to ask, 'Why bother?' The integrity agency from which it has taken over the inquiry already has those powers.

We suggest that not only should that 'stand in the shoes' power be available but we also believe that the commissioner should have the capacity, if they are of the view that conduct is at risk of becoming corruption (in other words, to try to prevent misconduct and maladministration becoming corruption) and that the use of their powers is appropriate and necessary to investigate the matter, then they should be able to use their ICAC powers. So, I commend the amendment to the house.

The Hon. G.E. GAGO: I do not have a long contribution. The government rises to oppose this amendment. This amendment is in relation to the ability of the commissioner to step into the shoes of an inquiry agency in the rare circumstance that this action may be necessary. The ability of the commissioner to take this action is constrained by the fact that the commissioner may only use the powers provided to the inquiry agency concerned.

The commissioner is not entitled to use their powers in this capacity because those powers should not be used unless the commissioner is investigating corruption. The opposition's amendment allows the commissioner to use those coercive powers when investigating maladministration or misconduct. The government cannot support that ability. If the commissioner becomes aware of a potential issue of corruption, the commissioner should take an investigation in their capacity as the independent commissioner against corruption.

The line between an investigation about corruption, with all of the coercive powers that this type of investigation permits, and an investigation by the commissioner in the capacity of another inquiry agency should be clearly and distinctly drawn.

The Hon. S.G. WADE: Just by way of clarification; the minister is incorrect to say that this would empower the commissioner to take over any example of misconduct or maladministration. It is only the case if they are of the view that it may develop into corruption.

Amendment negatived; clause as amended passed.

[Sitting suspended from 18:04 to 19:45]

Clause 36.

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

Page 28, lines 21 to 23 [clause 36(1)]—Delete subclause (1) and substitute:

(1) The Commissioner must, before referring a matter to a public authority, take reasonable steps to obtain the views of the authority as to the referral.

I regard this amendment as related to [Wade-1] 7.

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

Amendment carried.

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

Page 28, after line 33—After subclause (3) insert:

(3a) The Commissioner may not give directions to a House of Parliament or the Joint Parliamentary Service Committee in relation to a matter concerning a public officer.

This is ancillary to amendment No. 1, which deals with the issue of parliamentary privilege not being affected by the operation of this legislation.

The Hon. S.G. WADE: As I indicated before, the Liberals support the parliamentary amendments, if you like, and appreciate the government's cooperation in fixing this issue between the houses. I would ask this question of the minister: why is the bar on direction limited to matters related to a matter concerning a public officer? To underscore the point, the concluding words say 'in relation to a matter concerning a public officer'. Is it possible for the commissioner to direct parliament in relation to a public authority or a private citizen involved in a corruption matter?

The Hon. G.E. GAGO: I have been advised that it is the intention of this amendment to preserve the independence of members of parliament so that the commissioner cannot direct members of parliament to do particular things. The commissioner is not concerned with recommendations concerning public authorities and private individuals or citizens, other than in the context of their educative role and review functions.

The Hon. S.G. WADE: Could I indicate to the government that I would like to have further discussions with the government about this and it might be added to the list of further clauses to be considered because I think it is quite conceivable that a commissioner might be tempted to give directions in relation to a public authority even if they are investigating a particular person. For example, a commissioner—

The Hon. G.E. Gago: We are happy to recommit.

The Hon. S.G. WADE: Yes, let me just make the point so you do not have to guess what I am thinking.

The Hon. G.E. Gago: I might change my mind.

The Hon. S.G. WADE: Yes, I will be brief, but it is for the benefit of your officers rather than yourself, minister. It is conceivable, for example, that a commissioner might be looking into the behaviour of a councillor at Burnside council and take the view that a select committee of the Legislative Council looking at Burnside council would be inconvenient, and they may give a direction to the parliament in that respect. I would urge the government to look at a broader set of words. I certainly respect the spirit and the cooperation of the government, but I think this might be an opportunity to enhance the amendment.

Amendment carried; clause as amended passed.

Clause 37 passed.

Clause 38.

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

Page 29, after line 31—After subclause (4) insert:

(5) The Commissioner may not evaluate the practices, policies and procedures of a House of Parliament or a judicial body.

Again, this is ancillary to amendment No. 1.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clauses 39 to 42 passed.

Clause 43.

The Hon. R.L. BROKENSHIRE: I did touch on this a little earlier. Having had discussions with the government, whilst I believe that there is merit in as much transparency as possible, including with respect to public hearings, I understand that the opposition and the government had some concerns over this.

I therefore will not be proceeding with the amendment, but I want to put on the public record that I am advised that the government will intend to ensure that, when it comes to the commissioner for ICAC actually looking at policy matters and possibly reviewing acts, which we will talk about a little bit later with another amendment, those hearings will be public. Based on that, I am prepared to accept the government's word and not proceed further.

The Hon. S.G. WADE: Almost by way of clarification, the member alluded to opposition concerns in relation to a previous amendment the member foreshadowed in relation to clause 27 and did not move. I just would not want the committee or the public to be left with the impression that the opposition in any way supports the compromise that the member is foreshadowing, which is that public hearings are only necessary for public inquiry matters.

We have made it very clear that we do not believe that a blanket ban on public hearings is consistent with a transparent, effective ICAC. No other ICAC in Australia has it. We have indicated that, in government, we will review that aspect and enhance the ICAC to try to give South Australians not the ICAC-lite that this government has offered them but the full-blooded ICAC that they expect and deserve.

Clause passed.

Clause 44.

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

Page 32, lines 32 and 33 [clause 44(1)]—Delete 'to determine whether powers under this Act were exercised in an appropriate manner' and substitute:

of the operations of the Commissioner and the Office

Page 32, after line 34—After subclause (1) insert:

(1a) Without limiting the matters that may be the subject of a review, the person conducting a review—

(a) must consider—

(i) whether the powers under this Act were exercised in an appropriate manner and, in particular, whether undue prejudice to the reputation of any person was caused; and

(ii) whether the practices and procedures of the Commissioner and the Office were effective and efficient; and

(iii) whether the operations made an appreciable difference to the prevention or minimisation of corruption, misconduct and maladministration in public administration; and

(b) may make recommendations as to changes that should be made to the Act or to the practices and procedures of the Commissioner or the Office.

Page 32, after line 39—After subclause (3) insert:

(3a) The report must not include information if publication of the information would constitute an offence against section 54.

The amendment clarifies the review function of the annual reviewer of the operations of the commission and the OPI. The reviewer is an independent person whose function is to consider whether the powers of the commissioner were exercised appropriately and whether OPI and the legislative scheme are operating effectively.

This amendment raises particular matters that the reviewer ought to consider, including whether the commissioner's powers were exercised in an appropriate manner and whether the operations of the ICAC made an appreciable difference to the prevention or minimisation of corruption in public administration. These functions are appropriately placed with the independent reviewer.

The final amendment clarifies that the reviewer may not publish in his or her report any information that would constitute an offence against clause 54 of the bill. This is consistent with the clear policy underpinning this bill, namely, that the commissioner is an investigator and such investigations should be kept confidential until they are part of a prosecution.

The Hon. S.G. WADE: I rise to indicate that the opposition will be supporting this series of amendments. In offering our support we would indicate that we see the expansion of the annual review and the expanded role of the committee as complementary. The government and the opposition, and I am sure all members, share a desire to make sure that appropriate confidentiality is maintained in commissioners' proceedings.

We think that the reviewer with an expanded role complements the work of the committee because having a reviewer with the capacity to access confidential information will allow the committee to consider information that it would not otherwise be able to properly consider. If you like, the reviewer is a filter or a preparatory stage to parliamentary consideration. I would expect that the committee and the reviewer would cooperatively develop their work programs to ensure their activities complement rather than duplicate.

The Hon. R.L. BROKENSHIRE: I have a question for the minister. I understand that this actually confines a review to the commissioner and the Office of Public Integrity. There are amendments about lobbyists and whistleblowing. Whilst I acknowledge that we can debate them down the track, I want clarification as to the degree that matters with respect to the review would be looked at, because I understand that the commission will be reviewing things like the code of practice for lobbyists.

The Hon. G.E. GAGO: I have been advised that what this involves is an annual review of the commissioner by an independent reviewer. The review of the whistleblowers legislation and the lobbyists code of conduct will be conducted by the commissioner under their functions as outlined in section 6, once they are appointed.

Amendment carried; clause as amended passed.

Clause 45.

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

Page 33, line 4—Delete 'Crime and Corruption Policy Review Committee' and substitute:

Crime and Public Integrity Policy Committee

This is the first amendment related to the parliamentary oversight committee. We will have discussion about more details about that committee later but I think it would be fair to say that both the government and the opposition are of the view that the committee should be broadened to include crime and corruption, that it should have a policy focus rather than the reviewing function as we have just considered in relation to the annual review. This is the first of a series of amendments and changes that are made to reflect that expanded role of the committee.

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

Amendment carried; clause as amended passed.

Clauses 46 to 52 passed.

Clause 53.

The Hon. R.L. BROKENSHIRE: I have already highlighted this on a couple of occasions, so I do not think I need to repeat myself and hold up the proceedings. As I said, I put on the public record that we expect with all the reviews—policy reviews, legislation reviews and departmental reviews—that they will be held in public.

Clause passed.

Clause 54.

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

Page 36, line 7 [Clause 54, penalty provision]—Delete the penalty provision and substitute:

Maximum penalty:

(a) in the case of a body corporate—$150,000;

(b) in the case of a natural person—$30,000.

The purpose of this amendment is to insert a penalty for corporations for a breach of the public offence.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried; clause as amended passed.

Clause 55.

The Hon. A. BRESSINGTON: I move:

Page 36, after line 29—After subclause (4) insert:

(4a) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

(4b) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: $10,000.

(4c) Proceedings for an offence against subsection (4b) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

I move this amendment and in doing so speak to [Bressington-2] 7, which proposes an identical amendment to the Whistleblowers Protection Act 1993. As members may be aware, the inadequacy of the whistleblower protection in this state has long been a concern of mine. On too many occasions I have seen the lives of those who have come forward to the benefit of the wider community to expose corruption or wrongdoing destroyed by the insidious recriminations of others.

Whilst I cannot address all of my concerns in amendments to this particular bill, I believe the amendment I propose both significantly advances whistleblower protection and the role of the

ICAC commissioner. As I detailed in my second reading contribution, the amendments I have moved seek to criminalise the victimisation of a whistleblower under section 9 of the Whistleblowers Protection Act 1993 and of those who make a report to or assist the commissioner under clause 55 of the Independent Commissioner Against Corruption Bill 2012.

South Australia is the only state or territory not to hold those who victimise whistleblowers criminally liable. Every other state and territory has recognised that those who victimise whistleblowers who have come forward to the benefit of the wider community harm the interests of the community and not just those on whom they seek their revenge. For example, section 20(1) of the New South Wales Public Interest Disclosures Act 1994 provides:

> A person who takes detrimental action against another person that is substantially in reprisal for the other person making a public interest disclosure is guilty of an offence.

Section 14(1) of the Western Australian Public Interest Disclosure Act 2003 states:

> A person must not take or threaten to take detrimental action against another because anyone has made, or intends to make, a disclosure of public interest information under this act.

Utilising the existing definition of victimisation in section 9(1) of the Whistleblowers Protection Act 1993 and clause 55(1) of the bill in which the necessary elements of what constitutes victimisation are detailed, the offence I propose simply reads:

> A person who personally commits an act of victimisation under this act is guilty of an offence.

Despite suggestions to the contrary, all the necessary elements of an offence are present. By making the victimisation of a whistleblower a criminal offence, the state, either through the commissioner if committed by a public servant or otherwise the police, will assume some responsibility for investigating and proving that a whistleblower has been victimised. Instead, this task currently falls to the whistleblowers themselves.

Additionally, by making victimisation a criminal offence, the commissioner will be able to play an active role in protecting those who speak out. Despite the Independent Commissioner Against Corruption Bill 2012 purporting to protect those who make a complaint or to assist the commissioner, currently the commissioner will be unable to pursue those who seek their revenge and will be forced to simply direct victimised whistleblowers to the courts or the Equal Opportunity Commission for redress. This stands in stark contrast to the extensive protections, powers and offences available to its interstate counterparts.

The amendment also seeks to introduce a part defence to the existing civil action a victimised whistleblower may commence. Essentially, where a whistleblower is seeking to hold an employer vicariously liable for their victimisation, a defence will be available to the employer if they can prove that they exercised all reasonable diligence to ensure that their employees or agents would not commit an act of victimisation.

This is in part recognition that the evidentiary burden borne by a whistleblower would be reduced if they can rely on evidence from a criminal investigation, but mainly it is to encourage employers, particularly state administrative units, to do all they can to protect those who disclose corruption and wrongdoing in their midst and not simply rely on the existence of policies that may or may not be adhered to.

A similar defence in the Equal Opportunity Act, which to my understanding already applies to victimisation proceedings pursued under that act, has been interpreted to require direct action by the employer, and not simply having policies in place—in other words, that world of paper policy that we have all come to know so well. Similarly, an equivalent defence available to the state in Queensland has reportedly been effective in promoting the culture change that I seek and have sought since I came into this place.

Members may be aware that the Attorney-General wrote to me regarding my amendments and expressed his opposition to using this bill to address the deficiencies of whistleblower protection—and I might add he accepts that there are serious deficiencies with that bill—and instead proposed that the independent commissioner against corruption be tasked with reviewing the Whistleblower Protection Act 1993. As members would have seen in my response to the Attorney-General, I do not believe a promise to review the act is adequate justification to delay the progress to the whistleblower protection my amendments represent.

Again, I am hardly proposing that South Australia take the lead here, but rather that it should catch up to every other state and territory and soon the commonwealth. However, I

nonetheless hope the Attorney-General will follow through on his commitment to review the act regardless of whether these amendments pass or not. As I stated, I am unable to address all of the inadequacies of whistleblower protection in this bill, and such a review would hopefully provide the impetus to do so.

I advise members and the government that during the dinner break I had an amendment drafted to have in legislation this promise of a review of the Whistleblower Protection Act. I hope members can see fit to support these amendments. It is plain to me that those who victimise whistleblowers should be held criminally liable by the state for doing so. It is also plain that those who attempt to victimise someone who has made a complaint to, or assisted, the commissioner should also be criminally punished for doing so. I commend the amendment to the committee.

The Hon. S.G. WADE: I rise to indicate that the Liberal opposition will be supporting this amendment in relation to victimisation. I thought it might assist the committee if I highlight some information that came on to the public record in the last couple of months. First, I would like to quote from the Adelaide *Advertiser* on 19 July 2012. Sean Fewster reported:

> South Australians trust the state government less than anyone else in the country—but are the least likely to report corruption, a survey has found.
>
> The Newspoll survey found that just 21 per cent of respondents feel the government keeps 'the right amount' of secrets from the public. Only 42 per cent believe that, were they to become whistleblowers, their claims would be acted on and they would be protected from retribution.

The Newspoll to which Mr Fewster refers provides data which is even more compelling. In relation to the question, 'If I reported some wrongdoing by someone in my organisation, I am confident something appropriate would be done about it'—very much to do with whistleblowers and victimisation—South Australia's agree rate is only 42 per cent. That is 10 per cent below the nearest other state and almost half that of the lead state, Tasmania.

The fact is that these are not just, if you like, theoretical concerns of citizens, rather they are experiences on the ground. I would also draw the committee's attention to the report in *The Australian* on Friday, 13 July 2012. Sarah Martin wrote an article entitled, 'Terrorised whistleblower wants answers', and I quote:

> An eight-month campaign of fear and violence against a South Australian Department of Health manager, including death threats against her children, has forced her to move house 11 times. Her lawyer and doctor have condemned the state government and police response to her case, saying they failed to adequately protect her after she allegedly uncovered fraud in the department.

The story goes on. These are not theoretical concerns: these are real impacts on real people trying to do the right thing. I think this parliament should be very concerned that our citizens do not trust those in authority to the extent that they feel they can report wrongdoing. I commend the Hon. Ann Bressington for putting this clause before the parliament, and the Liberal opposition will be supporting it.

The Hon. G.E. GAGO: The government rises to oppose this amendment. The government does not support this particular proposed change. The government has consulted with the Director of Public Prosecutions and the Commissioner of Police. Both do not support this amendment. Clause 55 of the bill defines 'detriment' as including injury, intimidation or harassment, and threats of reprisals. Acts causing such detriment are already captured by the criminal law.

I refer members particularly to section 248 of the Criminal Law Consolidation Act 1935. This provision provides inter alia an offence for a person to stalk another person on account of anything said or done by that person in the course of assisting a criminal investigation. Stalking includes a wide variety of conduct, including loitering outside a place frequented by the person, sending offensive material to the person or communicating with others about the person in a manner that could reasonably expect to arouse the other person's apprehension or fear.

In addition to the criminal offences, it is an offence in this bill and in the whistleblowers legislation to disclose the identity of a complainant or informant. Clause 11 of schedule 2 provides for an examiner to make arrangements to avoid prejudice to the safety of a person or to protect a person from intimidation or harassment. Acts that do not fall within conduct that is criminalised by the current criminal law are not in the government's, the DPP's and the police's view appropriately dealt with by the Hon. Ms Bressington's amendment. It is for these reasons the government opposes this amendment.

The Hon. M. PARNELL: Looking at the government's bill and the honourable member's amendment, if we stick with what the government has, then we do have a fairly broad definition of detriment which would trigger the victimisation section. However, the main shortcoming that I can see with the government's section as drafted is that there are only two real avenues for a person who could be appallingly treated in their workplace for having disclosed corruption and blown the whistle.

Those two courses of action are either an action in tort—and we know that the civil courts are primarily for the well-to-do or the reckless; bringing an action in tort against an alleged wrongdoer is not something that a person is likely to engage in lightly—or secondly there are the Equal Opportunity Act provisions that can be dealt with as well. The question before us really is: how seriously do we treat the victimisation of people who are discriminated against and who are detrimentally treated as a result of their having, in the public interest, disclosed corruption and wrongdoing?

The Greens' position is that that sort of conduct is serious and is deserving of criminal sanctions, so whilst incorporating it into this bill at this time might be seen as a backdoor method of rewriting the whistleblower protection laws, we do think that it is an appropriate response because the consequences of not taking victimisation seriously is that we end up with the situation that the Hon. Stephen Wade referred to where large numbers of people are not prepared to come forward and disclose wrongdoing that they come across. There are the civil options available; I think they are inadequate and a criminal option, I think, sends the right message about how seriously this parliament takes victimisation.

The Hon. R.L. BROKENSHIRE: Whilst I have indicated that I will speak further to the issue of the whistleblower amendment based on the fact that I understand the government will commit to a full review of the whistleblower act, I just want confirmation from the minister that, from what I think I heard her say, the government's argument is that it is inappropriate as these are often employment matters and maybe the government thinks SafeWork SA would be appropriate. However, based on what I have seen under section 56 regarding bullying and harassment in the public sector act, I think it is wise to actually strengthen the issues around people being victimised in the workplace—or anywhere, for that matter—when they come forward.

A lot of the time this will be from situations in the workplace where they see possible corrupt activities occurring, so I cannot really see that there is actually a problem in just having some strength, given that the government has already identified the victimisation issue. If they did not think there was an issue at all with victimisation, why would they bother to have that part in the act?

They clearly consider there is an issue, but then they are opposing tougher penalties around that as a way of encouraging people not to victimise those who go before the commissioner with a concern. I would not mind some further clarification on that. Particularly, the minister may have said and I could not hear: what is the reason specifically for the police being opposed to having some fairly tough penalties around victimisation?

The Hon. G.E. GAGO: This was the police commissioner's advice to the government. His advice was that he does not support this provision. You would need to discuss those reasons with the police, but they certainly provided us with advice that they do not support this particular amendment.

The Hon. S.G. WADE: Just by way of footnote, could I remind members of the committee that the Hon. Ann Bressington's amendment refers to victimisation generally, not just victimisation of whistleblowers. It may well be that some South Australians who might be victimised in relation to their relationship with ICAC might otherwise be able to rely on the Whistleblowers Protection Act. However, it is quite conceivable that South Australians would engage with ICAC, not be a whistleblower and not be able to access that act. But they still should be entitled to protection. I support the Hon. Ann Bressington's amendment.

The Hon. R.L. BROKENSHIRE: For the record, can I ask whether it was the former commissioner or the current commissioner who gave this advice to government?

The Hon. G.E. GAGO: It was the former commissioner, but the current commissioner has reconfirmed his support for the former commissioner's position in relation to this.

The committee divided on the amendment:

AYES (12)

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

NOES (7)

Darley, J.A.	Finnigan, B.V.	Gago, G.E. (teller)
Gazzola, J.M.	Hunter, I.K.	Kandelaars, G.A.
Wortley, R.P.		

PAIRS (2)

Stephens, T.J. Zollo, C.

Majority of 5 for the ayes.

Amendment thus carried; clause as amended passed.

Clauses 56 and 57 passed.

Clause 58.

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

Page 37, line 31 [Clause 58(2)(a)]—Delete '(other than public officers)'

The purpose of this amendment is to allow for the Governor to make provision for the payment of expenses, including legal costs, that any person may incur by complying with attendance at or producing documents or things to the commissioner, the deputy commissioner, an examiner or investigator. This provides capacity to declare a scheme for payment to public officers of legal costs otherwise not covered, on a similar basis to arrangements for members of the South Australian Public Service.

The Hon. S.G. WADE: I indicate that the opposition will be supporting the amendment but may seek to recommit the clause.

Amendment carried; clause as amended passed.

Clause 59 passed.

Schedule 1.

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

Page 38, lines 17 to 40 [Schedule 1, table, rows 3 to 6 (ignoring header row) relating to the Legislative Council and the House of Assembly]—Delete all words on these lines and substitute:

a Member of the Legislative Council an officer of the Legislative Council a person under the separate control of the President of the Legislative Council	Legislative Council	
a Member of the House of Assembly an officer of the House of Assembly a person under the separate control of the Speaker of the House of Assembly	House of Assembly	
a member of the joint parliamentary service	Joint Parliamentary Service Committee	

This amendment is necessary to preserve the independence of members.

The Hon. S.G. WADE: Members might have guessed that there is no disagreement between the government and the opposition on this, because we have identical amendments filed. I indicate that it reflects what I regard as poor drafting in the original bill. The fact that the

government could think it was appropriate that the Premier would be the designated responsible minister in respect of the Governor, members and officers of the parliament shows a clear misunderstanding of the nature of our constitutional relationships. The issue was raised by the opposition in the House of Assembly. We appreciate the steps taken to put forward a more appropriate set of amendments and we support the amendment that the minister has moved.

Amendment carried.

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

Page 39, after line 34—After the entry relating to the Local Government Association of South Australia insert:

a person who is a member of the governing body of the Local Government Association of South Australia an officer or employee of the Local Government Association of South Australia	the Local Government Association of South Australia	the Minister responsible for the administration of the Local Government Act 1999

This amendment is in response to a request from the Local Government Association. It sets out who the officer, public authority and relevant minister is for the inclusion of the Local Government Association to come under the proposed legislation. The amendment moved in the other place to include the LGA did not identify the officer, public authority and relevant minister in this particular way.

The Hon. S.G. WADE: The amendment that the minister referred to in the other place was done precipitously by the Attorney-General when his lack of consultation with the LGA was brought to the attention of that house. We are glad that the government is putting that behind it and suggesting a credible set of relationships for schedule 1 in relation to the ICAC.

Amendment carried; schedule as amended passed.

Schedule 2 passed.

Schedule 3.

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

Page 53, after line 11—After Schedule 3 Part 3 insert:

Part 3A—Amendment of *City of Adelaide Act 1998*

3A—Repeal of Part 3 Division 3

Part 3 Division 3—Delete the Division

3B—Repeal of Part 3 Division 7

Part 3 Division 7—Delete the Division

3C—Repeal of Schedule 2

Schedule 2—Delete the Schedule

3D—Transitional provision

Following the repeal of Part 3 Division 7 of the *City of Adelaide Act 1998* by clause 3B—

(a) the Register of Interests maintained by the chief executive officer of Adelaide City Council under that Division will be taken to be the Register of Interests the chief executive officer is required to maintain under section 68 of the *Local Government Act 1999*; and

(b) the information entered into that Register before the repeal will be taken to have been furnished in a return submitted pursuant to Chapter 5 Part 4 Division 2 and Schedule 3 of the *Local Government Act 1999*.

The purpose of this amendment is to ensure consistency between councils. The City of Adelaide Act includes provisions for a code of conduct for members and a separate register of interest process. It is important that the obligations of the council members are the same throughout South Australia regardless of the particular council that they represent.

The Hon. S.G. WADE: The opposition has been advised by the City of Adelaide that they support that, and we also support the general policy point the minister just raised. We support the amendment.

Amendment carried.

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

Page 55, after line 13—After clause 8 insert:

8A—Amendment of section 248—Threats or reprisals relating to persons involved in criminal investigation or judicial proceedings

Section 248(4)(a)—Delete 'police with their' and substitute: 'a law enforcement body with its'

Section 248 of the Criminal Consolidation Act is titled 'Threats or reprisals relating to persons involved in criminal investigations or judicial proceedings'. This amendment ensures that persons assisting ICAC with their inquiries will be taken to be involved in a criminal investigation for the purpose of this particular section.

The Hon. S.G. WADE: The opposition supports this amendment.

Amendment carried.

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

Page 56, lines 14 to 16 [Schedule 3, clause 14(1), inserted paragraph (fa)]—Delete paragraph (fa)

It removes reference to the local government indemnity scheme, the purpose of which is to put the LGA scheme on the same basis as comparable government schemes.

The Hon. G.E. GAGO: The government rises to support this amendment. The purpose of this amendment is to make it clear that the LGA is exempt from the Freedom of Information Act together with all units of the LGA including the Mutual Liability Scheme.

Amendment carried.

The Hon. S.G. WADE: I have a question on clause 37. Again it relates to a local government matter. The question that I understand the LGA wants put is in relation to clause 37, in other words, proposed insertion of section 263B Outcome of Ombudsman's Investigations. What action will the Minister for State/Local Government Relations take if a council fails to implement the recommendation of the Ombudsman to impose a penalty on a council member? Further, what action will the minister take if the council imposes a penalty on a member who fails to accept the penalty and then the council fails to prosecute the matter in the District Court?

The Hon. G.E. GAGO: We have actually answered all of those.

The Hon. S.G. WADE: If that is the case—

The Hon. G.E. GAGO: I am pretty sure that these are all on the record.

The Hon. S.G. WADE: Let's not reread them. Did you say they were on the record?

The Hon. G.E. GAGO: They are. If you are still not satisfied with those answers, you can look them up. We have answered them all and it seems to be a waste to repeat them.

The Hon. S.G. WADE: That's fine. I move:

Clause 40, page 65, after line 9 [Schedule 3, clause 40, inserted section 272]—After subsection (3) insert:

(4) The Ombudsman must, at the request of the Minister, provide to the Minister an interim report relating to the investigation, or to any aspect of the investigation specified by the Minister.

(5) The Minister must supply the council with a copy of an interim report and give the council a reasonable opportunity to make submissions to the Minister in relation to the matter unless the Minister considers that providing the report or such an opportunity would be likely to undermine the investigation.

The proposed amendments to sections 272 and 274 involve removing the role of the minister and substituting the Ombudsman to conduct investigations into councils or their subsidiaries. It is proposed to delete section 272 in its entirety and replace it with a new provision that sets out when the Ombudsman is to conduct an investigation into the council and a referral to the Ombudsman may be made on the basis of a report.

Section 274 is proposed to be further amended by requiring the minister before referring the matter to the Ombudsman to give the subsidiary a reasonable opportunity to explain its actions and make submissions unless providing such an opportunity would undermine its investigations. Instead of the minister instigating investigations of a council as well as the Ombudsman, the

minister may refer to the Ombudsman for investigation and report any contravention or failure to comply by council with this or another act.

The opposition's main concern here is that we believe there should be an opportunity for the Ombudsman to make an interim report regarding an investigation under this section. We have consulted with the Ombudsman on this matter and he said that he does not have a problem with this amendment. He has a general obligation to keep complainants informed of the progress of their complaints and this amendment would be consistent with that general obligation.

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

Amendment carried.

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

Clause 43, page 65, after line 28—Before subclause (1) insert:

(a1) Section 3(1), definition of *administrative act*, (d)—after 'Crown' insert:

or an agency to which this Act applies

The purpose of this amendment is to ensure that all agencies under the Ombudsman's jurisdiction are in the same position with regard to acts by legal advisers. One such agency is the Local Government Association's Mutual Liability Scheme. The government recognises the important role of the Mutual Liability Scheme in enabling councillors to meet the obligations to have insurance cover for civil liability claims. The government has no intention for the inclusion of the scheme within the ambit of the Ombudsman's jurisdiction to affect the commerciality of that scheme.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

Page 66, after line 8—After Schedule 3 clause 43 insert:

43A—Amendment of section 12—Officers of Ombudsman

Section 12—after subsection (2) insert:

(2a) While a Public Service employee is assigned to work in the office of the Ombudsman, directions given to the employee by the Ombudsman prevail over directions given to the employee by the chief executive of the administrative unit of the Public Service in which the employee is employed to the extent of any inconsistency.

I consider this to be consequential to [Bressington-2] 2.

Amendment carried.

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

Page 67, after line 35—After Schedule 3 clause 48 insert:

48A—Repeal of section 31

Section 31—delete the section

This amendment seeks to repeal section 31, which deals with reports to the statutory officers, because this role is proposed to be taken by the Parliamentary Oversight Committee.

The Hon. G.E. GAGO: The government supports the amendment.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

Page 67, after line 39—After Schedule 3 clause 49 insert:

49A—Amendment of section 15I—Functions of Committee

Section15I(1)(a)(ii)—after 'that office' insert:

(unless another Committee has the function of inquiring into, considering and reporting on the performance of those functions)

I also consider this amendment to be consequential to [Bressington-2] 1.

The Hon. G.E. GAGO: The government does not accept that the amendment is consequential, but we support it anyway.

The Hon. S.G. WADE: I do have [Wade-1]16, but I do not intend to move it. I prefer the Hon. Ann Bressington's amendment.

Amendment carried.

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

Page 69, after line 24 [Schedule 3, clause 50, inserted section 15Q]—After subsection (1) insert:

(1a) A Minister of the Crown is not eligible for appointment to the Committee.

This amendment is consistent with the membership of other committees.

Amendment carried.

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

Page 68, line 3 to page 69 line 6 [Schedule 3, clause 50, inserted Part 5E]—Delete Part 5E

This amendment proposes to remove the reference to the conduct committee. We consider that the current mechanisms of the parliament to oversee conduct are to be preferred. But, of course, the provisions in the act for the parliament to lay down codes of conduct are retained.

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

Amendment carried.

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

Page 69—

Lines 7 and 8 [Schedule 3, clause 50, inserted Part 5F heading]—Delete 'Crime and Corruption Policy Review Committee' and substitute 'Crime and Public Integrity Policy Committee'

Line 11 [Schedule 3, clause 50, inserted section15P]—Delete '*Crime and Corruption Policy Review Committee*' and substitute *Crime and Public Integrity Policy Committee*

I regard these amendments as consequential to [Wade-1] 10.

Amendments carried

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

Page 69, line 14 [Schedule 3, clause 50, inserted section 15Q(1)]—Delete '7' and substitute '6'

I might try to seek an indication from the government whether it is likely to support this and whether it would like the full comments. Presumably, we are entering this series of amendments with the discussion as to whether it be a House of Assembly committee or a Legislative Council committee.

This amendment seeks to reduce the overall number of members appointed to committees so that, as my consequential amendment proposes, each house of parliament has equal representation. The committees as proposed by the government are proposed to be entirely government dominated. We do not believe that is appropriate in terms of accountability. We certainly do not believe that it is appropriate in the context of a commission which should be independent.

We must be reminded that, under the joint standing orders, the presiding officer has both a deliberative and a casting vote, so government dominance would be unequivocal. This committee will inquire into the reports of government departments and government appointments. As it stands, the government is proposing that Caesar investigate Caesar.

I should stress that the Liberal Party does aspire to be in government sooner rather than later. We are proposing standards that we are prepared to stand by. So often the Premier claims to want better standards to be upheld in this place, yet the government's proposal in this bill falls short. Therefore, the Liberal opposition is proposing that the composition of the committee be changed to comprise three members from each house, and this balance will promote better oversight.

The Hon. G.E. GAGO: The government opposes this amendment. The amendment seeks to reduce the number of members of the committee to six rather than seven. [Wade-1] 17 states that the member removed by this amendment is a member of the House of Assembly. The government was inclined to support this amendment so long as the presiding member of the

committee remained a member of the House of Assembly. This membership structure is consistent with the Environment, Resources and Development Committee. Given that the opposition has indicated its intention to persist with an amendment for the presiding member to be a member of the Legislative Council, the government therefore opposes the amendment.

The Hon. M. PARNELL: Whenever the prestigious Environment, Resources and Development Committee is invoked I struggle with the analogy, given that that committee has been in existence for some 17 years, from memory, and it has never once fulfilled its statutory ability to reject a decision made by the executive arm of government. So, it is almost enough said.

The Greens do support the reduction of members from seven to six; and, whilst it has not been moved yet, we also support the Legislative Council providing the chairperson. If we are looking for analogies, a committee that we have already talked about today, the Statutory Officers Committee, is exactly this structure. It is six people. It is three from each house and the Legislative Council chairs it. I think that it is good enough for that committee, and I think it is good enough for this important policy committee as well.

The Hon. A. BRESSINGTON: I indicate that I will also be supporting this amendment.

The Hon. R.L. BROKENSHIRE: We had an amendment regarding membership as well, which I will not move, because we will be supporting this amendment with a Legislative Council chair.

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

Amendment carried.

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

Clause 50, page 69, line 15 [Schedule 3, clause 50, inserted section 15Q(1)(a)]—Delete '4' and substitute: '3'

I suggest that this amendment is consequential on [Wade-1] 20, which was just passed.

Amendment carried.

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

Clause 50, page 69, lines 27 and 28 [Schedule 3, clause 50, inserted section 15Q(3)]—Delete 'House of Assembly' and substitute: Legislative Council

This amendment would require the presiding officer of the committee to be elected from the appointed members of the Legislative Council. Again, this is about ensuring that the committee is one step removed from the government of the day and can provide effective oversight of the matters within its scope. It is not strictly consequential, but I believe that it is consistent with the decisions already taken by the council to ensure the independence of the committee from the executive.

The Hon. G.E. GAGO: The government opposes this amendment. We have already put our reasons on the record.

The Hon. A. BRESSINGTON: I am supporting the amendment.

The Hon. M. PARNELL: The Greens are supporting.

The Hon. R.L. BROKENSHIRE: I am supporting, sir.

The Hon. J.A. DARLEY: I am supporting this amendment.

Amendment carried.

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

Clause 50, page 69, lines 32 and 33 [Schedule 3, clause 50, inserted section 15Q(3)]—Delete:

'House of Assembly' and substitute 'Legislative Council'

I understand the government regards this as consequential; so do we.

Amendment carried.

The Hon. S.G. WADE: I will not move [Wade-1] 25, but I will move [Wade-2] 1. Therefore, I move:

Clause 50, page 69, line 34 to page 70 line 29 [Schedule 3, clause 50, inserted Part 5F Division 2]—Delete Division 2 and substitute:

Division 2—Functions of Crime and Public Integrity Policy Committee

15R—Functions of Committee

(1) The functions of the Crime and Public Integrity Policy Committee are—

(a) to examine—

(i) each annual and other report laid before both Houses prepared by the Independent Commissioner Against Corruption, the Commissioner of Police, the Ombudsman or the Police Ombudsman; and

(ii) each report on a review under section 44 of the *Independent Commissioner Against Corruption Act 2012*; and

(iii) each report laid before both Houses under the *Police Act 1998*, the *Serious and Organised Crime (Control) Act 2008* or the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; and

(b) to inquire into and consider the operation of—

(i) the *Serious and Organised Crime (Control) Act 2008*; and

(ii) the *Serious and Organised Crime (Unexplained Wealth) Act 2009*; and

(iii) insofar as they are concerned with serious crime, criminal organisations or proceedings under an Act referred to in a preceding subparagraph, the *Bail Act 1985*, the *Controlled Substances Act 1984*, the *Criminal Law (Sentencing) Act 1988*, the *Criminal Law Consolidation Act 1935*, the *Evidence Act 1929*, the *Juries Act 1927*, the *Summary Offences Act 1953* and the *Summary Procedure Act 1921*,

and, in particular—

(iv) how effective those Acts have been in disrupting and restricting the activities of organisations involved in serious crime and protecting members of the public from violence associated with such organisations; and

(v) whether the operation of those Acts has adversely affected persons not involved in serious crime to an unreasonable extent; and

(vi) whether the operation of those Acts has made an appreciable difference to the prevention or minimisation of the activities of organisations involved in serious crime; and

(vii) the effect of the amendments made by the *Statutes Amendment (Serious and Organised Crime) Act 2012*; and

(c) to inquire into and consider the operation of the *Independent Commissioner Against Corruption Act 2012* and, in particular—

(i) the performance of functions and exercise of powers by the Independent Commissioner Against Corruption and the Office for Public Integrity; and

(ii) whether the operation of the Act has made an appreciable difference to the prevention or minimisation of corruption, misconduct or maladministration in public administration; and

(iii) whether the operation of the Act has adversely affected persons not involved in corruption, misconduct or maladministration in public administration to an unreasonable extent; and

(d) to inquire into and consider the performance of functions and exercise of powers by the Ombudsman under the *Ombudsman Act 1972* or any other Act; and

(e) to report to both Houses on any matter of public policy arising out of an examination of a report or an inquiry (including any recommendation for change) as the Committee considers appropriate; and

(f) to perform other functions assigned to the Committee under this or any other Act or by resolution of both Houses.

(2) The Independent Commissioner Against Corruption must not disclose to the Crime and Public Integrity Policy Committee information that identifies, or could tend to identify, a person or body (whether incorporated or unincorporated) who is, or has been, the subject of a complaint, report, assessment, investigation or referral under the *Independent Commissioner Against Corruption Act 2012* or has provided information or other evidence under that Act, unless the information disclosed to the Committee is already a matter of public knowledge.

(3) Nothing in this section authorises the Crime and Public Integrity Policy Committee—

(a) to investigate a matter relating to particular conduct; or

(b) to obtain information classified as criminal intelligence under an Act or information held by a body established for law enforcement purposes the release of which may, in the opinion of a person in charge of a current investigation, prejudice the investigation; or

(c) to reconsider a decision of the Independent Commissioner Against Corruption or any other person or body in relation to a particular matter.

I would appreciate the advice of government as to whether its understanding is the same as mine: I understand that the two sets of amendments are identical except for subsection (3)(b). If that is the shared understanding, I will speak to my amendment. By way of contrast, members may wish to have those two sections handy. The Liberal amendment would ensure that certain policy areas are not off limits to the committee's consideration simply because they have some relation to a matter currently subject to an investigation. The government amendment, in contrast, would prohibit the parliamentary committee from considering any matters that relate to a current investigation.

The key consideration should not be whether a matter is being investigated, but whether considering a particular matter could prejudice an investigation. The Liberal amendment makes this distinction. It would not take long for members of the Legislative Council to think of examples where this might be relevant—perhaps Burnside. The Liberal amendment leaves the decision about the release of information entirely in the hands of the investigator. It is not for some expansionist parliamentary committee chairperson. The investigator is the best-placed person to make such a decision. If it is their decision that provision of the information would prejudice an investigation, then they are under no obligation to provide it.

For example, the government amendment would stop any consideration of local government practices or codes of conduct if they are currently the subject of an investigation. A parallel inquiry by the committee might be entirely justified for other reasons, and indeed even the investigator may see the value in the committee's consideration, but his or her opinion would be irrelevant. The government's provision as drafted would actually forbid them from providing the relevant information to the committee.

I hope the committee sees the extent to which the opposition has worked constructively with the government to protect the legitimate interests of law enforcement agencies. We believe we have done that more than adequately in our amendment. After all, it is completely in the hands of the relevant investigator.

The Hon. G.E. GAGO: The government opposes this amendment. It would allow the investigating officer powers of discretion to release information. The government's position is that it should be the Commissioner of Police who provides that particular authority, and the opposition's amendment obviously does not include what we see as a safeguard.

The Hon. S.G. WADE: The government is opposing it as it stands, but if the commissioner was put in lieu of the investigating officer it would be acceptable to the government, in which case perhaps we could look to a recommittal to achieve that purpose. I certainly do not mind the commissioner having to sign off a local investigator's decision.

The Hon. G.E. GAGO: That has been helpful, and we would be happy to have it recommitted and have further discussions on proposed changes.

The Hon. M. PARNELL: I do not know whether the minister is in a position to answer this, but the question that the Hon. Stephen Wade first posed was whether the government agreed that the only difference between these two sets of amendments was that—

The Hon. G.E. GAGO: Yes.

The Hon. M. PARNELL: Yes; thank you. The Greens' position, notwithstanding that we might have a recommittal, is to prefer the Liberal amendment to the government amendment. The way the government amendment is worded is that any matter that is the subject of a current investigation can effectively be off-limits.

My concern around that clause is that—whilst not directly relevant to this, it is similar—I have a freedom of information application that has been knocked back on the basis that something is a current investigation. It relates to events that are years old, and they just keep the file open as a method of preventing access to the documents.

So, I think the Liberal amendment has the advantage of having that discretion in the hands of the person in charge of the investigation, as to whether information is released or not. Now, whether it is that person or whether it is the police commissioner, at least there is a level of judgement involved. I would hate to think that files could be kept open purely for the purpose of denying access to information.

Amendment carried.

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

Page 71, lines 15 to 17—Delete the clause.

I understand the government is favourably disposed, so I will not speak to it.

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

Amendment carried.

The CHAIR: The Hon. Mr Brokenshire, do you have an amendment to move?

The Hon. R.L. BROKENSHIRE: Sir, I formally move that I will now be withdrawing that amendment, but on the basis that I have an understanding that, in the first year or thereabouts of the commissioner and ICAC being in existence, the government will request that the commissioner investigates the code the government currently has with respect to lobbyists and the like, and that that will be transparently tabled and reported to the house. Therefore, based on my understanding, I will be withdrawing that amendment.

The Hon. S.G. WADE: Sorry, I have a question on that.

The CHAIR: What, the Hon. Mr Brokenshire withdrawing the amendment?

The Hon. S.G. WADE: No. The committee has been informed about a referral to the ICAC commissioner. Minister, on what basis can it be referred to the ICAC commissioner?

The Hon. G.E. GAGO: I have been advised that the commissioner can review legislative schemes, that the commissioner will be asked to review the Public Sector Act with particular focus on whether the code of conduct about lobbyists would improve that particular scheme.

The Hon. S.G. WADE: I actually doubt that that is an appropriate interpretation, because there is currently no legislative scheme in the Public Sector Act for lobbyists. Let us remember that this is not because the government suddenly heard a good suggestion from Family First and thought, 'Hey, let's put in a legislative scheme for lobbyists'; let us remember that the government committed to a code of conduct for lobbyists in legislation. The Attorney-General Mr Rau said it in *The Advertiser* on 29 December 2010, Premier Weatherill said it in a media release on 24 October 2011, and here we have an ICAC with not even a attempt to legislate for lobbyists.

My reading of 6(3) is that the Attorney-General may request the commissioner to review a legislative scheme related to public administration and make recommendations to the Attorney-General for the amendment or repeal of the scheme. It is not referring to a current act, which might potentially be the repository for a scheme. Let us remember that the current lobbyists' code of conduct and register is part of a DPC circular, No. 32.

I suggest that the government might enjoy doing quick deals with crossbenchers to facilitate passage of legislation, but I personally do not think this will achieve what is being suggested.

The CHAIR: There is only a response to a question. We do not have an amendment in front of us at the moment.

The Hon. R.L. BROKENSHIRE: We do not because I have withdrawn it on the understanding—and I am putting it clearly on the public record—that the ICAC commissioner will be reviewing this code of conduct and then tabling transparently the review to the parliament.

The Hon. S.G. WADE: I certainly understand the member's hope, but I do not think that the government can give a commitment to make the referral because I do not think that the legislation authorises it to do so. I am happy to do a recommittal; I am also happy for the member to choose to withdraw his amendments—

The Hon. G.E. Gago interjecting:

The Hon. S.G. WADE: Sorry; before the minister starts heckling, if the member is happy to withdraw on the basis of what I regard as a dubious offer from the government that is his call. I am not insisting on anything; I am not the one who tabled a whole set of amendments relating to lobbying.

The CHAIR: You are attacking the member. You're being attacked.

The Hon. R.L. BROKENSHIRE: I have put it on the public record; we will see what happens.

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

Part 21, page 73, lines 25 to 37—Delete the Part

After further consideration, the government has determined that the ICAC and OPI should not be exempt from the State Records Act 1997, and this amendment addresses that particular issue.

The Hon. S.G. WADE: The opposition supports the amendment.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

Page 74, after line 19—After Schedule 3 clause 68 insert:

68A—Amendment of section 9—Victimisation

Section 9—after subsection (3) insert:

(3a) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.

(3b) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: $10,000.

(3c) Proceedings for an offence against subsection (3b) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

I believe that this is consequential to [Bressington-2] 4.

The Hon. G.E. GAGO: The government accepts it is consequential and, although we opposed the original amendment of the honourable member, we accept that we lost that.

Amendment carried.

The Hon. A. BRESSINGTON: I move:

After line 19—After clause 68 insert:

68A—Insertion of section 13

After section 12 insert:

13—Review of operation of Act

(1) The Attorney-General must, as soon as practicable after the commencement of this section, conduct a review of the operation and effectiveness of this Act.

(2) The Attorney-General, or a person conducting the review on behalf of the Attorney-General, must consult the Independent Commissioner Against Corruption in relation to the review and have regard to any recommendations of the Commissioner for the amendment or repeal of this Act (unless the Commissioner is the person conducting the review).

(3) The Attorney-General must, within 12 months of the commencement of this section, prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

I apologise to members, because this particular amendment was drafted in the dinner break. I do not believe it is a groundbreaking amendment but it will hold the Attorney-General of the day to giving the commitment that there will be a review of the Whistleblowers Protection Act and that the report from the commissioner for amendment or repeal of this act will be laid before the parliament for discussion and debate. Rather than the hope, wish and dream that the Whistleblowers

Protection Act will be amended at some stage, this actually puts a time line on it and, as I said, it commits under this act now to that being undertaken within 12 months and for the commencement of the section after this act has been assented to.

I have done this for two reasons. First, I was not sure that my whistleblower amendments would actually get up, so this was like a fail-safe for that; but also because I recall that when we were debating the Public Sector Act in 2008 the then minister gave a commitment. I moved a number of amendments to the Public Sector Act which included whistleblower protection and it was basically said back then in 2008 that it was inappropriate to have those amendments included in the Public Sector Act. I was given an undertaking by the then minister that a full review of the Whistleblowers Protection Act would be undertaken. That was 2008 and it still has not happened.

The Hon. M. Parnell interjecting:

The Hon. A. BRESSINGTON: Yes. We have had a similar promise made in relation to this ICAC bill and I am not quite as naive as I was in 2008 so I am having it inserted into the legislation; and I hope that members can see the value in supporting this and holding the government to commit and undertake a promise that it has made—for a very deficient bill, I might add.

The Hon. G.E. GAGO: The government rises to oppose this particular amendment but we accept that it is going to be recommitted and there will be further discussion, so my comments are premised around that. The government does accept the intent of this clause, but it is obviously concerned about the timing. The intention was to ask the commissioner to conduct this review within 12 months of their appointment.

The commissioner is the most appropriate person to conduct this review. Given that the appointment of the commissioner is, according to recent amendments, in the hands of the Statutory Officers Committee, if there were some delay in that appointment, it could significantly reduce the time the commissioner would have to conduct a thorough review of the legislation. The government is happy to discuss these time lines further with members. We accept that this clause will be recommitted and further discussions will ensue.

The Hon. S.G. WADE: I appreciate the minister's comments, but the opposition is doubly committed to the Hon. Ann Bressington's wording. Let us not presume that the ICAC commissioner will not have a busy first 12 months anyway. We have been careful in the way that we have drafted our amendments not to direct the commissioner in terms of priorities before it.

Whilst I completely agree with the Hon. Ann Bressington that a review of the Whistleblowers Protection Act is a priority, it may well be that the ICAC commissioner is so busy that the government will need to find somebody else to do the review. I think the Hon. Ann Bressington's amendment is wise in allowing for a person, who may or may not be the ICAC commissioner; that is a matter for the government to speak to the ICAC commissioner about and in the context of other available reviewers.

In terms of the government's time frame, the Hon. Ann Bressington in this parliament has been waiting four years for the government to honour this commitment. I do not think we need any more excuses to push it out even further.

The Hon. M. PARNELL: The Greens will be supporting this amendment. It is hard to think of any two pieces of legislation that do not fit better together than the ICAC Bill and the whistleblowers protection legislation because I would imagine that the vast majority of corruption will not come to light without someone courageous being able to draw attention to it, so I think the link with the Whistleblowers Protection Act is very clear.

The Hon. Ann Bressington says that she was told four years ago that tacking a review of the Whistleblowers Protection Act onto another piece of legislation that related to public servants was inappropriate. I think that she was dudded then, and I think she is keen not to be dudded this time, so I think these two bits of legislation do go hand in glove.

In terms of whether or not the amendments that have already passed this chamber will somehow eat into the 12-month time period for this review, I do not accept that because the way the honourable member has drafted this amendment obliges the Attorney-General, as soon as practicable after the commencement of this section, to conduct the review, and it may well be that the government could postpone the commencement of this particular section. I do not believe that there is a real practical difficulty with the period of time being less than 12 months. I think it is a sensible amendment, and I look forward to its passage.

The Hon. R.L. BROKENSHIRE: I foreshadowed this after the Hon. Ann Bressington had advised me before the dinner break that she had something being drafted, so we support this because we want to see the Whistleblowers Protection Act reviewed. In fairness to this current Attorney-General who I talked to about this, he indicated in principle that he understood and did not have an issue with this.

I do not take people at face value lightly. Clearly, four years ago there was a promise made and it was not delivered, but I would expect better from this Attorney-General because I have actually had an indication from him that he does intend to have the Whistleblowers Protection Act reviewed within the 12-month period or thereabouts.

Amendment carried; schedule as amended passed.

Long title.

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

After 'the *Child Sex Offenders Registration Act 2006*,' insert 'the *City of Adelaide Act 1998*,'

Delete 'the *State Records Act 1997*,'

The Hon. S.G. WADE: We support both amendments.

Amendments carried; long title as amended passed.

Bill reported with amendment.

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 July 2012.)

The Hon. J.M.A. LENSINK (21:21): I rise to make some second reading remarks relating to the bill, which we will be supporting, and note that it is amending the Health Practitioner Regulation National Law (South Australia) Act 2010, which we debated a few years ago and which came into effect on 1 July 2010. I would like to thank the minister's office and officers from the Department for Health for providing a briefing to myself a couple of weeks ago.

My understanding of this legislation is that it is a tidy up of some of those provisions that we passed several years ago, firstly in relation to the regulation of pharmacy premises, which introduced the concept of trusts. This has been reviewed and on review has been found to be too prescriptive and has now been simplified.

There has also been a revision of who may own a pharmacy, such that non-pharmacists have been allowed to own them. It will now be that there will be a requirement to be a pharmacist to own a pharmacy. There will be grandfathering provisions. I think the department estimated that there were five to eight non-pharmacists who will be allowed to continue, and that is of some 10 pharmacies in total. They will not be able to add to their holdings but they can retain, and there is no time limit on that provision.

The other significant change is a standardised time frame for appeals to the tribunal, which is 28 days. I am pleased that there has been some consensus reached on these issues because at the time that we passed this initial legislation we had significant concerns about how things would operate and whether they would operate smoothly.

The final provision within the legislation is the repeal of the Occupational Therapy Practice Act 2005, as occupational therapists entered the NRAS on 1 July 2012. They were one of four professions, including: medical radiation practitioners, Aboriginal and Torres Strait Islander health professionals and Chinese medicine practitioners.

I would like to turn to some lobbying that a number of members may have had from the social work association, known as the Australian Association of Social Workers. They have written to a number of members of this parliament, including myself and our shadow spokesperson, the member for Waite, Mr Martin Hamilton-Smith; indeed, we had a meeting with them. I think they put a very good case that they should be included within the provisions of the health practitioner legislation.

They have undertaken their own survey, and I think a lot of people in our community would be surprised to know that they are actually not covered through any sort of board. They have what

is often described as a negative licensing system such that if they join as formal members of the AASW, they need to abide by a code of practice and keep their CPD requirements up to date and so forth. If there is any sort of breach of those, then the only remedy is to kick them out of the association.

In their submission to us they have made a number of very good points, firstly that there is only one-third of social workers who are members of that association and therefore are covered anyway. One of their greatest arguments is in relation to the vulnerability of their client group, a number of whom work within the health field and fall under the auspices of the health department in some way or another, whether it be through funding or working directly within the health system itself.

I advised the officers when I met with them that I would be raising these issues and seeking a response to the government as to what the current plans are in relation to social work and their inclusion in the health practitioner regulation. It is not something that we can do at a state level, so I would not be seeking to amend this piece of legislation but I think it is a very important issue that needs to be raised, and I look forward to the government's response.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (21:26): I thank all the members for their contributions to this bill. This bill serves three purposes: first of all, to bring South Australia into line with all other jurisdictions in adopting a time frame of 28 days in which appeals against a decision of the national board can be made to a tribunal; to simplify the regulatory processes for pharmacy premises and depots in this state; and to finalise arrangements for the inclusion of the occupational therapy profession in the National Registration and Accreditation Scheme.

I am advised that all stakeholders concerned with these changes have been consulted in the preparation of the bill and are keen for the commencement of these provisions at the earliest possible opportunity. I thank the Hon. Ms Lensink for her questions regarding social workers. I have been advised that there are some health professional associations including that for social work that have approached government officers and some members of the parliament for inclusion in the National Registration and Accreditation Scheme.

The Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions envisaged that other health professionals would be added to the scheme from time to time. The first 10 health professions included in the national scheme that commenced on 1 July 2010 were previously regulated in all jurisdictions. On 1 July 2012 a further four professions were incorporated into the national scheme. These professions were regulated in at least one jurisdiction prior to this time.

I am advised that health ministers have agreed that no other health profession, apart from perhaps paramedics, would be incorporated into the national scheme until 2015. This will allow the scheme to properly establish itself and will also be after the scheduled three-year review of the National Registration and Accreditation Scheme.

I understand that whether a health profession should be subject to statutory regulation has traditionally been assessed against criteria established by the Australian Health Ministers' Advisory Council. The criteria included that it must be demonstrated that a professional practice presents serious risks to public health and safety and that these risks can be minimised by regulation. In addition, regulation must be practical and possible to implement, the existing regulatory and other mechanisms must fail to address the health and safety issues identified, and the benefits to the public of regulation must clearly outweigh the potential negative impact of the regulation.

These criteria were developed in 1995 and there has been some debate on whether they are still sufficiently robust to enable a determination on whether a health profession should be subject to statutory regulation. Options on how to better manage those health professions that are not subjected to statutory regulation are currently under consideration by a committee of the Australia Health Ministers' Advisory Council. I commend the bill to the house.

Bill read a second time.

In committee.

Clause 1.

The Hon. J.M.A. LENSINK: I thank the minister for his response. He was not particularly specific about social workers. I note from what he said that his comments included the words

'serious risk to health and safety' and I would put it to him that social workers can indeed present a very serious risk to the health and safety of their clients, particularly given the context in which they work. They may be people with mental health problems, they might have an intellectual disability, they may have disabilities.

There is a whole range of reasons why this client group, certainly in the child protection area, may be particularly vulnerable. Can the minister comment on that particular issue as to whether he agrees that social work poor practice can be a risk to health and safety; and can he advise when the issue of inclusion of social work was last discussed at the Australian Health Ministers' Advisory Council?

The Hon. R.P. WORTLEY: The issue of social workers has not been discussed at ministerial advisory council level, and the cost of regulation is very high. That is not to say that they will not be discussed in the future, but at the moment they have not been discussed.

The Hon. J.M.A. LENSINK: Are there any plans to put that on the agenda for discussion?

The Hon. R.P. WORTLEY: Yes, there are, and there have been discussions with the association.

Clause passed.

Remaining clauses (2 to 19), schedule and title passed.

Bill reported without amendment.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (21:33): I move:

That the bill be now read a third time.

Bill read a third time and passed.

NATIONAL HEALTH FUNDING POOL ADMINISTRATION (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 17 July 2012)

The Hon. J.M.A. LENSINK (21:34): I rise to make a few brief remarks in relation to this bill which I understand has been the subject of much negotiation at COAG and which is based on agreements which have been reached at that level, and I congratulate the officers for having achieved agreement between commonwealth and all jurisdictions which cannot be an easy thing.

This particular legislation was introduced into the House of Assembly in May. It gives effect to financial management and reporting mechanisms which have been agreed to and commits federal and state governments to a model known as activity-based funding rather than block funding and special-purpose payments. Again, I would like to place on the record my appreciation to the minister's office and to the officers of his department for the comprehensive briefing that they provided to me. I understand that this form of funding is similar to what South Australia has in the past known as case-mix.

The commonwealth has agreed in principle to fund half of all future growth in health funding and establish a national pool which will fund each state. Our health spokesperson, the member for Waite, Mr Martin Hamilton-Smith, has advised that under the current model the commonwealth's share of health funding has been in decline. I think it is important that this point is made, because health is one of those areas that has an inflation factor which is certainly well above CPI. I think it might be in the order of 11 per cent these days, particularly as our population ages, so obtaining a greater proportion of commonwealth funding to be able to fund our hospitals into the future will be very important.

This government anticipates that the current level of commonwealth funding of 40 per cent will increase to 45 per cent by 2014-15 and to 50 per cent by 2017-18. There will be a new health administration structure which will be required to administer the pooled funding, and that will be an administrator who is an independent statutory officeholder. The position must be agreed by all ministers and separately appointed, which may be an interesting exercise.

The role of the administrator will be to calculate the amount of commonwealth funding into the state pool account and to make payments to local hospital networks in accordance with service agreements. The state pool account and the state managed funds consist of block funding and

teaching and training funds. So, overall, there is to be greater transparency of funding and service agreements, with the administrator auditing activity. There will be no penalties to states until 1 July 2014.

I understand that the first stage in terms of determining activity funding will be acute in-patients, emergency departments and outpatient departments, which are known as eligible non-admitted, as these are the ones that are easiest to calculate in terms of a per service fee. Block funding will continue at that stage and all activity-based funding goes into that pool. I welcome these revised arrangements and look forward to the committee stage of the debate.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (21:38): I would like to thank the Hon. Ms Lensink for her contribution to this bill. This bill is technical in detail, giving effect to those clauses agreed by the Council of Australian Governments National Health Reform Agreement on 2 August 2011. The essence of the agreement, and hence this bill, is to ensure that the commonwealth and state governments work in partnership to ensure the financial sustainability of the public hospital system.

The funding arrangements as outlined in this bill will provide for greater transparency and accountability on how public hospitals are funded and managed. Information on the services provided by each local hospital network and the money allocated by the commonwealth and state governments for public hospital services and the amounts spent will be publicly available.

I acknowledge there have been some concerns raised about the plethora of national bodies that have been established under the National Health Reform Agreement and how they will interact. As the minister in the other place stated, this legislation forms part of a very complex process of reform. The agreement and these bodies are the result of all parties wishing to ensure that their interests are protected. How the arrangements under the agreement will play out will become clearer over the next couple of years as the transition is made to activity-based funding.

I would like to reiterate again that the cost of establishing these national bodies and that ongoing cost will be met by the commonwealth government. In using the existing health services regions (renaming them as local health networks) and existing Department of Health and Ageing staff for reporting and the administration of accounts, the government has ensured that health funding continues to be used for service delivery and not setting up bureaucracies. I commend the bill to the chamber.

Bill read a second time.

Bill taken through committee without amendment.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (21:42): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (BUDGET 2012) BILL

The House of Assembly agreed to amendment No.1 made by the Legislative Council without any amendment and disagreed to amendment No.2.

CRIMINAL LAW (SENTENCING) (SUPERGRASS) AMENDMENT BILL

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

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) (21:44): I move:

That this bill be now read a second time.

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

Leave granted.

The acute problem posed to our community by organised criminal gangs cannot be exaggerated. Gangs of this kind are involved in many criminal activities such as the manufacture and trafficking of illicit drugs and the all too common and indiscriminate use of violence and firearms to resolve their internal disputes and to enforce their criminal will. Such activities are intolerable in any civilised and law abiding society. The Government remains determined, despite the recent blocking by the Legislative Council of the *Criminal Law (Sentencing) (Sentencing Considerations) Bill 2011*, to continue its ongoing efforts against the organised criminal gangs involved in serious

crime. These criminal gangs consider that they are above the reach of the law and conventional law enforcement is often ineffectual in dealing with them because of the strong fears that their thuggery engenders and the resulting unwillingness of many witnesses to testify or assist the authorities in the investigation and prosecution of such criminals. This Bill is an integral part of the comprehensive series of linked measures that the Government is taking to help tackle the very real problems posed by organised criminal gangs involved in serious crime. The Bill, in particular, supports and complements the operation of the *Statutes Amendment (Serious and Organised Crime) Act 2012*. The Bill reintroduces part of the *Criminal Law (Sentencing) (Sentencing Considerations) Bill 2011*.

The present Bill is intended to challenge any notion of 'honour amongst thieves'. The Bill confers the power on a court grant an 'at large' discount in sentence to an offender in return for that offender's valuable co-operation with the authorities. The Bill encourages offenders involved in serious and organised crime to turn on their criminal associates and to assist the authorities in the investigation and prosecution of other offenders and/or other crimes. Such offenders are often known as 'supergrasses'. Such co-operation can, and in fact does, play an important role in combating crime, especially in bringing to justice the leaders of organised gangs involved in serious crime.

The policy of the Bill is deliberate and is not something revolutionary. For many years the courts have sought through substantial reductions in sentence where appropriate to discourage the notion of 'honour amongst thieves' (see *R v Golding* (1980) 24 SASR 161) and to encourage offenders to assist the authorities, especially in serious and organised crime. 'It would be to close one's eyes to reality', as Justices Deane and McHugh of the High Court observed in 1985 in *R v Malvaso* ((1985) 168 CLR 227, 239):

'to fail to recognize that in areas of organized crime in this country, particularly in relation to drug offences, the difficulties of obtaining admissible evidence are such that it is imperative, in the public interest, that there be a general perception that the courts will extend a degree of leniency, which would otherwise be quite unjustified, to those who assist in the exposure and prosecution of corrupt officials and hidden organizers and financiers by the provision of significant and reliable evidence…Any person who provides genuine information to the authorities about the workings of organized crime exposes himself to the danger of retributive violence. That danger can be aggravated within a prison environment.'

These observations are as telling now as they were 25 years ago. To successfully prosecute the pivotal figures involved in serious and organised crime, there is a very real need to encourage individuals who may very well be criminals themselves to help the authorities.

The President of the Queen's Bench Division in England in R v P [2007] EWCA Crim 2290 at [22] explained in strong terms, which are equally applicable to Australia (see R v Cartwright (1989) 17 NSWLR 243, 252), the strong public interest in favour of encouraging offenders to come forward and co-operate fully with the authorities, especially to the 'Mr Bigs' of the underworld:

> *'There has never been, and never will be, much enthusiasm about a process by which criminals receive lower sentences than they otherwise would deserve because they have informed on or given evidence against those who participated in the same or linked crimes, or in relation to crimes in which they had no personal involvement, but about which they had provided useful information to the investigating authorities. However, like the process which provides for a reduced sentence following a guilty plea, this is a longstanding and entirely pragmatic convention. The stark reality is that without it major criminals who should be convicted and sentenced for offences of the utmost seriousness might, and in many cases, certainly would escape justice. Moreover, the very existence of this process, and the risk that an individual for his own selfish motives may provide incriminating evidence, provides something of a check against the belief, deliberately fostered to increase their power, that gangs of criminals, and in particular the leaders of such gangs are untouchable and beyond the reach of justice. The greatest disincentive to the provision of assistance to the authorities is an understandable fear of consequent reprisals. Those who do assist the prosecution are liable to violent ill-treatment by fellow prisoners generally, but quite apart from the inevitable pressures on them while they are serving their sentences, the stark reality is that who betray major criminals face torture and execution. The solitary incentive to encourage co-operation is provided by a reduced sentence, and the common law and now statute, have accepted that this is a price worth paying to achieve the overwhelming and recurring public interest that major criminals, in particular, should be caught and prosecuted to conviction.'*

The Bill builds on and promotes this important policy. It sends a strong signal to criminals involved in serious and organised crime to assist the authorities. The Bill does not cover normal or routine co-operation and is confined to exceptional co-operation or undertakings of exceptional co-operation given prior to sentence. The Bill duplicates the procedure in the *Statutes Amendment (Serious and Organised Crime) Act 2012*, supported by the Opposition, which allows an offender who has already been sentenced to be resentenced for exceptional co-operation in the context of serious and organised crime.

The Bill is not, as some have claimed, a 'get out of jail free' card for offenders who will somehow escape unpunished if they co-operate with the authorities. This is simply not the case. Offenders who provide exceptional co-operation to the authorities in the investigation and prosecution of serious and organised crime will still receive what the court regards in the particular case as the appropriate punishment balancing the nature and gravity of the crime that they have committed with the benefit and nature of their co-operation with the authorities. It is worthy of note that, should the authorities wish to allow an offender to escape unpunished in return for assisting the authorities, the Director of Public Prosecutions already has a power to grant a complete indemnity from prosecution in return for helping the authorities. The procedure in the Bill of allowing the court the discretion to grant an appropriate discount in sentence for exceptional co-operation is preferable to the offender been granted a complete indemnity from prosecution.

The *Statutes Amendment (Serious and Organised Crime) Act 2012* introduces a new procedure to allow offenders who have already been sentenced to seek re-sentence after their exceptional co-operation. The court on re-sentence may reduce their sentence by an 'at large' figure on account of their exceptional co-operation. It would be anomalous to have the statutory scheme in the *Statutes Amendment (Serious and Organised Crime) Act 2012* for sentencing supergrasses who have provided exceptional cooperation after sentence but to leave it to the common law to regulate exceptional co-operation by a supergrass before sentence. The law, out of consistency, should provide the same procedure for the sentencing of supergrasses who have co-operated with the authorities, whether such co-operation was extended before or after sentence. It is very difficult to see how one can logically oppose this procedure for exceptional co-operation before sentence but support it in respect of exceptional co-operation after sentence.

The Bill is confined to discounts for 'exceptional' co-operation in the context of serious and organised crime by what can be termed as 'supergrasses'. It will arise in only narrow and specific circumstances. The Bill draws on the definition of serious and organised crime in *Statutes Amendment (Serious and Organised Crime) Act 2012*.The Bill does not apply to co-operation with the authorities that can be regarded as routine, normal or standard.

The Bill is intended to cover the field for the discount to be conferred upon a supergrass for both co-operation with the authorities and a plea of guilty, if there is one. If the supergrass pleads guilty, the discount will cover both the plea of guilty and the co-operation. If the supergrass pleads not guilty and is convicted, the discount will cover only the co-operation. Other mitigating factors such as normal co-operation do not fall within the Bill and will be left to the common law and s 10 of the *Criminal Law(Sentencing) Act 1988* to regulate. The common law provides an existing range of about 20-40 or 50% for co-operation with the authorities. The Bill will allow a court to go beyond this to those offenders who will fall within the category of a true supergrass.

The Bill applies to supergrasses who have provided exceptional co-operation, whether they pleaded guilty or were convicted at trial. In practice, however, it is expected that most supergrasses who will fall within the Bill will have pleaded guilty to the offences that they face. It is inappropriate to fetter the court's discretion and confine the Bill to only those offenders who plead guilty. It may be appropriate in rare circumstances for a court to confer a discount under the Bill upon a supergrass who provides exceptional co-operation but did not plead guilty. However, there is a world of difference between a cynical supergrass who pleads not guilty and only agrees to act as a supergrass and help the authorities after he or she has been convicted at trial and realises that he or she now has nothing to lose with the frank supergrass who pleads guilty at an early stage and fully co-operates with the authorities from the earliest possible opportunity. There are real benefits in an early and timely plea of guilty. In deciding whether to grant an 'at large' discount, the court must have regard, amongst other factors, to whether the defendant pleaded guilty, and the timing and circumstances of any guilty plea.

The 'at large' discount in sentence for co-operation must reflect circumstances which are truly exceptional. The court, in its discretion, must have regard to the nature of the case, the value and benefit of the co-operation and/or the testimony, the nature and degree of the risk to the defendant and his or her family and the potential violent and other consequences to him or her in prison and any plea of guilty and the timing and circumstances of such a plea. In brief, the overall circumstances of the case must be such as to justify a departure in the public interest from the ordinary common law discount for normal co-operation of 20 to 50%.

The Bill has been the subject of much thought. It is designed to be narrow in its scope and application. The Bill is confined to offenders who give valuable information and assistance in the investigation and prosecution of serious and organised crime. These will be persons who, at considerable risk to themselves and their families, have provided valuable assistance to the authorities, generally through testifying, that has enabled major criminals involved in crimes of the utmost gravity to be brought to justice. It is likely that, without the assistance of these persons, these criminals would not have been able to be brought to justice. The Bill is designed to encourage exceptional co-operation from those involved in, or with knowledge of, serious and organised crime. It is necessary that there is a clear distinction between the supergrass who provides valuable and exceptional co-operation to the authorities in the context of serious and organised crime as defined in the Bill, and the offender, who in contrast provides merely standard or normal co-operation. In the former case, it may be appropriate for the court to exceed the normal common law range of 20-50% reduction in sentence for co-operation. In the later case, it would be inappropriate for the offender to receive excessive and unjustifiable discounts in sentence in return for such standard or normal co-operation. Hence the vital distinction in the Bill between 'normal' co-operation where the common law continues to apply and 'exceptional' co-operation where the possible discount is at large and could not exceed the normal range at common law of 20-40 or 50%.

The Bill includes a specific provision allowing an offender to be re-sentenced if he or she promises to co-operate with the authorities and is sentenced on that basis but later fails to satisfactorily honour his or her side of the arrangement. He or she should be re-sentenced but on the basis of the sentence that they would have received but for the original deduction for the promise of co-operation with the authorities.

If the defendant has pleaded guilty and falls within the definition of exceptional co-operation under the Bill, he or she should not receive one discount for the plea of guilty and another for the exceptional co-operation and then both amounts are arbitrarily combined together to produce one aggregate discount. Such an approach is artificial, and could lead to excessive discounts in practice. When such a combination of a plea of guilty and exceptional co-operation exists, it should not be the practice to attempt to identify a specific reduction for each of the factors. There should be no attempt to isolate a reduction for the fact of the plea and a separate reduction for assistance to authorities. Rather, the preferred approach is confer one discount that reflects both the plea of guilty and the co-operation with the authorities. This accords with the views expressed by the Court of Criminal Appeal in *DPP (Commonwealth) v AB* [2006] SASC 84.

It is not intended that the Bill will affect the general way in which the criminal courts go about formulating the correct sentence applicable in any given case and, apart from exceptional co-operation and any guilty plea, does not undermine the principle of 'instinctive synthesis' that the High Court favours.

The Bill serves an important purpose in the Government's ongoing integrated efforts against serious and organised crime.

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 *Criminal Law (Sentencing) Act 1988*

4—Insertion of section 10A

The following section is to be inserted after section 10 of the principal Act.

10A—Reduction of sentences for cooperation etc with law enforcement agency

New section 10A provides that a court may declare a defendant to be a defendant to whom this new section applies if satisfied that the defendant has cooperated or undertaken to cooperate with a law enforcement agency and the cooperation—

- relates directly to combating serious and organised criminal activity; and
- is provided in exceptional circumstances; and
- contributes significantly to the public interest.

In determining sentence for an offence or offences to which a defendant has pleaded guilty or in respect of which a defendant has been found guilty, the court may, if the defendant is the subject of such a declaration, reduce the sentence that it would otherwise have imposed by such percentage as the court thinks appropriate in the circumstances.

In determining the percentage by which a sentence is to be reduced under this section, the court must have regard to such of the following as may be relevant:

- if the defendant has pleaded guilty to the offence or offences—that fact and the circumstances of the plea;
- the nature and extent of the defendant's cooperation or undertaking;
- the timeliness of the cooperation or undertaking;
- the truthfulness, completeness and reliability of any information or evidence provided by the defendant;
- the evaluation (if any) by the authorities of the significance and usefulness of the defendant's cooperation or undertaking;
- any benefit that the defendant has gained or is likely to gain by reason of the cooperation or undertaking;
- the degree to which the safety of the defendant (or some other person) has been put at risk of violent retribution as a result of the defendant's cooperation or undertaking;
- whether the cooperation or undertaking concerns an offence for which the defendant is being sentenced or some other offence, whether related or unrelated (and, if related, whether the offence forms part of a criminal enterprise);
- whether, as a consequence of the defendant's cooperation or undertaking, the defendant would be likely to suffer violent retribution while serving any term of imprisonment, or be compelled to serve any such term in particularly severe conditions;
- the nature of any steps that would be likely to be necessary to protect the defendant on his or her release from prison;
- the likelihood that the defendant will commit further offences,

and may have regard to any other factor or principle the court thinks relevant.

Nothing in this new section affects the operation of sections 15, 16 and 17.

Serious and organised criminal activity is defined for the purposes of this new section to include any activity that may constitute a serious and organised crime offence within the meaning of the *Criminal Law Consolidation Act 1935*.

5—Substitution of heading to Part 2 Division 6

The proposed new heading is 'Re-sentencing'.

6—Insertion of section 29DA

This new section is proposed to be inserted immediately following the heading to Part 2 Division 6.

29DA—Re-sentencing for failure to cooperate in accordance with undertaking under section 10A

Proposed section 29DA applies if—

(a) a person is currently serving a sentence of imprisonment for an offence or offences that was reduced by the sentencing court under section 10A (the *relevant sentence*); and

(b) the person has failed to cooperate with a law enforcement agency in accordance with the terms of an undertaking given by the person under that section.

The Director of Public Prosecutions may, with the permission of the court that imposed the relevant sentence on the person, apply to the court to have the sentence quashed and a new sentence imposed, taking into account the person's failure to cooperate with the law enforcement agency in accordance with the terms of an undertaking given by the person under section 10A.

The Director of Public Prosecutions, the chief officer of the law enforcement agency and the person will be parties to the proceedings on the application.

Nothing in this proposed section authorises a court to impose a new sentence that would exceed the sentence that would, but for the reduction given under section 10A, have been imposed by the sentencing court under that section.

Schedule 1—Transitional provision

1—Transitional provision

This clause makes it clear that the *Criminal Law (Sentencing) Act 1988*, as amended by this measure, applies in relation to proceedings relating to an offence instituted after the commencement of this measure, regardless of when the offence occurred.

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

CRIMINAL LAW (SENTENCING) (GUILTY PLEAS) AMENDMENT BILL

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

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) (21:45): I move:

That this bill be now read a second time.

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

Leave granted.

The *Criminal Law (Sentencing) (Guilty Pleas) Bill 2012* regulates and makes transparent the sentencing discounts given to offenders who plead guilty. The main objective of the Bill is to improve the operation and effectiveness of the criminal justice system by reducing current delays and backlogs in cases coming to trial. It encourages offenders who are minded to plead guilty, to do so in a timely way. A secondary objective of the Bill is to tidy up the operation of section 10 of the *Criminal Law (Sentencing) Act 1988*.

The Bill identifies 3 pivotal stages in major indictable cases which are the core around which provision for discount for guilty pleas can be made. The Bill provides for a modified and simplified 2 stage process for matters dealt with summarily, to reflect the different nature of the typical summary case and operational considerations in the Magistrates Court.

The Bill provides for a graduated series of discounts for pleas of guilty. The quantum of the discounts are dependent on the timing and circumstances of the guilty plea. The earlier the plea, the higher the discount. The Bill restricts the conferral of discounts for late guilty pleas but it permits adequate discretion to a court to ensure that defendants who may plead guilty at a late stage through no fault on their part or for some good reason are not unfairly prejudiced. Any perception that the Bill will allow offenders to escape their 'just deserts' and appropriate punishment by pleading guilty is mistaken.

The figures for the discounts in the Bill are not intended to be overly rigid or mechanically applied. They merely provide the upper limit at which a discount for a guilty plea can be set. Though there may be debate as to what should be the precise upper limits, the figures in the Bill are not overly generous. They are consistent with existing sentencing practice. What the Bill achieves is the codification of the rule that the earlier the guilty plea, the greater the discount. It places some limits on the freedom of the courts in providing discounts in sentencing.

The Bill is not radical or revolutionary. Its major effect is to make transparent and regulate what already happens or, at least, what should be happening, in the State's criminal courts on a daily basis. There has been strong support in both Australia and overseas amongst law reform agencies, judges, academics and legal practitioners for a statutory scheme to encourage early guilty pleas and regulate discounts for guilty pleas. Such a reform helps tackle delay and thus assists all parties in the criminal justice process, especially victims and witnesses.

The Bill is taken from the *Criminal Law (Sentencing) (Sentencing Considerations) Bill 2011* (the *Sentencing Considerations Bill*). It was unfortunate that the Sentencing Considerations Bill was defeated in the Legislative Council in March 2012. There appeared to be no consistent or coherent theme to the opposition to the Bill; a Bill which had resulted from major and considered reform, drawing on the work and input of many sources and interested parties. The Sentencing Considerations Bill provided for a comprehensive legislative framework for the provision of sentencing discounts for pleading guilty and/or cooperating with the authorities (both for normal cooperation and exceptional cooperation in the context of serious and organised crime) and also tidied up and clarified aspects of the operation of section 10 of the *Criminal Law (Sentencing) Act 1988*. The subject matter of the Sentencing Considerations Bill is simply too important and beneficial to be left unaddressed following its defeat in the Legislative Council and the Government remains resolved to proceed with the reforms with appropriate changes.

The original Bill has been split into 2 new Bills. Exceptional cooperation in relation to serious and organised crime is the subject of the *Criminal Law (Sentencing) (Supergrass) Bill 2012* now before Parliament. The guilty pleas portion of the Sentencing Considerations Bill is covered in the present Bill. Both the *Criminal Law (Sentencing) (Supergrass) Bill 2012* and the *Criminal Law (Sentencing) (Guilty Pleas) Amendment Bill 2012* (the *present Bill*) are intended to be complementary in operation.

The present Bill is quite different from the original version that was first introduced in 2011. The present Bill includes the Government Amendments to the original Bill that were unsuccessfully moved in the Legislative Council. These changes are designed to clarify aspects of the Bill's intended operation and, in particular, to make it clear that the Bill is not to prejudice defendants who through no fault on their part enter a late plea of guilty. Any discount for normal cooperation is for future consideration and has been left out of the Bill in light of the major practical problems that it gives rise to.

The 2011 Bill was carefully drafted to promote the Government's policy to encourage early guilty pleas but not so as to prejudice or disadvantage offenders whose delay in pleading guilty was due to unforseen circumstances beyond their control. Both the 2011 Bill and the present Bill contain a general exemption allowing any court to confer a discount of up to 30% for a late plea of guilty if the guilty plea is entered at the first practicable opportunity and the reason for the delay is beyond the control of the defendant. It was considered that this provision was adequate to protect the position of the defendant who pleaded guilty late in the proceedings through no fault of his or her own. However, to dispel any lingering concerns, the present Bill puts the situation beyond any doubt and there is now further specific provision to allow a discount in sentence in certain circumstances for a late plea of guilty if good reason exists for the delay in pleading guilty. The Law Society accepts that, with these changes, the main concerns that it previously expressed about the Bill are now removed.

The present Bill represents a sensible and balanced model. Furthermore, contrary to some assertions, the present Bill should not result in the granting of unduly lenient sentences for offenders through excessive discounts. The figures for the maximum discounts in the Bill for a guilty plea are consistent with existing common law guidelines. Indeed, by preventing a court in the absence of some good reason from treating a belated guilty plea on the doors of trial in the same way as a prompt and early guilty plea, the Bill will help prevent the granting of excessive and undeserved discounts for late pleas of guilty.

A great deal of effort and preparation going over several years has gone into the Bill. The Opposition's approach has been unhelpful and obstructive. It is a bit rich of the Opposition to talk about alleviating the pressures on the criminal justice system and helping victims when all it does is seemingly oppose anything concrete that the Government comes up with. Whenever the Government makes a move to legislate to try and improve the effectiveness of the criminal courts, to tackle delays and assist victims and witnesses, maximise the use of prosecutors' time and minimise the amount of time defendants have to frustrate the system, the Opposition comes up with new arguments to oppose whatever the Government is proposing to do.

Background

The Bill draws on recommendations made by His Honour Judge Rice of the District Court several years ago and, later, the Criminal Justice Ministerial Taskforce (CJMT). At the relevant time, the Criminal Justice Ministerial Taskforce was chaired by the then Solicitor-General (now Chief Justice) Chris Kourakis QC and comprised the Commissioner for Victims Rights and representatives from the State and Commonwealth Offices of the Directors of Public Prosecutions, South Australian Police, the Law Society, the Bar Association, the Legal Services Commission, Aboriginal Legal Rights Movement, the Department of Treasury and Finance and the Attorney-General's Department. The Courts Administration Authority was represented in an observer capacity.

In its first report, the CJMT highlighted the need to reform and rationalise the recognition to be given to offenders for guilty pleas. Amongst its recommendations was the introduction of a graduated series of sentence discounts to offer incentives for defendants to plead guilty at an early stage and to discourage delays in pleading guilty.

The original Bill was the subject of an exhaustive consultation process with many expert commentators. The draft original Bill was placed on the Attorney-General's Department website and public comment was invited. The final version of the original Bill was the subject of further comment by the heads of the judiciary and the Joint Courts Criminal Legislation Committee. The original draft Bill was sent for comment to a range of interested parties. Comment was received from the then Chief Justice, the Joint Courts Criminal Legislation Committee the Chief

Judge, the Chief Magistrate, the Senior Judge of the Industrial Court, the Senior Judge of the Environment, Resources and Development Court, the Senior Judge of the Youth Court, the Law Society, the State DPP, the Commonwealth DPP, the Legal Services Commission, the Victim Support Service, Prisoners Advocacy, the Commissioner for Victims' Rights, the Police Commissioner, the Bar Association and Volunteering SA. The Solicitor-General for South Australia, Mr Martin Hinton QC, provided expert advice to the Government and officers of the Attorney-General's Department in finalising the Bill.

The result of the consultation process was inevitably mixed. Though there was near unanimous support for the Government's objectives to encourage early guilty pleas and to improve the effectiveness of the criminal justice process, there was an inevitable difference of emphasis in how this should be attained. On the one hand some parties considered that the figures for the discounts in the original Bill were too generous while, on the other hand, some respondents considered that the figures were too low and that the Bill was too restrictive of judicial discretion, especially in respect of guilty pleas entered just before trial. These concerns have been addressed in the present Bill to widen the court's discretion in certain circumstances to cater for a late guilty plea.

The problem

The increasing backlogs and delays in cases coming up for trial in South Australian higher courts have been a major and longstanding concern. If allowed to continue, this trend will seriously erode public confidence in the criminal justice system and cause major problems in the administration of criminal justice. It is a well known and apt maxim that 'justice delayed is justice denied'. Though this applies to defendants, it applies especially to victims and witnesses and has an especially adverse effect on vulnerable victims, such as children or those with an intellectual impairment.

The criminal trial list remains unsatisfactory. In most recent years, the number of new criminal cases received in higher courts has exceeded the number of cases finalised. The number of criminal cases still 'in the system' has therefore significantly increased. The 2009-2010 Courts Administration Authority Annual Report showed that, although the number of new cases received at the District Court had remained largely steady from the previous year, the number of criminal trials listed but not heard at both the Supreme Court and the District Court, had actually increased despite more cases being dealt with and concluded during the year in the District Court. The increased number of cases finalised in the District Court was insufficient to reduce the current lengthy backlog of cases pending in that court. The 2010-2011 Courts Administration Authority Annual Report showed a significant improvement in easing the District Court's backlog of outstanding trials but delay remains a major problem in the courts and late guilty pleas are a leading contributing factor to such delays.

Efficiency in the system is the responsibility of all those that participate in it. No single participant can solve the problem acting alone. It is for this reason that the Government will continue to look at a range of measures designed to contribute to the efficient administration of the criminal justice system without compromising justice.

The impact of the problem

Some of the many aspects of the negative consequences of long delays include:

1. Increased risk of offenders escaping justice through attrition of witnesses, including deterioration of witnesses' recollection of key events over time. This is a major problem with vulnerable witnesses, such as children or those with an intellectual impairment.

2. Compounding of the well known adverse psychological effects on victims of crime with delays inherently extending the period of anxiety for victims awaiting participation in trials and the giving of evidence. Again, this is a particular problem with vulnerable witnesses such as children or those with an intellectual impairment.

3. Increased legal aid and public prosecution costs as current protracted criminal procedure provides for many pre-trial hearings.

4. Increased prisoner time spent on remand by people who either will not get a sentence of imprisonment at all or who will be sentenced to imprisonment for a period equal to or less than that spent on remand—at a well-known cost to the prison system. South Australia has the longest remand times in Australia.

5. Police, prosecution, forensic science and defence (especially the Legal Services Commission) resources devoted to preparing and processing cases unnecessarily for trial, when those limited resources could be better devoted elsewhere.

6. Unproductive use of limited judicial time and resources, especially reserving courts for trials that ultimately turn out to be non-effective.

A guilty plea just before trial is especially undesirable as it magnifies many of the adverse effects of delay. The longer a case remains in the courts' list, the greater the delay it causes in other cases being reached. Consequently, getting cases out of the list should contribute to a reduction in delay.

What causes the problem

The number and timing of not guilty pleas has been clearly identified as a major, though not the sole, contributor to delays and inefficiencies in the criminal trial process. Defendants are perfectly entitled to plead not guilty and to require the State to establish their guilt beyond reasonable doubt, However, at common law there is almost universal acceptance that there may be a reduction in sentence for an early plea of guilty. In *R v Place* (2002) 81 SASR 395, 412-413, the Court of Criminal Appeal endorsed an earlier statement by Chief Justice King about the importance of a discount for a plea of guilty and the pragmatic rationale for such a discount in assisting the orderly and effective administration of criminal justice. Discounts in sentence were intended to encourage guilty persons to

admit their guilt, instead of putting the State to the cost and trouble of a criminal trial and thereby contributing to the congestion of the criminal lists and distress to victims and witnesses. The Chief Justice observed that this is an important public policy consideration and judges were to be encouraged to foster an awareness amongst people charged with criminal offences, and those who advise them, of the advantage to be gained by a guilty person by acknowledging his or her guilt at the first reasonable opportunity. The Bill reaffirms and reinforces this important common law policy.

The present practice in relation to reducing sentences by reason of a guilty plea is unsatisfactory. An offender who pleads guilty to an offence before trial will attract a sentence discount varying in quantum but generally up to a third where the defendant pleads guilty at the first opportunity and up to 50% where the defendant pleads guilty at the first opportunity and provides substantial assistance to the Crown.

Over recent years, it appears that, as Justice Duggan noted in the consultation process, the common law requirement that the plea be early is too often overlooked. Reductions of 20% and 25% are not uncommon for pleas entered within a few weeks of trial and defendants even receive significant discounts for a guilty plea literally entered at the doors of court on the day of trial. There does not appear to be sufficient difference in practice between the reductions for early guilty pleas and those much closer to trial. The trend of belated guilty pleas is undesirable and should be actively discouraged. Late guilty pleas represent a wasteful use of limited public and judicial resources and are unhelpful to all the parties in the criminal justice process, including defendants.

A guilty plea is far swifter to progress and finalise than a criminal trial. Clearly, any defendant is entitled to plead not guilty and to insist that the State prove his or her guilt beyond reasonable doubt. But what is a source of considerable and particular concern is the continuing substantial number of defendants who plead not guilty initially and are committed for trial, only to plead later in the proceedings, often literally at the doors of court on the day of trial.

The problem of late guilty pleas has been a recurring one over recent years. The State DPP noted that in 2008-2009 late guilty pleas were the cause of 188 of the 686 fixed higher court trial dates that had to be vacated. This represented over a quarter of the higher court trials that did not proceed. In 2009-2010 late guilty pleas were the cause of 308 of the 883 fixed higher court trial dates that had to be vacated. This amounts to well over a third of the fixed higher court trials that did not proceed to trial. In 2010-2011 late guilty pleas were the cause of 386 of the 1073 fixed higher court trial dates that were non-effective. This again amounts to over a third of the fixed higher court trials that did not proceed to trial. Over half of the defendants who are sentenced in the District Court, only plead guilty at the District Court and not in the Magistrates' Court at committal. This all represents a waste of limited court, prosecution, police, forensic science, Legal Services Commission and prison resources. The situation places major pressures on the operation of the District Court and other agencies and contributes to South Australia's high rate of prisoners on remand. It is common for trials to take well over a year from committal to be heard. This all puts acute pressures on victims and witnesses.

The problem of court delays is major and complex. There is no simple answer. It is clear that additional resources, (even if available), would not, of itself, solve the problem. The Government has already increased the number of District Court Judges and provided additional courtrooms in an attempt to alleviate the problems. The District Court's figures for 2010-2011 show that the Courts Administration Authority has made significant progress in addressing delays but it is clear that major problems still remain. It is timely and appropriate to consider other avenues such as encouraging early guilty pleas through this Bill and other linked measures to improve court effectiveness.

The Bill in detail

The Bill has a number of major features and, where appropriate, provides for a different application in matters heard summarily compared to those dealt with in higher courts, to reflect the different procedures for those matters.

The Bill provides, in all cases, a discount of up to 40% for pleading guilty within 4 weeks of the defendant's first scheduled appearance, whether in person or through a legal or other representative, in a court in relation to the case. The defendant will be admitting his or her guilt at the earliest opportunity. This discount applies to all offences. It is expressly contemplated on the basis that the prosecution will not have effected full disclosure of its case. There will be some offenders who will be willing to plead guilty without sight or consideration of the prosecution's detailed evidence. More often than not a summary of the alleged offence, an 'apprehension report', will be the only information available. The defendant will be admitting his or her guilt at the earliest opportunity and the police or other investigative agency will be spared the time-consuming task of compiling a brief of evidence that would otherwise be required. This higher discount is expressly confined to this class of case and can only be varied in narrow circumstances, namely that a court was not available within the 4 week period to take the plea.

For major indictable charges not dealt with summarily under the *Statutes Amendment (Courts Efficiency) Bill 2012*, the committal is another suitable focal point under existing legislation and practice for the defendant to be properly expected to offer a meaningful and informed decision as to plea. At present, it is clear that far too many offenders plead not guilty at committal, only to plead guilty later in the proceedings. The encouragement and expectation should be for those defendants, who are likely to plead guilty in respect of major indictable offences, to do so, before or at committal and not at some later date.

The Bill provides for a discount of up to 30% for a guilty plea after four weeks from the defendant's first scheduled appearance but before the committal for trial. This will typically be after the prosecution has completed the bulk of its investigation and supplied the bulk of its evidence to the defence and the defence lawyers are in an informed position to advise their client as to the strength of the prosecution case and to the appropriate pleas.

The Bill provides for a discount of up to 20% for a guilty plea in the period after committal and up to 12 weeks from the arraignment date set at committal. This discount is not absolute and limited exceptions are provided in the Bill. This third stage of 12 weeks after the arraignment date accords with the preference expressed in the consultation process by the Chief Judge. This third stage is designed to maximise effective court listing and to tackle the all too common present practice of belated guilty pleas. For those offenders who are still likely to ultimately plead guilty but who have not already done so within 4 weeks of charge or at committal, then the third focal point is designed as a final 'filter' to catch such defendants and encourage them to plead guilty before the considerable inevitable final effort involved in preparing for trial.

There is a need for a relatively strict approach in this area. The Bill's policy is to discourage the all too common present practice of defendants pleading guilty just before the trial. In order to tackle this culture, a point in time long before a listed trial date should be the cut off for a discount in the ordinary course of events. This will facilitate the aim of the Bill in achieving cost savings and efficiencies through early guilty pleas.

Under the Bill, there will generally be no discount in the higher courts if the guilty plea is entered in the period after 12 weeks of the first arraignment date and up to, and including, the first trial date. However, the Bill is not inflexible or absolute. It is not intended to unfairly or unduly prejudice defendants.

If the reason for the delay in any case, whether at the higher or summary courts, in the defendant pleading guilty is beyond his or her control and he or she has pleaded guilty at the earliest practicable opportunity, the court will still have a limited discretion to confer a discount in sentence up to 30%. This exception cannot usefully be further defined. It may, for example, be due to the late service of important evidence that has a major bearing on the strength of the prosecution case. The plea of the defendant may be accepted to a lesser or alternative offence. The defendant may even have provided a firm and reliable offer to have pleaded guilty to a lesser offence to the court and the prosecution, but the prosecution initially rejected that proposal but accepts it on the day of trial. The reason for the delay in pleading guilty may even be due to other factors or parties, such as the court. The reason for the delay may not lie with either the defendant or his or her lawyers for the discount to be available. The onus is on the defendant to satisfy the court that this exception is made out. It is not contemplated that this will require lengthy hearings or the calling of witnesses to resolve. Indeed, it is contemplated that, in most cases, this will be capable of being achieved either 'on the papers' or on the basis of counsel's submissions without the calling of any evidence.

The Bill allows a further discretion for a discount of up to 15% for a guilty plea in the District or Supreme Court in the period of 7 days following an unsuccessful legal argument by the defendant. It is not intended that this discretion will arise for a guilty plea following a frivolous or untenable legal argument put on behalf of a defendant. However, the defendant may have a valid legal argument to raise such as that a vital piece of evidence such as an incriminating confession or the result of a search should be excluded but be perfectly willing to plead guilty without any further delay if that legal argument is rejected by the court. This provision therefore provides that if a defendant pleads guilty within 7 days immediately following an unsuccessful application by or on behalf of the defendant to quash or stay the proceedings or a ruling adverse to the interests of the defendant in the course of a hearing of the proceedings, the defendant can still receive a discount of up to 15%. To assist with alternative court listing arrangements and to minimise the stress and inconvenience to the all the parties and witnesses in the proceedings, the guilty plea would have to be entered after committal and at least 5 weeks before the first date set down for the commencement of the trial at the District or Supreme Courts. This timing is dependent upon the court listing the defendant's case for legal argument during the period in question as the clause clarifies.

The phrase 'commencement of the trial' is already well understood (see *R v Wagner* (1993) 68 A Crim R 81 and *Attorney-General's Reference (No 1 of 1998)* (1998) 49 SASR 1).

The Bill provides that the defendant will still be entitled to the applicable and relevant discount if the court did not list his or her case in the period in question. It has the specific effect in the context of the 15% discount that if the court did not list the pre trial legal argument in the period after committal and at least 5 weeks before the first date set down for the commencement of the trial at the District or Supreme Courts, the defendant is still entitled to a discount in sentence of up to 15% if the defendant pleads guilty within 7 days immediately following an unsuccessful legal argument.

Though court listing practices are clearly an issue for the Chief Judge, the Chief Justice and the Courts Administration Authority, it is hoped that this provision will encourage the parties in the proceedings to identify issues in dispute well in advance of the trial and the court to list pre-trial legal arguments significantly in advance of the trial date, rather than leaving them to the morning or day before a jury is empanelled. The introduction of binding rulings in the *Statutes Amendment (Courts Efficiency) Bill 2012* should help provide the support for listing legal arguments significantly in advance of trial.

The Bill further clarifies that a defendant is still entitled to the relevant and applicable discount if the court for any other reason outside the control of the defendant is unable to hear the defendant's case during the period in question. It has the specific effect that if the court for reasons outside the control of the defendant was unable to hear the pre-trial legal argument in the period after committal and at least 5 weeks before the first date set down for the commencement of the trial at the District or Supreme Courts, the defendant is still entitled to a discount in sentence up to 15% if the defendant pleas guilty within 7 days immediately following the unsuccessful legal argument. This is subject to the requirement that a court must be satisfied that the only reason that the defendant did not plead guilty within the relevant period was because the court did not sit during that period; the court did not sit during that period at a place where the defendant could reasonably have been expected to attend; or the court was, because of reasons outside of the control of the defendant, unable to hear the defendant's matter during that period.

The 15% discount is confined to cases before the higher courts. It is unnecessary to extend this discount to the Magistrates Court given the very different nature of both the cases and listing pressures and practices in that court.

The final exception is that any criminal court has a residual discretion in limited circumstances to provide a discount in sentence of up to 10% if it is satisfied that a good reason exists for the defendant's delay in pleading guilty. It is accepted in certain circumstances that, despite the late guilty plea, there is merit in a residual discretion for a late guilty plea if good reason exists to avoid an unnecessary trial, especially in a sexual case and/or one involving a vulnerable witness. This residual discretion will only apply once any other discretion in the Bill (including the 30% and 15% discounts) for conferring a discount for a late plea of guilty has been considered and discounted. This residual discretion will be available in both the Magistrates' Court and the District and Supreme Courts. Good reason is deliberately not defined. It will depend upon the sense and discretion of the court in each particular case.

The timing of the stages for pleading guilty in the higher courts will be capable of variation by Regulation. This is if, as is quite possible, working and listing practices and pressures in the higher courts should change in due course. It is more efficient that the periods can be changed to reflect these practices and pressures by regulation as opposed to having to return to Parliament to change the periods. There is a need for the law to be responsive in this regard.

The Magistrates Court is the workhorse of the criminal justice system and deals with over 90% of criminal cases. The Bill provides for a simplified regime to reflect the differing practices and pressures applying where matters are dealt with summarily. The Bill provides for a discount of up to 30% for a guilty plea after 4 weeks of the first scheduled appearance, whether in person and/or through a legal or other representative, but before 4 weeks of the first date set for trial for matters dealt with summarily. This will typically be after the prosecution has satisfied its pre-trial obligations of disclosure so that the defence lawyers are in a position to advise their client as to the strength of the prosecution case and the appropriate pleas.

The Bill provides that no discount is permitted for matters dealt with summarily if the guilty plea is entered in the 4 weeks before the first trial date. A limited exception of conferring a discount of up to 30% for a late guilty plea is provided in similar terms to that for the higher courts if the delay in pleading guilty is beyond the control of the defendant and the guilty plea is entered at the earliest practicable opportunity. A further residual discretion of up to 10% is provided for a late guilty plea if a good reason exists for the delay in pleading guilty.

As with the higher courts, the timing of these stages in the Magistrates Courts will be capable of variation by Regulation. This is if, as is quite possible, working and listing practices and pressures in the Magistrates Courts should change in due course. As with the higher courts, it is more efficient that the periods can be changed to reflect these practices and pressures by Regulation as opposed to having to return to Parliament to change the periods.

The Bill contains an overriding provision for any court to be able to decline to provide all or part of a discount for a guilty plea within the ranges in the Act having regard to public interest considerations, namely where the gravity of the offence and/or the circumstances of the defendant are such that the sentence that would arise from conferring the discount would be so inadequate as to 'shock the public conscience'. This expression is not new and is consistent with that already used in governing prosecution appeals against sentence. It is expected that the use of this provision will be rare but it is a necessary provision to make very clear that the courts' discretion is to award up to the level of the discount—it need not award the level of discount, especially for the most repugnant offender or offences. In fact, it need not award a discount at all if the circumstances demand such a course.

It is not intended that the Bill will affect the general way in which the criminal courts go about formulating the correct sentence applicable in any given case. The High Court has said that the correct method for determining an appropriate sentence is by a process of 'instinctive syntheses' of all the relevant circumstances. The Bill is not intended to displace this approach to sentencing. The Bill only modifies this approach to the extent that it requires the court to state in its sentence the amount of any discount that it is providing to reflect the guilty plea. The Bill does not require the court to go beyond this and to state any discount for any other mitigating factor. These will still be left to the operation of the common law and section 10 of the *Criminal Law (Sentencing) Act 1988*.

The Bill retains the existing requirement that the court, in determining sentence, may not have regard to the fact that a mandatory minimum sentence is prescribed for the offence, even though it may result in the court fixing a longer non-parole period than the court might think was otherwise appropriate in the circumstances. This especially arises with respect to the general 20 year non-parole period provided for offences of murder. The policy and content of this requirement has been discussed by the Court of Criminal Appeal in its recent decision in *R v A* (2011) SASCFC 5. The Government will carefully consider its position on this important issue and respond to the court's judgement in due course. The present Bill is not the appropriate vehicle to reconsider the issue of mandatory non-parole periods, especially in respect of murder.

Though the consultation process for the original Bill revealed considerable support for retaining section 10 of the *Criminal Law (Sentencing) Act 1988* as a central source of reference of the general principles of sentencing, the Bill, nevertheless, uses this opportunity to 'tidy up' the operation of that section. It is not a major restructure. Although section 10 in its original form merely set out the established common law principles of sentencing, section 10 has become increasingly unwieldy over recent years with the addition of various, sometimes ill defined, provisions. Therefore, for ease of reference and practical application, the Bill inserts a new section 10(1) that lists the original sentencing factors from 1988 whereas the additional factors added since 1988 have been included in a separate section 10(2). This should assist and 'tidy up' the operation of the provision.

Two consequential issues were also raised in the consultation process that are corrected in the Bill. First, a 'paramount consideration' identified in the existing section 10 of the *Criminal Law (Sentencing) Act 1988* is the 'paramount need' to protect children from 'sexual predators' by ensuring the need for deterrence. The State DPP has identified that this provision is undermined in practice by some judges insisting that the prosecution prove something more than sexual offending against children, namely that the offending was 'predatory' rather than opportunistic. The State DPP suggests that the term 'sexual predator' be changed to 'an offence involving the sexual exploitation of a child'. This suggestion makes sense and accords with what was the original intention of Parliament in inserting this

provision. Secondly, problems were raised with the interpretation of the existing provision dealing with the lighting of bushfires. This has been replaced by an amended provision which makes it absolutely clear the extreme gravity with which Parliament regards the offence of lighting a bushfire.

It is appropriate to provide a means of oversight at the end of 2 years after the Bill's commencement to evaluate its effect. A suitable person recommended by the Chief Justice will be appointed by the relevant Minister to conduct an inquiry into the operation of the new law after 2 years. The inquiry will specifically look at the transparency of the Act in respect of the sentences given to defendants and the effect of the Act in improving the operation and effectiveness of the criminal justice system.

Any perception that the Bill either goes too far and unfairly restricts the conferral of discounts or on the other hand is too generous and will lead to excessive discounts is mistaken. The Bill is both balanced and fair. It is necessary to restrict the conferral of discounts for belated guilty pleas in the manner stated in the Bill so as to tackle the underlying culture of late guilty pleas. There is adequate discretion in the Bill to avoid unfair or undue prejudice to defendants who plead guilty late in the proceedings for reasons beyond their control or for other good reason. Not only must the underlying culture of late guilty pleas be addressed but there are other linked issues that also require major reform. It is acknowledged that defendants and their lawyers are not to be solely blamed for the current delays arising from late guilty pleas. The effectiveness of the committal process and the need for timely and effective prosecution disclosure and accurate and informed and early prosecution decisions on charging are also significant. A prerequisite if the Bill is to achieve its stated objectives of reducing delays and encouraging early guilty pleas is sufficient and timely prosecution disclosure of its evidence. It must be emphasised that the problems of delays and inefficiencies in the criminal courts are complex and involve different agencies. The answer to these problems is as much administrative and cultural as legislative and new laws or additional funding will not necessarily address or resolve these problems.

There are problems in the present arrangements for public legal aid funding which perversely discourage early decisions and resolution and encourage delays and cases been taken to trial and contribute to guilty pleas been entered literally at the doors of court. There is an ongoing review that is looking at the funding arrangements by the Legal Services Commission in criminal proceedings, especially to outside lawyers.

The Bill should not be viewed as an isolated measure or a sole panacea. Rather it is an integral part of a series of wider and ongoing series of linked reforms that the Government is taking to improve the effectiveness of various aspects of the criminal justice process and to continue to address court delays and backlogs and improve the position of victims and witnesses.

This Bill is a major step forward in this Government's determination to address court delays. It sets a benchmark in Australian criminal justice reform.

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 *Criminal Law (Sentencing) Act 1988*

4—Amendment of section 9—Court to inform defendant of reasons etc for sentence

This clause substitutes subsection 9(1) of the principal Act to require a court, when sentencing a person who is present in court (whether in person or by video or audio link) for an offence to state the sentence it is imposing and the reasons for the sentence.

A court is not, however, required to state any information that relates to a person's cooperation, or undertaking to cooperate, with a law enforcement agency

5—Insertion of section 9E

This new section is to be inserted at the beginning of Division 2 of Part 2 of the principal Act. That Division is entitled 'General sentencing powers'.

9E—Purpose and application of Division

This section clarifies the relationship between Part 2 Division 2 of the principal Act and the common law. The provision also makes clear the fact that, unless a particular provision in the Division expressly provides otherwise, nothing in the Division affects mandatory sentences, mandatory non-parole periods and similar special provisions.

6—Substitution of section 10

Current section 10 is to be repealed and a new section substituted.

10—Sentencing considerations

This section sets out the matters a court must, or must not, have regard to when sentencing a person for an offence.

7—Insertion of sections 10B and 10C

New sections are to be inserted immediately before section 11 of the principal Act.

10C—Reduction of sentences for guilty plea in Magistrates Court etc

This section sets out a scheme whereby a sentence that a court would have imposed for an offence may be reduced on account of the defendant pleading guilty. This section (as opposed to section 10D) applies where the sentencing court is the Magistrates Court, some other court sentencing for a matter that was dealt with as a summary offence, or in the circumstances prescribed by the regulations.

The maximum amount a sentence can be reduced is dependant upon when the defendant pleads guilty; subsection (2) sets out the maximum discounts available in relation to pleas at various stages in the proceedings.

The section provides for a defendant to receive the maximum available reduction despite having pleaded guilty outside the relevant period if the reason he or she could not meet the deadline was one set out in subsection (3).

The section also sets out matters a court must have regard to in determining the quantum of any reduction under the new section.

10D—Reduction of sentences for guilty plea in other cases

This section provides a scheme of the same kind as in section 10C in circumstances where that section does not apply. For example, this new section applies to the District Court and Supreme Court sentencing indictable matters.

The scheme is essentially the same as in section 10C, modified to take account of the different stages of proceedings applicable in relation to indictable matters.

8—Repeal of section 20

This clause repeals section 20, the effect of which is now located in new section 9E.

9—Substitution of Schedule

The current Schedule in the principal Act is to be repealed and a new Schedule is to be substituted that provides for an inquiry to be held 2 years after the commencement of the amendments proposed in this measure into the effect (if any) of the operation of the amendments on providing transparency in respect of sentences and improving the operation and effectiveness of the criminal justice system.

Schedule 1—Transitional provision

1—Transitional provision

The transitional provision provides that amendments made by this measure to the principal Act apply to proceedings relating to an offence instituted after the commencement of this measure, regardless of when the offence occurred.

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

At 21:46 the council adjourned until Wednesday 5 September 2012 at 14:15.