LEGISLATIVE COUNCIL

Thursday, 29 October 2015

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

Petitions

WATER LEVIES

The Hon. R.L. BROKENSHIRE:

Presented a petition signed by 1,161 residents of South Australia requesting the council to urge the state government to—

1. Remove part (b) of the interpretation of infrastructure in the Natural Resource Management Act 2004 so it cannot be defined to mean dams or reservoirs.

2. Remove Chapter 7, Part 2, Division 2 of the Natural Resources Management Act which restricts the amount of water a landowner can use from dams and reservoirs.

3. Ensure that a water levy cannot be imposed on water captured in dams, reservoirs or rainwater tanks that started out as rainfall.

Parliamentary Procedure

PAPERS

The Hon. R.L. Brokenshire interjecting:

The PRESIDENT: Order! Will the Hon. Mr Brokenshire please allow the minister to lay a paper on the table.

The following papers were laid on the table:

By the Minister for Employment, Higher Education and Skills (Hon. G.E. Gago)—

Reports, 2014-15—
- Hydroponics Industry Control Act 2009
- Listening and Surveillance Devices Act 1972
- South Australian Disability Accommodation Services
- South Australia Police

ReturnToWork SA—Report, 2014-15 Erratum
Ministerial Directions to the Commissioner of Police, dated 14 October 2015
Response to the Recommendations of the Crime and Public Integrity Policy Committee's Report: Annual Review into Public Integrity and the Independent Commissioner Against Corruption

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

Reports, 2014-15—
- Australian Health Practitioner Regulation Agency
- Controlled Substances Advisory Council
- Food Act 2001
- Health and Community Services Complaints Commissioner
- Health Performance Council
- Office of the Guardian for Children and Young People
- Retirement Villages Act 1987
- Safe Drinking Water Act 2011
- South Australian Medical Education and Training Health Advisory Council
- Teachers Registration Board of South Australia

Ministerial Statement

MURDER INVESTIGATION

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:20): I table a copy of a ministerial statement relating to Khandalyce Pearce and Karlie Pearce-Stevenson made earlier today in another place by my colleague the Hon. Tony Piccolo.

MENTAL HEALTH COMMISSION

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:21): I table a copy of a ministerial statement relating to the establishment of the SA Mental Health Commission made earlier today in another place by my colleague the Minister for Mental Health and Substance Abuse.

Question Time

MINISTERIAL TRAVEL

The Hon. R.I. LUCAS (14:21): I seek leave to make an explanation prior to directing a question to the Minister for the Environment on the subject of overseas travel.

Leave granted.

The Hon. R.I. LUCAS: In a feature story in *The Advertiser* this morning, under the heading 'Hey, big spenders—that's our cash you're splashing', it went on to say:

> With the state in the grips of a jobs crisis, tens of thousands of South Australians are having to tighten their belts. But this appears to have been lost on our big-spending state politicians and bureaucrats.

In that major article, *The Advertiser* says:

> Taxpayers were billed almost $100,000 to send a delegation of seven senior government officials led by Jay Weatherill on a week-long European sojourn, new figures show.
>
> The World Summit for Climate and Territories brought the globetrotting group of South Australians together in Lyon, in France's south east, during the European summer in June and July.

The article notes further on, without going through all the detail, that in the delegation of seven was minister Hunter, a staffer to minister Hunter, and two public servants within his department, the chief executive, Ms Sandy Pitcher, and senior public servant, Ms Julia Grant. What the documentation shows is that the senior public servant, Ms Julia Grant, travelled business class on this trip to Europe at a total cost of approximately $9,200 for the travel component of the total costs.

Public servants are required to follow guidelines and determinations from the Commissioner for Public Sector Employment in relation to taxpayer-funded overseas travel. The relevant determination is 3.2, Appendix 1, Overseas Travel Arrangements. Under that subsection, Standard of Air Travel, it says:

> All public sector employees are to travel economy class for general air travel, both interstate and overseas, except for chief executives who may travel business class.
>
> Employees travelling with ministers or chief executives are to travel economy class.
>
> Approval of business class travel may be given, where there are substantial reasons for an employee to travel business class. Approval is at the chief executive's discretion.

My questions to the minister are:

1. What justification can the minister give to the taxpayers of South Australia for the public servant within his department (who is not a chief executive officer) travelling business class to this overseas conference?

2. Can the minister assure this house that his staff member, Mr Mooney, did not travel business class?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:25): What an

incredibly obvious question and, might I say, a very particularly juvenile one from a failed Liberal Party treasurer who has nothing better to do than set up questions in this place based on articles in *The Advertiser*. You would think that, given all the time that we've had before sittings, they could have done some work, they could have done some research—but no. Like his leader, the Hon. Mr Ridgway, they rely on articles in *The Advertiser* which are entirely predictable and, I might say, are purely there because of the government's proactive disclosure policy. We put all this information out into the public realm, and we make it obvious that we have nothing to hide on these matters—nothing at all.

I did travel to Europe between 28 June and 6 July 2015, as honourable members would know who might have read that article. The primary purpose of the trip was to participate in the World Summit on Climate and Territories conference in Lyon, France. I accompanied the Premier who attended in his capacity as Co-chair of The Climate Group's States and Regions Alliance. The world summit was a valuable opportunity to recognise the role of sub-national governments in tackling climate change. At the summit, the French President, Mr François Hollande, and the Executive Secretary of the United Nations Framework Convention on Climate Change, Ms Christiana Figueres, confirmed that COP 21 would include a dedicated day for sub-national governments.

Meetings with The Climate Group and its members discussed the need to position the States and Regions Alliance at the centre of sub-national governments at COP 21. Of course, as one of the world leaders of the States and Regions group, it is very important that South Australia was there at that meeting and will be at the COP 21 in Paris later this year representing our state's interest on the world stage, one of the most important meetings of the decade: COP 21 in Paris.

I attended a series of bilateral meetings during the conference and also attended a conference in Brussels on 30 June on climate adaptation. These events provided me with the opportunity to brief a number of jurisdictions on the work the state is doing on climate change and also, by implication, the lack of action of the current federal Liberal government.

Importantly, the meetings provided valuable insight into the progress and likely outcomes ahead of the Paris climate negotiations in November this year, as well as work being done at the sub-national jurisdictional level around the world—insight which is important as the state formulates its climate strategy.

In February this year, the South Australian government announced its intention to make Adelaide the world's first carbon-neutral city. Whilst in Europe, I visited Copenhagen, which shares our ambition of becoming a climate-neutral city. I met with the technical Mayor of the Copenhagen City Council, Mr Morten Kabell, to discuss the council strategies which include waste-sector reform, renewable energy generation, policies to discourage carbon intensive forms of transport and encourage low carbon transport, and the limited use of low carbon offsets.

I also met with the project manager of the Copenhagen City Council's Plastic Zero initiative to learn about the operation of the waste sector in Copenhagen. It is very obvious that in South Australia, throughout innovative initiatives led by, in some part, Zero Waste SA, we are somewhat more advanced in the development of the waste and recycling industries.

I also met with the owner and operator of Denmark's energy distribution network, providing insight into how Denmark is managing its energy security while working to achieve a number of targets including: wind power constituting 50 per cent of the electricity consumption by 2020; electricity and heating systems being fossil-free by 2035; and Denmark being fossil-free by 2050. These are ambitious aims, and very credible.

I met with the Head of Press at State of Green. State of Green is a joint venture half owned by the Danish government and half owned by a consortium of Danish companies with expertise in the green economy, a sector representing 7 per cent of Danish exports. State of Green markets Danish companies with expertise in the green economy to governments and businesses around the world. I'm currently exploring the possibility of Green Industries SA replicating the State of Green model as part of its role in commercialising and selling South Australian expertise in the waste, water and climate sectors.

In relation to some of the comments made in the honourable member's explanation before asking the question, let me just reflect for a minute where the ultimate thrust of his question will take us. As I said at the beginning, this story comes about because of the government's policy of proactive disclosure. There is no such proactive disclosure policy that is used by the Liberals in this place, indeed by any member at all.

The Hon. D.W. Ridgway: We're not in government.

The Hon. I.K. HUNTER: You are accountable for your travel, just as we are. If you head down this path where you try to indicate that travel is not an important part of government, or indeed of MPs' business, then it will be on your head.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order! No debate. The minister is answering a question. Do you have a supplementary?

The Hon. R.I. Lucas: Is he still going or is that the end of his answer?

The PRESIDENT: I thought it was quite a comprehensive answer myself. Do you have a sup?

MINISTERIAL TRAVEL

The Hon. R.I. LUCAS (14:30): Yes, a supplementary question—I thought the minister said he was going to come to the question. He has obviously chosen not to answer the question in relation to justifying the business class travel, contrary to the guidelines, but is the minister going to answer the question in relation to whether or not Mr Mooney, his own staff member, travelled business class or economy class to this conference?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:30): I have given the honourable member the answer he deserves.

MINISTERIAL TRAVEL

The Hon. R.I. LUCAS (14:30): Mr President, I am assuming from that that the minister is refusing to answer that question. But in relation to other aspects of the minister's question, given the importance of this particular conference, as the minister has outlined, is the minister prepared to undertake to table in this house a copy of any speech or presentation that he made to the conference?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:31): I will have to check my records to see if I have kept the speech. I usually digress in quite a large way from prepared speeches. I am pretty sure I had a prepared speech for the Bavarian government's invitation, and I am pretty sure I had some speaking notes for the various meetings I had at the Lyon conference. But I will check on that and see whether it is appropriate to bring them back.

APY LANDS, CHILD SAFETY

The Hon. S.G. WADE (14:31): I seek leave to make a brief explanation before asking some questions of the Minister for Aboriginal Affairs and Reconciliation in relation to the APY Lands Steering Committee.

Leave granted.

The Hon. S.G. WADE: In 2008, the Mullighan inquiry—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Wade has the floor.

The Hon. S.G. WADE: In 2008, the Mullighan inquiry concluded that the incidence—

Members interjecting:

The Hon. T.A. FRANKS: Point of order, Mr President: I can't hear.

The PRESIDENT: Yes, well, if you would notice, I am actually trying to get some order in the place, so it doesn't help with you standing up with a point of order. Minister.

The Hon. T.A. FRANKS: It would help if you actually stood up and called the place to order.

The PRESIDENT: Just sit down and let me handle this, will you? Minister, in particular, you have given your answer. Now the Hon. Mr Wade is asking another minister a question. I think it is incumbent upon us all to allow him to say it in silence. The Hon. Mr Wade.

The Hon. S.G. WADE: Thank you, Mr President. In 2008, the Mullighan inquiry concluded that the incidence of child sex abuse in the APY lands was widespread. For the next five years, the state government was required by law to produce an annual progress report detailing its response to the inquiry's recommendations. The fifth and final progress report was tabled in parliament on 27 November 2013. The final report indicated that the APY Lands Steering Committee, a committee comprising representatives from state and federal government agencies and the APY executive, would henceforth be responsible for monitoring the ongoing implementation of the Mullighan inquiry recommendations.

In 2014, the APY Lands Steering Committee met only twice, although chief executive Harrison has said: 'Child safety did not form part of the agenda' at either of the meetings. Five weeks ago, on 26 September 2015, *The Advertiser* reported that, 'every one of the 700 students on the APY lands has been exposed to some form of sex abuse, according to child protection workers'. On the day that this report appeared, the Minister for Education and Child Development was quizzed about the role and work of the APY Lands Steering Committee during an interview recorded for the Paper Tracker Radio Show.

In that interview, minister Close confirmed that the steering committee was responsible for the monitoring and implementation of the Mullighan inquiry recommendation, and said that it had met very recently, that child protection matters had been on the agenda and that this issue was being discussed very actively at the moment.

Ms Nerida Saunders is the Executive Director of Aboriginal Affairs and Reconciliation within the Department of State Development and the state government's lead representative on the APY Lands Steering Committee. A fortnight ago, in an interview with the *Paper Tracker Radio Show*, Ms Saunders said that the steering committee had not held any meetings this year. My questions to the minister are:

1. How can the South Australian public have any confidence in the government's purported commitment to protect children in remote Aboriginal communities when the committee charged with driving the implementation of the Mullighan inquiry recommendations has failed to even consider child protection matters on those rare occasions that it has met?

2. Given the conflict between the statements of the Minister for Education and Child Development on the work of the APY Lands Steering Committee, and the recent remarks of the Executive Director of Aboriginal Affairs and Reconciliation, can the minister advise what are the facts?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (14:35): I thank the honourable member for his questions. On matters of child protection and responses to the Mullighan inquiry I am happy to take those questions on notice and refer them to the minister responsible for child protection in another place and bring back a reply.

APY LANDS, CHILD SAFETY

The PRESIDENT: Supplementary question, the Hon. Mr Wade.

The Hon. S.G. WADE (14:35): As the minister responsible for Aboriginal affairs and presumably the person to whom Ms Nerida Saunders reports, can the minister advise the house whether, in fact, the steering committee has met this year and, accordingly, whether it has addressed child protection this year?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (14:35): I haven't seen the comments that the honourable member purports were made by Nerida Saunders. I'm happy to have a look and bring back a reply.

WATERPROOFING EASTERN ADELAIDE PROJECT

The Hon. T.J. STEPHENS (14:36): I seek leave to make a brief explanation before asking the minister for Sustainability, Environment and Conservation questions about the Waterproofing Eastern Adelaide project.

Leave granted.

The Hon. T.J. STEPHENS: Recently, I received some correspondence from a constituent who is involved in the Waterproofing Eastern Adelaide project. He has confirmed to me that $7.5 million of commonwealth funding for this project is being held up by the state government. This delay has forced him and the pipe-laying contractor to lay off workers and there is concern that the project will no longer go ahead as its deadline is June 2016. My questions to the minister are:

1. What is the reason for the delay in the delivery of funding for this project to contractors?

2. Is the future of the Waterproofing Eastern Adelaide project secure?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:36): One is very tempted to slap this one right out of the ballpark. To give the honourable member his answer: go and talk to your federal colleagues; they are the ones who are holding up the funding. The Liberal government in Canberra, your colleagues, are the ones holding back the Waterproofing Eastern Adelaide Project and the funding program of $7.5 million. Go and talk to the Liberals. You are part of their party, apparently. They are the ones you need to talk to; they are the ones who are holding up the whole program.

The Hon. K.L. VINCENT: Point of order, Mr President. Since it is up to you, Mr President, to maintain order in this place you might want to point out to your minister that he is to address the opposition through you as President.

The PRESIDENT: I'm glad we're all experts.

The Hon. K.L. VINCENT: If you don't mind me interrupting with my point of order.

The PRESIDENT: The honourable minister, continue.

The Hon. I.K. HUNTER: Tell the Hon. Mr Stephens to go and talk to the Liberals. They are the ones who are holding up the funding for this project. Mr President, tell the Hon. Mr Stephens to go and talk to his Liberal mates, who don't give a damn for South Australia, don't give a damn for delivering projects here; and it's his mates, his colleagues, his party that are holding up that funding.

TRADE SUPPORT LOANS

The Hon. T.T. NGO (14:38): I seek leave to ask the Minister for Employment, Higher Education and Skills a question about trade support loans.

Leave granted.

The Hon. T.T. NGO: Trade support loans were introduced by the Liberal federal government, replacing the commonwealth Tools for Your Trade scheme. Obviously it is important that apprentices are supported during their training. The question to the minister is: could the minister tell the chamber the impact of trade support loans on South Australian apprentices?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:38): I thank the honourable member for his most important question. The government is indeed very concerned regarding cuts that the federal Liberal government has made, particularly on apprentices and trainees. Yesterday we saw the Hon. Andrew

McLachlan raise the question of the declining numbers of apprenticeships and trainees—I should say, the fall in the 2012-13 numbers that he reported on yesterday.

It is interesting; having looked more closely at the NCVER report that he referred to, I noted that the National Centre for Vocational Education and Research actually stated in the Apprentice and Trainees 2015 March Quarter Report, which is the latest one available, the following:

> The substantial changes to commencement and completion numbers appear to be predominantly due to changes in Commonwealth incentive payments for existing workers—

that is, cuts to those workers—

> namely the removal of the commencement incentive payment for those apprenticeships and trainees not on the National Skills Needs List. Under the changes, training needed to have commenced prior to 1 July 2012 to attract the old subsidy rate.

It is interesting how the honourable member comes into this place and reads selectively from reports. He failed to quote that section that NCVER, an independent group, has reported that the predominant reason for the decline is the cuts to federal Liberal government funds to apprentices and trainees. That's right, Mr President: the federal Liberal government cut incentive payments for apprentices and trainees and NCVER attributes it as the predominant cause for the fall in apprenticeship and trainee numbers nationally.

That is not the only cut the federal Liberal government has made. There has not been a single federal government policy introduced by the federal Liberal government that will increase apprentices and trainees; rather, they have either cut funding or reduced program expenditure when rebranding apprentice and trainee support programs. These cuts are estimated by the federal opposition to be over $2 billion—$2 billion worth of cuts to our VET system, including cutting over $1 billion from programs that support apprentices and trainees. A $1 billion cut in funding from the federal Liberal government to our apprentices and trainees.

The Liberal government cut the support for the adult Australian apprentices incentive from 1 July 2015. The incentive provided financial support of up to $13,000 during the first two years of an apprenticeship to boost the income of eligible apprentices aged 25 years and over who are being paid under the national minimum wage during their apprenticeship. The incentive provided payments to these older apprentices of up to $150 per week in the first year of their apprenticeship and $100 a week in their second year.

Adult apprentices are less likely to be living with their parents and are more likely than not supporting families of their own. All this cut does is to act to discourage older people from starting an apprenticeship, which could impact on apprenticeship numbers as well. Of course, that is particularly important to those people who have been retrenched and need to reskill and reposition themselves. This adult apprenticeship support scheme would have been a good incentive to help those retrenched older workers to go back and get a ticket. The federal Liberal government has also ceased to fund the joint group training program. This is a program—

The Hon. I.K. Hunter: Shame on them!

The Hon. G.E. GAGO: Yes, shame on them! It is an excellent program, which supported group training organisations to employ apprentices and trainees in specific trades and occupations. It is a program that was originally a joint commonwealth and state program, funded on a one-to-one basis. However, the federal Liberal government cut funding to the program for the 2014-15 year and entirely ceased funding the program in 2015-16.

The federal Liberal government made a short-sighted decision to indiscriminately withdraw federal funding, even though there is well-established data to show how successful these GTOs are. In South Australia, for instance, apprentices engaged by GTOs are 5.7 per cent (just under 6 per cent) more likely to complete their apprenticeship than those employed by a non group training organisation.

They are incredibly successful organisations, as I have said. Unlike the federal Liberal government, this government is committed to the group training model, and the state government will continue to support group training organisations by providing $1.3 million in 2015-16.

Yet another of these cuts I referred to yesterday is to the trade support loans. The Trade Support Loans replaced the Labor commonwealth government's Tools for Your Trade program where apprentices were able to access $5,500 for the costs of things like their tools, books and equipment. Instead, now, apprentices and trainees have to access a trade support loan where they potentially incur a debt of up to $20,000 which they must repay as an income contingent loan.

The Liberal government has replaced what was a grant to apprentices with a debt—as I indicated yesterday, a debt many can ill afford. It is an issue that is exceptionally concerning and it is an issue which I raised with assistant minister Birmingham at the time and one that I intend to raise with minister Hartsuyker.

This is a concerning issue, and Mr Peter Treloar MP, member for Flinders and fellow colleague of those opposite, wrote to me about this very matter. Mr Treloar wrote on behalf of his constituent Mr David Edwards of Port Lincoln. Mr Treloar stated in his letter to me that:

> [Mr Edwards and] his wife have been hesitant to take on any future debt until he was settled into his work and able to make informed decisions about where his apprenticeship might take him.

Mr Treloar further wrote about the difficulties of determining this in your first year of an apprenticeship. This is the year that the apprentices first need their tools of trade. I have indicated to the federal government that they should consider reintroducing the Tools for Your Trade program. Trade support loans were never about supporting apprentices: rather, they were about cutting expenditure. It was the federal Liberal government tearing down the Tools for Your Trade program that had supported thousands of apprentices and forcing apprentices into debt. The federal Liberal government has not introduced a single policy that actually supports apprentices and trainees.

APPRENTICES AND TRAINEES

The Hon. A.L. McLACHLAN (14:46): A supplementary, Mr President: given that the minister conceded yesterday that the Premier at the last budget round announced that he would look at a range of new tax reform, will the minister concede that reinstating the payroll tax exemption is something the state government can do to positively impact the numbers of apprenticeships and training positions?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:47): That is not a supplementary, sir.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! No, sit down. The minister has answered and given her position. She has no answer because she is not going to answer that question, so we will go on to the next one.

The Hon. G.E. GAGO: I am willing, sir, if you—

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Well, I did answer the question yesterday, but I am happy to answer it again—

The PRESIDENT: If you are happy to.

The Hon. G.E. GAGO: —even though it is not a supplementary. I do not believe it is a supplementary but I am happy to answer it, and I did answer it yesterday.

Members interjecting:

The PRESIDENT: Order! Minister, just answer the question then.

The Hon. G.E. GAGO: We know that apprentices' enrolments and completions are down, and I have outlined the reason for that, as the NCVER report shows predominantly because of the

federal Liberal government's cuts to apprenticeship and trainee funding. It is no wonder that the Hon. Andrew McLachlan is squirming in his seat.

Members interjecting:

The PRESIDENT: Let's get to the answer.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: As I have indicated, this government has introduced a raft of measures to fund and assist businesses, including extending the small business payroll tax regulations—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Will the honourable opposition leader please allow the minister to answer the question?

The Hon. G.E. GAGO: —abolishing stamp duty on non-real property transfers, abolishing share duty and abolishing stamp duty on genuine corporate reconstruction. The tax changes will return almost $2.5 billion to businesses and the community. In addition to this, the WorkCover reforms that I referred to yesterday will provide a reduction in business costs of $180 million per annum.

We have realigned priorities to measures that we believe are better value for state investment. The government will remain committed to supporting employers to employ and train apprentices—unlike the federal Liberal government that has not introduced any initiatives to assist apprentices and trainees. All they have done is rip the guts out of funding to apprentices and trainees and then sit by and watch numbers decline.

As I indicated yesterday, if the Hon. Andrew McLachlan is really genuinely concerned about this, rather than coming into this place and selectively reading parts of a report he will be sticking up for South Australian apprentices and trainees and he will be contacting his federal Liberal counterparts and demanding that those funds to our apprentices and trainees be reinstated, including the Tools to Trade funding. If he is really genuine, that is what he would be doing.

Even his colleague next door Peter Treloar MP had the guts at least to identify the enormous hardship and impost that transferring the tools grant funds to a loan places on apprentices and trainees. So, I am challenging the Hon. Andrew McLachlan to have the guts to stand up for South Australian apprentices and trainees.

APPRENTICES AND TRAINEES

The Hon. A.L. McLACHLAN (14:51): I thank the minister for her concern for my political career and my physical condition. I ask the minister: does the minister agree that reinstating payroll tax exemption will positively impact the number of apprenticeships and training positions, which relates to a component of her answer?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:51): I comprehensively answered the question both in terms of the reason behind the decline in apprenticeship and training numbers, which is that the federal Liberal government ripped the heart out of apprenticeship and trainee funding.

I also indicated comprehensively yesterday and today this government's commitment to assisting businesses to grow and to be vibrant and to grow jobs here in South Australia, and that includes apprentices and trainees and includes the considerable infrastructure program that we have. Of course, when you build things it does attract considerable jobs for apprentices and trainees.

I have outlined comprehensively this government's commitment and its comprehensive strategy to assist apprentices and trainees. I still issue the same challenge—that Mr McLachlan have the guts to stand up for South Australian apprentices and trainees.

GOVERNMENT LAND

The Hon. J.A. DARLEY (14:52): My questions are to the Minister for Employment, Higher Education and Skills, representing the Treasurer, with regard to the sale of the former TAFE SA site at Victor Harbor.

1. Can the minister advise why this land was sold by the Department of Treasury and Finance and not by Renewal SA in accordance with Premier and Cabinet circular 114?

2. How much did the land sell for?

3. Why was the land not rezoned to its optimum use in accordance with Premier and Cabinet circular 114 prior to the sale of the land?

4. What would the value of the land have been if it had been rezoned as a commercial shopping centre site?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:53): I'm happy to confer with the other minister in another place and provide answers to the questions and bring them back.

NORTHERN ADELAIDE FOOD PARK

The Hon. J.S.L. DAWKINS (14:53): I seek leave to make a brief explanation before asking the Minister for Automotive Transformation a question regarding the government's position on the duplication of Elder Smith Road at Mawson Lakes following the announcement of the northern food hub.

Leave granted.

The Hon. J.S.L. DAWKINS: Recently, the Premier announced the location of the northern Adelaide food hub at Parafield Airport, with transport links to the site off Main North Road and Elder Smith Road. Shortly before this announcement, the government released its updated Integrated Transport and Land Use Plan, with the medium (five to 15 years) to longer term (15 plus years) priority allocated to Elder Smith Road duplication and extension remaining unchanged.

This determination was made despite the fact that traffic volumes on Elder Smith Road have increased by more than 300 per cent since its construction in 2006 and that the road is operating at saturation levels during the peak hour. The City of Salisbury has long identified the duplication extension of Elder Smith Road as a priority action for the area, identifying a full upgrade of the road in the council's 2014 priorities document and in its recent response to the government's northern economic plan directions paper. Indeed, a provision for a road reserve and a recently gazetted Globe Derby surplus lands DPA has already been made to enable Elder Smith Road eventually to connect to Port Wakefield Road and all the way through to the recently announced northern connector.

I understand the council wrote to the government requesting the consideration of a more urgent upgrade to Elder Smith Road, to which the Department of Planning, Transport and Infrastructure responded that, although heavy queuing exists in both the morning and afternoon peaks for all approaches, the intersection is operating correctly. These issues are already occurring before the significant increase in traffic we will have along this road upon the establishment of the northern food hub. The Northern Economic Plan states that a clear aim to prioritise targeted infrastructure projects is a way to:

> strengthen and foster productive and accessible business and industries, as well as lay the foundation that can support medium and longer term economic activity.

Elder Smith Road clearly will be a crucial transport link for heavy transport vehicles accessing the food hub, and also potentially transporting goods out to locations via the northern connector. My questions are:

1. Will the minister commit to the duplication and extension of Elder Smith Road as part of the development of the recently announced northern food hub and construction of the northern connector?

2. Will the minister work with the City of Salisbury and other surrounding councils that are impacted to address the issues already facing users of this road prior to the development of the northern food hub?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (14:57): I thank the honourable member for his question and his interest in matters to do with the Northern Economic Plan generally and the food park specifically, and I thank him for his past strong support of some of the actions the government is taking to address some of the problems that will be faced by northern Adelaide in the coming years as the automotive manufacturing sector winds down at the end of 2017.

As the honourable member has pointed out, one of the things that is being looked at as part of the Northern Economic Plan is a food park in northern Adelaide. The site was announced a couple of weeks ago and appears in the Northern Economic Plan. I also add that we are taking up a suggestion, which the honourable member made a few weeks ago, in relation to our tele town hall, in which we talk directly to residents in northern Adelaide. The honourable member asked us to look at whether we would extend it further than the three council areas we engaged originally, and I am pleased to inform him that, yes, we are looking at it now, so that was a good suggestion that we have taken up.

In relation to his specific two questions, I will answer the second one first: will we continue to liaise with the councils that are impacted by various projects? Absolutely; we work very closely with the Salisbury council, the Playford council and the Port Adelaide Enfield council on things that are affecting the development of the Northern Economic Plan and projects included in that.

In relation to specific roads, that is not my area. I am sure the honourable member would love me to make a very specific commitment right here and right now in another minister's portfolio area, but I am afraid, as I am sure he expects, I will have to disappoint him and not do that. But what I will commit to is that I will raise those matters with the Minister for Transport, who has a responsibility for those things.

NORTHERN ADELAIDE FOOD PARK

The Hon. J.S.L. DAWKINS (14:59): I appreciate the answer; but does the minister concede that it is important, though, that Elder Smith Road is a very crucial part of the hub that has been announced and needs to be prioritised?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (14:59): I know that possible future uses are not always taken into account when upgrades are looked at for roads and infrastructure, so I will certainly raise that with the Minister for Transport. I know all projects in the Northern Economic Plan are being looked at right across government. There is a cross-government group that looks at all the projects that are being considered under the Northern Economic Plan, of which this is one.

ADELAIDE INTERNATIONAL BIRD SANCTUARY

The Hon. T.T. NGO (14:59): My question is to the Minister for Sustainability, Environment and Conservation. Will the minister tell the chamber about the latest developments about the Adelaide International Bird Sanctuary, and the recent highly successful Adelaide Flyway Festival celebrating the arrival of the migratory birds?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:00): I thank the honourable member for his most important and sensible question. On Sunday October 17, I and many hundreds of other South Australians gathered on the St Kilda foreshore for the inaugural Adelaide Flyway Festival. The festival, which will hopefully become an annual event, celebrates the impending arrival of the migratory birds to the Adelaide International Bird Sanctuary.

The sanctuary, in the St Kilda region, is part of the East Asian-Australasian Flyway route. Each year, around 27,000 resident and migratory birds travel enormous distances to reach the coast of Gulf St Vincent where they rest and feed up over the summer. I understand that this area is known

as a terminal site, meaning that the birds do not travel any further and spend the longest time right here.

The Adelaide International Bird Sanctuary provides a safe haven for the birds, where the mudflats, mangroves and salt marshes support the birds during their refuelling. The festival is a fantastic way of celebrating their arrival and raising awareness about the importance of protecting this very valuable conservation area.

The festival is also intended as a celebration of the wonderful local community surrounding the bird sanctuary. I understand around 2,500 people attended the Adelaide Flyway Festival over the course of the day, which is an exceptional turnout for our first festival and demonstrates the attraction of this wonderful area, its colourful and diverse community, and its exceptional food producers.

It is precisely for this reason that local businesses and community groups were closely involved in the preparation and running of the festival, and it was fantastic to see that all the stallholders on the day, including food vendors, were local to the area. I must confess to the chamber that I went away from the festival laden with gifts of tomatoes and cucumbers from some of the local producers and, of course, their stalls were rushed by many of the people there to get a taste of local tomatoes and local produce.

The Adelaide International Bird Sanctuary is an exceptional opportunity to combine conservation, tourism and the economic benefits for the local community and, of course, the entire state. It was why I was delighted to announce during the festival that the state government is nominating the Adelaide International Bird Sanctuary to be recognised as an official East Asian-Australasian Flyway Network site. The East Asian-Australasian Flyway is one of the world's greatest flyways, I am advised. At its northernmost point, it stretches from Russia in Alaska and encompasses Australia and New Zealand at its most southern point, passing through 22 countries along the way.

If successful, this nomination will mean that the bird sanctuary becomes a recognised network site and will be instrumental in strengthening the value of the area, not only for the local community but, most importantly, of course, for international visitation. The nomination also signals this government's commitment to our role in the conservation of migratory waterbirds and shorebirds.

In addition, and in recognition of this important site, I am pleased to report to the chamber that the state government intends to proclaim the bird sanctuary as a national park. The Adelaide International Bird Sanctuary presents a wonderful opportunity for the local community and the state in achieving important conservation and environmental outcomes to come together and celebrate that.

I would like to take the opportunity to thank everybody involved in the Adelaide Flyway Festival, in particular the local community and business groups, as well as the ongoing support in making the Adelaide International Bird Sanctuary such a success. I wish them all success into the future.

ADELAIDE INTERNATIONAL BIRD SANCTUARY

The Hon. M.C. PARNELL (15:03): Supplementary: in relation to the minister's answer just now when he said that a new national park would be created, is it the minister's intention to create that park under the joint proclamation provisions of the National Parks and Wildlife Act that enable mining activities to occur in national parks?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:04): The proclamation will be made in the normal way through the provisions of the act.

ADELAIDE INTERNATIONAL BIRD SANCTUARY

The Hon. M.C. PARNELL (15:04): Supplementary: the normal provisions of the act are for either a single proclamation or a joint proclamation. If it is a joint proclamation the area is also open to mining. What is the minister's intention?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:04): I thank the member for his obvious interest. He will have to wait and see.

Members interjecting:

The PRESIDENT: Order!

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: The honourable Leader of the Opposition, have respect for the Hon. Mr Hood, who has the floor.

GM HOLDEN

The Hon. D.G.E. HOOD (15:05): My question is to the Minister for Automotive Transformation. Is the minister aware of any plans by Holden to change the composition of its manufacturing, specifically to delete production of the Holden Cruze wagon model, prior to the earlier plans that Holden had announced?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:05): I thank the honourable member for his question. Certainly, Holden have said publicly, and have also said to the government, that they intend to keep producing automobiles at their Holden site up until the end of 2017. Certainly, on the composition of exactly what they produce and when they will stop producing certain models, there haven't been any guarantees given.

They have said they intend to keep producing up until the end of 2017. We've seen two rerates this year in terms of daily production of vehicles. I couldn't say for sure, and I'm not sure Holden would be able to say for sure, not knowing what forward sales figures will be exactly, how many will be produced up until their intended date in 2017 and exactly what the models are.

CONSUMER AND BUSINESS SERVICES

The Hon. J.S. LEE (15:06): I seek leave to make a brief explanation before asking the Minister for Business Services and Consumers a question about Consumer and Business Services (CBS).

Leave granted.

The Hon. J.S. LEE: Small businesses are doing it tough in South Australia and believe that they are getting no help from the government. My office has received a number of complaints about the Office of Consumer and Business Services. CBS is labelling South Australian businesses as 'dodgy' in their media releases. If a business is found guilty of an offence, using the term 'dodgy' would be deemed to be appropriate. However, I have been told by businesses that they suffer from the loss of business as well as their reputation being tarnished when labelled as 'dodgy' by a government agency even before a thorough investigation is completed.

For example, on 22 September 2015, the office of CBS released a media article titled 'Public Warning of Dodgy Dealings by Local Builder'. The document outlined the name of the tradesman along with his business name, stating:

> We strongly believe he is carrying on a business without holding the relevant South Australian Building Work Contractors licence.

Within the same document, however, it went on to say that 'CBS is continuing to investigate the alleged conduct'.

My questions to the minister are:

1. What mechanism has been put in place to monitor whether a small business is being unfairly treated by CBS, particularly when the investigation has not even been finalised?

2. What compensation measures will the minister put in place if CBS make the wrong judgement about a business under investigation?

3. Will the minister review the CBS name and shame policy to ensure that business owners are given a fair and equitable hearing?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:08): I thank the honourable member for her important question. It's really easy for businesses to avoid being shamed and referred to as 'dodgy'. It's quite straightforward: it's in their hands. They've got complete control over this, complete autonomy, and they simply need to do the right thing.

These warnings that CBS have the power to authorise are only ever distributed when there is clear evidence that a breach has occurred, even though complete inquiries can take some time. I'm absolutely confident that CBS does not misuse that authority. The powers of the commissioner are fairly limited in a number of respects, but one thing that they are able to do successfully is to name and shame.

CBS are a group of extremely hardworking public servants who perform at an extremely high level. They operate in an incredibly business friendly way. When they are alerted to or become aware of any potential problems with a business, they always seek the most conservative remedy in the first instance. They seek to inform and assist businesses to understand their obligations, to put the right systems in place and to do the right thing, and it is usually only after a series of warnings and other interactions, when a business has failed to respond to the concerns raised by CBS, that they will take the next step and issue a warning or name a company publicly.

I am absolutely confident that if CBS has named a particular organisation, it is based on sound and solid evidence. As I said, if businesses want to avoid being named and shamed, it is in their hands; they simply need to do the right thing. If they are in doubt, as I said, CBS is there. They will offer all sorts of advice and assistance to help organisations and businesses here in South Australia do the right thing.

CONSUMER AND BUSINESS SERVICES

The Hon. K.L. VINCENT (15:11): I have a supplementary question. Was the planning minister within the rights of his authority when yesterday he labelled people 'morons'? Did he give those people a warning?

The PRESIDENT: It is a non-question. The Hon. Mr Ngo.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Ngo.

APY LANDS, TAFE LEARNING CENTRE

The Hon. T.T. NGO (15:11): My question is to the Minister for Aboriginal Affairs and Reconciliation. Will the minister tell the house about the increased training opportunities on the APY lands?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:12): I thank the honourable member for his important question and his interest in these matters, particularly as the Chair of the Aboriginal Lands Parliamentary Standing Committee. I was very proud to be invited back last week to help open the new Kalka-Pipalyatjara TAFE learning centre. It was clear to me from my visit in August that the communities of Pipalyatjara and Kalka were very excited about the new services that would be provided and the new building itself.

The new TAFE learning centre in Pipalyatjara, which services both the Pipalyatjara and Kalka communities, is a great example of those two communities working together on a project that will benefit both communities. I know that not just TAFE but many other service providers have already enjoyed and will continue to enjoy having their meetings in the new centre associated with that building as well. I should say that I was very impressed in August with the service providers in general from the whole of the Pipalyatjara and Kalka communities making use of that building and having meetings to discuss common concerns. That meeting in that building showed just what a tightly knit close community Pipalyatjara is.

The new TAFE learning centre will not only provide the community with many opportunities for learning and development, but it will also provide students with the support they need to complete TAFE and other training courses. The centre itself will offer a wide range of subjects, including literacy, driver education, IT and internet, and other interesting and modern courses. These are some of the skills that locals will be able to acquire to help create opportunities for further education, for jobs and for the next generation of leaders in their communities. It also provides access for visiting specialist teachers, trainers and students.

I would particularly like to thank and recognise the commonwealth government, which provided around half a million dollars for the building itself. Like so many projects in remote Aboriginal communities, the best results are often achieved with the state and the federal government working together.

I also had the opportunity last week to visit again the Umuwa trade training centre. I have been there a couple of times this year, and I am always impressed to see what goes on there. It is a very well utilised facility and includes things like a commercial kitchen as well as automotive, engineering and construction workshops.

When I visited last week it was probably the busiest that I have seen it this year. There was a heap going on. On the day that I was there students were doing things such as their Certificate I in Hospitality, Certificate II in Operations, Certificate III in Early Childhood, and automotive training. In addition to that, the principals from Anangu schools right across the lands and Oak Valley and Yalata were at the Trade Training Centre discussing issues that affect teaching. So it's not just students who are utilising the Trade Training Centre: it is adults and others who provide services across the lands.

The Trade Training Centre has recently hit some really important milestones. It has had more than 600 different individuals access training with more than 1,000 enrolments in courses. More than 2,000 people have stayed at the accommodation and more than 2,500 people have been catered for at the Trade Training Centre this year.

I can attest to the quality of catering. I think even the Hon. David Ridgway would be impressed with the quality of catering provided there, and he has very high standards, as most people in this place would know. If I say the Umuwa Trade Training Centre is good enough for the Hon. David Ridgway to eat at I think people can be assured that it is of a great standard. These achievements indicate—

Members interjecting:

The PRESIDENT: Order! Minister, continue to answer, please.

The Hon. K.J. MAHER: Thank you for your protection from my colleagues, Mr President, it is very valuable.

Members interjecting:

The PRESIDENT: Order! It's not appropriate to be discussing these issues during question time.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: The honourable opposition leader, it's not appropriate. Let the minister, the Hon. Mr Maher, continue.

Members interjecting:

The PRESIDENT: The honourable opposition leader, I hope your taste in wine is not as good as your food, because I'm paying for it tonight. The honourable minister.

The Hon. K.J. MAHER: I thank the Leader of the Opposition for his interjection about spuds. He is always entertaining when he gets on to these sorts of topics. In conclusion, the Umuwa Trade Training Centre is going from strength to strength. I was pleased to be at the opening of the Pipalyatjara Kalka TAFE learning centre and also, last week, had the opportunity—and I have not

visited in more than a decade—to visit the Oak Valley community. The school is operating very well and the students are very proud of it.

The health service and aged care centre is certainly one of the best in such a remote community. I was very pleased to see the art centre back up and running and some of the newly funded employment places being used for women, particularly in the art centre, and also men accessing the art centre in Oak Valley.

GREYHOUND RACING

The Hon. T.A. FRANKS (15:18): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question about greyhound racing.

Leave granted.

The Hon. T.A. FRANKS: Earlier this year the government took steps to address community concerns regarding the illegal practice of live baiting by passing the Animal Welfare (Live Baiting) Amendment Bill. This was in response to the airing of a story entitled 'Making a Killing', which aired on *Four Corners* in early February and which showed the illegal practice of live baiting at trial tracks in New South Wales. Despite this, the RSPCA and other animal welfare groups continue to have concerns about this industry and they say that we have not yet gone far enough to protect the welfare of animals involved in the greyhound racing industry.

This concern is borne out by the shocking figures that were confirmed by the industry itself just last month in a joint report by Greyhounds Australasia and Greyhound Racing SA, which was uncovered as part of the special commission of inquiry into greyhound racing in New South Wales. The industry has revealed that it is responsible for the unnecessary deaths of between 13,000 and 17,000 healthy greyhounds each year and that, of this number, 7,000 greyhounds a year do not make it to the track and are never raced, highlighting the immediate wastage that occurs; and that the greyhound adoption program re-homes only about 6 per cent of all pre-raced and retired greyhounds. My question to the minister is: what action is the government taking in response to these wastage figures?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:19): I thank the honourable member for her most important question. As I have said in this place previously, we are quite committed as a government to protecting the welfare and safety of all animals, including those involved in the greyhound racing industry. This is why the government undertook swift action after allegations were made of live baiting occurring in other states in the nation.

Footage depicted on 16 February 2015 on the Australian Broadcasting Corporation's episode of *4 Corners* entitled 'Making a Killing' exposed the practice of live baiting in the greyhound racing industry in Queensland, New South Wales and Victoria. The footage depicted greyhound trainers using live bait to lure greyhounds around trial tracks, and the revelations shocked the nation and spurred the South Australia government to action. Live baiting is already illegal in South Australia; however, the associated activities of supplying animals to be bait and providing the venue or being present at these training sessions are not. Honourable members would know this because we passed the legislation not very long ago.

As our response to these interstate allegations, the government undertook reforms to tighten the screws on this sort of behaviour. This included making amendments to the Animal Welfare Act 1972, which creates new offences for participation in live baiting to mirror current offences for organised animal fights, such as dog and cock fighting, and increased maximum penalties for breaches of the new laws, up to $50,000 or imprisonment for four years, up from $20,000 or imprisonment for two years.

The legislative amendments complement the steps of Greyhound Racing SA, with the support of the RSPCA, which they have initiated together. This is in addition to what we have done through legislation, and this includes additional animal welfare and compliance staff; dramatically increasing the inspection rate of premises and new aerial drone surveillance; surveillance cameras at private racing facilities, trial tracks and registered tracks; new rules around the prohibition and compulsory reporting of live baiting; compulsion of registered participants to disclose all private

racing facilities; and protocols to inspect greyhound facilities without notice. I am pleased to note that the two organisations, the RSPCA and Greyhound Racing South Australia, work productively together. Throughout the development, the government's response to live baiting allegations gave us some very considered and well thought through joint advice on that legislation.

I also understand that on 31 August the RSPCA issued a media release stating that negotiations with Greyhound Racing had broken down and had called for greater reforms to the greyhound racing industry. The RSPCA, as an aside, recommended four areas of reform: the implementation of an independent agency responsible for integrity and oversight, suggesting that this should be the responsibility of government, not the industry; that a formal system of traceability of greyhounds through their lifecycle be established and that data be made publicly available; that funding be set aside by the industry for the future welfare of greyhounds bred for racing, including comprehensive re-homing and retirement programs; and that a formal referral mechanism be established mandating that all breaches of animal welfare legislation, regulations or codes be immediately reported to the appropriate enforcement agency for investigation and action.

In South Australia, I understand that the regulation of the racing industry is undertaken by the three controlling authorities, in accordance with the national local rules of racing, greyhound racing being one of those. I am also told that Greyhound Racing SA advises that they will contribute an additional $500,000 in expenses annually in support of integrity and welfare-related outcomes.

The establishment of an independent body is a racing issue and a matter for the Minister for Racing. I am advised that Greyhound Racing SA requires licensed persons to establish and maintain records of all births, sales and deaths of greyhounds. Greyhounds are also microchipped at the breeding establishment to ensure that tampering of these records does not occur.

I anticipate that the current suite of proposed changes to dog and cat management in South Australia will further assist in this matter. Dog and cat reforms include mandatory microchipping and a proposal for a centralised publicly accessible database. This will assist in tracing greyhounds through their lifetime.

I understand that Greyhound Racing SA advised that the industry is also working towards national disclosure of key statistics and public release of data pertaining to the lifecycle of greyhounds will need to be industry-led. I had that information directly when I reconvened our consideration of these issues with the RSPCA and Greyhound Racing SA in my office.

It is important to note that Greyhound Racing SA has re-homed a number of greyhounds. I understand that the number of greyhounds re-homed in South Australia is similar to the total number of greyhounds re-homed across Queensland and New South Wales combined, despite the fact that South Australia only breeds about 10 per cent of the number of greyhounds at those jurisdictions. The figures the Hon. Tammy Franks used in her explanation relate to the national level. As I understand it, they do not relate to the state's figures, which are significantly different.

I also understand that RSPCA South Australia and Greyhound Racing SA have been working towards the development of a memorandum of understanding, which would outline when and how referrals are made to the RSPCA. I look forward to working with both agencies into the future to encourage further strengthening of animal welfare issues in the greyhound racing industry in this state.

GREYHOUND RACING

The Hon. T.A. FRANKS (15:24): A supplementary, Mr President. Very simply, I think the minister indicated that the dog and cat breeding legislation he intends to bring forward will apply to greyhounds. Can he just confirm that that will be the case?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:25): The honourable member will be able to read my answer in *Hansard* and decide that for herself.

Bills

COMPULSORY THIRD PARTY INSURANCE REGULATION BILL

Second Reading

Adjourned debate on second reading.

(Continued from 27 October 2015.)

The Hon. G.A. KANDELAARS (15:26): I rise to support the Compulsory Third Party Insurance Regulation Bill. This bill is about ensuring a fair and equitable compulsory third party (CTP) insurance scheme and consumer protections for motorists and CTP insurance claimants by establishing an industry specific and independent CTP regulator. The bill is the government's preferred option to the establishment of a CTP regulator to govern the private sector CTP insurance market from 1 July 2016.

An independent CTP regulator will ensure a fair and affordable CTP scheme and consumer protections for motorists. The independent CTP regulator will be responsible for the oversight of all insurers, consumer protection, improving the CTP insurance scheme outcomes for injured, and setting CTP premiums. The independence of the CTP regulator is critical to providing the insurance industry with confidence that the governance of the CTP market design will be objective, fair and headed by a financial services specialist with the capacity and experience to engage with insurers and their prudential regulator, the Australian Prudential Regulatory Authority (APRA).

APRA supervises Australian banks, building societies, credit unions, life and general insurance and reinsurance companies, friendly societies, and most super funds. APRA's role is to promote financial stability by requiring these institutions to manage risk prudently so as to minimise the likelihood of financial losses to depositors, policy holders and superannuation fund members.

The crucial requirements for the CTP regulator are to be independent and objective and to have the specialist financial skills required to interact with APRA and APRA regulated insurers. This role is inconsistent with the role of the state's infrastructure regulator, the Essential Services Commission of South Australia (ESCOSA).

I am told that market consultations with insurers have confirmed that there is a risk that insurers would be unwilling to participate in the reformed CTP insurance market if CTP scheme regulation was placed within ESCOSA. If the government were to place the CTP regulator with the Motor Accident Commission, then it would also create actual conflicts and perceived conflicts for MAC, both as manager of the run-off portfolio and also in its role as the nominal defendant.

Establishment of an independent CTP regulator will not increase government administration, as regulation of the current scheme is carried out by the Motor Accident Commission. the Department of Treasury and Finance is managing recruitment of the person with the requisite skills for the role of the CTP regulator. The bill, if passed, will clearly define the functions of the office of the state CTP regulator and will vest responsibility to set and control CTP premiums with the CTP regulator.

The bill proposes amendments to sections of the Motor Vehicles Act 1959 to streamline the current regulatory provisions that are set out in that act and abolishes the existing Third Party Premiums Committee. The bill also provides amendments to the Motor Accident Commission Act 1992 that are consequential to the opening of the CTP insurance market to private insurers from 1 July 2016, including MAC ceasing to write CTP premiums. I commend the bill to the council.

The Hon. J.A. DARLEY (15:30): I rise to speak on the Compulsory Third Party Insurance Regulation Bill, which, according to the government, is about ensuring a fair and affordable CTP scheme and consumer protection for motorists and CTP claimants through the establishment of an industry specific and independent CTP regulator. The functions of the CTP regulator will be:

- to regulate approved insurers and perform other functions relating to approved insurers conferred on the regulator under the Motor Vehicles Act;
- to determine premium amounts payable in respect of CTP insurance policies;
- to determine the minimum terms and conditions of CTP insurance policies;

- to monitor, audit and review the operation and efficiency of the CTP insurance business;
- to provide or facilitate the provision of information to consumers about CTP insurance business and approved insurers;
- to make, monitor the operation of, and review binding rules and non-binding guidelines for approved insurers in relation to the determination of premiums, the management of claims, dispute resolution and the provision of information to consumers;
- to make recommendations to the minister in relation to eligibility criteria for insurers, the terms of conditions of any undertakings or agreements entered into between the minister and an approved insurer relating to the provision of CTP insurance, and the assessment of an application from an insurer for approval or withdrawal;
- to approve the novation of CTP insurance policies between approved insurers;
- to regulate such other insurance business as prescribed by regulation;
- to administer this measure; and
- to exercise any other function conferred on the regulator.

As we know, the CTP insurance market is due to be opened to the private sector from 1 July 2016. The government's preference is that the role of the CTP regulator be established before the scheme goes live, that is, before 1 July next year.

The first and most important point to make about this bill is that, according to the government, it is not actually required in terms of the opening of the provision of CTP insurance to the private sector and the cessation of MAC as the sole provider of CTP insurance in South Australia. Further, according to the government, the current regulatory framework is sufficient in terms of establishing a regulator, but this will most likely result in a less than satisfactory and archaic model compared with that envisaged by the bill, namely, the creation of an independent regulator with a separate statutory head of power.

I think it is fair to say that my experience was probably very similar to that of the Hon. Rob Lucas, in that the government advisers were quite explicit in terms of this advice. At the briefing I attended, they certainly indicated in very strong terms that if this bill is not passed it will not inhibit or in any way prevent the proposed privatisation process. That may very well be the case, but it does not mean that this bill should not be properly scrutinised, especially in the context of what MAC's residual role will be.

On that particular point, I was advised at the briefing that MAC will continue its road safety role and that it will continue to manage the back book for those claims lodged prior to 30 June 2016. In terms of operating costs and duplication, I was advised that long term the government does not envisage the operations of MAC and the CTP regulator to be greater than the existing organisation. Given that, according to the government we as a parliament will have no say in the privatisation of MAC. It is important that we get any associated legislation correct. That applies equally to this bill.

I understand that the minister will be placing on the record a series of answers to questions asked by the Hon. Rob Lucas and I, too, intend to scrutinise those very closely before proceeding any further. That certainly is not to say that I will not be supporting the bill. I simply make the point that I, like other honourable members, wish to have the opportunity to examine the information provided by the minister in response to those issues that have been raised. I should also add that I have circulated the bill for comment amongst various groups and am yet to hear back from them on this issue as well.

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:35): I understand that second reading contributions have been completed, and before proceeding to committee I would like to address some of the questions asked by the Hon. Rob Lucas during his second reading contribution and also referred to by the Hon. John Darley.

In relation to the question about the premium impacts in New South Wales and Queensland as a result of privatisation, I am advised that detail and specific analysis of pricing in other states has not been provided. However, a PriceWaterhouseCoopers-led commercial adviser reviewed the Queensland and New South Wales models, and effectively proposed the best option so as to fit the context of the proposed South Australian model and strike a balance between the regulation of price, price control, and sustainable competition.

The South Australian model will manage pricing through, first, CPI-like premium increases in the first three years, the transitional period; secondly, appointment of a strong independent regulator who will determine fair and affordable CTP premiums; and, thirdly, a sustainable, competitive market with three to five insurers and a CTP insurance market allocation of 15 to 35 per cent per insurer. This will ensure that, in year four, post the transitional period, a robust CTP insurance market is established to maintain ongoing price competition for motorists.

I am further advised that, of the three states where private sector provision of CTP insurance occurs, the Queensland CTP scheme has four insurers (four brands) and is a community-rated scheme with a strong price regulated arrangement. However, under this strongly regulated arrangement there is more limited choice in terms of CTP insurer. The New South Wales CTP scheme has five insurers (seven brands) and is primarily a risk-related scheme, with insurers having flexibility in premium price setting. The scheme is a 'file and write' arrangement, and premiums are based more on the risk characteristics of the motorist; however, there is a greater choice of insurer. The ACT CTP scheme until recently had only one CTP insurance provider, NRMA, but now has two insurers and four brands.

In relation to the issue about the fair and reasonable provisions, the government has announced that premium prices will remain fixed for the first three years, with CPI-like increases and governed by an industry specific CTP regulator to ensure motorists are protected. This has been reflected in the key objectives of the CTP insurance market reform process, which includes ensuring transparent and equitable CTPI premium setting and review processes.

I am advised that at present the TPPC considers what should be appropriate premiums, and the only guidance given to the TPPC under the Motor Vehicles Act 1959 is that premiums are to be fair and reasonable. This is a legally vague concept and does not provide any specific guidance to the TPPC. The practice of the TPPC has been to receive a detailed report involving actuarial and other advice, and it is the intention of the government that this process continue with the CTP regulator receiving a similar report to assist in determining appropriate premiums once the fixed price path required during the transitional period has come to an end.

To improve upon the current system, the bill proposes to amend the Motor Vehicles Act 1959 as set out below. In addition to those proposed new statutory provisions, it is intended, regardless of whether or not the bill has passed, that the government will enter into contractual arrangements with approved insurers to maintain a fixed premium price path during the transitional period.

The contractual arrangements will require a sophisticated premium setting process for the period beyond the transitional period, including through the publication by the CTP regulator of detailed premium setting rules and guidelines. I am advised that, in this way, the reform process objective of ensuring a transparent and equitable CTPI premium setting and review process will be met.

Importantly, those contractual arrangements have statutory standing under sections 101(4) and 101(8) of the Motor Vehicles Act 1959 and so have a higher standing than if they were merely enforced under contract law. Section 129(1) of the Motor Vehicles Act 1959 provides:

> (1) Upon the recommendation of the Minister, the Governor may appoint a committee to inquire into and determine from time to time what premiums in respect of insurance under this Part are fair and reasonable.

Section 17 of the bill proposes to repeal section129(1) in its entirety because the TPPC's role will no longer be required once the statutory CTP regulator is established. The report on the bill prepared by the parliamentary counsel indicates that this amendment is consequential on the establishment of the CTP regulator. It is proposed that, in place of the repealed section 129(1), the following premium setting provision be enacted:

- Section 5(1)(b) of the bill provides for the regulator to have a function of determining premium amounts payable in respect of the CTP insurance policy.
- Section 5(1)(f) of the bill provides that one of the regulator's functions is to make, monitor and review binding rules as well as guidelines in relation to a range of matters, including the determination of premiums.
- Section 5(3) of the bill limits the capacity for the regulator to set differential premiums to certain rating factors. This mirrors the existing section 129(5a)(a) of the Motor Vehicles Act 1959.
- Section 5(4) of the bill allows the regulator to recover his or her reasonable costs and expenses.
- Schedule 1, section 10(2) of the bill provides that 'insurance premium' or 'premium' in relation to a motor vehicle means the premium appropriate to the motor vehicle for a policy of insurance under part 4 as determined by the CTP regulator from time to time and includes any money that the registrar is required to retain under section 99A(14).
- Schedule 1, section 22(a) empowers the minister to direct the CTP regulator on the setting of premiums during the transitional period.

In relation to the question on how the stronger regulator model proposed for SA is reflected in either the bill or the contract, I am advised that there is no direct comparison from a regulatory perspective for the proposed South Australian model and the private sector models currently in place for Queensland, New South Wales and the Australian Capital Territory.

Based on expert advice and analysis, the optimal regulatory model has been developed specifically for the South Australian market, which will ensure a strong, sustainable, competitive and viable CTP insurance market. The regulatory model is enhanced by locking in for three years CPI-like premium increases, and in year 4 ensuring price control is managed through a premium ceiling and a premium floor arrangement which will be the responsibility of the CTP regulator.

It will be a sustainable, competitive market with three to five insurers and a CTP insurance market allocation of between 15 to 35 per cent per insurer. This will ensure that in year 4 (post the transitional period) a robust CTP insurance market is established to maintain ongoing price competition for motorists.

All elements of the model must be viewed together when determining its strength, including the three-year CPI-like increases during the transitional period, the presence of a strong independent CTPI regulator, and a sustainable competitive market in year 4 to ensure price competition is maintained.

The fundamental purpose of the bill is to establish an independent statutory CTP regulator who can provide robust regulation by discharging the function set out in section 5 of the bill. This is considered to be the optimal regulatory model. The contracts to be entered into between the government and the approved insurers (which will have statutory standing under section 101(4) and 101(8) of the Motor Vehicles Act 1959) reflect these functions.

If the bill does not pass, the contracts will still require the insurer under contract law, and by force of section 101(4) of the Motor Vehicles Act 1959, to comply with a regulatory regime set out in the contracts in the same terms as provided for in the bill. In relation to the question about why not use ESCOSA, I am advised that the CTP regulator must be an independent financial and insurance services specialist to:

- ensure a fair and affordable CTP scheme and consumer protections for motorists;
- provide the insurance industry with confidence that governance will be objective, fair and headed by a specialist with the capacity and experience to engage with their prudential regulator, the Australian Prudential Regulation Authority (APRA);
- liaise with APRA to manage insurer compliance as occurs in interstate private sector CTP models to ensure APRA functions are not duplicated; and

- maximise interest from credible insurers and any return to government from licensing.

Regulation of CTP insurance is a financial services regulation, as opposed to general utilities regulation (ESCOSA) and I am advised that the skill sets do not generally overlap, so there is very little ability to leverage economies of scale and scope within ESCOSA.

I am further advised that the insurance industry and other financial services regulators much prefer to deal with other independent financial services regulators and not a general utilities regulator. This is nontrivial and will materially impact on the effectiveness of the regulator. The three other private/competitive CTP insurance markets have an independent CTP insurance regulator and do not combine this with the general utilities regulator. South Australia should look similar, given the above and given that some or all of the CTP insurers will likely be the same as those in other markets.

In relation to the question about the government's future commitment to road-safety funding and the mechanism by which that will be achieved and how existing commitments for road-safety funding and other community programs would be maintained, the government has announced that MAC will continue operating its non-commercial community programs, including sponsorship of road-safety research and communications aimed at safer road-user behaviour. These activities are currently funded from CTP premiums collected by MAC. I am advised that from 1 July 2016, road-safety activities will be funded at the same overall cost through the CTP premiums.

Under section 20(2) of the Motor Vehicles Act, an applicant for registration must pay to DPTI certain amounts, including the appropriate insurance premium. The appropriate insurance premium as determined by the TPPC in the past and in the future by either the TPPC or the CTP regulator (depending on whether or not the bill passes,) comprises a number of elements including a 'pure premium' component which will be passed on by DPTI to the approved insurers under section 99A(13) of the Motor Vehicles Act 1959. Various government costs associated with the CTPI scheme, including road safety funding, will be passed on by DPTI to the relevant government entity (in the case of road-safety funding, MAC) under section 99A(14) of the Motor Vehicles Act 1959 as proposed under schedule 1, section 12(9) of the bill.

If the bill does not pass, then the government intends that various government components, including road safety, will continue to be part of the premium calculation which has to date been determined by the TPPC under section 129(1) of the Motor Vehicles Act 1959 and will continue to be so determined. Again, I thank honourable members for their contributions. I hope that these answers satisfy the questions asked and I look forward to this being dealt with expeditiously through the committee stage.

Bill read a second time.

STATUTES AMENDMENT (INDUSTRIAL RELATIONS CONSULTATIVE COUNCIL) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 27 October 2015.)

The Hon. T.T. NGO (15:50): I rise to support the Statutes Amendment (Industrial Relations Consultative Council) Bill 2015 and am pleased to have the opportunity to contribute to the debate on this bill. As honourable members would be aware, the government made a commitment to reforming state government boards and committees. The amendment bill is a further step to reducing red tape and adopting a new broad engagement approach for key industrial relations, work health and safety, and asbestos policy issues.

The amendment bill will establish the Industrial Relations Consultative Council (IRCC), which will replace the following committees: the Industrial Relations Advisory Committee, SafeWork SA Advisory Council and the Asbestos Advisory Committee. At times these committees have been considered duplicative, with the same members often represented on more than one committee.

The formation of the new council will create a single streamlined consultative body with members from key representative organisations with experience relevant to the breadth of industrial relations and work health and safety issues. The IRCC will consider the full range of industrial relations and work health and safety issues. It will also provide high-level advice to the Minister for

Industrial Relations facilitating the effective and efficient administration of the law. The establishment of the new IRCC will also create a cost saving for the government via a reduction in fees.

I understand that in addition to the council there will be the ability to establish smaller and time-limited reference groups to consider specific issues, enabling the provision of comprehensive advice to government. I support the establishment of the new Industrial Relations Consultative Council and commend the bill to the council.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:53): I would like to thank honourable members for their indications of support for the Statutes Amendment (Industrial Relations Consultative Council) Bill 2015 and their contributions to the second reading. I am pleased to provide the following information in response to questions from honourable members.

The Hon. Tammy Franks asked will the goals and measures outlined in the strategic plan of the SafeWork SA Advisory Council continue to be implemented under the Industrial Relations Consultative Council, and will the target of a 50 per cent reduction in workplace injuries by 2022 continue to be a target under the new council. I am advised that it is expected that the goals and targets within the SafeWork SA Advisory Council Strategic Plan 2012-17 will continue under the IRCC, subject only to any changes that the IRCC may wish to make once established.

SafeWork SA remains the lead agency responsible for South Australia's Strategic Plan strategy to achieve a target of a 50 per cent reduction in workplace injuries by 2022. Our state target supports the Australian Work Health and Safety Strategy 2012-2022, which aims to have a reduction in the incidence rate of claims resulting in one or more weeks off work of at least 30 per cent.

The rate of serious injury claims involving 10 or more days' lost time has reduced by 33 per cent from June 2002 to June 2012, I am advised, and South Australia's rate has continued to reduce by 13.33 per cent from 2012 to September 2014, which is ahead of the target reduction of 11.25 per cent within the Australian Work Health and Safety Strategy 2012-2022, I am advised.

The new council will be expected to continue providing high level advice to the Minister for Industrial Relations to facilitate the effective and efficient administration of laws covering safe and fair workplaces which will include strategies aligned with meeting the current target. I commend the bill to the house.

Bill read a second time.

Committee Stage

Bill taken through committee without amendment.

Third Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:57): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LONG SERVICE LEAVE (CALCULATION OF AVERAGE WEEKLY EARNINGS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 27 October 2015.)

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:58): I would like to thank honourable members for their contributions to the second reading of the bill and I am pleased to provide the following information addressing questions that were asked by members.

The Hon. Rob Lucas raised a question as to whether this bill is retrospective. The provision inquired of by the Hon. Rob Lucas will eliminate the effect of the Flinders Ports v Woolford decision

immediately once the bill is proclaimed. The amendments, once they come into operation, apply to workers who take long service leave or are paid long service leave in lieu, not those unfortunate workers who have already been affected by the Woolford decision.

I am advised that this amendment will not create a queue of workers seeking retrospective long service payments from before the time that this bill becomes law; it will only ensure that a part-time or casual worker who has an entitlement for long service leave into the future will not have that entitlement diminished by a work-related injury absence prior to the amendment taking effect.

The Hon. Tammy Franks has called on the government to investigate protections to ensure that hours worked for the purposes of averaging provisions include hours that have been paid pursuant to the minimum engagement provisions of the worker's relevant award or agreement. The government has demonstrated, by seeking to pass these amendments today, its willingness to legislate in order to protect workers' long service leave payments brought about by interpretations that result in unsatisfactory consequences.

Should the matter raised by the Hon. Tammy Franks result in an unjust dilution of entitlement under the act the government will investigate the matter at the time and take appropriate steps to preserve the intent of the legislation. I commend the bill to the house.

Bill read a second time.

Committee Stage

Bill taken through committee without amendment.

Third Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (16:01): I move:

That this bill be now read a third time.

Bill read a third time and passed.

SUMMARY OFFENCES (BIOMETRIC IDENTIFICATION) AMENDMENT BILL

Second Reading

Adjourned debate on second reading (resumed on motion).

The Hon. K.L. VINCENT (16:02): I would like to speak very briefly at the second reading of the Summary offences (Biometric Identification) Amendment Bill. In so doing, I will not rehash the extensive points made by colleagues such as the Hon. Andrew McLachlan and the Hon. Mark Parnell, but I will put on the record that Dignity for Disability does have concerns about the potential implications of this bill in terms of privacy and the comprehensive information that police could end up with in relation to many people, not just those who have committed, or who are alleged to have committed, a crime.

While we support this bill going into committee, we do have these concerns and hope that the questions which we certainly have and which have already been raised by other members will be answered before it proceeds any further. We would certainly appreciate it if the relevant minister could provide answers to those questions in the committee stage so that we can decide whether or not we will support the further advancement of the bill.

The Hon. T.T. NGO (16:03): I rise to support the Summary Offences (Biometric Identification) Amendment Bill 2015. Prior to the 2010 state election, the state government announced that it was going to allocate funding to allow police to trial the use of mobile fingerprint scanners to help identify people in the field. The government has acted on this promise through the introduction of this bill.

This bill will allow the police to use the mobile fingerprint scanners in the same circumstances as when police can ask a person's name and address. The police officer must have a reasonable suspicion that the person has either committed or be about to commit an offence or be able to assist in the investigation of an offence. The scanners then match the person's fingerprints against a national database to determine if the person can be identified. This bill will be of great assistance to

police as it will help ensure that criminals are unable to evade police by using false names and addressed to avoid detection. The scanners are very efficient and they allow police to identify multiple people quickly in often difficult scenarios.

To address any concerns about the retention of data that is obtained by the fingerprint scanners, the bill includes offence provisions for any person that retains or stores data for longer than necessary to use the scanner. This limits the purpose of a scanner to that of identification only. I understand that the opposition has supported the bill in the other place, and I encourage all members to do the same to ensure that these devices can begin assisting police in protecting the community without delay. With that said, I commend this bill to the chamber.

Debate adjourned on motion of Hon. J.A. Darley.

CONTROLLED SUBSTANCES (SIMPLE POSSESSION OFFENCES) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 13 October 2015.)

The Hon. J.A. DARLEY (16:08): I rise to speak very briefly on the Controlled Substances (Simple Possession Offences) Amendment Bill. The bill, as we know, is intended to address an anomalous application of the Police Drug Diversion Initiative (PDDI) which operates under the Controlled Substances Act 1984 to divert people charged with simple possession offences away from the criminal justice system into drug assessment for counselling and/or treatment.

Members interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! I cannot hear the Hon. Mr Darley.

The Hon. J.A. DARLEY: According to the government, often where a person is apprehended for manufacturing illicit drugs, they are often also found to have a small amount of the drug in their personal possession and, therefore, are also charged with simple possession. I do not think it was ever intended that a person apprehended in these circumstances would be able to be diverted under the PDDI scheme, and it is this anomaly that the bill seeks to rectify. This is certainly a measure I support.

Whilst the drug diversion initiative plays an important role in terms of drug assessment and treatment, it is not there to be taken advantage of, especially by those offenders who manufacture illicit drugs for sale. With that, I support the second reading of the bill.

Debate adjourned on motion of Hon. D.G.E. Hood.

LIQUOR LICENSING (PROHIBITION OF CERTAIN LIQUOR) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 27 October 2015..)

The Hon. J.A. DARLEY (16:12): I rise to indicate my support for the Liquor Licensing (Prohibition of Certain Liquor) Amendment Bill. This bill has been introduced in response to the introduction of powdered alcohol (Palcohol) which has been approved for sale in the US. According to the government, the manufacturer is now seeking to distribute the product here in Australia.

According to the minister, while section 131AA of the Liquor Licensing Act 1997 enables the manufacture, sale or supply of certain liquor products to be prohibited on the ground that the products may have a special appeal to minors or be confused with confectionery products, there is no explicit power to enable a product to be prohibited on general public interest or community welfare grounds. That is what this bill seeks to achieve.

Whilst section 131AA is likely to be broad enough to prohibit Palcohol, it is not inconceivable that the product's manufacturers will try to circumvent those provisions. Basically, I think it is a case

of better to be safe than sorry, especially when you consider the very serious risks that such a product poses and the potential for misuse.

I agree that a nationally consistent approach to this issue is the most ideal way of moving forward, but given that this may be some time away it is important that we follow the lead of New South Wales, Queensland, Western Australian and Victoria and move swiftly to prevent this product from being sold at least in this jurisdiction. With that, I support the second reading of the bill.

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): I call the Hon. Ms Vincent; thank you for your understanding.

The Hon. K.L. VINCENT (16:15): As always, my pleasure, Sir. It was back to the future day the other day, so it is probably culturally relevant at the moment anyway. I will begin from the beginning, for the sake of *Hansard*. I will speak briefly in support of the second reading of the Liquor Licensing (Prohibition of Certain Liquor) Amendment Bill. Members may recall that back on 24 March this year I raised the issue of powdered alcohol sales in this place during Question Time, and I think I am correct in saying that I was the first member, and Dignity for Disability was the first party, to raise this very issue in this place.

I never received a formal answer, to the best of my knowledge, to those questions without notice, but I guess the appearance of this bill in this place some seven months later does suggest that Dignity for Disability was on the money in raising this issue, and that our concerns were valid. Therefore, we are very pleased to see them being heeded now. Back on 24 March I said, during Question Time:

> Recently the Victorian government has announced that it will move to ban powdered alcohol, known as Palcohol, as there is an expectation that an overseas manufacturer plans to sell this product in Australia.
>
> To make an instant standard drink, one pouch of powdered alcohol is added to water. Media reports suggest that the product is likely to cause security problems for venues and events, as well as schools, because it can be carried in powdered form and then mixed up on site. My questions to the minister are:
>
> 1. Is the minister concerned about a potential increased risk of drink spiking with such a substance available?
>
> 2. Will the South Australian government follow the Victorian government's move to ban the sale of Palcohol?

The minister then replied:

> I thank the honourable member for her most important question. I have read similar articles to those, no doubt, the Hon. Kelly Vincent has considered in relation to the proposed introduction of powdered alcohol here in Australia, and it does sort of beggar belief. Given the access ability of alcohol already, it does amaze me that there is a potential market for selling powdered alcohol, but there you go.

The minister went on to say:

> I will watch with great interest—

She never got to finish that sentence due to a great deal of interjecting. She later continued:

> Thank you, Mr President, for your protection. It does beggar belief, I have to say, in terms of where the market appeal for this is. I have also understood some of the concerns, particularly around young people being able to more readily hide the sachets. I do not have a view at this point in time. I need to consider this carefully before, if necessary, taking a position to cabinet.
>
> I have to say in my initial thinking it is hard for me to see a great deal of difference between carrying a sachet into a venue versus a hip flask, for instance. I do not see a great deal of difference in that and, as I said, given the accessibility of alcohol already. It is the same with drink spiking as well. We understand that it is already fairly easy to spike a drink. Perhaps powdered alcohol might make it even easier, I am not sure, but I am certainly prepared to consider the concerns and fears around the introduction of powdered alcohol and, as I said, if necessary, take a position to cabinet.

I am very pleased the minister has heeded those concerns and now obviously has taken a position to cabinet, which has seen the introduction of this bill. I would like to thank the minister and the government for heeding Dignity for Disability's concerns about this, as raised back in March. With those words, as we did have those concerns back then when we first raised the issue in the parliament back in March—and still have them now—we are pleased to support the bill.

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (16:19): I believe all those wishing to make a second reading contribution have done so. By way of concluding, I would like to thank those honourable members for their contributions and their support for this bill that seeks to prevent the manufacture and distribution of powdered alcohol. I look forward to dealing with this expeditiously through the committee stage.

Bill read a second time.

Committee Stage

Bill taken through committee without amendment.

Third Reading

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (16:22): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CONTROLLED SUBSTANCES (SIMPLE POSSESSION OFFENCES) AMENDMENT BILL

Second Reading

Adjourned debate on second reading (resumed on motion).

The Hon. A.L. McLACHLAN (16:23): I rise to speak to the Controlled Substances (Simple Possession Offences) Amendment Bill. I will be speaking this afternoon on behalf of my Liberal brethren, and we will be supporting the second reading of this bill.

This bill makes some minor amendments to the Controlled Substances Act to remedy an anomalous or illogical application of the Police Drug Diversion Initiative. The Police Drug Diversion Initiative plays an important role in assisting persons who have been charged with simple possession offences. It is aimed at treating offenders for their personal drug use with assistance from health professionals, rather than going through the criminal justice system which may not provide the appropriate tools to help offenders overcome their drug addiction.

The scheme is underpinned by the notion that personal drug use is more appropriately and effectively addressed with a health response, rather than a criminal justice response. The opposition continues to support the initiative and considers the scheme a sensible policy for first-time offenders.

Under the current legislative arrangements, the drug diversion scheme can be invoked in unintended circumstances. Currently, if someone is charged with a serious drug offence, but they possess only a small quantity for personal use, they automatically get referred to the drug diversion scheme for the simple possession offence in addition to facing criminal charges and going through the courts for the serious offence.

The bill seeks to address this by preventing those persons charged with a serious drug offence from also being diverted under the Drug Diversion Initiative. The bill achieves this by amending the application of section 34 so that 'serious drug offences' will be excluded from the operation of the drug diversion scheme. Serious drug offences include, by way of example:

- trafficking in a controlled drug;
- trafficking in a large commercial quantity of a controlled drug;
- manufacturing a controlled drug for sale;
- cultivation of controlled plants for sale;
- possession or supply of prescribed equipment; or
- intentional manufacture of a controlled drug alternative.

There are also a range of offences involving children, for example, the sale, supply or administration of a controlled drug to a child, or in a school zone, or the sale of equipment to children for use in connection with the consumption of controlled drugs. It is therefore appropriate that offences of this magnitude should be dealt with through the criminal justice system.

I note that the government opposed the opposition's 2014 bill introduced by the member for Stuart which sought to limit the number of times an individual can be diverted under the drug diversion scheme, without facing a magistrate, to two. This was designed to address the situations that have arisen where persons were repeatedly diverted but continued to reoffend. For example, it was reported in the media that one person had been diverted up to 27 times, so a need for change in the automatic diversion approach was clearly warranted. The member for Taylor, in her second reading contribution to the 2014 opposition bill, indicated that the government was exploring an alternative proposal involving the use of undertakings.

The government has since advised the opposition, in relation to the bill before the chamber, that Drug and Alcohol Services South Australia (DASSA) has made some internal policy changes to the way the assessments are made in order to enable a stricter treatment of simple possession offenders who offend multiple times within a certain period of time. The opposition has also received advice from the Attorney General's Department confirming this.

The advice outlined, from 1 July this year, that persons who have been diverted under the scheme more than two times in the previous 24 months, will be required to enter into an undertaking. An undertaking is an agreed treatment plan that a diverted individual is required to complete pursuant to section 38 of the Controlled Substances Act. It is more an intensive health intervention than a standard intervention and can include referral to other services such as drug treatment services.

The Police Drug Diversion Initiative clinicians also retain the discretion to apply an undertaking to any diversion at any time if they consider it appropriate or necessary in the circumstances. We need to ensure that offenders are able to have ample opportunity to rehabilitate but also minimise the opportunity for the drug diversion system to be abused. We should continue to monitor the application of the new administrative approach, and I note the Attorney-General's comments during the second reading contributions in the other place agreeing to the same.

If the administrative changes at DASSA fail to achieve the desired outcomes, we may need to address the issue by way of legislative change as was previously attempted by the opposition. I ask one question for which I seek a response in the summing up at the conclusion of the second reading debate. If this bill is enacted and an individual is charged with a serious drug offence and they are subsequently acquitted or the charges are withdrawn, what then happens? Are they then diverted under the Drug Diversion Initiative for simple possession? In these circumstances, I can imagine there is a potentially substantial timing issue given the length of time for some matters to be called on. With this single question, I commend the bill to the chamber.

The Hon. D.G.E. HOOD (16:29): I rise to offer Family First's support to the passage of the Controlled Substances (Simple Possession Offences) Amendment Bill through this chamber. We have quite a unique system in South Australia, which Family First is broadly supportive of, and that is that we have an adult court that encompasses the principles of restorative justice. In most jurisdictions in Australia, these principles are only used in juvenile offending, as I understand it.

I believe it is worth noting that when used appropriately, restorative justice methods actually have very strong results in reducing recidivism and getting offenders to take responsibility for their actions. In some places in the United States, for example, principles of restorative justice are used for very serious offences, such as rape and assault, with some pleasing and positive outcomes.

Looking at the specifics of this bill, though, I have heard varying reports from the drug diversion courts, including when I did a tour of the courts and met with the people involved as to the outcomes that offenders have with the program. Some criminal lawyers have reported that many clients complete the program only to enter a continuing cycle of repeat offending and facing the drug diversion program. This seemingly endless process, as it is for some people—and I too have heard media reports of it being over 20 times in some individual cases—does not appear to provide any benefit to the offender, their family or indeed the community at large. It also suggests that this might not be the best use of taxpayer dollars.

That being said, lawyers do go on to say, of course, that there is a minority of offenders who genuinely benefit from the program. Typically, I am told, those clients who do benefit have reached their 30s, by and large, in a typical example, have children and are fed up with being part of the criminal justice system for many years. Similarly, the magistrate in charge of the diversion program has reported instances where offenders have taken responsibility for and shown insight into their actions which they did not have prior to the diversion program. All of this is to say that there certainly are benefits to the diversion program, but the results appear to be mixed and in some cases limited.

We do have concerns, similar to those which have been raised in the other place, that offenders can engage in the diversion program repeatedly, seemingly without any further legal consequences. Whilst we understand that some administrative changes have been made regarding offenders who front the program for a third or subsequent time in a 24-month period, our concern is that we are continually sending the message to offenders that it is perfectly alright to enter a diversion program in order to avoid gaol.

In short, some people are misusing the system, not resulting in a change in behaviour in any substantial way, and then simply repeating the process. How long can this situation continue? I do not believe this is the intention of the program, nor that it would meet community expectations of what this program should be. I urge the government to do more to ensure appropriate and timely rehabilitation, including mandatory rehabilitation as some experts are now calling for. It should be investigated and trialled; if not to be made a permanent fixture, certainly, we should be examining it at the very least. We simply cannot ignore this issue anymore. Something must be done to improve our current circumstance.

Looking at the bill itself, Family First supports this bill. It makes sense to prevent someone who is charged with both a serious drug offence and what you might call a minor drug offence, that is, possession, from entering the diversion court, especially in instances where it is most likely that the person will serve gaol time for that offence or at the very least face a more serious penalty.

This bill gives clarity to what is considered a serious drug offence, such as commercial offences; offences involving children in school zones; or the supply, manufacture or possession of a controlled precursor, to name just a few. These are clearly serious offences, which come with knowledge and an intentional element by the offender to break the law. In the instance that someone is charged with one of these offences and has a small supply of, say, cannabis on their person, it makes sense that under this bill they would be precluded from drug diversion.

I believe the majority of the community would expect serious offenders and corresponding minor offences to be dealt with in a court that reflects the seriousness of the major offence, as this bill seeks to do. As this bill frees up places in the drug diversion court for those who may well benefit from it and precludes serious offenders from entering the program, Family First supports the bill.

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

STATUTES AMENDMENT (FIREARMS OFFENCES) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 15 October 2015.)

The Hon. A.L. McLACHLAN (16:35): I rise to speak to the Statutes Amendment (Firearms Offences) Bill 2015, and I speak to this bill on behalf of my Liberal colleagues in this chamber. I advise the chamber that the Liberal Party will be supporting the second reading of this bill.

The genesis of this bill comes from the tragic events that occurred in 2013, resulting in the tragic loss of life of a young man. As a consequence of those events, the government has introduced this bill. Earlier, before the introduction of this bill in the other place, in September 2012 parliament passed the Statutes Amendments (Serious Firearms Offences) Bill 2012 which introduced a new approach to the sentencing of serious firearm offenders. The Criminal Law (Sentencing Act) was also amended. The effect of these amendments was that the following categories of offences attracted a presumption that a sentence of immediate imprisonment would be imposed unless there were exceptional circumstances justifying departure from this course.

Offences involve an illegal firearm, a fully-automatic firearm and a handgun that is unregistered and the person is unlicensed. This bill reclassifies offences under section 10C(10) and section 14 of the Firearms Act as serious firearm offences by adding them to the definition in the Criminal Law (Sentencing) Act. Section 10C(10) makes it an offence to supply a firearm to a person to whom a firearm's prohibition order applies and section 14 makes it an offence of trafficking in firearms which includes acquiring a firearm without a licence or supplying a firearm to someone without a licence. It follows that pursuant to the bill anyone found guilty of a trafficking offence will be sentenced to a term of imprisonment which cannot be suspended unless the offender can demonstrate exceptional circumstances.

This bill also creates a derivative liability offence which operates on an absolute liability basis. If a person commits a firearm trafficking or supply offence, and the commission of the offence results directly—in fact, directly or indirectly—in a firearm coming into the possession of an unlicensed person, the first person is liable for any offence committed by the second person with that firearm. It has been drafted as a stand-alone offence with a maximum penalty being a term of imprisonment but no longer than the maximum term of the subsequent offence—that is, the offence committed by the person who receives the gun. The extended liability provisions will apply to juveniles.

The government has asserted that, while the concept of derivative liability is novel, its principles fall within the parameters of the common law along a similar vein as joint enterprises and the law of complicity.

I note that the government moved amendments in the House of Assembly that passed with opposition support. Under the first drafting of the bill, the subsequent offence committed with the unlawfully supplied firearm would only fall within the bill if committed in South Australia. The government amendment to the bill was drafted at the request of the South Australian Commissioner of Police so that the bill extends to where a subsequent offence is committed in breach of either interstate or South Australian law.

A subsequent offence, for the purposes of criminal liability, is equivalent to the interstate offence actually committed and not equivalent to the corresponding South Australian offence. So if a gun is used to commit a bank robbery in Victoria the subsequent offence is the equivalent to the Victorian offence, whatever the exposure to a liability might be and not the South Australian robbery offence.

The clauses of this bill have been strongly criticised by the Law Society. For the purposes of completeness, I will be reading a large part of the letter which was sent to the Hon. John Rau, the member for Enfield, Deputy Premier and Attorney-General. The letter is dated 1 September 2015 and it has been written by the President of the Law Society. It states:

> The Law Society opposes this bill for the following reasons:
>
> (a) There is no place for derivative liability in the criminal law. This Bill makes into a criminal offence an act based on loose principles of causation which, in many instances, would not give rise to tortious liability;
>
> (b) The proposed offence is not in character a criminal offence. It is not capable of being defended. Any trial for the offence must necessarily be unfair. It appears to be invalid;
>
> (c) Criminal liability for serious offences must include mental and physical elements. The proposed offence has neither;
>
> (d) The proposed offence is unfair and unjust. The essence of the offence is in the prescribed offence, which has already been prosecuted. The person who supplies the weapon is then at jeopardy a second time if a subsequent offence occurs. The prescribed offender would have no involvement in the subsequent offence. The prescribed offender then faces being sentenced for a second time for the same conduct. Both sentences would be lengthy terms of imprisonment;
>
> (e) There is no need for the proposed offence, because the present offence of supply is serious enough, attracting serious penalties.

Those points (a) to (e) constitute the Executive Summary of the letter. In the substantive part of the letter, under the heading 'Underlying Purpose of the Bill', it goes on to say:

> As stated in the Explanatory Report the Bill purports to be a direct response to the 'Humbles case' and gives effect to a 'promise' given to those affected. Principally, the Bill provides a mechanism for those who supply/traffic

illegally in firearms to be held accountable for the purposes of any person who subsequently should use the firearms for a criminal purpose.

The underlying policy of the bill is revealed in the following statement in the Explanatory Report:

> '…if you put the gun in the hands of an irresponsible person, and you do so illegally, then you wear the consequences of that action. Cullen should be guilty, not just of the weapons offences, but of murder or manslaughter.'

The Society is concerned that the base proposition emphasised above and upon which the Bill is founded is, from a legal perspective and without more, unfounded.

The Society has a number of concerns in relation both to the underlying purpose of the Bill as well as the manner in which it gives effect to that purpose. The Society opposes the bill.

It is, in the Society's submission, inherently dangerous to enact legislation in direct response to a single incident and to do so in fulfilment of a 'promise' purportedly given not to the South Australian public but to a select group.

When one considers the respective sentences imposed upon both Humbles and Cullen it is not immediately apparent why legislative intervention is required. Humbles was sentenced to life imprisonment with a non-parole period of 23 years (later reduced on appeal to 17 years). Cullen, whose offending extended beyond the supply of a firearm to Humbles, was sentenced (after applying a 30% discount on account of his guilty plea) to 8 years imprisonment with a non-parole period of 3 years 9 months. It cannot reasonably be suggested that these sentences are inadequate or would otherwise be contrary to those that might be expected by the public.

Ultimately, it is the Society's submission that the Bill, and more specifically the derivative liability provision contained therein (section 267AA), is surplus to requirements. The law as it stands in South Australia is capable of holding appropriately to account those who commit firearm offences and, in particular, those who supply a firearm to another with the knowledge that it will be used subsequently for a criminal purpose.

The next section, headed 'The extension of criminal responsibility', states:

The principle that a person can only be held criminally liable for their own acts has been eroded such that a person may now be criminally liable in a number of ways for a crime physically committed by another person. That erosion has largely been affected by the development of the common law.

As identified in the Explanatory Report, the law in relation to derivative liability in South Australia is both settled and effective. The current statutory and common law is such that a person will be held criminally liable for the act of another in circumstances where they have aided, abetted or procured the commission of that act or have engaged in a joint criminal enterprise to that end.

A person's liability for the act of another is in part referrable to that person's state of mind at the time of the assistance provided. In other words, the trier of fact must ask: did the accused know of the person's intention to commit the subsequent act or in the case of a criminal enterprise, was it within contemplation or otherwise foreseeable?

The effect of the Bill is to remove that element of knowledge (actual or constructive) from the equation. Accordingly, a person could be held liable for the actions of another whose identity and intentions they have no knowledge of or could not have foreseen. This is a step too far.

The lack of any mental element, or mens rea, is particularly troubling in circumstances where the nature of the new derivative liability offence is such that there is also no physical element, or actus reus. This begs the question, what are the elements of the new offence created by the Bill?

It appears to the Society that the Bill, rather than creating a new offence capable of being prosecuted in a Court of law in accordance with established principles, in fact establishes an administrative process whereby a person upon two conditions precedent being realised becomes liable to be sentenced for an act in respect of which, in the majority of cases, the person will already have been sentenced for.

The Society is not aware of any legislation in any other Australian jurisdiction that extends criminal responsibility to the extend proposed in the Bill. It is unprecedented.

The Society understands the serious danger posed by the illegal use of firearms and their capacity for destruction. Nevertheless, the Society is not convinced that 'the policy of the law should be that, if you put a gun into the hands of an irresponsible person, and you do so illegally, then you wear the consequences of that action.' Such a sentiment, though noble, is again contrary to established legal principles.

If this is to be the policy in respect of firearms then the public would be entitled to ask—why stop here? Why not extend criminal liability to the drug dealer whose consumer later overdoses or to the bartender who serves alcohol to a patron who later king-hits a passer-by? Such questions raise a wide range of complex moral issues, which the Society does not propose to address in this submission. Nevertheless, there is in the Society's submission there is little to be distinguished between these examples and the subject of the Bill.

Further, and as foreshadowed earlier, the Society does not agree as a matter of law with the base proposition that underpins the Bill, namely, that 'Cullen should be guilty…of murder or manslaughter.' The Society acknowledges that there are circumstances where a person who supplies a firearm to another ought to be guilty of a subsequent murder committed by that person with the firearm supplied.

However, any finding of guilt to the offence of murder must occur after a trial in which the necessary elements of that offence are proved beyond reasonable doubt. The law in South Australia is capable of providing for such an outcome. Had the Director of Public Prosecutions (South Australia) formed a view that Cullen was an accessory to, or causative of, the murder committed by Humbles it was available to him to lay an Information accordingly.

The next section, entitled 'Causation', states:

Leading on from the above, it is the Society's submission that the Bill's extension of criminal responsibility is contrary to the common law principle of causation, the basic tenet of which is that an 'accused's conduct need not be the sole, direct or immediate cause of death. It is enough that the applicant's conduct contributed significantly to the death of the victim.' However, and critically, 'where the death is not caused directly by the conduct of the accused but by something done by a third person, there may be a question whether the chain of causation has been broken.'

For a comprehensive discussion on the principle of causation, particularly in the case of homicide, we refer you to the English case of R v Pagett (1983) 76 Cr App Rep 279. In that case, Lord Justice Goff stated:

> 'Problems of causation have troubled philosophers and lawyers throughout the ages; and it would be rash in the extreme for us to trespass beyond boundaries of our immediate problem.'

The effect of the Bill is to remove the troublesome, but entirely necessary, question of causation from the equation. The Bill essentially provides for an automatic assumption that the unlawful supply of a firearm is causative of any offence committed by any person who may subsequently come to possess and use that firearm. That, as a general proposition cannot on any view be correct. There are many and varied ways in which the law has recognised that a chain of causation can be broken.

Lord Goff in Pagett states relevantly:

> 'In cases of homicide, it is rarely necessary to give the jury any direction on causation as such. Of course, a necessary ingredient of crimes of murder and manslaughter is that the accused has by his act caused the victim's death…Even where it is necessary to direct the jury's minds to the question of causation, it is usually enough to direct them simply that in law the accused's act need not be the sole cause, or even the main cause, of the victim's death, it being enough that his act contributed significantly to that result. It is right to observe in passing, however, that even this simple direction is the direction of law relating to causation, on the basis of which the jury are bound to act in concluding whether the prosecution has established, as a matter of fact, that the accused's act did in this sense cause the victim's death. Occasionally, however, a specific issue of causation may arise. One case is where, although an act of the accused constitutes a causa sine qua non of (or necessary condition for) the death of the victim, nevertheless the intervention of a third person may be regarded as the sole cause of the victim's death, thereby relieving the accused of criminal responsibility. Such intervention, if it has such an effect, has often been described by lawyers as novus actus interveniens.'

Lord Goff then broadly expressed support for the contention that 'the circumstances in which the intervention of the third person, not acting in concert with the accused, may have the effect of relieving the accused of criminal responsibility' include whether 'the intervention is voluntary, ie. whether it is "free, deliberate and informed".'

With respect, the passages set out above expose the degree to which this Bill is contrary to the established legal principles that have been the subject of much discussion and consideration in the highest Common Law Courts.

The next section is entitled, 'Does the bill address a deficiency in the criminal justice system?'

It is not clear from the Explanatory Report whether any analysis has been conducted in relation to the nature of the sentences imposed by South Australian courts upon those convicted of offences against sections 10C(10) and 14 of the Firearms Act 1977. Notably, the maximum penalty in respect of those offences is 15 and 20 years imprisonment respectively.

The Society submits that legislative intervention designed to address a perceived or prospective shortfall in the judicial system should be made only after careful consideration of its necessity. In this case, the 'shortfall' is presumably a purported failure by sentencing Judges to consider the significant danger to the public caused by the dissemination of unregistered firearms to unlicensed persons.

If that is a consideration that the legislature desires Judges to have particular regard to when sentencing 'serious firearms offenders', then there are much simpler ways than this Bill to require it of them.

For example, section 10 of the Criminal Law (Sentencing) Act 1988 sets out a number of matters that a Court must have regard to in determining sentence. This includes, for example:

- the circumstances of any victim of the offence—section 10B(1)(d);
- if the offence was committed by an adult in the presence of a child—section 10(1)(f); and

- any injury, loss or damage resulting from the offence—section 10(1)(e).

Although section 10(1)(1)(o) the Court to consider 'any other relevant matter', if Parliament wished to put it beyond doubt it could amend the Criminal Law (Sentencing) Act 1988 to include a further consideration of section 10, for example:

> 'in determining the sentence for a serious firearm offence, a court must have regard to the danger caused by the unchecked distribution of firearms within the community.'

The next section is titled 'Concerns as to how the bill gives effect to its purpose', and states:

In addition to the concerns set out above in relation to the utility, purpose and base proposition that underpins the Bill, the Society has identified a number of potential issues with the proposed execution. In particular, the new section 267AA offence creates:

- a potentially unlimited category of offenders;
- uncertainty for convicted offenders, which at its highest level arguably amounts to cruel and unusual punishment;
- an offence that, in most circumstances, would likely be impossible to defend successfully;
- an offence without the traditional elements required to be proved beyond reasonable doubt; and,
- uncertainty as to its retrospectivity.

The proposed section 267AA(2)(b) provides that 'the subsequent offender need not be the person to whom the accused supplied the firearm in respect of the prescribed firearm offence'.

The bill as drafted does not place any limitation upon the degrees of separation between an accused and the principal offender (as defined in the bill). It is entirely possible for a firearm to be subject of multiple exchanges before ultimately being used in the commission of a criminal offence.

Accordingly, for each criminal offence committed by a subsequent offender, there could be innumerable persons liable to be prosecuted pursuant to the section 267AA. By way of example:

- If John legally acquires a class-H handgun before illegally supplying it to James;
- James holds on to a firearm for 1 year before illegally supplying it to Phillip;
- Phillip two days later illegally supplies the firearm to Paul;
- Paul stores the firearm for 4 years before illegally supplying it to Keith; and,
- Keith then 2 months later uses the firearm to commit murder; then
- Pursuant to section 267AA of the Bill, each of John, James, Phillip, Paul and Keith are liable to be sentenced to life imprisonment.

That situation is, on any view, particularly when regard is had to the principles of causation discussed above, unsatisfactory.

The proposed section 267AA(2)(a) provides that the subsequent offence may be committed before or after the accused is found guilty of the prescribed firearm offence. The bill as drafted does not place any temporal imitation upon the original supply offence and the subsequent offence, as defined in the Bill. Without such a limitation it is entirely possible that a person could serve the entirety of their sentence in respect of the original offence only to be later punished again for what is, in fact, the very same act.

This creates a situation where persons who illegally supply a firearm will forever be in jeopardy (or until the firearm supplied is either used in the commission of an offence or otherwise located by authorities before that happens). The Society submits that this is manifestly unfair, unreasonable and also a barrier to rehabilitation.

It is the Society's submission that to require a person to live in constant jeopardy, even after they have served the entirety of their sentence, may amount to a cruel and unusual punishment and a violation of that person's human rights. For example, how is that person to plan for the future, or what motivation do they have to better themselves and their station in life in circumstances where they could, at any moment, be arrested and imprisoned for a crime committed by a person they may have never met?

The effect of the Bill could, in the Society's respectful submission, be viewed as being contrary to the recent statements made by your Department in the June 2015 Discussion Paper, 'Transforming Criminal Justice—Better Sentencing Options: Creating the Best Outcomes for Our Community'.

The purpose of that discussion paper was to reconsider what the appropriate sentencing outcomes are for those offenders for whom rehabilitation is a possibility. The Society queries whether the further incarceration of persons who have served their sentence and affected their rehabilitation constitutes an appropriate sentencing outcome.

This problem has been identified previously in this submission where the Society posed the question—what are the elements of the offence created by the Bill?

It seems to the Society that the offence created by section 267AA is not an offence in the traditional sense. That is, one committed upon the satisfaction of certain mental and physical elements but, rather, one committed upon two separate findings of fact being made by a court. Any question of causation, ordinarily left for the jury, is usurped.

In those circumstances, how does the accused defend the charge? Is an accused able to challenge the verdict of a Judge or jury in relation to the subsequent offence? Should an accused be able to be heard in the trial of the subsequent offender and take points or raise defences that otherwise would not be made? On paper, this of course sounds absurd. But, in circumstances where the section 267AA accused is in no less jeopardy than the subsequent offender—why shouldn't they have a right to be heard?

An individual's right to be heard or to challenge a criminal allegation or decision that affects that individual is fundamental to our justice system and to Australian society. Any attempt by the legislature to infringe upon that right must be scrutinized with the utmost care to ensure that any infringement is:

- absolutely necessary; and
- the infringement is precisely proportionate to the issue sought to be addressed.

As stated by the High Court in Coco v R (1994) 179 CLR 427 at 437:

> 'The insistence on express authorization of an abrogation or curtailment of a fundamental right, freedom or immunity must be understood as a requirement for some manifestation or indication that the legislature has not only directed its attention to the question of the abrogation or curtailment of such basic rights, freedoms and immunities, but has also determined upon abrogation or curtailment of them. The courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakeable and unambiguous language.'

The Society is concerned that the effect that the Bill has upon the fundamental rights of the South Australian public has not been considered adequately.

The Society notes that the Bill does not contain any transitional provisions. That is particularly unsatisfactory when the Bill, on its face, purports to govern events and findings of fact that may have occurred long before the Bill is ultimately assented to.

For example, it is entirely possible that a firearm, illegally supplied, say, two years ago could be used in the commission of an offence well after the Bill becomes an enactment and is assented to.

Accordingly, is it intended that all persons who have been found guilty of offences contrary to the sections 10C(10) and 14 of the Firearms Act 1977 (South Australia) since their commencement will be, upon the commission of a subsequent offence (as defined by the Bill), liable to prosecution pursuant to the new section 267AA? If that is the intention, then the Society is opposed to such a course.

If that is the intention of the Bill then it creates a number of further practical difficulties and only serves to heighten the unfairness discussed [in paragraphs above].

The next section is titled 'Is the Bill unconstitutional?'

Finally, the Society has considered briefly whether the Bill may in fact be unconstitutional. The Society's answer to the question posed is: quite possibly.

It is arguable that, for certain reasons set out in this submission, the effect of the Bill is to deny a person a fair trial according to law. To do so would be unconstitutional. As stated by Gaudron J in Dietrich v R (1992) 177 CLR 293 at 362:

> 'The fundamental requirement that a trial be fair is entrenched in the Commonwealth Constitution by Chapter III's implicit requirement that judicial power be exercised in accordance with the judicial process.'

In the Society's submission, it is questionable whether the prosecution of an offence under the proposed section 267AA could be described as being 'in accordance with the judicial process'. It appears to the Society to be nothing more than a rubber stamp exercise. In that regard, the Bill arguably infringes upon judicial independence.

As stated by the Chief Justice French in South Australia v Totani (2010) 242 CLR 1 at 20:

> 'Courts and judges decide cases independently of the executive government. That is part of Australia's common law heritage which is antecedent to the Constitution and supplies principles for its interpretation and operation. Judicial independence is an assumption which underlines CH III of the Constitution….'
>
> 'It is a requirement of the Constitution that judicial independence be maintained in reality and appearance for the courts created by the Commonwealth and for the courts of the States and Territories. Observance of that requirement is never more important than when decisions affecting personal liberty and liability to criminal penalties are to be made.'

Could it be said that a successful prosecution pursuant to the proposed section 267AA has been decided 'independently of the executive government'? The Society does not believe so. On one view the accused is only guilty because the executive has deemed him or her to be so…In many cases, if such an accused were tried according to law and was able to question for example, whether their act was causative of the subsequent offence, they would likely, in many cases, be entitled to an acquittal.

The final section entitled 'Conclusion' goes on to say:

The Society must oppose this Bill. It provides for an automatic and unprecedented extension of criminal liability that imputes causation without any regard to the facts of a particular case. It is arguably unconstitutional. The Bill, in the Society's submission, cannot stand.

In considering this bill, a line of one of Horace Mann's lectures comes to mind:

The object of punishment is, prevention from evil; it never can be made impulsive to good.

Much of the community discussion has centred on the access to trafficked firearms. Unregistered firearms are a threat to all of us in the community. However, there has been very little discussion about the two young men who have fallen into drug dealing and the evils of the subculture. The conversation should not only be about the firearms, or the firearm in this instance, but also what we should be doing better in our community to prevent young people sliding into this morass.

In my experience, drug and alcohol-affected youths rarely do a risk-assessment exercise examining the consequences of breaching the law. This law may, given its broad and long-lasting reach, prove more punitive than preventing the trafficking of firearms which is really the real goal, or should be the real goal of all of us in this chamber, together with keeping our youths safe. I leave the chamber with a quote from the great poet, speaking through Portia:

Though justice be thy plea, consider this,

That, in the course of justice, none of us

Should see salvation: we do pray for mercy;

And that same prayer doth teach us all to render

The deeds of mercy.

I commend the bill to the chamber.

Debate adjourned on motion of Hon. G.A. Kandelaars.

At 17:08 the council adjourned until Tuesday 17 November 2015 at 14:15.