LEGISLATIVE COUNCIL

Tuesday 5 March 2013

The PRESIDENT (Hon. J.M. Gazzola) took the chair at 14:18 and read prayers.

LIQUOR LICENSING (SMALL VENUE LICENCE) AMENDMENT BILL

His Excellency the Governor assented to the bill.

FINANCIAL TRANSACTION REPORTS (STATE PROVISIONS) (MISCELLANEOUS) AMENDMENT BILL

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT AND REPEAL (TAFE SA CONSEQUENTIAL PROVISIONS) BILL

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (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 answer to a question be distributed and printed in *Hansard*.

CONSULTANTS AND CONTRACTORS

297 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, 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 the Status of Women, Minister for State/Local Government Relations): I have been advised:

Primary Industries and Regions SA

1. During 2010-11 Primary Industries and Regions SA did not engage any person as a consultant or contractor who had previously received a separation package.

2. Not applicable.

ForestrySA

1. During the year 1 July 2010 to 30 June 2011, ForestrySA did not, to the best of their knowledge, engage any consultants or contractors who may have previously received a separation package from the state government.

2. Not applicable.

South Australian Tourism Commission

1. For the year 2010-11, there were no persons employed or otherwise engaged as a consultant or contractor, appointed by the South Australian Tourism Commission who had previously received a separation package from the state government.

2. Not applicable.

Office for Women

1. For the year 2010-2011, there were no persons employed or otherwise engaged as a consultant or contractor in the Office for Women who had previously received a separation package from the state government.

2. Not applicable.

PAPERS

The following papers were laid on the table:

By the President—

Report of the Auditor-General on the Adelaide Oval Redevelopment pursuant to section 9 of the *Adelaide Oval Redevelopment and Management Act 2011* for the designated period 1 July 2012 to 31 December 2012
Ombudsman SA—Final Report on an Investigation into the Growth Investigation Areas Report Procurement
Police Complaints Authority—Report, 2011-12

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

Reports, 2011-12–
Electricity Industry Superannuation Scheme
Phylloxera and Grape Industry Board of South Australia
Small Business Commissioner South Australia
Community Road Safety Fund Revenue and Expenditure Report, 2011-12
Regulations under the following Acts–
Bail Act 1985—Surrendered Items
Correctional Services Act 1982—Surrendered Items
Criminal Law Consolidation Act 1935—Surrendered Items
Criminal Law (Sentencing) Act 1988—Surrendered Items
Firearms Act 1977—Fit and Proper Person
Fisheries Management Act 2007–
Lakes and Coorong Fishery—Mesh Net and Yabby Pot Entitlements
Prescribed Quantities
Summary Offences Act 1953—Weapons Bayonet and Cross-Bow
Young Offenders Act 1993—Surrendered Items
Management Plan for the Lake Eyre Basin Fisheries

By the Minister for Sustainability, Environment and Conservation (Hon. I.K. Hunter)–

National Environment Protection Council—Report, 2011-12
Regulations under the following Act–
Teachers Registration and Standards Act 2004—Registration Exemptions

APY LANDS, FOOD SECURITY

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:23): I seek leave to make a personal explanation regarding a statement I made on 19 February 2013 regarding backup generators on the APY lands.

Leave granted.

The Hon. I.K. HUNTER: On 19 February 2013 I stated that this government has been spending $288,000 to backup generators. I should have used the language 'has allocated $288,000 to put backup generators in place to make sure that spoilage (of food) is not the feature that it has been in the past'. I am advised that the Indulkana store is the first store to date that has accepted this offer.

CONSTRUCTION INDUSTRY

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:24): I table a ministerial statement made by the Premier Jay Weatherill on the housing construction industry.

FIRE AND EMERGENCY SERVICES ACT REVIEW

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:24): I table a ministerial statement made by the Hon. Michael O'Brien on the review of the Fire and Emergency Services Act 2005.

NATURAL RESOURCES COMMITTEE

The Hon. R.P. WORTLEY (14:24): I bring up the report of the committee on Water Resource Management in the Murray-Darling Basin, Volume 3: Postscript—The Return of the Water.

Report received.

QUESTION TIME

EXPORT INDUSTRY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): I seek leave to make a brief explanation before asking the Minister for Agriculture, Food and Fisheries a question regarding exports.

Leave granted.

The Hon. D.W. RIDGWAY: In July 2011, the federal Labor government announced it would move to full cost recovery for Australian food exporters. Naturally this is bad news for small and low-volume exporters, and there are thousands of small to medium food exporters in South Australia.

Federal Labor then announced reforms to offset the additional costs which will be borne by these small exporters. One such measure was a scheme to allow exporters to use officers authorised by the Australian Quarantine and Inspection Service to inspect fresh produce prior to export. This was to reduce their inspection charges for the produce inspection previously done by AQIS, but the use of AQIS was not intended to reduce the cost of export certification of export packing facilities, which is an entirely different issue: these still have to be inspected by AQIS staff.

Small exporters, like Riverland citrus grower Michael Punturiero, are forced to pay an establishment registration charge of some $8,530 this financial year, up from as little as $500 in the previous year, to export six to eight pallets of limes to New Zealand. My questions are:

1. Is the minister aware of this enormous cost increase affecting small food exporters in South Australia?

2. Has the minister written to her federal counterpart expressing her dismay and concern, and has she stuck up for the small South Australian exporters?

3. Did she write to Mr Michael Punturiero, who had explained his problem of increased costs relating to export packing facilities?

4. In her reply, did she tell him the answer to his problem was to use AQIS authorised officers whose authority only relates to produce and not packing facilities?

5. Does the minister have any understanding of her portfolio, and will she now write to all South Australian small exporters, be it citrus, pistachio, almonds or whatever, apologising for her lack of understanding?

The PRESIDENT: The minister will ignore the opinion.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:30): I thank the honourable member for his questions. Indeed, our biosecurity systems are very important in this state. Our national biosecurity system and Intergovernmental Agreement on Biosecurity were developed following a national review of biosecurity in 2009, which made a number of recommendations about improving biosecurity. Nationally biosecurity is also guided by the ministers for primary industries through our standing committee (SCoPI) and reporting to SCoPI is the National Biosecurity Committee (NBC).

A national management group operates to manage national eradication programs for exotic incursions, pests and diseases, and make policy and also planning and funding decisions on behalf

of SCoPI. The main focus of the NBC is to develop action plans to address the seven schedules for priority action in implementing national biosecurity under the Intergovernmental Agreement on Biosecurity.

The IGAB was approved by the South Australian government in 2010 and has been signed by the majority of states, except Tasmania I understand, and the Prime Minister signed it on behalf of the commonwealth in January. There are a number of schedules and they cover the national decision-making and investment framework, biosecurity information framework, the national surveillance and diagnostic system, the national management system for established pests and diseases, the national engagement and communication framework, the national emergency preparedness and response arrangements, and the national biosecurity research, development and extension framework.

Another integral part of the national biosecurity system are the emergency disease response arrangements, and two private companies were established by the commonwealth, state and territory governments and involve industry, and provide biosecurity services to their industry and government members. The AHA manages the emergency animal disease response agreement and responds to animal health emergencies, such as foot and mouth disease, and similarly the PHA manages the emergency plant pest response deed and manages pest and disease incursions that primarily have an environmental and social amenity impact.

The NBC has developed the national environmental biosecurity response agreement, and this agreement identifies the role and responsibilities for jurisdictions, the NMG and also cost-sharing arrangements. I am advised that I have written to Mr Punturiero, but I will double-check that. In terms of the rest of the questions that my answer has not addressed, I am happy to take those on notice and bring back a response.

MURRAY-DARLING BASIN AUTHORITY

The Hon. J.M.A. LENSINK (14:34): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question on the subject of state government's funding for the Murray-Darling Basin Authority.

Leave granted.

The Hon. J.M.A. LENSINK: In the Mid-Year Budget Review the government announced its shocking decision to strip funding from the MDBA from to $26.4 million to $12.1 million a year. Tony Burke was quoted at the time in *The Australian* as saying:

> I don't think there has been a decision in this portfolio that has shocked me more. I have no way of explaining this.

Since then the MDBA has written to the state government outlining the impact the cuts in funding will have in rendering unviable works to reduce salinity, improve environmental outcomes and monitor river health. The chairman, Craig Knowles, delivered a speech stating that the cuts would place Victoria in a position where it would be cross-subsidising other states and should be expected to:

> ...follow this race to the bottom leading to the end of the Living Murray salt interception schemes and joint natural resource management programmes.

Mr Knowles also stated that the cuts:

> ...foreshadow a need to radically alter the way in which the basin is managed and its water assets are funded. The scale of the state government cuts dictates that there will be consequences.

The government's own response to the altered proposed basin plan of 27 August 2012 states the following on page 22:

> Under no circumstances should the MDBA weaken or reduce the water quality and salinity objectives, targets and management frameworks in the Basin Plan. The Basin Plan must include non-discretionary requirements for water resource plans to manage water quality and salinity.

My questions for the minister are:

1. How does he reconcile that statement in his own government submission with its cut to the MDBA?

2. Does he acknowledge that Victoria will be subsidising South Australia if this cut proceeds?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:35): I thank the honourable member for her most important question because it allows me to put on the record, once again, the outrageous behaviour of New South Wales in this matter.

The decision to reduce funding from 2014-15 was not made lightly by this government. Our state takes only 7 per cent of the extractions of water from the River Murray but has been contributing more than 24 per cent of the funding for the Murray-Darling Basin Authority. That was before New South Wales cut its contribution by 60 per cent in July 2012.

I am not sure that I actually heard the honourable member or, indeed, her party raise their voices when New South Wales took that unilateral decision to cut that funding. They, of course, were all the way with New South Wales and the Liberal government then. That reduction from the New South Wales funding is to be followed by a further cut with a contribution from New South Wales capped at $8.9 million in 2013-14 and 2014-15. Our reduction in funding is to take place from the 2014-15 financial year and our contribution during 2013-14 will be maintained at $26.4 million.

Prior to making this decision, the South Australian government expressed concern in response to the New South Wales decision to reduce its funding. Unfortunately, New South Wales has continued with its proposed action and has refused to consider increasing its contribution over the next three years to back to where it should be. With New South Wales reducing its contribution, South Australia, was, in effect, subsidising New South Wales at the expense of other programs in our state for the environment, for the health and education of those communities. The New South Wales' Liberal government is refusing to pull its weight.

Maintaining our contribution in 2014 will allow time for us to negotiate with the other basin states and the Murray-Darling Basin Authority to ensure an equitable and efficient way of managing the River Murray as an entire system. The reduction in funding is for joint projects only. The implementation of the Murray-Darling Basin Plan is funded by the federal government and that is not affected by these announcements. South Australia has fought hard to ensure the Murray-Darling Basin Plan provides for a healthy river. We will work to ensure that New South Wales comes back to the table.

The PRESIDENT: A supplementary, the Hon. Ms Lensink.

MURRAY-DARLING BASIN AUTHORITY

The Hon. J.M.A. LENSINK (14:38): Does the minister expect Victoria to continue to subsidise South Australia through its own contribution?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:38): I expect Victoria would do its utmost to help us drag New South Wales back to the negotiating table.

QUEEN ELIZABETH HOSPITAL

The Hon. R.I. LUCAS (14:38): I seek leave to make an explanation prior to directing a question to the minister representing the Minister for Health on the subject of cancelled operations.

Leave granted.

The Hon. R.I. LUCAS: The Liberal Party has been contacted by a 70-year-old female who was meant to have a right hemicolectomy (which is the removal of the right-side colon) yesterday morning at The Queen Elizabeth Hospital. This woman arrived at The Queen Elizabeth Hospital Admissions at 7am yesterday only to be told that her surgery had been postponed but they could not tell her when the new date would be. She indicated to the staff at Admissions that she had a copy of a letter with the 4 March date on it but they said, nevertheless, the operation had been postponed. She did receive a call late yesterday afternoon to inform her of the new date for her surgery. My questions are:

1. Is this cancellation of major surgery an inevitable result of the government's $949 million in budget cuts being implemented and, if not, what was the reason for the cancelled surgery?

2. What procedures are meant to be adopted in circumstances where major surgery is postponed? Were these procedures followed in this particular case and, if not, why not?

3. Does the minister agree that it is unacceptable that a 78-year-old woman facing major surgery should arrive for that major surgery at 7am only to be told that it has been postponed?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:40): I thank the honourable member for his most important question, and of course I undertake to take that to the Minister for Health and Ageing in another place and seek a response on his behalf. I might also ask the honourable member if he should consider, in fact, what the impacts of his cuts will be when he—hopefully never—gets into government? Their plan is to reduce 25,000 to 35,000 public servants. How many front-line staff will that impact? That is the question we should be asking.

WOMEN IN RESOURCES AWARD

The Hon. CARMEL ZOLLO (14:41): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question regarding the Women in Resources award.

Leave granted.

The Hon. CARMEL ZOLLO: Community conscious mining and energy companies that make an outstanding contribution to society are being encouraged to nominate for the Premier's annual mining and energy awards. This year, an award, 'Excellence in leadership—women in resources', has been announced. Can the minister tell the chamber about the award?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (14:41): The answer to the question is: yes, I can, and I thank the honourable member for her question and her interest in these most important issues. I am delighted to tell the chamber that there is indeed now an award which recognises contributions towards the participation of women within the workforce within the mining and resources sector. As members know, the Premier's Community Excellence Awards in Mining and Energy recognise companies that contribute economically, socially and environmentally to the South Australian community.

In addition, the awards have been expanded this year to specifically recognise excellence in environmental management. The 2013 Premier's community awards in mining and energy have four categories, including two new awards: excellence in social inclusion; excellence in supporting community participation; excellence in environmental management, which is a new award, as I said; and excellence in leadership—women in resources, which is also a new award.

I am very pleased that the excellence in leadership award recognises initiatives that encourage greater participation by women in the mining and energy sector. The award recognises a company in the mining or energy sector which, through implementation of initiatives, corporate processes or projects, has made significant opportunities to further advance more women through their workforce. I have spoken before in this place about the importance of women's work and the opportunities that exist by tapping into the great resource that women offer as a labour pool.

Women comprise the largest untapped workforce available to us. Generally speaking, overall, women are better educated than men in terms of year 12 completion and also degrees achieved, so it makes very good sense to utilise what is an already well-educated labour force. Data indicates that many women are looking to enter the workplace in the first instance and also that many who are in the workplace are looking to increase their hours. As I said, it is a very large untapped labour force.

Non-traditional areas of employment offer us the greatest potential benefits. The Weatherill government firmly believes that all South Australians should benefit from industries such as mining and resources. I am sure members are aware that gender diversity in the workplace can bring enormous benefits. Not only is encouraging diversity the right thing to do; as you well know, Mr President, it is the smart thing to do. By rewarding companies that embrace gender equity through flexible working arrangements, diversity forums or targeting training programs to attract and retain female workers, the opportunities for participation in the market for both the company and women grow.

I am advised that research tells us that companies who employ greater numbers of women, particularly in executive and leadership positions, do better than those with limited numbers at those levels. It is important that industry plays a role in encouraging greater diversity by promoting

innovative workplace practices like flexibility and mentoring for women, which really help to provide career options for women.

A panel comprising community organisations, industry representatives and government will judge those entries, and the winners will be announced at the South Australian Chamber of Mines and Energy (SACOME) Resources Industry annual dinner to be held in April this year at the Convention Centre. I just remind people that nominations are now open, and they will close on Friday 15 March 2013.

APY LANDS, FOOD SECURITY

The Hon. K.L. VINCENT (14:46): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation questions on the subject of the cost of food and the availability of other essential items on the APY lands.

Leave granted.

The Hon. K.L. VINCENT: The high cost of food on the APY lands has been a very hot topic in this chamber in recent weeks, and rightly so. Food is, of course, vital, but unfortunately it is not the only essential item that can be cost prohibitive for people on the lands. There are many more questions that need to be asked about this situation, not all of which I have managed to get on the record amidst all the hullabaloo of the last few weeks, so I thought I would ask a few more today. My five questions to the minister today are:

1. Is the minister aware that a single capsicum can cost as much as $4 on the APY lands?

2. What is the Weatherill government doing to reduce the cost of other essential items, like baby nappies, which, I gather from my personal trips to the lands, are so expensive that many shopkeepers do not bother to even price tag them, so that patrons are not put off buying them before they get to the check-out?

3. Has the minister personally visited the APY lands for more than a fly-in, fly-out trip? If not, exactly when does he plan to do this in his new role as minister, and would he like to answer that question this time?

4. Since Labor has been working on food security in the lands since coming into government 11 years ago, can the minister advise Anangu people how much longer they will have to wait, so that they can ration their existing stocks appropriately?

5. If the Labor government's record on serving and consulting with Aboriginal Australians is as good as the minister might have us believe, then why is it that many people on the lands refer to government ministers as 'pelicans', who fly in, shit everywhere, and leave?

The PRESIDENT: The Minister for Aboriginal Affairs and Reconciliation will ignore the opinion and the debate.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:48): I thank the honourable member for her most important question on this most important subject. To start with, I am not in the habit of confirming the details of my diary with members of this chamber. If they want to do their own research they will find that from time to time I have spoken on matters to do with the APY lands. They can go and read the *Hansard*. I invited them to do that last time and I invite the honourable member to do that once again.

The Hon. K.L. Vincent interjecting:

The Hon. I.K. HUNTER: I don't know how much clearer I can make it, sir. Go and read *Hansard*, do your own research.

The Hon. K.L. Vincent interjecting:

The Hon. I.K. HUNTER: Go and read *Hansard* and do your own research about when—

The PRESIDENT: Minister, you will direct your answer to me, thank you.

The Hon. K.L. Vincent interjecting:

The Hon. I.K. HUNTER: No; I am suggesting that the honourable member might do her own research—

The PRESIDENT: Order!

The Hon. K.L. Vincent interjecting:

The Hon. I.K. HUNTER: Well, you are not the people of South Australia, as much as you might like to think you are.

The PRESIDENT: Order! The honourable minister will direct his answer to me and will ignore the interjections, which are out of order.

The Hon. I.K. HUNTER: I will, Mr President. I also suggest that if you have an interest in this you might like to read the *Hansard* as well, as I suggested last sitting week, because in there you will find details of when I have spoken on these issues previously. However, I will not be in a position of advising this chamber of what my diary commitments have been or will be; people can see that when I speak in this chamber on these matters.

To go to the substantive question, it is well accepted that improving food security on the APY lands, like many other important areas, requires a sustained, long-term cooperative effort. As I have previously advised on a number of occasions, this government is committed to improving the health and wellbeing of Aboriginal people living on the APY lands and is following through with a plan to increase the availability and consumption of healthy foods.

I have said before in this place that the APY Lands Food Security Strategy is in the third calendar year of its six-year implementation and includes seven key priority areas each led by a nominated government department or agency. One, being financial wellbeing, which is led by the Australian government's Department of Families, Housing, Community Services and Indigenous Affairs; two, freight improvement, led by DPC-AARD; three, consumer protection, led by Consumer and Business Services; four, store management support, again led by FaHCSIA; five, education, led by Department for Education and Child Development; six, home management support, led by Department for Communities and Social Inclusion; seven, several discrete small projects, including projects I have spoken of before in this chamber, Come Cook with Your Kids school holiday program, and community gardens.

In each of these areas, governments are working together with each other and with communities to improve food security on the APY lands. I will take a moment to speak about each of these focus areas. It is well recognised that the financial wellbeing of Anangu is critical to the capacity to purchase nutritious foods. That is why the state government's Food Security Strategy includes financial wellbeing as a key priority area for action. The state government is working with the Australian government to drive activity and outcomes in this area. Changes are being driven through the provision of education, budgeting supports and the implementation of income management assistance in partnership with communities. More specifically, the state government has continued to advocate for and supported consultation with Anangu regarding the introduction and implementation of income management on the APY lands.

A model of income management was introduced in 2012 after consultation with Anangu across the APY lands, and I am advised by the Australian government that as at 31 January 2013 there were 260 voluntary participants. The state recognises that income management must sit within a suite of financial management tools and resources, as well as a range of other supports if it is to be effective. This includes services such as financial counselling provided by MoneyMob. Since July 2012 MoneyMob, I am advised, has opened three offices on the APY lands at Mimili, Amata and Pukatja.

The state government through the Department for Communities and Social Inclusion has funded a MoneyMob community educator at Mimili since October 2012. In November and December the educator provided services from the council offices at Fregon as well. While that officer recently left the role, I am advised that a replacement educator commenced on 4 March 2013. I am advised that Amata is presently unstaffed. However, during the recruitment process for a community educator and a financial counsellor, MoneyMob has continued to provide a presence every second Friday in that community.

Other initiatives that support the financial priority action area within the Food Security Strategy include minister Macklin's announcement in May 2012 that $891,154 will be made available for the implementation of an intensive family support services program for the APY lands to support at risk families manage a daily budget and provide mentoring to assist in the purchase and preparation of nutritious foods.

I will take a moment of the chamber's time to talk about freight improvements. The state government has committed to addressing the challenges in delivering freight to the APY lands and related contract administration with a view to developing a more efficient and cost effective supply chain. To achieve this, the state government has provided funding for two critical pieces of work that will lay the foundation for a more efficient supply chain into the future.

As a preliminary step, the first freight project funded by the state government involves the recruitment of a consultant to work with willing APY lands stakeholders to assess and review current freight arrangements to the APY lands. A longer term initiative, also funded by the state government, is a second freight project for the development of the APY lands Freight Strategic Plan. The strategic plan will not only develop a baseline approach for freight but identify potential value adds that can be incorporated with any new identified resourcing or through the development of strategic partnerships. It is intended that both of these contracts will also support the work of the APY Lands Stores Review and stores more generally. Both freight projects are planned for completion before the end of the financial year.

It has been suggested in this place before that freight subsidies might provide a simple solution to the cost of freight, prices in stores, and even to the cost of living on APY lands. The state government does not support that proposition. There is no single solution to the complex challenge of food security on the APY lands. The state government recognises that freight has an impact on costs along the supply chain and to that end has funded two freight projects. However, in line with industry experts, the state government does not support that notion that freight subsidies are an efficient or properly targeted remedy to food insecurity on the APY lands. Indeed, the notion of committing to any type of subsidy at any particular single point along the chain of supply and consumption is problematic, particularly in a region like the APY where the causes of food insecurity are many, complex and cumulative rather than standalone.

In 2009, the House of Representative's Aboriginal and Torres Strait Islander committee conducted an inquiry into remote Aboriginal and Torres Strait Islander community stores. In the subsequent November 2009 report, Everybody's Business, there was the following discussion on the issue of freight, specifically freight subsidies:

> Ian Lovell, a cold chain and freighting specialist for remote communities, suggested that streamlining the efficiencies in the supply chain was the first and most important step before considering freight subsidies. He stated:
>
> '...if you cannot be convinced that the supply chain is working at the optimum already then to put a freight subsidy in is going to perpetuate inefficiencies. I would say that before you entertain a freight subsidy to anywhere you really need to be satisfied that the supply chain is working effectively, both cost effectively and in terms of service and delivery.'

Mr Lovell highlighted the difficulty in ensuring that the freight subsidy is passed on effectively to the consumer. He gave the following example of how freight subsidies can become absorbed by the market:

> ...if you give a subsidy of, let us say, 10 per cent, who is actually going to get it? In a free market, you will find that suddenly costs change, and of that 10 per cent maybe four per cent will get through to the community and the other six per cent will go to either the store, the transport company or the supply because the price signal is there.

In 2012, DPC-AARD confirmed that this remained Mr Lovell's position, I am advised. This is why the food security strategy approach is multifaceted and seeks to create ownership for driving solutions to the range of challenges across governments, sectors and communities.

APY LANDS, FOOD SECURITY

The Hon. T.A. FRANKS (14:56): I have a supplementary question. Given that the state's APY lands food security strategic plan produced its year 1 evaluation report a year ago now, will we see the year 2 evaluation report this month?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:57): I am advised that there is some report coming to me this month. I haven't received it yet, and I am awaiting it eagerly.

RIVER MURRAY MEDAL

The Hon. K.J. MAHER (14:57): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber about the recent recipient of the River Murray Medal?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (14:57): I thank the honourable member for his very important question. The River Murray Medal has been traditionally awarded by the Murray-Darling Basin Authority to water professionals who have given more than a decade of dedicated service to the river.

I am pleased to advise that the medal was recently awarded to a proud South Australian and fourth generation fisherman from Clayton, Mr Henry Jones. Interestingly, Henry is the first community member to have been awarded the medal since its inception in 1853! I will take that on advisement; I suspect that is not quite the correct date. I might have to come in with another personal explanation tomorrow.

Whilst I said earlier that the medal had traditionally been provided to water professionals, the Murray-Darling Basin Authority decided to change this tradition to award the medal to Mr Jones. This was not only because he was well deserving of such an honour but also they wanted to note and acknowledge his expert local knowledge earned from a lifetime on the river and his personal dedication as a member of the Living Murray Reference Group and the Basin Community Committee, where he generously shared that knowledge of his with whoever he met.

As a result, the criteria for the medal now reads 'individuals who demonstrate outstanding service to the River Murray'. This change, I believe, more adequately reflects the range of South Australians who dedicate their lives to the river, and it will be a fitting tribute for the many unsung heroes of our Riverland communities and the many heroes yet to come.

This chamber should note that Mr Jones's service, as required for the medal, has been nothing less than outstanding. As a commercial fisherman for most of his life, and a boy who grew up on the banks of the river, Mr Jones has a lifetime of knowledge. He has been a volunteer, community representative and long-time activist for the river upon which he lived.

He took up the fight when he first saw the Murray Mouth close in 1981, I am told, and he was still fighting 30 years later when he helped this state and the Weatherill government take up the issue of downstream health of the river to the commonwealth. I am told that, at the launch of the Premier's Fight for the Murray campaign, Mr Jones gave an impassioned speech, where he likened salt in the river to cancer, eating its way upstream, killing everything as it goes.

Indeed, when federal minister, the Hon. Tony Burke, met with Henry just the other week, he conceded that 'without Henry Jones there wouldn't have been a plan'. Those are some pretty profound words from a federal minister, and that acknowledgement and the medal are a fitting tribute to the efforts of Mr Jones. However, I know—and I am sure his friends and family know—that the real tribute that Henry wants is a healthy River Murray and that is why this government, under the leadership of Jay Weatherill, will continue to fight for the Murray. On behalf of the state government of South Australia, I would like to congratulate Mr Jones on his award, and I commend his efforts to the chamber.

RIVERBANK PRECINCT

The Hon. J.A. DARLEY (15:00): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Premier, questions about the Adelaide Riverbank Precinct draft management plan.

Leave granted.

The Hon. J.A. DARLEY: I understand that the Adelaide Riverbank Precinct draft management plan was released by the government in 2011 followed by a period of consultation with the private sector as well as members of the public. The draft master plan focuses predominantly on the area bordered by North Terrace, Adelaide Oval, Morphett Street and King William Road, and outlines a strategy to incorporate a cinema, retail precinct (including luxury fashion), eateries, commercial facilities, enhanced hotel as well as a new hotel in the proposed new River West Precinct, and an extended casino.

Included in this space is also Parliament House. The draft master plan shows that the new commercial/cultural and retail precinct will be located directly at the rear of Parliament House with a new enhanced commercial high-rise office tower incorporating private residential apartments immediately to the west of Parliament House. The Adelaide Casino also has a master plan which, I understand, incorporates an hotel, car park, more gaming facilities, VIP suites, restaurants, and even a rooftop spa and pool, all aimed at attracting high rollers to Adelaide.

In February last year, SkyCity CEO Nigel Morrison stated in the media that the Casino's redevelopment would not proceed unless the South Australian government offered some concessions. In December of the same year, the former treasurer announced that the government had struck a deal concerning the future of the Casino which would extend SkyCity Entertainment Group's casino exclusivity to 2035 but they would pay more tax.

Treasurer Snelling said the deal would see SkyCity's tax arrangements on a more equal footing as those currently paid by South Australian hotel owners. In addition, the Casino will be allowed to operate 1,500 gaming machines (up from 995) and 200 gaming tables (up from 90). The government claims that in return the Casino will have the strongest responsible gambling measures applied to any casino in Australia.

In the past few weeks and months members may have noticed several people walking around the Parliament House premises seemingly to survey the area. My questions to the minister are:

1. Has the Adelaide Riverbank Precinct draft management plan been finalised following consultation on the draft?

2. What part or parts of the master plan have already been agreed to, if any?

3. Has the Casino expansion been given the go-ahead?

4. What part of the Casino's master plan has been agreed to, if any, and when can we expect to learn more about that?

5. What will both these plans mean in terms of the heritage areas at the rear of Parliament House and in the Casino building?

6. Has there been any consultation or feedback from the public regarding the Casino's plan to erect a new contemporary and, as I understand it, somewhat imposing building that is to extend to the River Torrens, adjoining the existing heritage building?

7. What considerations have been given to safety issues around Parliament House, and has there been any sort of comprehensive risk assessment with respect to this issue?

8. Have there been surveys made in and around Parliament House in connection with any proposed development?

9. Can the minister confirm whether any of the proposed buildings behind Parliament House are to incorporate a multilevel car park to be used by the Casino, and how will this impact on existing heritage structures in that area?

10. Will South Australian residents be given the opportunity to voice their views on these proposals?

11. When can we expect to see any legislative changes relating to this issue?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:04): I thank the honourable member for his most important and detailed questions and will refer them to the appropriate ministers in another place and bring back a response.

I would like to take a few moments to highlight the very important economic growth that has been driven by this Labor government and particularly by the Jay Weatherill government. The particular precinct that the honourable member refers to is just fabulous. We see it as a real hub that has enormous potential to attract high levels of investment and activity and will be the centrepiece of our vibrant city. You only have to look around at the landscape and look at the number of cranes to see how much activity there is going on here. Indeed, South Australia's gross state product grew by 2.1 per cent in 2011-12, exceeding the majority of economic forecasts. Our exports for that same period—I am advised petroleum and related materials were up 34 per cent to $200 million; motor vehicles up 12 per cent to $390 million; iron and steel up 12 per cent to $80 million; vegetables and fruit up 0.4 per cent to $340 million.

I am advised that, during the September 2012 quarter, seasonally adjusted real private new capital expenditure rose 15 per cent in South Australia compared to 2.8 per cent nationally, and compared to the year earlier South Australia's seasonally adjusted growth of 8.1 per cent was second only to Western Australia in percentage terms. South Australia's non-petroleum minerals

exploration expenditure grew by a 2 per cent trend in the September 2012 quarter to be 9.4 per cent higher than a year earlier. National expenditure was 8.7 per cent, I am advised.

South Australia's Major Developments Directory for 2012-13 lists a record 304 major projects underway or in the pipeline in South Australia, with a total value of $94 billion. As I said, a record 304 major projects either underway or in the pipeline, with a total potential value of $94 billion. Also there is some joy in terms of our new dwelling approvals where there was a small increase in November 2012. So you can see that there are some very positive signs and that just does not happen by accident: that happens because the Jay Weatherill government has a clear plan and is prepared to invest in capital development.

The State of Australian Cities 2012 report, compiled fairly recently, revealed that Adelaide has the least expensive food, mortgage interests and financial and insurance services than any other capital. We have been designated the most desirable place to live in all of Australia. We have the highest proportion of residents who believe their city has good quality, affordable housing, good economic opportunities and quality of life. The report also showed that South Australia had the strongest growth of volunteers in the country which is a fabulous indication of the community's preparedness to work for the community.

One of this government's key strategic goals is to deliver a more vibrant Adelaide and obviously the precinct that the honourable member refers to is part of that. Some of those reforms—

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

The Hon. G.E. GAGO: Well, it was a very long question and I believe, given how detailed and lengthy the question was, it deserves a thorough and comprehensive answer. Part of the reforms underpinning this include zoning changes to the city development plan through the Capital City DPA, so there are some good things happening there. Placing design at the centre of development process, we have introduced a City Design Review Panel under the leadership of the government architect to ensure high-quality design outcomes and street level activation.

Of course, with our project of activating laneways, we are focusing on improving places for people throughout the city, with a particular focus on linking particularly the Riverbank Precinct right through to the central markets. Again, that is linked to our key strategic government priority. It doesn't happen by accident: it happens because we have a Jay Weatherill government that is prepared to plan, put projects in action and invest in capital growth.

WATER INDUSTRY ALLIANCE

The Hon. J.S. LEE (15:10): I seek leave to make a brief explanation before asking the Minister for Water and the River Murray a question about the Water Industry Alliance.

Leave granted.

The Hon. J.S. LEE: The Water Industry Alliance stated that it had been working closely with the state government to develop a business case and proposal to attract funding from the commonwealth government for irrigators using Murray water in South Australia. In October 2012, the Premier announced that the commonwealth government had committed $265 million for water recovery and industry regeneration projects in South Australian River Murray communities. However, in a recent letter addressed to Water Industry Alliance members from the CEO of WIA, Mr Andy Roberts stated that the funding was a $240 million program rather than a $265 million program, as previously announced by the Premier.

On 12 February 2012, in Senate estimates, Ms Mary Harwood, First Assistant Secretary to the Water Efficiency Division, revealed that the state government did not lodge a business case to the commonwealth government by the deadline of 21 January 2013. My questions are:

1. Why has the CEO of the Water Industry Alliance stated the program was a $240 million program rather than the original $265 million, as announced by the Premier?

2. Will the minister advise the council exactly where the remaining $25 million of commonwealth funding will go? Will the funding be allocated to the River Murray communities?

3. Will the minister advise the council why the state government business case did not meet the guidelines for the commonwealth government application?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation)

(15:12): I thank the honourable member for her most interesting and important question. She got part of it right at least. On Sunday 28 October 2012, in Renmark the Premier, Jay Weatherill, welcomed a $265 million commitment by the federal government for water recovery and industry regeneration projects in South Australian River Murray communities—so far we agree. But, $240 million of this funding package is for the Water Industry Alliance South Australian River Murray Improvements Program, which aims to return 40 gigalitres of water to the environment and provide opportunities for regional development and the reconfiguration and renewal of the South Australian River Murray irrigation industry.

The $265 million funding announcement is comprised of $180 million from the commonwealth Sustainable Rural Water Use and Infrastructure program, all of which will be put towards the Water Industry Alliance program, and $85 million from the South Australian Industry Futures Fund to be established for research, regional development and industry redevelopment in South Australia, with $60 million of the $85 million to be forwarded to the Water Industry Alliance program.

The South Australian government continues to work to improve environmental outcomes along the South Australian River Murray and strongly supports the Water Industry Alliance and its development of this program. This investment in South Australian industry will assist our irrigators to further improve infrastructure and practices and consolidate our state's position as international best practice irrigators.

The proposed program will provide South Australian irrigators with an opportunity to be rewarded for their previous responsible behaviour by investing in the future sustainability of the industry and the region. The Australian government has also provided additional funding up to $1.206 million to assist the Water Industry Alliance to prepare its business case, and the state government has contributed an additional $134,000 as well as providing significant project assistance to support the development of this business case.

The final business case is expected to be completed and submitted for the Australian government's consideration in March 2013. Water savings resulting from implementation of the WIA program will be transferred to the commonwealth Environmental Water Holder and will count towards South Australia's share of the basin water recovery target. The funding of this proposal is an example of how industry, communities and state and federal governments can work together to develop innovative and practical solutions to complex problems. I am advised that the $265 million in funding would be made available over six years starting in 2013-14.

This is an example of how our Premier, Jay Weatherill, has led the fight up to the commonwealth and to the Eastern States and won an outstanding amount in contributions to our state. As far as I can tell, the $265 million is composed of $180 million, as I said, and $85 million and, I think that adds up to $265 million.

RIVERLAND REGIONAL DEVELOPMENT

The Hon. G.A. KANDELAARS (15:15): I seek leave to ask the Minister for Regional Development a question about regional development in the Riverland.

Leave granted.

The Hon. G.A. KANDELAARS: The minister has previously provided information on commitments made by the government to help revitalise the Riverland. Can the minister update the chamber on recent developments in this region?

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:16): I thank the honourable member for his most important question. It is with great pleasure that I return to this very important topic. I have recently visited the Riverland again and I have to say, even though it was obviously very dry, the region is looking remarkably good. It is astounding how people's morale has improved, and it was good to see the level of high community morale.

It was wonderful to get out to see some of the businesses which have been helped by grants from the Riverland Sustainable Futures Fund. As you may remember, sir, the $20 million over four years has been distributing funds for projects which meet the objectives outlined in the Riverland prospectus. The prospectus set out a vision for the future and the 20 year investment objectives and identified key potential growth areas such as value-added food and beverage processing, tourism and suchlike.

The fund's aim is to facilitate projects that improve infrastructure, support industry attraction, help grow existing businesses and help attract new businesses as well. It is expected that, over time, this initiative will deliver structural change, population growth and enhance employment outcomes for the Riverland.

The fund will focus on ensuring the key enablers of the economy are in place to build on the existing strengths of the region and to improve its competitive advantages. The state government will pursue a strategic approach that focuses on short, medium and long-term tangible results to leverage for sustainable growth in the Riverland. The state government has now supported 26 projects with $15 million in grants from the Riverland Sustainable Futures Fund, helping to create around 220 jobs.

I was able to visit one of the sources of great produce in the Riverland, which exemplifies our priority of premium food and wine from our clean environment, Lowan Fruits. This family-owned business received a grant of just over $318,000 from the fund last year which helped to support a just on $640,000 project to expand and improve its Renmark North packaging operations. The new building and packing line helps the company further expand its offering to the market of fresh fruit, particularly nectarines, peaches and apricots.

The new premises have streamlined and increased capacity of the operation, installing new coolrooms to receive fruit from orchards and upgrading the packing line to state-of-the-art facilities, as well as ensuring comfortable amenities for their employees. Not only does the premises work better, the new works were completed ahead of time and it was a great pleasure to meet the proprietor Dino Ceracchi and his father, who still works there. His father was there on the line helping out, which was quite remarkable, and it was great to see how dedication and excellence has paid off for this family-led company.

Another local business which is set to make an impact following a grant from the fund is the Pike River luxury apartments. Andrew and Bronwyn Caire saw the opportunity to develop high-end accommodation in the Riverland and, following the grant of $340,000 committed in November 2011, have been working hard to construct two new luxury villas and an eco-friendly function centre. These are located on a beautiful spot on the river, looking over the river, and it is well on track at this point in time for completion.

The $680,000 project will see a new business centre with a capacity of 30 people, as well as the function centre capacity increasing by up to 130 people, allowing for sizeable events at this beautiful scenic spot. I understand that expansion means that the first wedding to use the facility is booked for April this year, so already this project is generating lots of interest in the market.

Vall's Styrene, which is based at Berri, has moved to expand its existing styrene box business in a very new and exciting direction. I was able to visit the factory site and proposed expansion site to hear about the plans for premises to manufacture new eco-friendly insulated roofing and wall panels. It is fascinating to hear how, since 1983, this again family-owned business—both brothers, Tony and Frank, are involved—has grown from small origins to provide a diverse range of mouldings, including industrial and refrigeration packing and building products. They are working on a $2.64 million project in total, supported by $1.2 million from the fund. The new manufacturing plant, which is expected to be up and running by mid-2014, is an exciting prospect and I certainly wish the brothers well.

In addition to these visits, I had great pleasure in formally opening another great local development which has been kicked along by a grant from the fund—the renovation of the Loxton Community Hotel. Since 1946 the hotel has been community based, which means it is owned by community shareholders, with the dividends or surplus profits reinvested into the local area. The $1.7 million project saw the renovation of existing hotel units to modern standards from what were pretty ordinary little rooms—and they look fantastic. They are just stunning; they are overlooking the pool complex. It is a really attractive site.

They have done an incredible job there. The main function room has been refurbished to a high standard. The new Reflections Room looks out over the hotel's pool as well. There is fabulous new landscaping for the venue, and I understand that already the venue is attracting bookings for weddings and functions, while there has been an improved occupancy rate in the hotel's rooms, which is great. The state government fund committed around $870,000 to the project and it has been a great result. Again, I believe that this project was not only slightly ahead of time but on budget. Congratulations to all those grant recipients.

ARKAROOLA PROTECTION AREA

The Hon. M. PARNELL (15:23): I seek leave to make a brief explanation before asking a question of the Minister for Aboriginal Affairs and Reconciliation regarding consultation under the Arkaroola Protection Act.

Leave granted.

The Hon. M. PARNELL: Section 8 of the Arkaroola Protection Act states:

(1) The Minister must, as soon as practicable after the commencement of this section, develop a management plan for the Arkaroola Protection Area.

The minister must, before commencing to develop or alter a management plan under the act, undertake consultation with persons or bodies who hold interests in the Arkaroola Protection Area, in such manner as the minister thinks fit. Members will recall that in this chamber we broadened the range of people who should be consulted before the management plan for the Arkaroola Protection Area is finalised.

The Greens' amendment, which was supported by this chamber, provides that along with the following list of five stakeholders—namely, native title holders, owners of land, lessees of leasehold land, holders of tenements in relation to land or custodians of land—the minister should also consult with any other Aboriginal persons or organisations whom the minister believes have a particular interest in the Arkaroola area.

The decision as to which, if any, additional Aboriginal people or groups to consult rests with the minister. The act does not name any particular persons or groups, but one group that I do know wishes to be consulted in relation to the management plan is the Anggumathanha (Camp Law) Adnyamathanha Elders. My questions are:

1. Who has the minister consulted so far over the management plan for the Arkaroola Protection Area?

2. Does the minister intend to consult with the Anggumathanha (Camp Law) Adnyamathanha Elders? If not, why not?

3. When does the minister believe that the management plan for the Arkaroola Protection Area will be complete?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:25): I thank the honourable member for this most important question. I understand that the Arkaroola Protection Bill was brought into operation on 26 April 2012, and Arkaroola was entered on the South Australian Heritage List on 27 July 2012. The government submitted its national heritage listing nomination for Arkaroola to the commonwealth government in February 2012; however, assessments of any new nominations for national heritage listing were deferred by the commonwealth until 2013.

The Department of Environment, Water and Natural Resources commenced preparing a management plan for the Arkaroola Protection Area in consultation with the owners of the land. Of course, I will take advice from my department on who should be included in that consultation process, and I have no doubt that my department will read this *Hansard* very closely and take on notice the suggestions made by the honourable member in this regard. However, I will be acting not on his advice but on the advice of my department.

The Hon. T.A. Franks: What arrogance!

The Hon. I.K. HUNTER: Well, I don't think so.

ANGOVE CONSERVATION PARK

The Hon. J.S.L. DAWKINS (15:26): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question regarding fire prevention in Angove Conservation Park.

Leave granted.

The Hon. J.S.L. DAWKINS: In January this year a bushfire occurred in Angove Conservation Park at Tea Tree Gully, which in itself was not of catastrophic significance. However, fire crews and vehicles had significant difficulty accessing the park to fight the fire; as a result, the

fence line had to be cut so that firefighters could gain access. Of even more concern to local residents are reports from a number of emergency services personnel that there is no access on the northern side of the conservation park for emergency vehicles.

Although over a number of years concerned local residents have contacted the Department of Environment, Water and Natural Resources about these issues, and the need for fire protection maintenance, only limited action has been taken. Local residents have submitted petitions to the Tea Tree Gully council and the federal member for Makin regarding these issues and are also lobbying for the establishment of a second entry and exit point to allow a quick evacuation of the area and easy emergency services access if and when required. My questions are:

1. What action, if any, was taken by the Department of Environment, Water and Natural Resources when residents contacted the department regarding fire prevention maintenance, particularly given the recent fire in the park?

2. Will the minister ask his department to investigate the possible installation of a second point of entry and exit to Angove Conservation Park on its northern boundary?

3. Given the continuing hot weather we are having as we move into autumn, will the minister request that the department urgently refresh the firebreak around the perimeter of the park?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:29): I thank the honourable member for his most important question. I am advised that a fire management plan has been developed for the parks in the Hills Face Zone, which includes Angove Conservation Park. The plan has been developed to guide fire management activities within that park.

Fuel reduction is undertaken annually within Angove Conservation Park in accordance with that plan, I am advised. I am also advised that, following representations, the government will meet with local residents, the CFS and MFS in the coming weeks to discuss their concerns and current bushfire mitigation strategies. I would be very surprised if those matters ventilated by the member are not discussed then.

EVIDENCE (IDENTIFICATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 February 2013.)

The Hon. D.G.E. HOOD (15:30): In order to debate the merits of this bill it is first necessary to consider briefly some matters of history that have affected it. It has been around for some time. I commence by mentioning a few matters concerning Family First's position on the issues that are raised by this bill, and there have been many.

In the debate in 2011 upon the government's earlier bill in the same terms as this one—that is, the exact same bill—I indicated at that time that Family First would support the bill. We did and we voted for it at the time. My view was then, and it remains now, that the law was in need of reform by legislation such as this and for that reason Family First chose to support the bill. Identification parades are no longer regarded as the most appropriate method of identification in criminal cases and the usage now is much less than it once was.

There are also practical difficulties with identification parades, and I think we have debated this bill and aspects of it long enough to understand what they are. The constraints of precedent have prevented the law from moving with the times at some level, so the intervention of parliament in my view in this particular case is necessary and appropriate.

There was a question raised in the debate back in 2011 on this bill as to whether the bill should have contained provisions to ensure quality in police identification procedures—that is, just not how it is done but how well it is done. The 2011 government bill failed to pass this chamber and it was mainly because of that issue. The chamber simply could not reach agreement on that range of issues.

My position on that was that the law needed updating; indeed, that is the position of our party. The question of whether quality in police procedures should be ensured by regulations or through court decisions was a debate where the result was much the same in either event, in my view. Put simply, the law needs updating. I emphasise that I am not saying the quality of

identification procedures does not matter, of course it does, but what I am saying is that I have every confidence that the courts are in a position to ensure that the police maintain proper standards of quality in this regard. If police procedures are not of proper quality, I have no doubt that the courts will make this very plain to the police and will also ensure that no injustice is done. On the other hand, if there are standard procedures that can be set out in regulations, as is being proposed by amendments to the bill, then we would certainly be prepared to consider those amendments.

After the defeat of the original government bill back in 2011, the opposition introduced a private member's bill with the same title back in 2012. The effect of the terms is similar to the government bill but there are some important differences. The first, as I understand it, is that the opposition's bill is framed in terms of identification evidence not being admitted unless it complied with certain requirements, whereas the government bill provides that identification evidence is not to be excluded on certain grounds.

A second difference is in the part of the bill referring to admission or exclusion of the identification of evidence. The opposition's bill refers to all identification evidence whereas the government's bill refers only to identification parades not being necessary. The third difference is that the opposition's bill refers to procedures for the obtaining of identification evidence to be prescribed by regulation. The government bill makes no reference to this. The difference is perhaps more a matter of form than substance because the opposition bill, in the end, provides that even if the regulations—and I think this is appropriate—are not complied with, a judge may still admit the evidence if he considers that it still has sufficient probative value. I think that is an important point to note.

My conclusion is that both bills end up with a similar result, although they might choose slightly different paths to reach that position. I accept that the opposition is seeking an additional layer of protection to ensure that procedures are of appropriate quality, and I think this is something that is by and large appropriate. In my opinion, the government bill also achieves the assurance of quality through the monitoring by the courts. Indeed, under either bill, the courts have complete control of what evidence is admitted and what is rejected in the end. The final position is theirs and theirs alone.

That looks forward to another opposition bill which we will be discussing tomorrow. Coming back to the government bill, we supported this bill back in 2011 and we see that the bill is the same and, for that reason, Family First will be supporting it today.

The Hon. G.E. GAGO (Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Regional Development, Minister for the Status of Women, Minister for State/Local Government Relations) (15:35): I thank honourable members for their second reading contribution to this bill. I would like to take this opportunity to clarify the policy behind the bill. The government's policy is to remove the dated judicial preference for identification parades, or line-ups, over the other procedures for obtaining evidence of the identity of an accused. The bill is carefully constructed to do no more than achieve this policy. In particular, the bill is carefully constructed so that the court and the jury maintain complete discretion over the admissibility and weight of identification evidence.

There are good and reliable identification parades and there are bad and unreliable identification parades. There are good and reliable photo boards and there are bad and unreliable photo boards. It is up to the judge and the jury each playing their own role to sort out how good and reliable the identification evidence is. The government approach lets them play their role.

Contrary to the assertions of the Hon. Mr Wade during his second reading contribution on the bill, the government has considered his private member's bill of the same title. The government determined that the private member's bill was deficient in a number of particulars and therefore reintroduced this bill to parliament to provide honourable members with the opportunity to decide between the two approaches to this issue. I understand that the Hon. Mr Wade has requested that his private member's bill be debated tomorrow, and he has recently circulated amendments to the bill for consideration by members.

The government has, of course, considered those amendments, but it will await the outcome of its bill before determining what approach it will take to the Hon. Mr Wade's bill and his amendments. Accordingly, the government may respectfully request that the honourable members here agree to an adjournment of the debate on the Hon. Mr Wade's bill so that the government may consider the implications of the recently-filed amendments.

The council divided on the second reading:

AYES (9)

Brokenshire, R.L.	Finnigan, B.V.	Gago, G.E. (teller)
Hood, D.G.E.	Hunter, I.K.	Kandelaars, G.A.
Maher, K.J.	Wortley, R.P.	Zollo, C.

NOES (12)

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

Majority of 3 for the noes.

Second reading thus negatived.

COMPULSORY THIRD-PARTY INSURANCE

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Aboriginal Affairs and Reconciliation) (15:42): I table a ministerial statement made in the other place by the Minister for Health and Ageing on South Australian motorists who receive a reduction of CTP premiums.

RESIDENTIAL TENANCIES (MISCELLANEOUS) AMENDMENT BILL

In committee.

Clauses 1 to 3 passed.

Clause 4.

The Hon. D.G.E. HOOD: I move:

Page 6, lines 17 to 19 [clause 4(2), inserted definition of *domestic facility requiring instructions*]—Delete the definition

There are two amendments, essentially, but the first one I am talking to is really deleting the definition, and [Hood-2] is the substantive amendment of these two amendments. What it does is delete the fact that, under the government bill as it stands, a criminal offence is created by a landlord who does not provide a tenant with a manual, or does not take reasonable steps to provide a manual.

The legal advice I have—and I may be accused of being pedantic here—is that the word 'reasonable' creates a lot of questions. Is it reasonable that they contact the manufacturer, for example? Is it reasonable that they scour the internet? What exactly is reasonable? If they fail to do that, then they are subject to a very substantial penalty, being potentially up to $1,250. There is an expiation fee applicable of $210, but should someone refuse to pay that because they simply do not agree with it, and of course that is their right, they could be slugged up to $1,250.

What I think is more offensive, is that potentially if they were found guilty of the offence and fined whatever the amount, they would be subject to a criminal record. This is just a landlord who has failed to provide some manuals to an individual because they cannot access them for whatever reason. The landlord believes they have taken reasonable steps, and they could find themselves with a criminal record, so I object to that. Essentially my first two amendments, that is [Hood-1] 1 and [Hood-2] 2, will make changes to this bill so that would no longer be the case.

The Hon. G.E. GAGO: I rise to oppose this amendment. Clause 22, new subsection (2), of the bill introduces a requirement for landlords to take responsible steps to ensure that tenants are given, before or at the time the tenant moves into the property, manuals or written or oral instructions about the operation of any domestic facilities requiring instructions. Domestic facilities requiring instructions are defined as appliances or devices provided by the landlord for the use of a tenant for which it would be reasonable to expect the tenant would need instructions.

If the landlord does not provide the necessary instructions then it will be taken into account in any subsequent compensation claim against the tenant for damaging the item pursuant to

clause 41 of the bill. The proposal is based on section 14(2) of the Residential Parks Act 2007, which provides that residential park owners are required to ensure that residents have been given manuals or written or oral instructions about the operation of any appliances and devices provided for the use of the resident.

Concern has been expressed about the fact that the clause includes a maximum penalty of $1,250 for failure to comply. This penalty is not considered excessive at all as it is at the lowest end of the revised penalty scheme within the bill. It is noted that the same penalty applies to proposed new section 48(1) of the act under clause 22, new subsection (1), of the bill which requires a landlord to provide their contact details to the tenant.

Penalties have been reviewed and increased across the entire act, which has not happened since the act came into operation over 15 years ago. As with all penalties, the penalty proposed under clause 22 of the bill is there to encourage compliance within the requirements under the act. Landlords who attempt to do the right thing and provide instructions for the use of those facilities will obviously have nothing to worry about and there is also the requirement to list facilities they have provided instructions for in the tenancy agreement, which will provide a level of protection for landlords should a dispute arise as to whether instructions were provided.

The proposal under clause 22, new subsection (2), is considered important to ensure that tenants can properly use all facilities on the premises left by the landlord for the tenant's use and enjoyment and protect the tenants from being liable to compensate a landlord for damaging an appliance as a result of not being advised about its proper operation and also protect landlords by reducing damage to property by ensuring tenants know how to properly operate appliances.

The Hon. D.G.E. HOOD: I wonder if the minister would outline then, if this amendment is not going to succeed, two things. First of all, why should it be a criminal offence for not providing a manual for an oven, for example, in a particular property or an air conditioner, or whatever it may be? My second question is, given the minister's explanation, what would she or the government consider reasonable steps that would satisfy this? I would like to get something on the *Hansard* so when this is reviewed by the courts in future, they have something at least to consider. I think it is extraordinary that we will make criminals out of landlords who cannot provide manuals to tenants.

The Hon. G.E. GAGO: I have been advised that the penalty described in this provision is a standard penalty that we find throughout the act, a maximum penalty of $1,250 for failure to comply. The magnitude of the penalty reflects the severity of the breach. I draw to the attention of the opposition that it is a maximum penalty of $1,250. I have also been advised that, if the clause is supported on the condition that the penalty clause is deleted, then the government will still support this on the basis that tenants still will be protected through clause 41, which is the compensation clause.

The Hon. J.A. DARLEY: I support the government's intention in relation to the supplying of instructions to tenants. However, I would never support any penalty. I understand the minister is prepared to amend her clause to that effect.

The Hon. D.G.E. HOOD: For clarity, I thank the minister for that response. We are certainly much more comfortable with that. Moving this amendment maybe will not have the ultimate outcome for which I was looking, but nonetheless we will not be making criminals out of landlords, which of course is the objectionable part of this. However, we have seen no amendment to that effect.

The Hon. S.G. WADE: I indicate that the opposition is inclined to support the government's position but is not unattracted to the argument the Hon. Dennis Hood is putting that, whilst it is an appropriate balance of landlord and tenants' rights that instructions be provided and that that be a factor in the consideration of damage, to achieve that balance and mutual interest we do not need heavy sticks like maximum penalties and expiation fees. I echo the comments of Mr Hood and, if the government is not proposing to delete the maximum penalty in the expiation fee, the opposition is inclined to do so.

The Hon. K.L. VINCENT: This may be in some sense a silly question, but better safe than sorry: what about pieces of equipment that are add-ons? For example, in my house I am not really able to reach the air conditioning panel due to the fact that I use a wheelchair, so my landlord has provided me with a remote control for that air conditioner, which actually comes from a different model but works on my air conditioner. Would the landlord be in breach of the act by not providing a manual for that remote control, because it technically comes from a different piece of equipment?

The Hon. G.E. GAGO: I am advised that it would depend on what a person could reasonably expect. So, if it is reasonable to expect that you would need a manual to be able to operate the remote control—and I for one definitely need a manual to operate a remote control because I guarantee that every one I have in my household is different, and it sends me crazy—a manual should be provided.

The Hon. D.G.E. HOOD: Can I just clarify the government's position, and forgive me if I did not hear you, minister. Is it the government's position that you will move an amendment to clause 22 to delete the financial penalties and the potential for criminal conviction?

The Hon. G.E. GAGO: I am advised that the government would be happy to move an amendment, but that needs to occur at clause 22, I am advised.

The Hon. D.G.E. HOOD: In that case, I am happy to withdraw that amendment, having had that commitment from the minister.

The CHAIR: The Hon. Mr Hood, you have moved it; you are seeking leave to withdraw it, are you?

The Hon. D.G.E. HOOD: That is right, sir.

Leave granted; amendment withdrawn.

The Hon. S.G. WADE: I was hoping to clarify the advice the minister gave to a previous member in relation to reasonable steps and oral instructions. As I understood the minister's advice, there is a hierarchy of obligations, if you like. In other words, the landlord needs to take reasonable steps to provide a manual and, if it is not reasonable to provide a manual, then take reasonable steps to provide written instructions and, if that is not reasonable, take reasonable steps to provide oral instructions. That is not how I understand the common usage of the word 'or'.

I would have thought that the plain meaning of proposed section 48(2) is that a landlord, even at the first juncture, could choose between a manufacturer's manual, written instructions or oral instructions. Could you just clarify that I have understood her advice?

The Hon. G.E. GAGO: I think that subsection (2) is quite straightforward and very easy to understand. It says:

> A landlord must take reasonable steps to ensure that a tenant is given, before or at the time the tenant commences occupation of the premises under the residential tenancy agreement, manufacturers' manuals, or written or oral instructions, about the operation of any domestic facilities requiring instructions.

So, it is 'or' on both occasions.

The CHAIR: The Hon. Mr Hood sought leave to withdraw his amendment and that amendment was to clause 4. We have fast-forwarded to clause 22. I am quite happy to put the first 21 clauses, but can we stick to clause 4. Minister, you have an amendment?

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

Page 7, lines 15 and 16 [clause 4(8), inserted definition of *statutory charges*, (b)]—Delete:

'the *Waterworks Act 1932* or the *Sewerage Act 1929'* and substitute 'the *Water Industry Act 2012'*

This is a minor consequential amendment to update the definition of statutory charges under clause 4(8)(b) of the bill to include a reference to the Water Industry Act 2012, which repealed the Waterworks Act 1932 and the Sewerage Act 1929 on 1 January 2013.

Amendment carried; clause as amended passed.

Clause 5 passed.

New clause 5A.

The Hon. M. PARNELL: I move:

Page 8, after line 9—After clause 5 insert:

5A—Amendment of section 12—Membership of Tribunal

(1) Section 12(2)—delete subsection (2) and substitute:

(2) Subject to this section, an appointment as a member of the Tribunal following the commencement of this subsection will continue until the person attains the age of 65 years or retires before attaining that age.

(2a) A member of the Tribunal may be appointed on an acting basis and, in that case, the term of appointment will be for a term of not more than 6 months.

(2) Section 12—after subsection (3) insert:

(3a) Before a person is appointed (or reappointed) as a member of the Tribunal, the Minister must consult confidentially about the proposed appointment with a panel consisting of—

(a) a nominee of the Law Society of South Australia who has expertise in tenancy law; and

(b) a nominee of the Attorney-General; and

(c) a nominee of the House of Assembly appointed by resolution of that House; and

(d) a nominee of the Legislative Council appointed by resolution of the Council; and

(e) the Commissioner for Public Sector Employment,

(and for the purposes of the consultation must inform the members of the panel of all persons short-listed for appointment).

(3) Section 12(6)(b)—delete paragraph (b) and substitute:

(b) comes to the end of his or her term of office under this Act (including by retirement) and, in the case of an appointment on an acting basis, is not reappointed; or

This clause is to do with the membership of the Residential Tenancies Tribunal. There are basically two evils that I am seeking to overcome in this clause. The first is the ability of the government to appoint their mates, for want of a better word, to the tribunal, to make sure that there is some integrity over the appointment process, so that people appointed are in fact suitable and qualified for the position. The second evil is to be overcome by providing for some security of tenure which is consistent with the quasi-judicial or even judicial functions that are inherent in the jurisdiction of the tribunal.

What you have to remember, Mr Chairman, is that this is a tribunal where their jurisdiction is to be increased to $40,000 and where they also have, as I understand it, the ability to deal with contempt of the tribunal and with a range of other judicial or quasi-judicial matters. My understanding is that the most recent tenures provided to members of the Residential Tenancies Tribunal have been six months.

Imagine how we would regard the appointment of magistrates or judges if they were basically appointed for six months. I understand the practice of government is for longer terms than that, but my understanding of practice over many years is that, whether it is a fault in the Attorney-General's office or somewhere else, they never quite get around to appointing people in time and what often happens is that people actually do not know whether they are going to be reappointed up until the day that their tenure expires—and it has been thus for years and years and years.

What I think we need to do is take more seriously these appointments to what is effectively, as I say, a judicial or even quasi-judicial body. The approach that the government has taken over many years—and it suits the government—is to treat these tribunal members as if they were members of some minor advisory committee of government, the blowfly advisory board or something like that. They are paid sessional rates for the hours that they turn up and hear disputes. They are not entitled to any other Public Service benefits. They certainly do not have holidays or sick leave or anything like that. They are treated as if they were members of an advisory committee to government rather than people exercising jurisdiction up to $40,000 in value.

The model that I have chosen in this amendment (and I am grateful as always to parliamentary counsel for providing the precedent) is to use the same model as in the Fair Work Act 1994 relating to commissioners of the Industrial Relations Commission. Effectively, I have translated those requirements into the Residential Tenancies Act. The main two parts of the amendment are first of all to provide for tenure of appointment and secondly to make sure that any appointment or reappointment goes through a panel consisting of a nominee of the Law Society, a nominee of the Attorney-General, a nominee of the House of Assembly, a nominee of the Legislative Council, and the Commissioner for Public Sector Employment.

As members would be well aware, because it formed the basis of some debate in this place some time ago, that certainly was not the process followed with the most recent appointment

of the presiding member. So what this amendment seeks to do is to add to this tribunal the gravitas it deserves.

The Hon. G.E. GAGO: The government opposes this amendment. Pursuant to section 12 of the act, members of the Residential Tenancies Tribunal are appointed by the Governor for a term not exceeding five years. This amendment seeks to change the term of member appointments so that they continue until the person reaches 65 years of age or they retire before then. It also provides for temporary six-month appointments for acting members, and introduces a requirement that before a member is appointed the minister must consult on the proposed appointment with a panel consisting of a nominee of the Law Society of South Australia, the Attorney-General, the House of Assembly, the Legislative Council and the Commissioner for Public Sector Employment.

As I said, the government opposes this amendment. The proposed tenure is not considered appropriate. It is necessary to be able to retain flexibility around operational requirements for the tribunal as its resource needs fluctuate. Additionally, the proposed consultation process is not considered appropriate, as members of the tribunal other than the presiding and deputy members are not required to be legally qualified, nor are they considered to be employees of the government. It is on those grounds that the government opposes this amendment.

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

Proposed subclauses (1) and (3) to the proposed new clause 5A in the Hon. Mr Parnell's amendment be deleted.

The opposition is in part agreement with the government. At present a member of the Residential Tenancies Tribunal may be appointed for a term of up to five years by the Governor through Executive Council. A person may be reappointed after completion of their term, but has no guaranteed tenure whatsoever.

The amendment proposed by the Hon. Mark Parnell would treat the tribunal more like a court, with appointments being made in a similar way to magistrates. We appreciate that this is a value judgement in relation to each court and tribunal but, in our view, this tribunal should not be accorded that status.

However, we are attracted to the proposed subclause (2), particularly in the experience of this government in its lack of transparency and a lack of merit in the appointment process, so we believe that would be an enhancement. If the government wants to tweak the list it may choose to do so in this committee consideration or subsequently, perhaps even by recommittal; however, on behalf of the opposition I indicate that we support subclause (2).

The Hon. M. PARNELL: Having heard the view of government and the view of the opposition, whilst I still believe that there is merit in the three parts of my amendment, I will not object to the deletion of subclauses (1) and (3). Once they are gone, then we can vote on the rest.

Amendment carried.

The committee divided on the new clause as amended:

AYES (11)

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

NOES (10)

Brokenshire, R.L.	Darley, J.A.	Finnigan, B.V.
Gago, G.E. (teller)	Hood, D.G.E.	Hunter, I.K.
Kandelaars, G.A.	Maher, K.J.	Wortley, R.P.
Zollo, C.		

Majority of 1 for the ayes.

New clause as amended thus inserted.

Clauses 6 to 14 passed.

Clause 15.

The Hon. M. PARNELL: I move:

Page 9, lines 36 and 37 [clause 15(1)]—Delete subclause (1)

This amendment comes from the submission to the review of the Residential Tenancies Act by the Community Housing Council of South Australia Incorporated. It is probably fair to say that I was a little surprised that this organisation asked for this amendment because it is effectively a landlord body and the benefit of the amendment could probably be said to lie more with tenants—at least that was my first reaction when I saw it.

The issue is how long a party to a tribunal order has to lodge a notification of intention to seek to vary or set aside an order. In other words, it is sort of the second bite of the cherry amendment. So, if an order is made, the question is: how long before the door closes on parties being able to go back to the tribunal to seek to vary or set aside that order? The current arrangement is three months. So, parties have three months to go back to the tribunal. The government's bill proposes that that be reduced to seven days.

I will read the very brief paragraph provided by the Community Housing Council of South Australia. I think that all members would have this but, for the benefit for *Hansard*, I want to put it on the record. It states:

> The experience of CHOs is that the current time limit of 3 months offers flexibility which means they are able to negotiate constructively with tenants; it is important to note that CHOs house vulnerable tenants. As an example it might be that the order is to make certain repayments and a tenant maybe going well for 6 weeks and then there are issues. CHOs in the current 3 month timeframe have the opportunity to work with tenants and get them back on track within the 3 months. CHOs are concerned that a 7 day time limit will remove this flexibility which is an effective tool and used frequently to maintain tenancies.

In other words, according to the Community Housing Council of South Australia, it believes that the status quo better serves its vulnerable tenants.

In light of that submission, it seems to me that the status quo is probably worth retaining. That is at the heart of this amendment; it keeps the three-month time period within which applications to vary or set aside tribunal orders may be made.

The Hon. G.E. GAGO: The government advises that it opposes this amendment. The purpose of clause 15 of the bill is to improve the efficiency of the tribunal by requiring parties seeking to vary or to set aside an order to do so in a timely manner. Whilst circumstances change, it is not considered necessary for parties to be given three months within which to apply to the tribunal for such an order. Please note that the ability of the tribunal to grant an extension of time to applicants will be retained for the benefit of the few situations where a longer time period is genuinely needed.

The Hon. S.G. WADE: The opposition is supportive of the government position.

Amendment negatived; clause passed.

Clauses 16 to18 passed.

Clause 19.

The Hon. M. PARNELL: I move:

Page 10, after line 25—Insert:

(1) Section 46(1)—after 'fees' insert:

payable by landlords (other than the South Australian Housing Trust or a registered community housing organisation)

This amendment seeks to redress one of the longstanding elements of unfairness in relation to the Residential Tenancies Tribunal system; that is, that the Residential Tenancies Tribunal is overwhelmingly funded by interest on tenants' bond money, yet the tribunal is used overwhelmingly by landlords to evict tenants.

Putting that issue to one side, some recent amendments a few years ago allowed for application fees to be levied for applications to the tribunal; in other words, compounding the

existing injustice. It is not enough that the tenants are already paying for a service that is overwhelmingly used to evict them but if they have a claim, a case they want to bring, they have to pay an application fee of $37.25.

This amendment is fairly simple. It basically recognises that the tenants have already paid for the use of this service and they should not have to pay a second time. There are, as I understand it, already exemptions that can be granted in relation to not having to pay that fee but this amendment would make it so that tenants would not be paying the fee as a matter of course.

The other exceptions are the Housing Trust and registered community housing organisations. They should not be obliged to pay the fee either. That is the effect of this amendment; that is, tenants will not need to pay the $37.25 to bring applications to the tribunal.

The Hon. A. BRESSINGTON: I will not be supporting this amendment. I think the choice of the Hon. Mark Parnell's words is interesting: that the tribunal is used to evict people. I know a number of people who own rental properties with good tenants, and the last thing they want to be doing is evicting good tenants.

When you go to the tribunal to evict a tenant there are probably a number of reasons why and No. 1 is that they have probably fallen way behind in their rent and you seek some sort of mediatory body to be able to come to an agreement as to either being able to catch up with rent or whatever it may be. There may also have been property damage and you want to evict the tenant because they have wrecked your property. Sometimes it is that the property needs to be sold because renting properties these days is not a profitable exercise at all.

To say that, if you have had damage done to your property or that your tenant is behind in the rent and you want to take this to the tribunal, you are then responsible for the application fee as well is pretty much a bit of slap in the face. I would like to just stress that good tenants rarely get evicted.

The Hon. S.G. WADE: Like the Hon. Ann Bressington we are attracted to joining the government in opposing the amendment. We note that under section 46(2) the fee may be reduced or remitted by the registrar if the person is suffering financial hardship or for any other proper person, and we note the scope of that discretion is wide. As such, we do not share the honourable member's view that additional exemptions should be enshrined.

The Hon. G.E. GAGO: The government opposes this amendment. As the Hon. Mark Parnell correctly notes, the tribunal is funded by the income derived from the investment of bond moneys lodged with Consumer and Business Services. However, it is not considered appropriate for tenants to be granted free access to the tribunal for this reason.

One of the main reasons for the introduction of the application fee was to reduce the number of applications made unnecessarily to the tribunal. The imposition of a fee encourages parties to attempt to resolve disputes between themselves before applying to the tribunal as a last resort. Some of you may not be aware that the collection of the fee facilitates a provision of educational initiatives, such as the financial counselling and advocacy support provided to tenants through the Tenants Information and Advocacy Service.

TIAS is a service provided by Anglicare, which receives an annual grant through the collection fee from Consumer and Business Services. Additionally, it is important to note that the application fee does not apply to concession card holders, full-time students and those who can demonstrate they are suffering financial hardship. Where they might be significantly disadvantaged by this fee, there are provisions made for any of those individuals.

Amendment negatived; clause passed.

Clauses 20 and 21 passed.

Clause 22.

The Hon. D.G.E. HOOD: I think the minister had some comments to make on this clause before I move this amendment if I need to.

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

Page 11, lines 36 to 37—Leave out all words in these lines

The Hon. D.G.E. HOOD: Can I just clarify this with the minister. Is the impact of that that a landlord, because they would not be subject either to an expiation fee or a fine, also would not be subject to any criminal record?

The Hon. G.E. GAGO: I have been advised that, yes, your understanding is correct; however, as I pointed out earlier on, they are still likely to be subject to compensation.

The Hon. D.G.E. HOOD: Family First supports the amendment, and I withdraw my amendment [Hood-1] 2.

Amendment carried; clause as amended passed.

Clause 23.

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

Page 12, lines 26 and 27 [clause 23, inserted section 49(1)]—

Delete 'form approved by the Commissioner' and substitute 'prescribed form'

The government bill is proposing to create a standard form to use for residential tenancy agreements. Previously, the written agreement did not have to be in a consistent format, provided it was a valid agreement that complied with the act.

In the absence of a standard form the industry created a series of forms, I understand many of which followed a standard formula per se. This has proved helpful for landlords to ensure the requirements of the agreement were met, and so the opposition agrees with the government's proposal to create a standard form. It will make compliance with the act more straightforward and give both landlords and tenants some peace of mind.

However, this is a very important part of any agreement and, in our view, should not just be left to the commissioner alone to decide without a prospect of review. The industry and tenants should be given more assurance than simply, 'Just trust us, it will be fine.' The government has not given any public commitment to consulting with industry or tenant groups, and having the agreement in the regulations would force the government to do so and ensure that such an important form gets the consideration it deserves.

The opposition is not suggesting that the government or the commissioner have any sinister motives in drafting the forms, just that since it will have such a central role in agreements it should be created through a collaborative process. Placing it in regulations will also allow the parliament to be that final check and balance should the agreement not reflect the values of the community and the needs of the sector. This is a balance and a check that we hope the parliament does not have to use, but given this government's track record on consultation, or lack thereof, we are of the view that this is necessary.

The Hon. J.A. DARLEY: Whilst I agree in principle with what the Hon. Stephen Wade is trying to achieve, I also believe that allowing a greater level of flexibility with respect to written residential tenancy agreements is preferable. I understand the minister is willing to give an undertaking that, in developing a format that would be acceptable to the commissioner and in making any subsequent changes down the track, the government would consult with peak bodies, such as the Real Estate Industry Association. If that is the case, I am willing to support the clause in its current form. I understand that the real estate industry accepts this. Will the minister please confirm?

The Hon. G.E. GAGO: The government rises to oppose this amendment. It had been considered to prescribe the standard form agreement by regulation. However, the feedback received from respondents during consultation highlighted the need for the form to be easily amended, if necessary. Therefore, rather than prescribing the form by regulation, which will provide for a slower amendment process as it is subject to cabinet and parliamentary processes, it was decided to introduce a form approved by the commissioner so as to provide for greater flexibility and administrative efficiency. As the Hon. John Darley has indicated, the government will give an undertaking to consult with the industry on the development of the form.

The Hon. S.G. WADE: I find it extraordinary. Of course I welcome the government's commitment to consultation, but do we really think that having regulations precludes consultation? Having regulations actually insists on consultation. That is why we have regulatory disallowance processes, so that governments cannot, without fiat, ride roughshod over communities' views. This

is why the parliament constantly talks about disallowable instruments. To think that somehow my amendment is getting in the way of the consultation process is beyond belief.

In terms of the argument the minister uses with regard to flexibility, is the minister serious? The cabinet operates on a 10-day rule. Is the government saying that it believes that it needs to put in standard form agreements with more regularity than every 10 days? This is bizarre! I find it gobsmacking that the government would try to put up these sorts of arguments.

We found through our consultation that stakeholder after stakeholder after stakeholder said that this standard form was very important—that it was far too important to leave it in the single fiat of a single bureaucrat. I urge members to join us in parliament giving some assurance to the community that consultation will not merely be promised by this government but shall be delivered.

The Hon. G.E. GAGO: I am somewhat bemused. The Hon. Stephen Wade needs to listen to the contributions made in this place. There was nowhere in my debate on this amendment that I challenged that regulations would somehow impede consultation—that was not said or inferred at all. I said that the problem in putting it into regulation is that it slows down the process. That was the argument. It is an unnecessary additional process. We have consulted broadly; the industry supports what we are doing. It agreed to a standard form and doing it this way provides much greater flexibility and administrative efficiency.

The Hon. S.G. WADE: If the government is serious in suggesting that a regulatory process would slow down the process, is the government suggesting that the commissioner would not be required to take the standard form to cabinet?

The Hon. G.E. GAGO: I am advised, technically not.

The Hon. S.G. WADE: I would make the point to the committee that is even more extraordinary. If, at least, the cabinet was going to say, 'We will have a look over it,' but the commissioner can write it on Monday night and issue it on Tuesday morning. I think that the industry deserves more respect than that.

The Hon. M. PARNELL: I want to try to get some perspective back into this. The most important thing we are going to achieve in this is that there will be a standard form of tenancy agreement. That is the first thing. Just by way of an aside, I only ever appeared once before the Residential Tenancies Tribunal in Victoria and that was a situation where some DIY person had taken an old shop lease and crossed out the word 'shop' and written in the address of the residential premises and it was an inappropriate document, but it did strike me 25 years ago that a standard form agreement would make sense.

When you go online and you look for the standard form agreements now, you can see they have not been updated for a long time. They still have that free water allowance. Remember the free water allowance we used to get? It says that the tenant only starts paying after the free water has been exhausted and we have not had that situation for years. The question before us is: if we are going to have a standard form agreement, is it enough that the commissioner approves it or should it be in the regulations?

The Greens' position has been fairly consistent over the years that, if we think something is important enough to warrant a bit of scrutiny, then having a disallowable process makes sense. There is only one nagging doubt I have–and the Hon. Stephen Wade might take this question and answer it. It strikes me that if we do go down the path of your amendment where it is a disallowable instrument if it was, in fact, disallowed, then I am just wondering whether that would create a vacuum and whether there would be, in effect, no standard form agreement that could be used.

As it is worded, it basically says that a landlord or tenant must not prepare or authorise the preparation of a written residential tenancy agreement in a form that is not the form and it is either approved by the commissioner on the regulations. I am worried how might we deal with a vacuum in regulations?

The Hon. S.G. WADE: My understanding is that the regulation introducing a new form (first clause) would be to delete the old form, and so if you disallowed the regulation you would be disallowing the bit that says delete the old form. The old form would exist until it is replaced. I do not believe it would be beyond the width of parliamentary counsel to draft such a form. If it is necessary to make provisions in the act for preservation, then that might need to be a recommittal issue if the house is inclined to this approach.

The Hon. A. BRESSINGTON: I would like to ask the minister a question. We are going to have a standard form, a tenancy agreement, and this is for real estate agents and their tenants, or the people who they are renting the houses to on behalf of owners. I am just wondering if this is going to also apply to landlords who are renting one home to a tenant and, if that is the case, are they actually able to amend that tenancy agreement to suit the individual circumstances? For example, my neighbour rents a house to somebody else but she actually covers the excess water bill so that the garden is kept in reasonable condition.

Would those sorts of amendments be able to occur just between the landlord and the tenant or would they need to go in front of the commissioner to be able to get approval for an amendment?

The Hon. G.E. GAGO: I am advised that yes, there will be one standard form agreement for all written tenancy agreements, but it will be possible to include variations within that where both parties are in mutual agreement.

The Hon. A. BRESSINGTON: So, you do not have to go to the commissioner to get approval for that?

The Hon. G.E. GAGO: I have been advised that the standard form should provide the flexibility to enable that to occur.

The Hon. M. PARNELL: Further to the issue I raised with the Hon. Stephen Wade, I think the only consequence of having a vacuum—and I am thinking more in terms of the initial regulations; if they were disallowed there would be nothing to fall back on—would be a potential criminal matter, but it is impossible to conceive where if there was in fact no standard approved form that anyone would be prosecuted for failing to use it when it did not exist.

I do not like answering my own questions in these things, but I note that subsection (4) provides:

> A failure to comply with this section does not make the residential tenancy agreement illegal, invalid or unenforceable.

So, in fact even if there was some difficulty or hiatus in terms of a standard approved form, it does not invalidate whatever form was used.

In light of that, the Greens will be supporting the Hon. Stephen Wade's amendment. If there is some need for parliamentary counsel to tweak it or to look at it again between the houses, we can do that. We think that this is a fundamentally important document and we like the idea of it being in regulations, rather than simply at the whim of the commissioner.

The Hon. D.G.E. HOOD: Family First supports the amendment.

The committee divided on the amendment:

AYES (13)

Bressington, A.	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.	Stephens, T.J.	Vincent, K.L.
Wade, S.G. (teller)		

NOES (8)

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

Majority of 5 for the ayes.

Amendment thus carried.

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

Page 12, lines 29 and 30 [clause 23, inserted section 49(2)]—

Delete 'form approved by the Commissioner' and substitute 'prescribed form'

I suggest to the committee that this amendment is consequential to my first amendment to clause 23.

Amendment carried; clause as amended passed.

Clauses 24 and 25 passed.

Clause 26.

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

Page 13, after line 19—After subclause (2) insert:

(3) Section 52(3)—delete subsection (3)

This amendment seeks to remove subsection 52(3) from the act, which at present discriminates against families with children. The provision in the act provides that where an agent or a landlord lives on the premises or adjacent to the premises, they may refuse to grant a tenancy if the tenant has children. At a time when we hear federal Labor talk about its supposed support for working families it is peculiar, at least, that at the state level this provision remains.

The issue was first raised with the Liberal opposition by Shelter SA, which is seeking the amendment I am moving today. We have consulted with other industry stakeholders, and the amendment received broad support. If we are truly a state that values families and gives support to young families, we believe that removing barriers to stable, safe housing is an important way of demonstrating that support.

The Hon. G.E. GAGO: I understand that the Hon. Mark Parnell will move an amendment to this, so the government will support this with amendment. Discrimination against tenants with children was not intended as a priority area for the review of the act, particularly as it is regulated by extensive commonwealth legislation.

The government believes that the ability of a landlord or agent to discriminate against a tenant with a child in relation to premises in which they live is fair and reasonable and should be maintained. However, discrimination against tenants with children in relation to premises adjacent to the premises in which the landlord or agent lives is considered unfair by the government and, as such, the amendment, insofar as it relates to that issue, is supported.

The Hon. M. PARNELL: I move:

Page 13, after line 19—After subclause (2) insert:

(3) Section 52(3)—delete 'or in premises adjacent to those premises'

I have an amendment to the same clause. For the benefit of honourable members, the difference between the Hon. Stephen Wade's amendment and mine is that the Hon. Stephen Wade's amendment basically outlaws discrimination against children in all cases, whereas my amendment does retain one circumstance where you can discriminate against children, and that is if you are leasing part of your own property.

In other words, if you are leasing your back rooms then, I think for the reasons the minister said, most people probably accept that it is reasonable to say, 'I'm renting a part of my own house. I should be able to say whether or not I want children in my own house.' But the act as it currently stands goes too far because it also talks about premises that are adjacent. In other words, it is allowing landlords to be social engineers and determine that neighbouring properties are not allowed to have children either, and I think that is a bridge too far.

So, the amendment that I am moving basically creates a special case for when you are renting part of your own property but it draws the line there. There is no ability for a landlord to try to keep children out of the next-door property, which they presumably also own, and it does not bear much scrutiny when you think about it because they have no control over the people on the other side where they do not even own the property and a family with 15 children could move in. I see it as a way of putting a bit of a brake on social engineering but making a special case for someone who is renting out part of their own home.

The Hon. D.G.E. HOOD: Family First is attracted to both amendments, but I think the Hon. Mr Parnell has made a sound point. Within the very strict confines of someone's own

premises, they should have that ability to discriminate, if you like. It might be particularly an old person, or whatever it might be, so we will support the Hon. Mr Parnell's amendment.

The Hon. J.A. DARLEY: I will also be supporting the Hon. Mark Parnell's amendment.

The committee divided on the Hon. Mr Wade's amendment:

AYES (7)

Dawkins, J.S.L.	Lee, J.S.	Lensink, J.M.A.
Lucas, R.I.	Ridgway, D.W.	Stephens, T.J.
Wade, S.G. (teller)		

NOES (12)

Brokenshire, R.L.	Darley, J.A.	Finnigan, B.V.
Franks, T.A.	Gago, G.E. (teller)	Hood, D.G.E.
Hunter, I.K.	Kandelaars, G.A.	Maher, K.J.
Parnell, M.	Wortley, R.P.	Zollo, C.

Majority of 5 for the noes.

Amendment thus negatived.

The Hon. Mr Parnell's amendment carried; clause as amended passed.

Clauses 27 and 28 passed.

Clause 29.

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

Page 14, after line 10—After subclause (3) insert:

(3a) Section 55—after subsection (2) insert:

(2a) Despite subsections (1) and (2), the rent payable under a residential tenancy agreement may be increased at any time by mutual agreement between the landlord and the tenant.

Currently, section 55(1) of the act enables a landlord to increase the rent every six months. Since most fixed-term tenancies are for a term of at least one year, many tenants find themselves locked into a tenancy agreement they can no longer afford as a result of a mid-term rent increase. Clause 29 of the bill amends the act so that the rent increases may be only every 12 months. In light of that amendment, it was submitted that consideration be given to enabling rent increases at any time during a tenancy by mutual consent between the parties—for example, to cover the cost of an improvement to the premises or a request by the tenant, such as installing an air conditioner.

Currently 55(1) of the act would prevent a landlord and a tenant from agreeing that a rent increase is fair and reasonable in exchange for the installation of air conditioning, as requested by the tenant. Therefore, this amendment is recommended in the interests of enabling flexibility between parties to tenancy agreements where there is agreement.

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

The Hon. M. PARNELL: What is there to prevent a landlord asking daily for rent increases until they get the tenant's agreement?

The Hon. G.E. GAGO: The honourable member is about to steal my thunder because my next amendment is about placing undue pressure on tenants to agree to rent increases. I would imagine that asking a person daily would potentially constitute undue pressure.

Amendment carried; clause as amended passed.

Clause 30.

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

Page 14, after line 21 [clause 30(1)]—After inserted paragraph (fa) insert:

(fb) if the rent was purportedly increased under section 55(2a)—whether the tenant was put under undue pressure to agree to the increase; and

This amendment is consequential, if you like, on the previous amendment in relation to rent increases by mutual agreement during tenancies. It is a protection that has been included for the benefit of tenants and it aims to protect tenants, particularly the vulnerable and disadvantaged, from landlords who may use the proposal under clause 29 of the bill to place undue pressure on tenants to agree to a rent increase.

The amendment is an addition to the matters to be taken into consideration by the tribunal when determining if rent is excessive under section 56 of the act. This will enable the tribunal to reduce the rent payable under the agreement if it is found that the tenant was put under undue pressure to agree to a rent increase purported to be mutually agreed pursuant to the new section 55(2a) under clause 29 of the bill.

Amendment carried; clause as amended passed.

Clauses 31 to 34 passed.

Clause 35.

The Hon. M. PARNELL: I move:

Page 16, lines 20 to 30 [clause 35(4) to (8) (inclusive)]—Delete subclauses (4) to (8) and substitute:

(4) Section 61(2)—delete subsection (2)

This is an amendment which, when I first drafted it, I did so on the basis that it was an unfair provision, but since drafting it and considering it in the light of other government amendments it has a more sinister application now that I will speak to briefly.

In a nutshell, the section that I am amending is about the ability of a landlord every two years to go to the tenant and say, 'Your bond no longer represents the appropriate amount of bond'—either the four-week or six-week bond. The reason it no longer represents four or six weeks' rent is that the rent has gone up but the bond has not. There is no interest payable on the bond, so the bond devalues over time, so there is a provision which says that the landlord is allowed to get the bond topped up. I think that is unfair. I think the bond is the bond and whatever you paid, if you are still there and you are still a good tenant and you are still paying your rent, then that is the bond that should see you through the remainder of the tenancy agreement.

That was my starting position but when I said that there was another consequence—and I will get the minister's view on this because I need to know whether I am wrong—it is that unless this chamber agrees to this amendment the pet bond is retrospective. The pet bond means that anyone who currently has a cat or dog with the permission of their landlord will be required to stump up an extra 400 bucks when the landlord seeks a bond review.

The reason for that is that the wording of the section is that there is a maximum amount of bond and that maximum amount is about to increase as a result of the pet bond. My understanding of it—and again I will take advice if the minister thinks that I have this wrong—is that if the maximum bond goes from four weeks to five weeks or from six weeks to seven weeks, on the occasion of bond review when the landlord goes to the tenant and says, 'Your bond no longer represents the maximum that I am allowed to take from you, I want you to top it up,' they can then retrospectively get the pet bond.

I think that is a problem, and I think it is a problem for a number of reasons. First of all, I do not think it is fair; and, secondly, I would be interested in the response of animal groups like the RSPCA. If you have someone who, out of the blue, is required to find an extra $400 or $500 in order to be able to keep their pet, then I think that would be a terrible outcome. What we do not want to see are people abandoning their pets.

If I have got this wrong then I would love to hear the minister's explanation, but it seems to me that a combination of the pet bond being legally applied by way of setting the maximum amount of bond and given that this section talks about landlords being able to top the bond up to the maximum amount which now includes the pet bond, I think makes the pet bond retrospective. I might get a response from the minister to that proposition before we proceed with this because it may sway some members as to how they view this amendment.

The Hon. G.E. GAGO: The government rises to oppose this amendment. The amendment seeks to repeal the provision that landlords will no longer be able to top up a bond during a long-term tenancy. The government, as I said, opposes this. Currently the landlord is able to request a four-week bond if weekly rent is $250 or less and a six-week bond if weekly rent is higher. Since the $250 bond limit was set, weekly rentals have increased considerably, costs have also increased and many landlords find the bond does not cover their losses at the end of the tenancy.

Consideration was given to increasing the bond limit, but housing affordability is a significant problem, and increasing the limit would place extra stress on low income tenants, so the proposal was not pursued. Therefore, it is important to enable landlords to retain the option of increasing the bond for long-term tenancies so that it may be sufficient to cover the cost of any cleaning, rent and repairs owing at the end of the tenancy.

The Hon. K.L. VINCENT: I hope very much that this is a silly question, but just to get it on the record so we are absolutely clear: I assume that the pet bond would in no way apply to assistance animals, such as guide dogs, hearing dogs and so on? Could a landlord charge the pet bond for an assistance animal, such as a guide dog?

The Hon. G.E. GAGO: I have been advised that it could apply to all animals, including guide dogs.

The Hon. K.L. VINCENT: Is the minister aware that that would be in breach of the Disability Discrimination Act? I have never seen such a clear breach.

The Hon. G.E. GAGO: I will have to take that question on notice. There is confusion. I will take it on notice and bring back a response.

The Hon. K.L. VINCENT: What is the confusion exactly?

The Hon. G.E. GAGO: In supplying an answer at this particular time—I do not have the advice available.

The Hon. K.L. VINCENT: It is a very clear-cut breach of the Disability Discrimination Act.

The Hon. G.E. GAGO: You may be right.

The Hon. K.L. VINCENT: I am, I assure you. If and when it does become clear that this is a very evident breach of the Disability Discrimination Act, will the minister undertake to amend the bill so that this breach does not occur?

The Hon. G.E. GAGO: The advice I have received is that they are unsure now whether or not it applies to guide dogs, so that is why I am seeking further advice about the matter.

The Hon. K.L. VINCENT: But, if it did apply, will the minister undertake to amend it so that it will not? Surely, you would not want that.

The Hon. G.E. GAGO: Obviously, we will not breach that or any other legislation. The government would not put forward anything that is in breach. If you have drawn to our attention an area that is potentially in breach, then that would be addressed, irrespective of which legislation it would apply to.

The Hon. S.G. WADE: I seek a commitment from the minister that she will either report progress now or give an undertaking to the committee that, if it is in breach of any obligations of the state or the parliament, she will recommit the clause at a later stage.

The Hon. G.E. Gago: I have already given that commitment.

The Hon. S.G. WADE: No, you have not.

The CHAIR: Minister, you have given that commitment.

The Hon. G.E. Gago: Quite clear—you don't listen.

The Hon. M. PARNELL: The minister may have given a commitment to recommit if it turns out that there is an unlawful discrimination against guide animals, for example, but a few minutes ago I posed a question about whether the ability of a landlord to get a bond topped up to 'the relevant amount' means that the pet bond is retrospective, or is the minister taking that question on notice as well?

The Hon. G.E. GAGO: I am advised that it is in fact not correct to say that the pet bond is retrospective. I am advised that it is about maintaining the value of the bond over time.

The Hon. S.G. WADE: Do I take from the minister's answer that, if the pet bond was not sought at the beginning of the tenancy, it would not be able to be incorporated in subsequent adjustments to the bond? My understanding of the advice the minister gave the Hon. Mark Parnell was that there was no retrospectivity, so therefore, presumably, if a pet bond is not sought at the beginning of the tenancy it cannot be incorporated into any top up under this provision.

The Hon. M. Parnell: The words are 'the relevant amount' and that now includes the pet bond.

The Hon. S.G. WADE: Yes.

The Hon. M. PARNELL: Just for the benefit of the minister, my concern is that the maximum amount that the bond can be topped up to is an amount that is called 'the relevant amount'. What it says is that the relevant amount in the case of an agreement under which the tenant is permitted at the request of the tenant to keep an animal at the residential premises is five weeks' rent under the agreement. It does not say that it is new requests for new animals.

My interpretation of this is that if you keep a dog, for example, at your premises and you have done that for some time with the permission of the landlord, now that pet bonds have been introduced the landlord has an opportunity to say, 'Okay, on the bond review, in two years' time when you are topping it up, you are not topping it up to four weeks' rent, you are now topping it up to five weeks' rent.' That means existing families with existing pets could be up for a bond of $400 or $500 or more. Some families, I am sure, will not be able to afford that.

If the minister wants to put on the record categorically for the purposes of *Hansard* and send it to the Residential Tenancies Tribunal that this is not retrospective, that there is no way that a landlord can insist on a retrospective pet bond, then I would love to get that on the record. Otherwise, I think I am looking for a commitment to recommit this clause until we can get an answer to that question.

The Hon. G.E. GAGO: I have been advised that what the Hon. Mark Parnell has just outlined is correct and that is, yes, next time the bond is reviewed, a pet bond can be included into the future, so that is for the next 12 months' rent or whatever it is. What I meant by saying there is no retrospectivity is that the landlord cannot charge the person bond money from the previous 12 month tenancy; they can only include that or make changes to the bond for the period ahead.

The Hon. M. PARNELL: I thank the minister for her answer. That means that every family who owns a pet in a rental property, with the permission of the landlord, however long they have been there, runs the risk that, when that bond is reviewed—and it can be reviewed every two years—they will be forced to pay an extra $400 or $500 or more for the ability to keep their pet that they already have permission to keep. So the consequence of members not voting for my amendment is that that retrospectivity, in other words, a bond for an existing pet, will be able to be applied in the future.

The Hon. G.E. GAGO: I have been advised that, yes, that is correct. This enables a landlord to adjust the value of the bond to include potential damage, maintenance, etc., that could be caused by an animal. In the past, they have not been able to do this; they have not had access to that provision so they have just had to wear it. This enables them to have that protection for the future.

The Hon. A. BRESSINGTON: I would like to make a point with the minister and I also have a question. If somebody has had a dog at a rental property for 10 years and there has been no damage, the landlord has not had a problem with it, there have been no disagreements between the landlord and the tenant, when this legislation comes into being what would justify the same landlord, with the same dog, the same house, same tenant, being able to charge extra money for a pet that has not been a problem for 10 years, or maybe five years?

The Hon. M. PARNELL: While we are waiting, I have another observation. At the risk of stating the obvious, whilst I have talked about having to find an extra $400 or $500, it does represent bond, and of course there is the potential that they might get that bond back, but that does not take us away from the fact that a person has to find that cash up-front in order to pay that extra bond. If they do not have it, then the landlord, I believe, would be within their rights to say they have breached the tenancy agreement because they have not topped up the bond to the maximum amount allowed and therefore it could put their tenure in jeopardy.

The Hon. G.E. GAGO: Just in response to the Hon. Ann Bressington's question, the short answer is yes. What she says is so. This provision would allow that. However, what I can clarify is

that the bond provides for the potential damage, so damage that could be done; whether it is done or not is not the issue. The issue is that the animal could potentially create that damage to property—and I remind honourable members that if there is no damage the person gets their bond back. If there is no damage, that is returned.

The Hon. A. BRESSINGTON: I find that just extraordinary, that if you already have a record with a landlord and there has been no problem with a pet all of a sudden you now have to pay extra for having that same pet. I was wondering if the minister would be open to an amendment along the lines that, if the landlord can prove that the pet has caused damage, then the landlord, in the future, could charge a bond.

The Hon. D.G.E. HOOD: Just very briefly, I think this whole thing can be fixed by just applying it to future tenancies rather than any of those in the past, but in the absence of that, then Family First will be supporting the amendment.

The CHAIR: The Hon. Mr Hood is supporting the amendment?

The Hon. D.G.E. HOOD: I am supporting the amendment in the absence of the government deciding to apply this particular provision to future tenancies.

The Hon. G.E. GAGO: In terms of the question asked by the Hon. Ann Bressington about applying the bond to damage that has been proved, it does not make sense. Bonds are security against potential future damage; that is what bonds are all about. However, I remind honourable members that the pet bond is not a compulsory or obligatory thing. Landlords can choose to apply it where they believe there is the potential for damage.

In terms of the scenario that the Hon. Ann Bressington outlined, of a good tenant with an animal who has been there for 10 years and has caused no damage at all, why would a landlord want to apply a pet bond in that situation? They would have no reason to do that. Obviously, they have a good relationship with the tenant, a reliable tenant, an animal that does not cause any damage to the property, so why would the landlord choose to make any changes to that? However, the Hon. Ann Bressington is correct that ultimately the landlord could, if they chose to.

In terms of the question asked regarding whether the government would consider a potential amendment that would mean pet bonds could apply only to brand-new leases, not revised leases where there are existing pets, I am advised that the government would be prepared to consider that. Obviously, we will not be able to complete this tonight, but we would be happy to continue to progress this as far as we could. I think the Hon. Mark Parnell can attend to this legislation only until 6pm, and we will consider the proposed changes along the lines that the Hon. Dennis Hood has outlined.

The Hon. M. PARNELL: I thank the minister for her response but, to make it crystal clear, when we do get to talk about pet bonds proper, then that is something that the government is prepared to consider, making sure that it is not retrospective. In terms of my—

The Hon. G.E. Gago interjecting:

The Hon. M. PARNELL: What I am saying is that pet bonds should not apply to existing pets, only to new pets; that is what I mean by retrospective. The point for now is that my amendment relates to topping up bonds so that as part of the process of dealing with the Hon. Dennis Hood's points, if the minister will commit to recommitting the whole clause, when we are looking at pet bonds we can also look at the topping-up provisions, because that is what my amendment relates to. I have moved my amendment, and I want to put it now, but I want to be able to recommit if we do have to revisit pet bonds and whether they apply to existing pets or only to new tenancies and new pets.

The Hon. G.E. GAGO: As I have indicated, the government opposes the top-up part of this amendment. Because they are together, we cannot separate them at this point in time but, as I said, we are prepared to consider the proposal that the Hon. Dennis Hood put forward in terms of applying pet bonds only to future leases and recommit.

The committee divided on the amendment:

AYES (5)

Bressington, A.	Darley, J.A.	Franks, T.A.
Parnell, M. (teller)	Vincent, K.L.	

NOES (16)

Brokenshire, R.L.	Dawkins, J.S.L.	Finnigan, B.V.
Gago, G.E. (teller)	Hood, D.G.E.	Hunter, I.K.
Kandelaars, G.A.	Lee, J.S.	Lensink, J.M.A.
Lucas, R.I.	Maher, K.J.	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.
Zollo, C.		

Majority of 11 for the noes.

Amendment thus negatived.

The Hon. M. PARNELL: My amendment [Parnell-1] 6 is consequential. Therefore, I move:

Page 16, lines 37 and 38 [clause 35(9), inserted subsection (3)(a)(i)]—Delete 'an animal' and substitute 'a cat or a dog'

These are the [Parnell—2] amendments, and there are three amendments. These amendments relate squarely to the pet bond that we have already started talking about.

The Hon. G.E. GAGO: I am advised that it would be worthwhile to test these issues on the floor of the chamber now. That goes to the definition of what is involved, and it would be worthwhile to know what the views are on this issue.

The CHAIR: The Hon. Mr Wade, were you going to express an opinion?

The Hon. S.G. WADE: I defer to the minister's wisdom.

The Hon. M. PARNELL: The words in the bill, in relation to what we have all been calling pet bonds, are, in fact, animal bonds. The word 'animal' is not defined. Basically, anyone who wants to keep an animal, and they are given permission by the landlord, is potentially liable, if the landlord seeks to ask for it, to have to pay the pet bond. The pet bond applies to a cricket, stick insect, goldfish in a bowl, lizard in a tank or a skink in a jar. Basically, it applies to all animals because it is not defined.

In terms of cutting to the chase, what we are really talking about, in terms of animals, are cats and dogs. People can say, 'What about horses, goats, pigs and things like that?' If the landlord is happy to have those things, so be it, but generally they are going to say no, they are not going to let you have a horse, goat or a sheep in your backyard as a pet. The real action here—I would suggest that 95 or 99 per cent of the action—is cats and dogs, in which case, why not say what we mean when we are drafting legislation?

Under the present arrangements, if you have a green tree frog in a tank or a goldfish in a bowl and you seek and obtain the permission of the landlord to keep that animal, they can charge you an extra week's rent by way of bond. You might think, 'Surely the frog in a tank is not going to cause any damage, so I am sure I will get my bond back in the future.' That may well be, but the point is that you still have to find that money up-front. The approach I have taken, through these amendments, is to have a look at how they handled this issue in Western Australia.

In Western Australia, they also wanted to introduce pet bonds and so they constrained them to cats and dogs. They went one step further—which I will get to later on—in terms of what sorts of issues the bond is to be used for. In Western Australia, it is mainly around fleas, smell and fumigation of premises because, in terms of damage, the general bond already covers damage and, as many people have pointed out, children can cause as much damage as a cat. However, leaving that to one side (that is a later amendment), my amendment is saying that if we are talking about bonds for cats and dogs, why not say so? Get rid of the word 'animal' and put in 'cats and dogs'.

Of course, the Hon. Kelly Vincent has done us a great service today by reminding us that even within cats and dogs (dogs in particular) you have an extra category of working animals, if you like, that deserve to be specially treated. I think it would be inappropriate for a person who is vision impaired and who has a guide dog to be caught up with a bond that is overwhelmingly aimed at companion dogs and cats. I think that is probably the way I would summarise it.

The amendment I am putting forward now is quite simple: it replaces the word 'animal' with the words 'cat and dog'. No extra bond can be collected for the stick insect, the cricket, the frog in a tank, the guinea pig or the bunny in a hutch in the backyard—it is about cats and dogs.

The Hon. G.E. GAGO: The government rises to oppose this amendment. We believe that the amendment put by the Hon. Mark Parnell is too narrow in its application, just to apply to cats and dogs. We believe the proposal should be broad enough to give landlords and tenants flexibility to negotiate a pet bond for the pet in question. It does not make sense to exclude other animals that might be kept as pets by tenants that may cause damage to the premises, such as a cockatoo that is allowed about the house and encouraged to perch by providing feed.

In relation to the application, clearly it would be in the landlord's interest to apply something that is reasonable. A fish in a little fishbowl or a jar is unlikely to be able to cause any potential or real damage. However, a large aquarium, if smashed or leaking, could inflict considerable damage, particularly if it is in an upstairs apartment and the water leaks down walls and other cavities into apartments below. One has to apply what is going to be reasonable in each situation.

The Hon. S.G. WADE: I do not know whether I need to declare an interest in relation to Hodge and Lily, my cats, or whether I need to just send them a cheerio. However, in relation to this amendment, the opposition is inclined to support the government view. We see the government's primary amendment as basically pro animal. It will offer the possibility of additional bonds for pets, and that reform is likely to encourage more landlords to allow more pets, not fewer. We think it discriminates against insects, frogs and so forth, in not letting them be part of the bond movement. The Hon. Mark Parnell talks about the 95 per cent of cats and dogs that cohabit, but I cannot see why we should support discrimination against the 5 per cent.

We do not support an arbitrary selection of animals, such as cats and dogs, preventing a landlord from requesting an additional bond for other pets. A landlord who may have allowed pets like goldfish or rabbits if an additional bond was taken would not have the option to require it under the Hon. Mark Parnell's amendments, so instead a blanket 'no pets' condition, as is commonly the case at present, would be likely to continue to apply. We join the government in opposing this amendment and predict that on that basis it is unlikely to receive the support of committee.

The Hon. A. BRESSINGTON: I just want to make the point that this is what happens when we draft legislation that basically starts to control every aspect of our lives, whether we have a pet, whether we do not, or what kind of pet we have. I do not believe this is what we are here to do. I intend to support the Hon. Mark Parnell's amendment on principle, but the flip side of that is that if you only make it cats and dogs then someone could have a horse. It goes both ways.

I would like to ask the minister: who put forward this idea of bonds on animals? What evidence is there to say that this is actually a necessary piece of law when we are talking about the Residential Tenancies Act, because they already pay a bond and if a pet has caused damage then that bond can already be used to repair the damage? I think this is pointless, but that is just my opinion.

The Hon. M. PARNELL: The minister in some ways put her finger on it, I think, by talking about the range of animals that might cause damage. Where she misses the point is that there is nothing in the government's bill to say that extra week's bond is only to be used for damage caused by the animal. Basically, it could be used for anything. As anyone who has been involved in the rental sector would know, a big chunk of bonds, especially in a tenancy agreement that has gone pear-shaped, is used to pay the back rent. A tenant who has four weeks' bond sitting there could be thinking, 'Well, we'll just not pay rent for the last four weeks and we'll use our bond up.'

So, effectively what we are doing here is we are giving landlords the ability to claim extra bond which may bear no relationship whatsoever to the risk caused by the animal allegedly on whose behalf the bond was collected. There is no nexus, there is no connection between that bond and pet damage. While the minister said that common sense would prevail and if all you had was a little fish in a bowl or a frog in a tank then of course the landlord would not charge you the extra bond—yes, they would, because extra bond can be used for anything that goes wrong in the tenancy. Of course they are going to charge the maximum bond they can because that is what people do.

What I am trying to do is to remove the unintended consequence of people subverting, if you like, the maximum bond levels using reasons such as pets, most of whom will not cause a problem, which is why I am saying that for those that genuinely do, let us name them. Let us talk about cats and dogs. There are a whole range of other amendments we could put forward to say

that one week's extra bond relating to the pet is only to be used for pet damage and cannot be used for back rent. There are a whole lot of situations that start to emerge once we tease this out.

I have moved my amendment and I would like to test it. I appreciate that this is part of clause 35 and we are going to come back and revisit a range of issues in clause 35. So, in the interests of time I will not be dividing on it tonight if it does not go the Greens' way.

The Hon. G.E. GAGO: You do not have the numbers.

The Hon. M. PARNELL: It does not matter. I can divide, but I will not divide because we are going to recommit clause 35 and we can explore those issues in their entirety. I think there is some serious redrafting that needs to be done to accommodate not just frogs and fish but also seeing eye dogs and the other issues the Hon. Kelly Vincent raised, and also the retrospectivity of the pet bond, but for now I move the amendment.

The Hon. G.E. GAGO: Very quickly, if there is no damage then the bond is repaid. There is a level of discretion in terms of what the landlord can use the bond on. I do not believe we should be too prescriptive in terms of saying: this proportion for rent, this proportion for cleaning, this proportion for maintenance, etc., I think that would be a bridge too far. So, there is an element of discretion and I think that is reasonable.

This provision is about being pro animals, pro pets. We know that many landlords discriminate against tenants with pets because they see that the potential for damage is increased so they simply say, 'No, no pets,' so this has been identified to assist those households. We know how pets can enrich people's lives and we believe this will afford more leases that will allow more tenants to enjoy living with their pets, a whole range of pets, so we see this as a very pro pet and a very positive family amendment.

The Hon. A. BRESSINGTON: I get that you are trying to make this a pro pet exercise, but why would we not just allow for the two yearly bond increase, why do we have to mention the pet thing at all? We can make sure that bonds can be increased in a manner that is going to cover that aspect of it. Why can we not say that, if there is no proof that a pet has done damage in the past, they cannot start tacking on this increase now because, although this is pro pet, it is not actually pro family? There are going to be a lot of families with kids who have had pets for quite a while that have done no damage, that have not had to pay this bond, but who are going to have to pay it now. As the Hon. Mark Parnell said, that is going to put their bond up by maybe an extra $400 or $500. So in trying to be pro pet, can we not also try to be a bit pro family?

The Hon. G.E. GAGO: We have already debated this. We have now moved off the issue of what is in the definition, whether it is cats and dogs or broader. That is what we are talking about now. In terms of the issue of bonds applying to leases that currently have existing pets, I have already put on the record that we are prepared to re-look at that and consider making changes to that. What we need to do is concentrate on and debate the issue that is before us at the moment.

Amendment negatived.

The Hon. M. PARNELL: The second amendment is effectively consequential and, again, it is replacing the word 'animal' with 'cat and dog' so I will not move it, but we will revisit it on committal. I move:

Page 17, after line 10 [clause 35(9)]—After inserted subsection (3) insert:

(3a) If the amount of a bond is equal to the relevant limit under subsection (3)(a)(i) or (b)(i) because the tenant is permitted to keep a cat or a dog at the residential premises—

(a) an amount of the bond equal to 1 weeks rent (the *relevant amount*) may be used for the purpose of meeting the cost of fumigating the premises on the termination of the tenancy; and

(b) if fumigation is not required, or the cost of fumigation is less then the relevant amount, the relevant amount, or the balance of the relevant amount, must be paid to the tenant on application to the Commissioner under section 63.

As I have said before, this is the way the Western Australians did it. Western Australia confined their pet bonds to cats and dogs because that is where the action is and they also confined the use to which that bond could be put to—the word they use is 'fumigation'. Effectively what we are talking about are fleas and smell. As other members and the Hon. Ann Bressington said, damage is covered to premises already covered by the existing bond, so the additional one week pet bond

goes towards fumigation. This is the system that works in Western Australia and I think it is a system that would work well here.

I would just like to say that, in response to something the minister said before, we are not arguing against pet bonds and we are not saying this is not a pro animal and pro family thing, that it does increase the likelihood that landlords will say yes to pets because they can claim the extra bond. No-one is arguing with the general principle, we are just trying to make sure that the amendments that we pass really do attach themselves to what we are trying to achieve. That is why I think it would be good to bring this back. This amendment constrains the use of the bond to fumigation as they do successfully in Western Australia.

The Hon. G.E. GAGO: I think I have already spoken about this previously. We believe that describing what specifically the bond can or cannot be spent on is too prescriptive and so therefore we oppose this amendment.

The Hon. S.G. WADE: The opposition also believes that this is too prescriptive. We have concerns that such a focused provision may actually lead to an increase in costs for fumigation for South Australians.

The Hon. J.A. DARLEY: Whilst I am sympathetic to the Hon. Mark Parnell's amendment, I do believe that it should not be confined just to fumigation.

The Hon. B.V. FINNIGAN: I want to clarify this with the Hon. Mr Parnell. When this clause is recommitted, as the government has indicated it will be after considering the question of existing bonds, is it your intention to re-litigate or re-move all these amendments that you have? I am trying to clarify whether this is the final point in relation to this amendment, or will you be discussing it again in the future?

The Hon. M. PARNELL: When clause 35 comes back, it will probably come back in a different shape and we will have different issues to consider. For the honourable member's benefit, I am paying attention to what the committee is saying in relation to issues like confining the bond to a particular type of damage or repair. If it does not have support, then it will not have support. I do not need to re-agitate all these issues, but I also do not want to be constrained to raising issues as they arise when we look at a new clause 35.

Amendment negatived; clause passed.

Clauses 36 to 39 passed.

Progress reported; committee to sit again.

SUMMARY OFFENCES (FILMING OFFENCES) AMENDMENT BILL

In committee.

Clause 1.

The Hon. S.G. WADE: I rise in committee to consider the Summary Offences (Filming Offences) Amendment Bill 2012. At clause 1, I clearly state that the opposition supports the objective of the bill to enact criminal sanctions for humiliating and degrading filming. We support moves to strengthen the law, but want it to be done in a targeted way, and we do not think the bill is targeted enough. We have made clear that we think a parliamentary committee would be a good forum to sharpen the focus of the bill. In that context I moved amendments to a motion that was before this place on the referral of a matter to the surveillance bill.

To assist the Chair, I advise that my contribution on this matter will be long, so the Chair might want to consider how to manage the dinner break. I have indicated to the whip and to the Leader of the Government that is the case. I will persist in making my comments; I shall not be curtailed.

The CHAIR: Are you saying that you will seek leave to conclude your remarks after the dinner break? You said that you have a lengthy contribution. We are coming up to the dinner break, so if we are coming back—

The Hon. S.G. WADE: The conduct of the house is completely in the hands of the government, and I am not proposing to take it out of the hands of the government. I would be surprised if this consideration took less than two hours. If the government wants to sit through the dinner break, is up to them, but I will not be curtailed.

The CHAIR: My question to you is that we have reached 6 o'clock. The Hon. Mr Wade is asking for two hours, so we will be returning after the dinner break.

The Hon. S.G. WADE: To clarify, I expect my comments and any responses the government may wish to give may take up to two hours.

The CHAIR: At clause 1; alright. Therefore, minister, are we going to dinner?

The Hon. G.E. Gago: We will get up at 6.30.

The CHAIR: Alright. The Hon. Mr Wade.

The Hon. S.G. WADE: I thank the minister for choosing to communicate with the house—it would have been helpful if it had been given earlier. Given that extra time, I take the opportunity to remind the house of the background as to why this committee stage will be unusual.

The CHAIR: I will give you some guidance: you will stick to clause 1 and you will not treat clause 1 as a second reading speech.

The Hon. S.G. WADE: No, it is not a second reading speech, sir. The only reason the committee stage in this case will be very fulsome is because I moved a motion for the referral of the surveillance bill to the Legislative Review Committee, and to refer the summary offences bill to that committee.

The CHAIR: I understand that.

The Hon. S.G. WADE: I remind members that, in the context of my agreement to withdraw that amendment for the referral of the surveillance bill to the Legislative Review Committee, I made clear that I was only agreeing to withdraw that amendment because honourable members felt that they could not consider that amendment without a stronger case as to why I had concerns with the Summary Offences (Filming Offences) Amendment Bill.

I raised those concerns at a higher level in my second reading speech. The Attorney-General chose to respond to that by letter. In a number of respects his letter did not actually address all of my concerns.

I do not blame him for that because my second reading contribution was general. In fact, it may assist the committee if I read that letter. I will just arrange for that letter to be brought down so that the committee can be informed of the government's response to my second reading contribution. The house already has a copy of my second reading speech.

As the committee knows, I think it is helpful that when we have interchanges and letters to make sure that that public has access to the record by putting on the record key contributions—obviously not every letter. I have about four letters on this bill from the Attorney. It might be helpful for me to put on the record the letter dated 28 February 2013, which was from the Attorney-General in response to my second reading contribution.

I remind members that my second reading contribution was a justification as to why it should be referred to the Legislative Review Committee, but I was aware at that stage that members felt the need to have a better understanding of the issues that I was trying to raise before they considered possible referral. So, I made those comments in broad terms and I indicated that, at the committee stage of this bill, I would outline my concerns in more detail, and that is why this will be a very unusual committee stage. That is why I will be making significant contributions in the form of comments, not in the form of questions. The government may well choose to make comments in response.

I make it clear to the government that I hope that they are not going to dishonour the goodwill that I showed by withdrawing my amendment in relation to the surveillance bill motion to broaden it to include the Summary Offences (Filming Offences) Bill, because I only did that on the basis that I would be given latitude at the committee stage to raise my concerns such that members could consider a separate reference. That reference, which we will consider at the end of the committee stage, could be in the form of an amendment to the reference that is already on the Legislative Review Committee, it could be in the form of a fresh reference to the Legislative Review Committee, or it might be a fresh select committee; so, in that sense, it is linked.

This discussion is linked back to the second reading debate and it anticipates whether or not the house considers that a reference to a committee is a wise move in relation to this particular piece of legislation. I raised my concerns in very broad terms and the Attorney-General kindly offered the following response by way of letter. The letter is dated 28 February 2013. It states:

Dear Mr Wade,

Summary Offences (Filming Offences) Amendment Bill 2013

I refer to the above bill and to your second reading contribution on 21 February 2013. The bill is listed as a government priority for the next sitting week. The purpose of this letter is to respond to the issues you raised in your second reading contribution and to request that you provide the opposition's amendments, if any, or any further queries to my office as soon as practicable.

Onus of proof

Without more information from you I can only assume the reference to a reversal of the onus of proof is in relation to the proposed new section 26B, subsection (7). This section was prepared after extensive consultation with media organisations. There is nothing particularly unusual about enacting a presumption of the nature contained within the proposed section. Please provide further particulars of your concern with this section.

Complex issues of consent

The bill certainly contains the concept of consent, but there is nothing particularly unique or complex about this. The statute books are littered with references to consent because the law generally takes the unexceptional position that what is done to a person with their informed consent is one thing; the same thing done to a person without their informed consent is quite another. Consent is a concept which depends upon its factual context for a precise meaning, which is an issue best left for the courts to determine in all of the circumstances of the particular case. Please explain which aspect of the bill you believe to be too complex.

The bill risks criminalising everyday or thoughtless behaviour

No, it does not. Please justify this sweeping generality with examples.

Subjective and objective elements

You suggest that further comment is needed in relation to the definition of a humiliating or a degrading act. The device employed by the bill within this definition is not new. This device balances the need for an objective check on the sometimes unreasonable sensitivities of the individual against the need to take into account general characteristics shared by the significant minority. The criminal law is well used to such a device. The most famous example is the test of the ordinary person in the law of provocation. You may wish to consider, for example, Masciantonio (1995) 183 CLR 58.

Right to privacy

The filming of another person without the person's consent certainly raises issues about that person's right to privacy, but this bill is not solely about consent to filming. This bill is about the lack of a criminal sanction aimed at those who would film someone who is being unwillingly subjected to a humiliating or degrading act. With respect, I cannot understand why the opposition would be willing to delay passage of this bill simply because it is linked with the privacy of the person being subjected to a humiliating or degrading act. I would have thought that the humiliating and degrading aspect of the conduct warranted prompt action by the parliament.

I trust this letter responds to the issues you raised during your second reading contributions. I look forward to receiving your response to this letter.

Yours sincerely,

John Rau

Deputy Premier, Attorney-General

It is appropriate that I respond to the letter, but I choose to do so by way of the committee stage of the bill, as I gave an undertaking to the house to do so. In terms of the issue the Attorney-General raises about delaying passage of the bill, the opposition has no intention of delaying the passage of the bill. We support the bill. I would remind the government that it has taken it two years from the initial announcement of this bill to bring it before the parliament. Surely, you would expect the parliament to give it due consideration.

As I said earlier, the second reading was an acknowledgement that I was withdrawing the motion in relation to surveillance devices and seeking in the committee stage to outline the opposition's case for further consideration of this bill in some form of parliamentary committee. Members have indicated to me that, while they are open to a referral, they wanted more details on the opposition's concern and for that matter an opportunity for the government to provide a response. It has been suggested that the best forum to consider a committee referral is the committee consideration of the bill. If, after the committee consideration of the bill, the council agrees with the opposition that further consideration by a parliamentary committee would assist, then a motion to refer could be considered at that point.

Accordingly, this is an unusual committee stage debate of a bill. After all, the committee stage debate usually focuses on proposed amendments and queries to the government, but the fact of the matter is that it is completely within the capacity of the council to make and seek

comments in relation to a bill, and my particular comments will be highlighting issues that I think would benefit from further consideration by a parliamentary committee, whatever form that might take.

In that context, I would indicate that the opposition has been extremely flexible on this. When we first raised the issue with the Attorney-General in relation to a possible parliamentary consideration of this bill, we proposed that it be referred to a select committee. The Attorney-General was not attracted to that idea. In the context of his agreement to refer the surveillance bill to the Legislative Review Committee, we modified our suggestion and proposed instead that it be referred to the Legislative Review Committee.

The opposition does consider that there may be need for further amendment to the bill but, in our view, a parliamentary committee is better placed to consider the range of issues that the bill raises and promote a proper balance, so the focus of my comments in this committee stage will be on whether the bill will benefit from further consideration by a committee.

There are already bills on the *Notice Paper* that highlight the benefit of parliamentary committees in the passage of bills; I would remind honourable members of two. One is item No. 8 on today's *Notice Paper*, the Electoral (Miscellaneous) Amendment Bill (No. 117). It is significantly influenced by the joint select committee on electoral matters. That committee arose out of the concern of this council at the dodgy how-to-vote practices of the Labor Party at the last election. A number of the proposals in that bill can be traced back to the work of that committee—a committee which, by the way, was opposed by the Labor Party.

The other matter that has benefited from the contributions of a parliamentary committee is No. 10 on today's *Notice Paper,* the Statutes Amendment (Appeals) Bill (No. 119), and I acknowledge that, if the bill were significantly influenced by a parliamentary committee, even more credit is attributable to the contribution of the Hon. Ann Bressington. The Hon. Ann Bressington proposed a criminal cases review commission. As the Legislative Review Committee was looking at the proposal for a criminal cases review commission, they suggested changes to the statute law, which are reflected in that appeals bill.

There are other elements that the government has subsequently decided to add to that set, but I think it would be fair to say that that bill would not exist without the work of the Hon. Ann Bressington in bringing matters before this council and with the work of that parliamentary committee in relation to a bill then leading on to other proposals. We believe that parliamentary committees in this place have provided a valuable contribution to improving legislation.

To be frank, it is not as though the government is, if you like, as a matter of principle, opposed to parliamentary committees on bills. It was only in the last sitting week that the government moved the motion to refer the Surveillance Devices Bill 2012 to the Legislative Review Committee. The Leader of the Government in that context referred to the fact that:

> Given the complexity of the issues that...the bill is attempting to grapple with, the government has agreed that these issues ought to be referred to the Legislative Review Committee for further consideration rather than being dealt with via contested amendments on the floor of this chamber...The government looks forward to considering the report of the committee in due course and then progressing the Surveillance Devices Bill 2012 to completion.

The opposition supported that approach, and I submit that the same situation applies here. There was no talk of the bill being blocked, and in that sense let me make the opposition position clear: if this council does not agree with us, and does not agree either to refer this bill to a committee or alternatively, and as the government has done in relation to surveillance devices, pause consideration while a parliamentary committee considers related matters, we will not seek to hold up the passage of the bill. We will accept the view of the council.

The committee stage of this bill, as reflected in the discussions of the last parliamentary week, is an opportunity for this council to pause and reflect as to whether we can best discharge our legislative review function by adding further consideration by a parliamentary committee. In terms of timeliness, in the discussions in relation to the Surveillance Devices Bill, the government indicated that it was keen for there to be no undue delay, and it was the shared view of the government and the opposition that consideration of that bill by committee should be able to be completed by winter.

The Legislative Review Committee is a standing committee of the parliament, and has a dedicated research officer and secretary. The workload at this time is such that the Surveillance Devices Bill fits in nicely with the other matters before the council, and it may well be that a conjoint

consideration of the Summary Offences (Filming Offences) Amendment Bill could be considered in the same time frame.

Progress reported; committee to sit again.

SECOND-HAND GOODS 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 the Status of Women, Minister for State/Local Government Relations) (18:22): 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.

Purpose

The purpose of the *Second-hand Goods Bill 2012* is the reduction of property related crime through improved regulation of the second-hand dealer and pawnbroker industry. This will be achieved by the establishment of a new regulatory regime together with enhanced record keeping requirements and a requirement to electronically transfer transaction information to police.

A further objective is the introduction of legislative controls to address a current market imbalance which exists between pawnbroker service providers and consumers by requiring pawnbrokers to provide consumers with accurate information to enable the public to make informed choices when seeking these services.

The intended focus of the Bill is at the time a business acquires prescribed second-hand goods for resale or enters into a contract of pawn. It is not proposed to regulate the subsequent re-sale of the acquired goods other than a period of retention prior to resale.

The licensing and registration regime will be administered by Consumer and Business Services (CBS) and is targeted at businesses dealing in 'high risk of theft' second-hand goods. Licensees and registrants will be required to electronically transfer prescribed records via a web-based transaction management system to be administered and managed by Police.

A dual enforcement model will enable officers from both agencies to enforce and ensure compliance with the legislation. CBS will be responsible for licensing and registrations. South Australia Police (SAPOL) will be responsible for administration and compliance of the web-based transaction management system and resultant matching and investigation of stolen property.

Background

Second-hand dealing and pawnbroking involves acquiring pre-owned goods for re-sale. Research throughout Australia, New Zealand, USA and Canada has identified property criminals frequently exchange stolen property for money, using second-hand dealers and pawnbrokers. Anecdotal evidence of Police further supports the proposition the second-hand industry often knowingly or unknowingly provides a convenient means for offenders to convert stolen assets into cash, thereby facilitating the use of the industry as a conduit for stolen property.

In order to reduce the number of crimes, Police in these jurisdictions have or are taking steps to electronically monitor property pawned or sold to dealers, in order to identify property crime offenders and recover stolen property.

Interstate and overseas experience suggests licensing together with electronic transmission of transaction information reduces the opportunity and ability of property crime offenders to convert stolen property into cash, thereby reducing the number of theft and associated offences.

Over the last decade, several Australian and overseas jurisdictions have enacted legislation requiring dealers to be licensed and provide details of their transactions electronically to Police. Governments are also equipping Police with the technology to be able to automatically search transferred dealer's transaction information against Police databases.

Australian jurisdictions that have enacted legislation requiring second-hand dealers and pawnbrokers to be licensed include New South Wales (NSW), Western Australia (WA) and Queensland (Qld). In NSW and Qld the relevant Act and Regulations are administered by the respective State Office of Fair Trading (OFT) which has a licensing, compliance and investigation section.

Regulation of the industries in these three States occurs via a licensing regime and electronic transaction reporting system, similar to the scheme proposed by these reforms. To facilitate the recording and identification of stolen property, police in the aforementioned jurisdictions have developed 'web-based' second-hand dealer databases capable of receiving transaction records electronically directly from dealers.

Like any other economic market, the stolen goods market is largely driven by supply and demand. Property crime is affected by the ease of theft and the availability of a pool of willing buyers.

The reforms focus on shrinking the stolen goods market by preventing supply and reducing the demand for stolen goods. Without an active market disposal becomes difficult, risky and unrewarding and significantly impacts an offender's willingness to engage in property crime.

A central tenet of the proposal is the introduction of a web-based electronic transaction management system (TMS). Licensed and registered dealers will be required to transfer to Police, transaction information relating to a reportable list of 'prescribed goods'. These include those goods commonly stolen and traded.

Current Environment

Currently, the laws relating to second-hand dealing and pawn broking are contained in the *Second-hand Dealers and Pawnbrokers Act 1996*, and Regulations, which have been in place since 1998. The Act provides for a dealer to operate a second-hand business simply by registering their intent in writing with the Commissioner of Police.

Since the Act's introduction, there has been continued community concern over second-hand dealers and pawnbrokers and their possible role in the receipt, distribution and disposal of stolen goods.

Although regulating the sale of prescribed second-hand goods, the current legislation does not require dealers to be licensed or electronically transfer to police transaction information. This makes it difficult for Police to effectively monitor and investigate illegal dealings in an efficient and timely manner.

Furthermore, the current business registration system provides only limited screening processes to preclude unsuitable persons from entering and remaining in the SHDP industry making it difficult to ascertain who is participating in the industry.

Research as well as anecdotal evidence of Police suggests recidivist property offenders exploit opportunities to dispose of stolen property via the second-hand dealer and pawnbroker industry. Despite existing regulation and the efforts of police, operational intelligence indicates a significant proportion of stolen goods are disposed of through the second-hand industry.

Police estimate that between 10–15 per cent of stolen property may be sold to pawnbrokers and second-hand dealers either directly by property offenders themselves, or indirectly by recipients such as drug dealers and fences (a fence is an individual who knowingly buys stolen property for later resale in a legitimate market at a higher price).

As a result, Police are concerned the role second-hand dealers and pawnbrokers play in the receipt and distribution of stolen property. Research and anecdotal evidence of police further suggests recidivist property offenders exploit opportunities to dispose of stolen property via the second-hand dealer and pawnbroker industry.

SAPOL advises a data base enabling the electronic recording of dealer transactions has been in use in this State since the mid 1990's. Police estimate 5–10 per cent of dealer transaction records are currently received and activities monitored for stolen property or persons of interest. Previous reviews have concluded the current system is resource intensive and if not replaced, will cease to function in any productive form.

In response, on 3 June 2007, the Government announced $2.1 million had been allocated from the State Budget to introduce an online transaction reporting system for second-hand dealers and pawnbrokers to combat the stolen property market.

On 17 June 2009 the Government introduced the *Second-Hand Goods Bill 2009* to Parliament. The Bill sat during the winter Parliamentary break whilst formal industry and public consultation took place. The Bill was not debated and lapsed when Parliament was prorogued in December 2009.

As a result of the 2009 consultation process, a number of changes were made to the original proposal including the removal of scrap metal recyclers and auctioneers from the regulatory regime, the classification of prescribed goods into Class 1 and Class 2, enabling the creation of a tiered regulatory approach and the introduction of a registration regime for businesses acquiring class 2 prescribed goods.

On 21 March 2011, Cabinet approved a further submission to draft legislation and the release of a revised draft Bill for public consultation. During the four week consultation period, the SAPOL project team received 97 contacts regarding the proposed Bill with 17 formal submissions being received in both email and hard copy format.

As a result of the consultation process together with further scrutiny of the Bill by the Second-hand Dealers and Pawnbrokers Legislative working group, a number of policy changes and general amendments to the draft Bill have occurred.

Features of the Bill

The proposal is to repeal the *Second-hand Dealers and Pawnbrokers Act 1996* and replace it with legislation targeted to prevent and remedy current and possible future issues associated with the second-hand goods and pawnbroker industries.

The Bill introduces a new tiered regulatory regime and associated regulatory costs commensurate with the level of risk associated with the particular goods and activities of the industry groups. The objective of this market reduction approach is to alter property crime offenders' attitude, ability and opportunity to dispose of stolen goods via the second-hand and pawnbroker industry.

At risk goods will be prescribed by way of Regulation and will be similar to current Regulations in so far as they will include commonly stolen items frequently traded by second-hand dealers and pawnbrokers. Prescribed goods will be nominated as class 1 or class 2.

Class 1 prescribed goods are those portable items of property frequently stolen and traded by property crime offenders. Licences will be required by those second-hand dealers who deal in class 1 prescribed goods.

Class 2 prescribed goods are those goods which are commonly stolen but not to the same extent as class 1 prescribed goods. Second-hand dealers who only deal in class 2 prescribed goods will be required to register.

The Bill makes reference to the term 'approved persons' which refers to persons who are approved by the licensing authority to conduct or supervise transactions of class 1 prescribed goods and in the case of pawnbrokers, all pawns. An approved person must undergo probity checking to ensure he or she is fit and proper to carry out this role.

The Bill will retain a number of features contained in the current legislation including:

- prescribed goods will be similar to the current Regulations;
- the requirement to record details of a person from whom prescribed second-hand goods are bought or received, and all pawned goods;
- the requirement to record an accurate description of the prescribed goods including serial numbers and any identifying features;
- a retention period for prescribed goods acquired by a second-hand dealer;
- labelling of prescribed goods with a unique identifying code;
- the power for Police to enter business premises of all second-hand dealers, pawnbrokers, auctioneers and market operators to inspect and examine goods and records;
- the ability for Police to place 'holds' on goods suspected of being stolen;
- a requirement for any second-hand dealer or pawnbroker to advise Police of any goods acquired which he or she suspects are stolen;
- second-hand dealers and pawnbrokers are not to acquire goods from a child (a person under the age of 16 years);
- operators of second-hand markets are required to keep certain records of people selling goods at their market;
- charities, school fetes and the like where goods are donated are excluded from the provisions of the Act.

The Bill will further strengthen current provisions by requiring regulated dealers to comply with a number of features not contained in the present legislation including:

- Businesses which acquire class 1 prescribed second-hand goods for the purpose of resale (and all pawnbrokers) will be required to be licensed.
- In deciding whether or not to grant a licence or approval, the Commissioner for Consumer Affairs will take into account whether the applicant is a fit and proper person to hold a licence or approval.
- When acquiring class 1 prescribed goods, a licensee or approved person will be required to be present on the premises to conduct or supervise the transaction.
- Documents produced to verify a seller's identity will have to meet a '100 point system' regime. The scheme will not be as stringent as required in the banking environment and will use recognised and easily produced documents outlined in Regulations.
- When buying or receiving reportable prescribed goods, details of the transaction including the person's identity details and description of the goods must be electronically transferred to Police in a manner and timeframe prescribed by Regulations.
- Goods received by a licensed or registered second-hand dealer are required to be retained and not offered for sale for a period of 14 days from the date of transferring the transaction details to Police.
- Employee records are required to be kept and produced upon request to an authorised officer.
- The Commissioner of Police may prohibit the employment of a person in a licensed business if the person is found guilty of an offence or offences as prescribed by Regulations.
- Police have the ability to apply to the Magistrates Court for a barring order for a person identified as being a prolific property crime offender.
- Businesses who acquire prescribed goods only by way of trade-in are excluded from certain provisions of the Bill.

The Bill also contains a number of consumer protection mechanisms specific to pawn transactions and the redemption of pawned goods including:

- the issuing of 'pawn tickets' to persons pawning property outlining interest rates, fees and charges and the rights and obligations of both parties;
- provisions applicable to the redemption of the pawned goods, extending the redemption period and the sale of unredeemed goods;
- provisions applicable to 'surplus' funds following the sale of unredeemed goods.

Licensing, registration and approvals

As the licensing authority, Consumer and Business Services will have administrative responsibility for the processing of licence, registration and approval applications as well as issuing, disqualifying and suspending of licenses and approvals. Jurisdiction to hear disciplinary proceedings in relation to licensees and approved persons will be vested in the Administrative and Disciplinary Division of the District Court.

Electronic transfer of records

The requirement to electronically transfer transaction information is seen as an important tool to combat and restrict offenders disposing of stolen goods. The availability to police of accurate and timely transaction information will support the identifying of property crime offenders and cross-matching of stolen goods. With current technologies the transfer of information in close to real time will be expected in many instances. However it is recognised on occasions dealers may find it problematic to transfer information as soon as practicable, as such regulations will allow for a period of time to ensure details are transferred to police.

Transfer will be done via a web based interface or the uploading of computer files in a manner and form set out in Regulations.

Barring Orders

Research, together with Police observations, has identified a nexus between property crime offenders and the second-hand industry. Anecdotal evidence suggests that a small number of offenders are responsible for selling or pawning a disproportionate amount of stolen or unlawfully obtained property such as DVDs and small electrical appliances, often in new or near new condition.

In order to address this issue, the Bill provides Police, in circumstances where a person is charged with, or found guilty of a property related offence, to make application to the Court to bar the person from disposing of goods via a second-hand dealer, pawnbroker, auctioneer or second-hand market.

Consumer protection

As indicated in my introduction, a further objective of this legislation is to redress the current imbalance of information provided by pawnbrokers to consumers. This initiative will enable users to make more informed choices when seeking these services and as well as bringing greater consistency and transparency to the pawnbroker industry, which the Government believes is warranted in the current economic climate.

Market Operators

The Bill also acknowledges the level of risk in the trade of stolen goods associated with second-hand markets is significantly less than second-hand dealers and pawnbrokers. As a consequence, the legislation will not subject market operators to the same requirements. Instead, market operators where second-hand prescribed goods are offered for sale, will be required to be registered. These markets will also be required to ensure a supervisor is present during the trading hours of the market to supervise and comply with legislative requirements. A market operator will also be required to electronically transfer details of traders offering for sale prescribed goods.

It is understood this Bill encompasses a wide variety of goods and disparate industry groups. As such, Regulations will allow for variations such as retention periods for scrapped and dismantled vehicles and the age of certain prescribed goods such as old cameras or electrical and electronic items.

It is not the intention of this Bill to place unnecessary regulatory requirements upon certain areas of the second-hand goods industry such dealers of costume jewellery or those who acquire second-hand goods via clearance sales, deceased estates and unclaimed goods. This legislation also does not unnecessarily prevent individuals from holding legitimate garage sales or selling their goods at second-hand markets.

Conclusion

Although positive licensing imposes costs on industries, government and the community, the benefits to the community as a whole, outweigh these costs. Furthermore, the objectives of Government to limit trade in stolen property can only be achieved by through improved regulation and positive licensing.

The Bill, in large, builds upon existing provisions. It addresses current community concerns and expectations by equipping Police with the necessary legislation and technology to assist in the prevention and detection of property related crime. It represents, in the view of the Government, a sensible balance between the needs of those who conduct business and the needs of the law enforcement to have an increased ability to combat the trading of stolen goods.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines terms and concepts used in this Bill.

4—Application of Act

This clause ensures that people will not require 2 statutory licences in respect of any activity by providing that nothing in this measure applies in relation to an activity undertaken in accordance with a licence issued under another Act. The regulations may also modify or exclude the application of this measure in relation to persons, goods or transactions of a specified class.

In addition to the above, the Minister may, by notice in writing, exempt a person from the application of this measure.

5—Non-derogation

This clause provides that the provisions of this measure are in addition to, and do not derogate from, the provisions of any other Act, nor do they limit, or derogate from, any civil remedy at law or in equity.

6—Commissioner to be responsible for administration of Act

The Commissioner for Consumer Affairs is responsible for the administration of this measure. In so doing, the Commissioner is subject to the control and directions of the Minister.

7—Criminal intelligence

This clause provides for how information that has been classified as criminal intelligence by the Commissioner of Police may be used or disclosed etc in respect of the measure.

Part 2—Licences and approvals

8—Requirement to be licensed

This clause provides that a person cannot act as, or advertise or otherwise hold himself or herself out as, a second-hand dealer or pawnbroker unless licensed under proposed Part 2. The maximum penalty for a contravention of proposed subsection (1) is a fine of $20,000.

Proposed subsection (2) provides that certain specified second-hand dealers are exempt from this requirement.

9—Requirement to be approved

This clause makes it an offence for a person to act as, or advertise or otherwise hold himself or herself out as, an approved person unless approved under proposed Part 2. The maximum penalty for a contravention of the proposed section is a fine of $20,000. Temporary authorisations are provided for.

10—Application for licence or approval

This clause sets out procedural matters in respect of how a licence or approval can be obtained.

11—Applications to be furnished to Commissioner of Police

This clause provides that an application for a licence or approval must be communicated to the Commissioner of Police, who in turn must provide the Commissioner with certain information relevant to the application.

The clause also provides that the Commissioner of Police may object to an application by notice in writing provided to the Commissioner within the prescribed period, and sets out associated procedural matters.

12—Applicant for approval taken to be approved

This clause provides that applicants for approval are taken to be approved until the day on which the Commissioner determines the application.

13—Entitlement to be licensed or approved

This clause provides that a natural person who satisfies the eligibility requirements set out in proposed subsection (1) is entitled to be licensed or approved. Proposed subsection (2) makes similar provision in respect of the right of bodies corporate to be licensed.

14—Factors to be taken into account in deciding whether to grant licence or approval

This clause sets out factors the Commissioner must take into account in deciding when assessing an application for a license or approval. These include the reputation, honesty and integrity of the applicant, or people

associated with the applicant. The Commissioner must also take into consideration the grounds for any objection made by the Commissioner of Police in respect of the application.

An application for a licence or approval can only be granted if the Commissioner is satisfied that to grant the application would not be contrary to the public interest

15—Conditions

This clause provides that the grant of a licence or approval may be conditional or unconditional, and that the holder of a licence or approval must not contravene, or fail to comply with, a condition of the licence or approval. The maximum penalty for a contravention of proposed subsection (2) is a fine of $20,000.

16—Appeals

An applicant for a licence or approval, or a licensee or approved person, may appeal to the Administrative and Disciplinary Division of the District Court against certain decisions of the Commissioner, and the provision sets out related procedural matters.

17—Power of Commissioner to require photograph and information

This clause provides the Commissioner may require photographs and other information from a licensee or an approved person.

18—Identification to be carried

This clause provides that the Commissioner must issue each licensee who is a natural person and each approved person with an identity card in a form approved by the Commissioner. The person must carry the identity card when performing functions as a licensee or approved person, and produce it if requested to do so by an authorised officer or a person with whom the licensee or approved person has dealings as a licensee or approved person. The maximum penalty for a contravention of proposed subsection (2) is a fine of $1,250. The clause does not apply to a person who is taken to be approved under Part 2.

19—Duration of licence or approval

A licence or approval granted by the Commissioner Part 2 remains in force until it is surrendered or cancelled, or the licensee dies or (if the licensee is a body corporate) is dissolved.

20—Annual fee and return

This clause sets out procedural matters in relation to the payment of fees and the lodging of returns. A failure to do either may result in the Commissioner requiring the licensee or approved person to make good the default, and, if that does not happen in accordance with the proposed section, the relevant licence or approval is cancelled.

21—Change of particulars relating to licence or approval

This clause requires a licensee or approved person to notify the Commissioner in writing of any changes to any prescribed particular within 14 days after the change.

22—Commissioner may require surrender of licence or approval etc

This clause provides that (if a person's licence or approval is suspended or cancelled) the Commissioner may require a licensee or approved person to surrender their licence or approval and any identity card issued to the person under this measure. The maximum penalty for a contravention of proposed subsection (1) is a fine of $1,250.

Part 3—Registration—class 2 goods

23—Requirement to be registered

This clause provides that a person cannot act as, or advertise or otherwise hold himself or herself out as, a second-hand dealer unless registered under proposed Part 2. The maximum penalty for a contravention of proposed subsection (1) is a fine of $10,000.

Proposed subsection (2) provides that certain specified second hand dealers are exempt from this requirement.

This clause also sets out procedural matters in respect of how registration can be obtained.

24—Annual returns etc.

This clause provides that a registered second-hand dealer must lodge an annual return with the Commissioner.

25—Change of particulars relating to registration

This clause requires a registered second-hand dealer to notify the Commissioner in writing of any changes to any prescribed particular within 14 days after the change.

Part 4—Regulation of licensees and registered second-hand dealers

Division 1—Provisions applicable to licensees and registered second-hand dealers generally

26—Class 1 and 2 transactions

This clause requires a licensee to ensure that each class 1 transaction that occurs in the course of, or for the purposes of, the licensee's business is conducted or supervised by the licensee or an approved person. The maximum penalty for a contravention of proposed subsection (1) is a fine of $10,000.

The clause also requires a licensee to ensure that each class 2 transaction that occurs in the course of, or for the purposes of, the licensee's business is conducted or supervised by a natural person. The maximum penalty for a contravention of proposed subsection (2) is a fine of $5,000.

The clause also requires the licensee to make and keep certain records and verify the identity of sellers in accordance with the regulations. The maximum penalty for a contravention of proposed subsection (3) or (4) is a fine of $5,000.

The licensee must transfer to the Commissioner of Police, in accordance with any requirements that may be set out in the regulations, prescribed particulars of such records. The maximum penalty for a contravention of proposed subsection (5) is a fine of $5,000.

The regulations may also require the transfer of the prescribed particulars to be done electronically.

27—Labelling of goods

This clause requires a licensee or registered second-hand dealer to ensure that any class 1 or class 2 goods that he or she takes possession of in the course of, or for the purposes of, his or her business are marked or labelled in accordance with the regulations. The maximum penalty for a contravention of proposed subsection (1) is a fine of $2,500.

28—Retention of goods before sale

This clause provides that a licensee, in respect of class 1 goods that the licensee has taken possession of, and a registered second-hand dealer, in respect of class 2 goods that the dealer has taken possession of, must not alter the form, or part with possession, of the goods until at least 14 days after the prescribed day (which is defined in the proposed subsection (3)).

The clause also provides that the licensee and dealer must keep the class 1 or 2 goods (as the case may be) at the premises at which the goods were received, or premises notified to the Commissioner for the purposes of the proposed section, and must ensure that the goods are not moved to any other place.

The maximum penalty for a contravention of proposed subsection (1) is a fine of $2,500, and the clause also provides that the section does apply to goods in the circumstances listed in proposed subsection (2).

29—Staffing records

This clause requires a licensee or registered second-hand dealer to make and retain certain records in relation to the persons working in, or for the purposes of, the licensee's business. The maximum penalty for a contravention of proposed subsection (1) is a fine of $2,500.

Division 2—Additional provisions applicable to pawnbrokers

30—Preliminary

This clause defines terms used in the proposed Division.

31—Information to be provided to person pawning goods

This clause requires a pawnbroker to give (at no charge) to a person who pawns goods a pawn ticket. A pawn ticket includes a signed copy of the pawn agreement, required to set out matters relevant to the pawn such as interest rates and fees applicable, the rights and obligations under the pawn agreement and any other information that the regulations require be included. The maximum penalty for a contravention of the proposed section is a fine of $5,000, and the pawn agreement is invalid in the event that the section is not complied with.

32—Replacement of pawn ticket

This clause requires a pawnbroker, at the request of an entitled person (a term defined in proposed section 30), to replace (at no charge) a pawn ticket that has been lost, stolen or destroyed. The person requesting the replacement ticket must verify his or her identity in accordance with the regulations. The maximum penalty for a contravention of the proposed section by a pawnbroker is a fine of $2,500.

33—Redemption

This clause sets out how a person may be redeemed by an entitled person.

The clause also sets out a number of things that the pawnbroker cannot do in relation to the pawned goods during the redemption period, with penalties of up to a $5,000 fine if the pawnbroker contravenes those requirements.

34—Extension of redemption period

This clause provides that pawnbroker and an entitled person may extend a redemption period. The regulations will set out requirements regarding such an extension, while the proposed section sets out procedural provisions in relation to an extension. The maximum penalty for a failure to comply with the proposed section is a fine of $5,000.

35—Sale of pawned goods at end of redemption period

This clause provides that a pawnbroker must sell pawned goods, where the pawned goods have not been redeemed by the end of a redemption period. The goods must be sold in a manner that is conducive to getting the best price reasonably obtainable. The clause sets out further procedural requirements in relation to such sales, and requires that any surplus proceeds arising from the sale be paid, on request made by an entitled person before the end of the prescribed period, to the entitled person. The maximum penalty for a contravention of the proposed subsections is a fine of $2,500.

36—Fees and charges in respect of unredeemed pawned goods

This clause sets out the fees and charges that may be imposed in respect of unredeemed pawned goods, or deducted from the proceeds of the sale of such goods.

37—Pawnbroker not to purchase pawned goods

This clause prevents a pawnbroker, or a person acting on his or her behalf, from buying goods that have been pawned to and are being sold by, or on behalf of, the pawnbroker. The clause provides similar restrictions in the case of pawnbrokers that are partnerships or bodies corporate, extending the prohibition to partners, the body corporate and officers or directors of the body corporate.

Any sale in contravention of the section is void and of no effect, and contravention of the section carries a maximum penalty of $2,500.

Part 5—Special powers relating to licences and approvals

38—Suspension or cancellation of licence or approval—prescribed offences

This clause allows the Commissioner to cancel or suspend a person's licence or approval if the person is charged with or found guilty of an offence of a kind to be prescribed by regulation.

39—Suspension of licence or approval in urgent circumstances

This clause provides the Commissioner with a special power to suspend a licence or approval (for up to 6 months) if there are reasonable grounds to believe that a licensee or approved person has engaged, or is engaging, in conduct that constitutes grounds for disciplinary action, that the conduct is likely to continue and there is a danger that a person or persons may suffer significant harm, or significant loss or damage, as a result of the conduct unless action is taken urgently.

40—Power of Commissioner of Police to prohibit employee or agent from working for licensee

This clause provides that the Commissioner of Police may prohibit a person found guilty of an offence of a kind prescribed by the regulations from working as an employee or agent of a licensee. A prohibition is effected by notice in writing, and may only be done if the person has been convicted of an offence of a kind specified by the regulations. A prohibition may be permanent, or for a specified time.

41—Appeal

This clause provides for an appeal against a decision to issue a notice under the Part.

Part 6—Discipline

42—Interpretation

This clause defines certain terms used in the Part.

43—Cause for disciplinary action

This clause defines when proper cause exists for disciplinary action.

44—Complaints

This clause provides for the lodging of a complaint with the Court in relation to a disciplinary matter.

45—Hearing by Court

This clause provides for the hearing by the Court of a disciplinary matter.

46—Procedure on hearing of complaint

The Court is not bound by the rules of evidence but may inform itself as it thinks fit and must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms. The clause also provides that, in determining whether there is proper cause for disciplinary action, regard may be had to evidence of the conduct of persons with whom the licensee or approved person associates or has associated as the Court considers relevant.

47—Disciplinary action

This clause sets out the Court's powers on finding that proper cause exists for disciplinary action.

48—Contravention of orders

If a person contravenes an order of the Court, the person is guilty of an offence. If a person is employed or engaged in the business of a licensee or becomes a director of a body corporate that is a licensee in contravention

of an order of the Court, that person and the licensee are each guilty of an offence. Both offences are punishable by a maximum fine of $35,000 or 6 months imprisonment.

49—Joinder of Commissioner and Commissioner of Police as parties

The Commissioner and the Commissioner of Police are each entitled to be joined as a party to any proceedings of the Court under this Act.

Part 7—Regulation of markets

50—Market operator to be registered

This clause provides that a person cannot act as, or advertise or otherwise hold himself or herself out as, a market operator unless registered. The maximum penalty for a contravention of proposed subsection (1) is a fine of $10,000. Subsection (1) does not apply if the operator establishes that he or she has taken reasonable measures to ensure that no class 1 or class 2 goods are sold at any second-hand market operated by the market operator.

This clause also sets out procedural matters in respect of how registration can be obtained.

51—Annual returns etc.

This clause provides that a registered market operator must lodge an annual return with the Commissioner.

52—Change of particulars relating to registration

This clause requires a registered market operator to notify the Commissioner in writing of any changes to any prescribed particular within 14 days after the change.

53—Market to be supervised

Under this clause, a market operator is required to ensure that a second-hand market is supervised by a natural person. The penalty for failure to comply is a maximum fine of $5,000. The provision does not apply if the operator establishes that he or she has taken reasonable measures to ensure that no class 1 or class 2 goods are sold at the second-hand market.

54—Sale of goods at market

A person must not sell class 1 or class 2 goods at a second-hand market without the permission of the person supervising the market and that person must ensure that the identity of the seller is verified in accordance with the regulations. The maximum penalty for each offence is $2,500 or an expiation fee of $210.

55—Records

A market operator is required to keep records relating to the sale of class 1 or class 2 goods and the name and address of the person acting as supervisor of the market (with a maximum penalty of $5,000 or an expiation fee of $315). A market operator must transmit prescribed particulars to the Commissioner of Police (with a maximum penalty of $5,000).

Part 8—Enforcement

56—Powers of entry and inspection

This clause sets out powers of entry and inspection.

Part 9—Barring orders

57—Interpretation

This clause defines certain terms used in this Part.

58—Barring orders

This clause allows a police officer to apply to the Magistrates Court for an order (a *barring order*) barring a person who has been charged with, or found guilty of a barring offence from disposing of second-hand goods to, or through the agency of, a second-hand dealer, pawnbroker or auctioneer or at a second-hand market.

59—Issue of barring order in absence of respondent

This clause provides a procedure for the issue of a barring order in the absence of the respondent.

60—Service

This clause makes provision in relation to service of a barring order and in particular provides that a barring order must be served on the respondent personally and is not binding until it has been so served.

61—Variation or revocation of barring order

The Court may vary or revoke a barring order.

62—Burden of proof

The civil burden of proof is applicable to proceedings under this Part (other than proceedings for an offence).

63—Information relating to barring order

The Commissioner of Police may cause information relating to a barring order to be provided to second-hand dealers, pawnbrokers, auctioneers, market operators or such other persons as the Commissioner of Police thinks fit.

Part 10—Miscellaneous

64—Where goods suspected of being stolen

This clause is similar to the current section 11 of the *Second-hand Dealers and Pawnbrokers Act 1996* and imposes various obligations on dealers, pawnbrokers and auctioneers where goods are suspected of being stolen. In particular, the clause provides for the issue of notices by the Commissioner of Police in relation to suspected stolen goods, for the making of claims by members of the public in relation to suspected stolen goods, and for notification by dealers etc to the Commissioner of Police in relation to suspected stolen goods.

65—Offence to deal with child or intoxicated person

This clause prohibits certain dealings with children or intoxicated persons (the maximum penalty being a fine of $2,500 or an expiation fee of $210).

66—No contracting out

An agreement or arrangement that is inconsistent with a provision of the measure or purports to exclude, modify or restrict the operation of the measure is to that extent void and of no effect.

67—False or misleading information

This clause creates an offence relating to the provision of false or misleading information. The maximum penalty is $10,000 if the person made the statement knowing that it was false or misleading or $2,500 in any other case.

68—Statutory declaration

The Commissioner or the Commissioner of Police may require information to be verified by statutory declaration.

69—Investigations

The Commissioner may request the Commissioner of Police to investigate and report in relation to certain matters.

70—Information to be provided to Commissioner of Police

The Commissioner must advise the Commissioner of Police of a change in any prescribed particulars of persons licensed, approved or registered under the proposed Act.

71—Register of persons licensed, approved or registered

This clause provides for the keeping of a public register in relation to licensed, approved and registered persons.

72—General defence

It is a defence to a charge of an offence if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

73—Liability for act or default of officer, employee or agent

An act or default of an officer, employee or agent of a person carrying on a business will be taken to be an act or default of that person unless it is proved that the person acted outside the scope of his or her actual, usual and ostensible authority.

74—Service of documents

This clause provides for the service of documents under the measure.

75—Prosecutions

This clause makes provision in relation to the commencement of prosecutions under the measure.

76—Evidentiary provision

This clause provides for certain certificates and evidentiary presumptions for the purposes of the measure

77—Annual report

This clause provides for annual reports by the Commissioner.

78—Regulations

This clause is a regulation making power.

Schedule 1—Consequential amendment, repeal and transitional provisions

Part 1—Amendment of *Magistrates Court Act 1991*

1—Amendment of section 3—Interpretation

This clause makes a consequential amendment to the *Magistrates Court Act 1991*.

Part 2—Repeal

2—Repeal

This clause repeals the *Second-hand Dealers and Pawnbrokers Act 1996*.

Part 3—Transitional provisions

3—Act applies to transactions occurring after commencement

The measure is to apply to transactions occurring after commencement of the measure.

4—Regulations

This clause provides for the making of savings and transitional regulations, including, for example, regulations which allow the new provisions to be phased in.

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

LEGISLATIVE REVIEW COMMITTEE

The House of Assembly appointed Mr Odenwalder to the committee in place of Mr Sibbons.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The House of Assembly appointed Mr Odenwalder to the committee in place of the Hon. P.F. Conlon.

CONSTITUTION (RECOGNITION OF ABORIGINAL PEOPLES) AMENDMENT BILL

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

BURIAL AND CREMATION BILL

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

At 18:26 the council adjourned until Wednesday 6 March 2013 at 14:15.