LEGISLATIVE COUNCIL

Thursday, 24 September 2020

The PRESIDENT (Hon. J.S.L. Dawkins) took the chair at 11:00 and read prayers.

The PRESIDENT: We acknowledge Aboriginal and Torres Strait Islander peoples as the traditional owners of this country throughout Australia, and their connection to the land and community. We pay our respects to them and their cultures, and to the elders both past and present.

Parliamentary Procedure

SITTINGS AND BUSINESS

The Hon. R.I. LUCAS (Treasurer) (11:01): I move:

That standing orders be so far suspended as to enable petitions, the tabling of papers and question time to be taken into consideration at 2.15pm.

Motion carried.

Bills

LEGAL PRACTITIONERS (SENIOR AND QUEEN'S COUNSEL) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 10 September 2020.)

The Hon. F. PANGALLO (11:01): I rise to speak on behalf of SA-Best in support of the Legal Practitioners (Senior and Queen's Counsel) Amendment Bill 2020. The bill has been introduced to break the current impasse for advancement in the legal profession in South Australia, according to the government. There have been no Senior Counsel appointments for some time now. It is safe to say the Chief Justice has a clear preference for the term 'Senior Counsel', himself being the only South Australian QC to hand in his appointment from The Queen in favour of adopting 'SC'.

Nevertheless, the judiciary has indicated its willingness to resume making appointments should the bill pass. It is arguable that a postnominal that includes reference to The Queen or The King, as may be the case, is loftier. On the flipside, it can be perceived as a symbol of privilege; it depends on who you talk to.

The first Queen's Counsel barrister was appointed in England over 400 years ago. In South Australia we look back to the year 1865. Selection has often been a rite of passage to a judicial appointment. The first woman in Australia to be appointed Queen's Counsel was our very own trailblazer for women, Dame Roma Mitchell, in 1962.

An appointment traditionally recognises outstanding ability, leadership, expertise and mentoring. That is still the case today whether you are a Queen's Counsel or a Senior Counsel. There have been moments in time when the government of the day has refused to make QC appointments and a stand-off has ensued.

These moments in time have been cited as a catalyst for change. The refusal to appoint Elliot Johnston, known for his communist views, and David Edwardson, for his clients, come to mind. To judge a member of the bar on his clients goes against the fundamental right to legal representation we should all be afforded.

Governments of the day have improperly interfered in the past, albeit by lack of action. The appointment of Queen's Counsel ceased in 2008 at the request of the then Chief Justice. It removed the role of the executive entirely and was to signal the end of the political silk. Some credit can be given to the growing republican movement, but I suspect it was related more to further enshrining judicial independence.

It is vital that appointments honour the independence of the judiciary, and for that reason we will not be supporting the Labor amendment giving discretion to the Attorney of the day. Whilst there has been a shift away from references to the monarch in recent years, the tide has turned yet again in some jurisdictions. Seventy of the 74 Senior Counsel in Queensland have opted to make the switch, with all new Queensland appointments now referencing the monarch.

Victoria followed suit in 2014 after a 14-year hiatus. The same year, it was reinstated at a commonwealth level. The Chief Justice indicated in a letter to the Attorney-General in 2018 that the judiciary would not participate in any scheme that saw a return to the executive assessing applicants for appointment. This bill does not do that. In fact, all appointments should be made by the judiciary. It only provides the opportunity for any appointed Senior Counsel to apply to amend their postnominal to Queen's Counsel should they see fit. I understand there would be no approval process; it would be automatic.

The Chief Justice, though not in support of the bill, has advised members of parliament, via a letter to the Attorney-General, that should it pass, judges would resume making appointments. In our consultations, we have heard from members of the bar who say their members overwhelmingly prefer the title of QC. They have told us interstate advocates are trading with a competitive advantage, both nationally and internationally, that our top barristers are on an uneven playing field competing for local commonwealth briefs.

Apparently, ASIC is bringing interstate counsel into the state when we have on par legal abilities right here in South Australia. I believe that 18 of the 25 Senior Counsel took up the opportunity to make the switch to QC when it was offered by the Attorney-General in March 2019. It seems to be preferred by the majority of senior members of the profession. There certainly does not seem to be an overwhelming appetite for SCs. According to the bar, international clients are insisting on briefing QCs in Asian markets. This is curious, considering the key arbitration hubs, Singapore and Hong Kong, do not appoint QCs themselves.

There is also an argument that the new-age use of the title 'special counsel' by law firms diminishes the Senior Counsel title. Law firm MinterEllison, for example, has 100 special counsel listed on its national website. It does have the potential to be confusing and misleading, especially to the layperson, and perhaps the profession could have more to say about this in due course.

We must remember that clients, the general public, do not brief barristers. Other members of the profession do that, lawyers who are unlikely to be swayed by a different letter in a postnominal over legal ability. This does seem to be an ideological issue more than anything else. The focus of the profession should be on the obligations of the role in providing exemplary leadership and mentoring.

In any event, whether our top barristers use SC or QC is not the most pressing issue the profession should be turning its mind to. Sexual harassment and its faithful companions, bullying and discrimination, are much more important matters to consider. I look forward to the overwhelming support of this place of my colleague the Hon. Connie Bonaros' motion instructing the Attorney-General to instigate an independent inquiry into these matters.

In terms of this bill, we support the judicial recognition of well-deserving senior members of the legal profession. If that means a return to the use of the term 'QC' by some, then so be it. With those words, I look forward to the next stage of the bill.

The Hon. R.I. LUCAS (Treasurer) (11:09): I thank the Hon. Mr Pangallo and other members for their contributions to the second reading, and look forward to the committee stage of the debate.

The council divided on the second reading:

Ayes 17
Noes 2
Majority 15

AYES

Bourke, E.S.	Centofanti, N.J.	Darley, J.A.
Hanson, J.E.	Hood, D.G.E.	Hunter, I.K.

AYES

Lee, J.S.	Lensink, J.M.A.	Lucas, R.I. (teller)
Maher, K.J.	Ngo, T.T.	Pangallo, F.
Pnevmatikos, I.	Ridgway, D.W.	Scriven, C.M.
Stephens, T.J.	Wade, S.G.	

NOES

Franks, T.A.	Parnell, M.C. (teller)

PAIRS

Wortley, R.P.	Bonaros, C.

Second reading thus carried; bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. K.J. MAHER: My question to the Treasurer, representing the Attorney-General in this place, is: in allowing for the appointment of Queen's Counsels, as this bill proposes, how many dangerous child sex offenders will spend longer in prison as a result of this bill passing?

The Hon. R.I. LUCAS: The issue that has been raised by the Leader of the Opposition has nothing to do with the bill that we have before us. If he would like to further explain his question and somehow relate it to the content of this particular bill, I am happy to endeavour to provide a response.

The Hon. K.J. MAHER: Can the Treasurer outline how many further recommendations of the Royal Commission into Aboriginal Deaths in Custody will be implemented as a result of the passing of this bill?

The Hon. R.I. LUCAS: Again, that particular question has no relevance to the content of this particular bill.

The Hon. K.J. MAHER: Can the Treasurer explain in any way how our criminal justice system or our justice system will be better for South Australians as a result of the passage of this bill?

The Hon. R.I. LUCAS: I cannot add anything further than the answer I have given to the first two questions. If the Leader of the Opposition wants to play games by asking all sorts of questions extraneous to the bill, that is entirely his prerogative—within the standing orders, of course—but I think he needs to relate his questions to the clauses of the bill.

The Hon. K.J. MAHER: In relation to this bill, is the Treasurer aware of any reason why the Attorney-General herself, for I think the first time, personally briefed the opposition on this bill? Is the Treasurer aware of any reason why this bill is so important as for that to occur?

The Hon. R.I. LUCAS: The Attorney-General is a very competent activist and comprehensive adviser of anyone who is interested in her legislation—both herself, when she is available, and her office and her officers within the department. The nature of any discussions that the Attorney may or may not have had with the Leader of the Opposition or other members of the Labor Party I am not actually privy to. I leave that to judgement calls for the Attorney-General and I have every confidence that she will handle her portfolio, as she does always, competently.

The Hon. K.J. MAHER: Can the Treasurer explain if there is any difference in the instrument—I think it is Letters Patent—that appoint someone QC or SC? Is there any difference at all, in that instrument, between the two postnominals?

The Hon. R.I. LUCAS: One is actually an appointment by the Governor on the recommendation of the Attorney-General and the other is an appointment by the Chief Justice. There is a different process, but I am sure the honourable member is aware of that. I am not sure whether he has some other purpose in mind in terms of his question.

The Hon. K.J. MAHER: In the appointment as either Senior Counsel or Queen's Counsel, are there any privileges that a barrister enjoys that someone who has not had an appointment of Queen's Counsel or Senior Counsel has?

The Hon. R.I. LUCAS: I think perhaps the Leader of the Opposition can explain what sort of privileges he is wanting to ascertain someone might or might not take advantage of.

The Hon. K.J. MAHER: My question to the Treasurer is: has the Chief Justice written to the government outlining any concerns about the privileges that QCs may enjoy by virtue of the instrument of being appointed?

The Hon. R.I. LUCAS: As opposed to an SC?

The Hon. K.J. MAHER: No, as opposed to a barrister who does not have an appointment as a QC or SC.

The Hon. R.I. LUCAS: Whilst I have not read them, I understand the Leader of the Opposition or members of the Labor Party have copies of one recent letter and one older letter that the Chief Justice wrote to the Attorney-General about the issue. That is the only correspondence, I understand, so the Leader of the Opposition is aware of it. Certainly, my advice is that it has not been interpreted as the Chief Justice expressing concerns about privileges QCs might have over barristers. He has expressed his views, which the Leader of the Opposition and others have publicly enunciated in relation to the government's legislation.

In relation to the specific question the honourable member has asked, he has a copy of the letter or letters, as I understand it, and he can interpret those as he wishes. My advice is that there is nothing in those that could be interpreted as the Chief Justice complaining about the privileges that a QC has compared with a barrister.

The Hon. K.J. MAHER: I thank the Treasurer for his assurance to the chamber that all correspondence from the Chief Justice to the Attorney-General on this matter has already been forwarded to the opposition. Given the Treasurer's assurance, can the Treasurer please table all correspondence between the Chief Justice and the Attorney-General on this matter?

The Hon. R.I. LUCAS: No, I am not in a position to be able to do that. I am not aware and I will have to take advice from the Attorney-General in relation to that.

The Hon. K.J. Maher: We can adjourn it and come back after lunch then.

The Hon. R.I. LUCAS: You can propose that, but the government is not going to support an adjournment on that basis. As I understand it, two letters have been made publicly available. Evidently we did not provide it but the opposition, as I understand it, has a copy of it. They can explain, if they want to, how they obtained copies of the correspondence from the Chief Justice to the Attorney-General. In relation to the Chief Justice's views of the proposition, I think they are pretty well ventilated, and I think the Leader of the Opposition is very well aware of the views of the Chief Justice.

The Hon. K.J. MAHER: For the sake of clarity, can the Treasurer inform the chamber if, in fact, the only correspondence between the Attorney-General and the Chief Justice on this matter are the two letters that he has referred to, or is there other correspondence that has been kept secret?

The Hon. R.I. LUCAS: No, we do not know whether there is other correspondence from the Chief Justice to the Attorney-General. There may well be, but we are just not in a position to know whether there is other correspondence. As I said, the Chief Justice's views, as I understand it, are pretty well known in relation to this so it is not as though his views, however that has occurred, have not been publicly ventilated.

The Hon. K.J. MAHER: One of the arguments that has been put forward by the Attorney-General and others who support this legislation is that Senior Counsel in South Australia—

and indeed from the largest jurisdiction in New South Wales where for 30 years there has also only been Senior Counsel—are at an economic disadvantage to those from jurisdictions which, I think, now includes the option in Victoria and Queensland to be a Queen's Counsel by virtue of the title. Is the Treasurer able to give an example of how that has been borne out, one example of where a South Australian Senior Counsel has lost out because they do not have the title Queen's Counsel? I am just asking for one single example of where that has happened.

The Hon. R.I. LUCAS: In answer to the question, I am advised that I am not in a position to give one specific example, but my understanding is that the Bar Association, in terms of their submission, have made that claim on the basis of the experience of some of their individual members. That is a view that they have expressed on behalf of some of their members.

The Hon. K.J. MAHER: For the sake of being abundantly clear, is the government, through the Treasurer in this chamber, not actually aware of one single example of where a South Australian Senior Counsel has been at an economic disadvantage because they are not called Queen's Counsel? Notwithstanding the Treasurer has indicated that he has heard stories, the sort of thing that would be admissible in no court, is there actually an example the Treasurer can point to for the claim that his government has repeatedly made as the reason for this bill passing?

The Hon. R.I. LUCAS: I cannot add anything further to the answer to the same question the honourable member has already asked.

The Hon. T.A. FRANKS: As many, including the Treasurer, in this place are fond of saying, I am not a lawyer, but my interest was piqued during this second reading debate on the term 'SC' being applied to more than one type of counsel in the legal profession. I have heard of something called 'strategic counsel' recently used in Australia, which I think is possibly new in terms of the culture of the legal profession here. What types of SCs are there in the legal profession in Australia?

The Hon. R.I. LUCAS: It would assist the committee if the member could indicate whether there is a particular individual and his or her name and whether or not—

The Hon. T.A. Franks: I will be getting there. I want to know the different types of SCs.

The Hon. R.I. LUCAS: But I would be intrigued to know whether or not that particular individual uses SC as a postnominal on their business card. I guess anyone can call themselves anything. There is no legal status to the term 'strategic counsel', if that is the honourable member's question. There are various positions where people do refer to themselves as special counsel, but again no legal significance applies to the term 'special counsel' or 'strategic counsel'. Again, my advice is there is no law that prevents anyone calling themselves strategic counsel, special counsel, super counsel, super-duper counsel, or whatever it is they might wish if they want to somehow get the title SC onto their business card.

The Hon. T.A. FRANKS: I think the Treasurer does know where I am going with this question, because I am intrigued that Xenophon Davis have been employed by Huawei as a strategic counsel, which I understand is something that was more in the American legal culture in the past. What are the legal requirements of a strategic counsel when it comes to the foreign influence register?

The Hon. R.I. LUCAS: The requirements of that particular legislation would be as specified in the legislation. I cannot offer a detailed response, but I would be surprised if it refers to the title that the individual or group might claim for themselves; it would be more in relation to their background and their activity that would activate that particular piece of legislation or not.

What they call themselves, I suspect, is of interest to us all, but what would activate provisions in that particular legislation would be more the nature of the individual, their background, their experience, where they have previously worked, and the nature of any other activities in which they might have engaged.

The Hon. T.A. FRANKS: I think I am wrapping this up, and I am happy to take it on notice. I raise this because it has piqued my interest, given that we are debating these postnominals but also the legal profession's own terms for the things it does and the particular privileges and protections it is afforded. My understanding is that legal counsel is not required to be on the foreign

influence register, but I do not believe that strategic counsel has such a protection or privilege. Could the government come back with an answer as to whether or not a strategic counsel is a position that affords one protections or privileges of not being required to be on the foreign influence register?

The Hon. R.I. LUCAS: As imperfect as my knowledge is of that legislation, I am happy to take the question on notice, but I suspect the answer is that it does not provide any protections or privileges. I will seek further advice if I can and have the Attorney-General correspond with the member.

The Hon. K.J. MAHER: In relation to the other legal uses of SC, is the Treasurer able to outline a bit further? One of the arguments put forward by the government is that special counsel is confusing when we have Senior Counsel, the two uses of SC. Who holds themselves out to be special counsel, where do they work, what work do they perform and how does that lead to the confusion that the government claims between special counsel and Senior Counsel?

The Hon. R.I. LUCAS: My response is similar to those given to questions from the Hon. Ms Franks about strategic counsel. Special counsel, I am advised, has no legal significance, but there is no legal impediment—and as I understand it, it is occasionally used in commercial law where people hold themselves out to be special counsel—as I understand it or am advised, to their calling themselves special, or strategic for that matter, but it tends more to be, we are advised, in commercial practice.

The Hon. K.J. MAHER: To the government's understanding, are special counsel usually found in commercial law firms and as in-house counsel for companies, or do they practise at the independent bar, typically?

The Hon. R.I. LUCAS: My advice is that it is more common with in-house counsel where someone calls themselves special counsel.

The Hon. K.J. MAHER: I thank the Treasurer for that answer. Is the government aware whether there are any members of the independent bar, any practising barristers at all, who hold themselves out in South Australia as special counsel?

The Hon. R.I. LUCAS: My advice is that we are not aware of any—we are not guaranteeing that, but we are not aware of any.

The Hon. K.J. MAHER: So not being aware of any barrister holding themselves out as special counsel. I think the government is right, from my experience those who tend to invoke the use of the phrase 'special counsel' are in-house in commercial law firms or, more typically, in-house within companies as legal counsel. If we are not aware of any barristers holding themselves out as special counsel, when a solicitor comes to instruct a barrister for a case, how does the confusion arise in the solicitor's mind between Senior Counsel and special counsel if we are not aware of any special counsel as barristers?

The Hon. R.I. LUCAS: In the circumstances that the member has outlined, where a solicitor is seeking advice, I am not sure that I can add any detail to the honourable member's question about any potential confusion or not in that particular circumstance. Clearly, in the law and commerce generally, if you have people calling themselves special counsel or as the Hon. Ms Frank says, strategic counsel, there is no legal impediment to them putting SC on their business card if they so wish.

I suspect the government and the Attorney have been more particularly talking about that sort of confusion in terms of the legal and commercial marketplace generally, where people are calling themselves SCs. Some are senior counsels, some are special counsels and, as the Hon. Ms Franks indicates, some are strategic counsels.

The Hon. K.J. MAHER: Given that this is a great evil that the government is seeking to remedy with this bill, this huge confusion that exists in the population over SC on business cards, and notwithstanding the fact that, as the Treasurer has outlined, they are not aware of a single barrister who uses that, it would seem to me that they are very different markets for legal services. Given that this is one of the huge evils that the government is seeking to remedy in this bill, what prevents a lawyer or anyone else putting QC on their business card or letterhead?

The Hon. R.I. LUCAS: I am advised it is protected by the Letters Patent, so they are prevented from doing so. In relation to the issue, certainly from my viewpoint I would not characterise the fact that the parliament has been asked to address this issue as a 'huge evil', as is the exaggerated phraseology being used by the Leader of the Opposition.

I think the parliament is perfectly capable of chewing gum and walking at the same time. We can address substantive issues such as COVID-19 and we can address other issues such as QCs and SCs. We do not have to portray them—and I certainly do not seek to portray them—as a huge evil, a major issue of our time. Nevertheless, it is an issue that we are perfectly entitled as a parliament to address.

The Leader of the Opposition is entitled to trumpet and campaign against it, because he obviously sees it as a huge evil that the government is heading down this particular path, but I certainly do not characterise it as such. It is one of many issues governments are able to address. We have a particular view. The Leader of the Opposition is hugely offended by it, obviously; he can continue to mount his case. In the end, it will be determined by a vote of this chamber and another chamber.

The Hon. K.J. MAHER: I thank the Treasurer for his answer. Given that we have established that there does not seem to be a particular confusion in the market for legal services using, in different areas, the title SC, what is the quantum of the economic loss the South Australian legal profession has suffered because they have not been able to appoint QCs since 2007 or 2008?

The Hon. R.I. LUCAS: I hasten to say that I distance myself from the suggestion of the leader that 'we' have established, the royal 'we' there. He might have established in his own mind that that is the position. I can assure you, Mr Chairman, I have a different view and perspective of the legislation. In relation to his further specific question about an estimated quantifiable economic loss, the government has not produced a particular number. As I said, from our viewpoint it is a relatively simple matter for the parliament to decide: we are either prepared to support it or we are not. The answer to the member's question is: I do not have a number that I can share with him.

The Hon. M.C. PARNELL: My question is on a different topic. I will defer to the Leader of the Opposition if he is continuing that same line of questioning, but I have a different issue.

The Hon. K.J. Maher: Go.

The Hon. M.C. PARNELL: Go for it? Okay. We are on clause 4, which is the operative—

The CHAIR: No, we are on clause 1.

The Hon. M.C. PARNELL: Okay. I will ask a clause 1 question, which may or may not relate to clause 4 as well. The topic is the general mechanism for appointment and revocation of QCs. I note that the bill provides:

> The Chief Justice may, on behalf of the Supreme Court and in accordance with the Rules of the Court, revoke the appointment of any legal practitioner as a Senior Counsel or as a Queen's Counsel or King's Counsel.

I was reminded via an article in the *Sydney Morning Herald* on 3 July that there was a major push to strip a certain Queen's Counsel in New South Wales of the title. The *Sydney Morning Herald* article is headed, 'Attorney-General seeks advice on stripping Dyson Heydon of QC title'. The first two sentences of that story read:

> The NSW Attorney-General will seek advice about stripping Dyson Heydon of the title of Queen's Counsel after an investigation found the former High Court judge sexually harassed six staff members.
>
> Attorney-General Mark Speakman told the *Herald* 'the allegations against Mr Heydon are appalling' and he understood community concerns about the former judge keeping the title.

The relevance of that is, first of all, in New South Wales apparently it is something that the Attorney-General has a say in. The bill before us provides that revocation of QC shall be the gift, or whatever the reverse of a gift is, of the Chief Justice. The Chief Justice, apparently, is to act on behalf of the Supreme Court and also must act in accordance with the rules of court.

The *Sydney Morning Herald* article referred to 'community concerns' as being a relevant consideration about whether a person should continue to hold this title, but under the bill before us it

is the Chief Justice's call. He or she is acting on behalf of the Supreme Court, so it is unclear whether he or she is obliged to consult with her or his colleagues. Secondly, they must act in accordance with the rules of court. The question is: what are these rules of court? Have they been drafted? Have they been considered? What contents might those rules contain to ensure that community values are what are being upheld in decisions about whether or not to revoke someone's title as QC or KC.

I am asking the minister to explain how the system will work, especially in relation to these so-called rules of court, which I suspect have not been written, but the minister might have some advice on what is proposed be included in them, bearing in mind—I am working from memory here—the rules of court are largely written by the court themselves, but I think they are disallowable instruments in the parliament. So what work has the government done with the Supreme Court to draft appropriate rules for the revocation of QCs?

The Hon. R.I. LUCAS: My advice is that the rules of court are disallowable. They are not rules that are drafted by the government or the Attorney-General; they are drafted by the Chief Justice. I think the honourable member would understand the separation between those over there and those over here, if I can put it that way, so therefore this would be an issue for the Chief Justice.

The Chief Justice obviously has a view in relation to the legislation, and I am assuming without knowing that should the parliament have a different view, he would then have to set about drafting rules in relation to how he would go about it. As perhaps a guide and this is no more than a guide, I am told the now revoked rules as they related to Senior Counsel did state that a person admitted to the office of Senior Counsel is:

> A person…whom the Court regards as having proven himself or herself to be an advocate of high skill, integrity, professional judgment, and independence justifying an expectation on the part of the public and the judiciary generally that…he or she will provide outstanding service in the course of the administration of justice.

There are at least words in there like 'integrity' and 'expectation on the part of the public' but that in and of itself is not an indicator, should the legislation pass, that the Chief Justice might draft appropriate rules—appropriate, I mean, to the Hon. Mr Parnell—in terms of what he and they might put in them.

In the end, should the Hon. Mr Parnell still be in the parliament at the time that (1) the legislation passes and (2) the Chief Justice introduces new rules, given the advice I have that they are disallowable, the Hon. Mr Parnell can be all over them and he can move to disallow them if they do not have appropriate words in them to his satisfaction. I cannot provide any more detail than that but it would be something driven by the Chief Justice, not driven by the Attorney-General or the government.

The Hon. M.C. PARNELL: I thank the Attorney for his answer. A comment that I would make in relation to the—

The Hon. R.I. LUCAS: You promoted me to Attorney.

The Hon. M.C. PARNELL: Sorry, the Attorney's representative in this place. Regarding the list of qualities that the minister referred to based on previous revoked rules of court, my quick analysis of those is that they related to professional qualities rather than personal qualities, notwithstanding words like 'integrity' were included but I took those in context as being in relation to professional ability, where society has clearly moved on from judging people such as judges purely on their ability to do their job, there are other attributes as well.

I accept the minister has said the rules are to be written by the judges, they will be tabled in this place and we will be able to disallow them. Two consequences flow from that. The first one is that they will be, if I can use the words, 'a job lot' of rules of court. They will be included with all of the other rules that allow the court to operate; therefore, disallowance of the rules of court effectively confines the court to operating under its previous rules. In other words, it is all or nothing. We throw them all out or we allow them all.

The question would be: if the new rules of court contained the criteria for the revocation of a QC appointment, would disallowance of the rules mean that a QC appointment could never be revoked? If this parliament disallowed Supreme Court rules, the Supreme Court rules are the only

place where it sets out what has to be taken into account in revoking a QC, so the sword of Damocles, I guess, hanging over this parliament would be, if we dared to ever disallow Supreme Court rules that included the revocation provisions then a QC could never be revoked; is that correct?

The Hon. R.I. LUCAS: My legal advice is that no, the Chief Justice has the power to revoke. The rules of engagement, or the rules of the court, just provide description and detail. I am not sure why the parliament would want to stop the Chief Justice from having the power to revoke someone whom the Chief Justice wanted to revoke, but, putting that to the side, it seems counterintuitive to the proposition the Hon. Mr Parnell is putting. If, for whatever reason, the Hon. Mr Parnell, or indeed others who might form a majority, decided to continually disallow the rules to revoke—for whatever implausible reason I cannot think of—my advice is that the Chief Justice still has the power to revoke if he or she decides that they have to revoke somebody for the reasons the Chief Justice might have determined.

The Hon. M.C. PARNELL: I think the minister's answer does make sense, but just to make it clear, I was not suggesting that the parliament would use the disallowance power in order to stop a QC being revoked. As we know, these rules are a job lot. Yesterday, this council disallowed pages and pages of regulations. It was only number 25 that we did not like, but we had to throw the whole lot out. That is how it works.

I can perceive of a situation where the rules of court, for example, might make it too difficult to access paperwork, or might disenfranchise certain self-represented litigants. There is a whole range of reasons why rules of court might be inappropriate and why parliament might exercise its authority to disallow rules of court.

I do not need to ask a further question. The minister has made it clear that, in the absence of any rules, the Chief Justice still has that power and would just exercise it herself or himself according to their own judgement, and it would be as simple as that. I accept what the minister is saying, that there would still be the power to revoke, it is just that it would be completely unguided. I accept that answer.

The Hon. R.I. LUCAS: Just to add, the honourable member has, on a couple of occasions, referred to the fact that the rules of court would be a job lot. My advice is that that is not necessarily the case. There are still rules of court that exist. The only ones that have been revoked are the ones in relation to Senior Counsel. The new rules—insofar as I am guessing, because these are for the Chief Justice—would come back in relation Queen's Counsel and revocation. I think the proposition the honourable member is talking about in comparing it to yesterday's example is that the parliament would be restricted, because in getting rid of those rules you would be getting rid of every other rule that is there.

I think he is working on the mistaken expectation that all the other rules of the court have disappeared as well and they would all come back as a job lot. The advice I have is no, there are rules of court that are still there that apply to all the other things that they need rules of court for. What has been revoked has been in relation to the Senior Counsel issue. Therefore, if the parliament chooses to move down this path it is up to the Chief Justice to then have further rules of court in relation to this particular issue which, my guess is without knowing on the basis of past precedent, he and they would address in some fashion, but it would relate to that particular issue.

The Hon. I. PNEVMATIKOS: Who will this bill benefit: the community, clients and litigants, a proportion of the legal practitioners or profession, or the courts? Whose interests does this bill serve?

The Hon. R.I. LUCAS: It is the government's view that it is in the interests of the administration of justice in the state; therefore, there is a public interest, but obviously there is also an interest of legal practitioners, or at least those legal practitioners who support the view endorsed by this piece of legislation. I accept the fact that there are some other legal practitioners, as evidenced by the line-up of legally trained people in this chamber who argued against the bill, who have a different view.

The Hon. I. PNEVMATIKOS: In terms of the community, does this mean that the bill will result in fairer, affordable and accessible judicial processes?

The Hon. R.I. LUCAS: In my observation, I do not think the argument in relation to this legislation has hinged on 'affordable'. There is a range of other pieces of legislation or government policy that might relate to the affordability of the justice system not just in South Australia but the nation, but I am not aware that the debate on this has been about the affordability of the judicial system in the state.

The Hon. I. PNEVMATIKOS: The change in title—and I am referring to your own comments—how does this actually help the community?

The Hon. R.I. LUCAS: It is the government's view, as enunciated by the Attorney-General in the other place and to individual members as well, that in the overall administration of justice this is a policy change the government is prepared to support. The government has not held this out as something that is going to lead to a significant or momentous change in the administration of justice in the state. On the other hand, the government does not accept the characterisation the Leader of the Opposition has made that this is some great evil that is being corrected by the government through the proposition.

As I said, it is a government policy position that we have put to the parliament for the parliament, ultimately, to resolve. It is no more or less than that. We have had many pieces of legislation that do not change the world that we are nevertheless asked, as a parliament, to address whether we support them or not. This is another example.

The Hon. K.J. MAHER: I am keen to spend a little bit of time—and this has been raised—talking about the level of support within the legal community and profession for the change being proposed. We have spent time this morning establishing, in this committee, that there is no actual confusion between Senior Counsel and special counsel. We have established that we cannot point to any economic loss in the South Australian legal system as a result of having only SCs and, in fact, have established that the government cannot point to one single example of where someone has lost work because they are a Senior Counsel and not a Queen's Counsel. Can the Treasurer let us know the level of support within the broader legal community for this change?

The Hon. R.I. LUCAS: I think the Attorney-General outlined in her second reading explanation that the Law Society did a survey: I think there were 843 respondents, and 67 per cent—or 66.26 per cent or somewhere around that area—supported the option for QC once someone had been appointed as an SC. That is the evidence as provided by the association or body that represents lawyers in this state.

The Hon. K.J. MAHER: I appreciate the Treasurer cherrypicking the response rate. Is the Treasurer able to inform the chamber what that is as a percentage, firstly, of Law Society members who responded in favour of this, and then what percentage of that is of the legal profession in South Australia?

The Hon. R.I. LUCAS: As I indicated, it was 843 respondents, which as I understand it might be around about 25 per cent or so of members. For any survey—I am not sure how familiar the Leader of the Opposition is with the respondent rates in surveys—anyone who gets a 25 per cent response rate in terms of a survey instrument is generally over the moon in terms of the size of that particular survey result.

In the end—I am assuming the Leader of the Opposition is a member of the Law Society, although I do not know whether he voted—there are obviously lawyers who do not support the changes. At least one-third of the 843 do not support it and there may well be some of the people who did not respond. There may well be a significant number who could not have cared less and that is why they did not respond. A 25 per cent response rate is generally regarded by people with knowledge of survey instruments and market research as a very high percentage of respondents.

The Hon. K.J. MAHER: Can the Treasurer inform the committee of when the last trade-in or buyback scheme for SCs to change their postnominal to QCs was? When did that trade-in scheme, or whatever you want to call it, last occur?

The Hon. R.I. LUCAS: If we can get a specific date, I will put it on the record in the later stage of the committee. My initial advice is that we think it is around about 2018. It was not a buyback, it was an opportunity to change the title, but there was no payment, as I understand it, to encourage

people to do it. We think it is around about 2018, but it might have been early 2019—perhaps February or March 2019, rather than 2018.

The Hon. K.J. MAHER: At that time, immediately prior to the last trade-in round, how many SCs were there in South Australia?

The Hon. R.I. LUCAS: My advice is, and we may have to correct the record, we believe it was 39.

The Hon. K.J. MAHER: So, immediately before that last opportunity for SCs to trade their titles for QCs, there were 39 SCs. How many availed themselves of that opportunity?

The Hon. R.I. LUCAS: My advice is 17.

The Hon. K.J. MAHER: There were figures that were being put around for those who were supporting this bill that 17 availed themselves of it out of a possible 25. Is the government aware where the figure of 25 might have come from? I know that is what the Hon. Frank Pangallo referred to. Is the government at all aware of where this figure of 25 may have come from when those who were supporting this bill had been advocating for it?

The Hon. R.I. LUCAS: My advice is no, I am not aware, and my officer here is not aware of where 25 has come from.

The Hon. K.J. MAHER: I think the Hon. Frank Pangallo mentioned that 17 out of 25 SCs during the last round availed themselves to become QCs. Is that the figure that was—

The Hon. F. PANGALLO: I do not have my notes with me at this point but that is what the indication was.

The Hon. K.J. MAHER: We had different figures. We were told it was 39, so a minority of SCs traded in. Just so we are clear, the government has no idea how that confusion came about?

The Hon. R.I. LUCAS: I cannot help with the Leader of the Opposition's confusion. I can only share the advice I am given. The issue here is really that it is just an option, is it not? There is no compulsion. It is a question for people, if they want to retain SC they are perfectly entitled to do so—it is just the option for those who wish to. Whether it is a majority, minority or it is actually fifty-fifty is not the issue, at least from my viewpoint. The issue the government is prosecuting is that there is an option and some will choose it, and did; some decided not to choose it, and they are perfectly entitled to do that.

The Hon. K.J. MAHER: Last time it was available it was a minority of the profession who opted to do that. Am I doing my maths right? As Treasurer, you can probably correct me—I am just a mere former lawyer—17 out of 39 is a minority of barristers who wished for that.

The Hon. R.I. Lucas: I will leave you to do your own maths.

The Hon. M.C. PARNELL: I have been re-reading the submission from the Law Society and the Bar Association and one of the arguments they raise in supporting this bill makes no sense to me. I will see if the Treasurer can enlighten us. Most of the arguments are pretty obvious, they relate to self-interest and career advancement and things like that, but the curious one is that they say that this bill:

> …will very likely facilitate further work, particularly from Commonwealth agencies being conducted in this State should, as we expect, female practitioners both at the independent bar and practising at the Crown, be appointed?

It then goes on to state:

> As you may be aware, the Commonwealth has equitable briefing policies, compliance with which is essential to facilitating such work for the profession in South Australia.

My understanding of that is they say, 'Well, the commonwealth government wants to make sure that they equally give work to men and women lawyers.' That is what I understand when it talks about compliance with that equitable briefing policy.

Unless the commonwealth has some sort of discriminatory policy in relation to QCs, SCs and regular barristers, how is it possible that simply changing the titles in an otherwise equitable briefing environment would result in more work for South Australia? Is there some hidden bias in favour of QCs that is not published anywhere and that we are not aware of? How can there be more work for South Australian barristers simply because the letters after their name change?

The Hon. R.I. LUCAS: I am very happy to endeavour to explain the South Australian government's position. Asking me to explain the motivations or reasons the Law Society, a completely independent body from the South Australian government, has for supporting legislation I will leave to them. I understand the honourable member has had discussions with the Law Society in relation to this legislation over recent weeks. In relation to the commonwealth government, I am not familiar with their procurement policies in relation to this issue. I think it is really up to the Law Society. I know the honourable member often points us to the Law Society's submissions as justification for a particular point of view the Hon. Mr Parnell—

The Hon. M.C. Parnell: Not this time.

The Hon. R.I. LUCAS: Indeed. We all pick and choose. The Hon. Mr Parnell, I think, is a little unfair when he characterises the Law Society's submission as being essentially driven by self-interest and promotion, but nevertheless he is entitled to attack the Law Society in that particular way. I cannot explain that particular aspect or possibly even other aspects of the Law Society's submission. They are perfectly entitled to put their point of view to the Hon. Mr Parnell and, indeed, to the government and anybody else who is prepared to listen. As the Hon. Mr Parnell has just demonstrated, there will be occasions when we all either support their position or oppose their position, as we are entitled to do.

The Hon. M.C. PARNELL: I am going to rephrase my question, as I should have done in the first instance. Does the government believe that creating QCs will deliver more commonwealth-funded legal work in this state?

The Hon. R.I. LUCAS: I have no evidence and nor do my officers have any evidence to either support or oppose that particular contention. I am just not in a position to provide the honourable member with any evidence one way or other in relation to that particular issue, as much as I would love to. I am just not in a position to do so.

The Hon. F. PANGALLO: Just to clarify the issue that was raised by the honourable Leader of the Opposition in those figures, 18 of the 25 requested to go from Senior Counsel to QC. Those figures were provided to our office by the Bar Association.

The Hon. R.I. LUCAS: It might be—we do not know—that they were Bar Association members, as opposed to the numbers that the government has provided, which is a large number of 39. Maybe that explains the difference.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The Hon. K.J. MAHER: I might speak generally before moving amendments. Because there are two competing amendments that we are moving to this clause, both of which cannot exist, I might outline our view generally and outline what those amendments do. It might be of some benefit to the committee, then, to perhaps turn to the crossbench and seek their views on both of those amendments. I think that will guide us in perhaps how things are moved. That is how I intend to proceed. It is up to members how they intend to proceed, but that might provide some guidance as to how amendments are moved.

This bill seeks to allow the practice that has existed for over a decade in South Australia and for some three decades in New South Wales of only appointing well-recognised and distinguished barristers with the title Senior Counsel, and it seeks to allow the title Queen's Counsel. It is very longstanding Labor Party policy that we do not support that.

We support the postnominal Senior Counsel. We support the recognition of distinguished barristers with a postnominal and that is Senior Counsel. We made this change as a government

back in, I think it was, 2007 or 2008. We have not had a change in our party policy. It remains our party policy that we support the appointment of Senior Counsel. We do not support the appointment of Queen's Counsel. The amendments that are being moved by the opposition reflect that.

There are two amendments. The first one essentially replaces the operative part of the bill that allows for anyone appointed Senior Counsel to essentially ask for a trade-in to be appointed Queen's Counsel. As I said, it is very longstanding Labor Party policy that we do not support that. We think it is anachronistic and a throwback to something that is not relevant to Australia, indeed South Australia, today. In so many ways we stand on our own two feet, separate from the monarchy of the UK, and we think it is appropriate that, like New South Wales has done for some three decades, we retain and continue with the recognition of distinguished barristers but as Senior Counsel.

Our first amendment seeks to replace the part of the bill that allows for that trade-in of Senior Counsel to Queen's Counsel, and in fact makes it clear that you cannot appoint someone who has been awarded Senior Counsel as Queen's Counsel. It says that that is not allowed, and that is consistent with longstanding Labor Party policy.

That is our preferred amendment, and we would be seeking the support of the chamber. I will be keen to hear from the crossbenchers as to their views on that. Alternatively, if that does not seem to have the favour of the council, our second competing amendment is to change one word in the bill at clause 4: a 'must' to 'may'. That is where the Attorney-General receives the request for someone who has been awarded postnominal Senior Counsel.

At the moment, under the government's bill, the Attorney-General must forward that on to the Governor for that proclamation of a Queen's Counsel. Our alternative amendment simply says 'may', so the Attorney-General is not compelled by force of this legislation to do it. It is at the Attorney-General's discretion whether or not to do it.

They are competing amendments to this section. Our preferred position as the opposition is the first one; that is, that you cannot have Queen's Counsel, it is Senior Counsel, and that is consistent with our longstanding Labor Party policy. Our other proposal, in the event that that does not have the support of the chamber, is changing the Attorney-General 'must' forward it to the Governor to 'may' forward it to the Governor. Having outlined the two amendments the opposition is putting forward, I would invite the crossbenchers to make a contribution, if they wish, as to where they are headed, and that can guide us in terms of which amendments are put forward at this committee stage.

The Hon. R.I. LUCAS: Given that the honourable member is outlining a smorgasbord of options in descending order of importance—are you are interested in this one and, if you are not interested in that one, are you interested in the other one? I am sure that, if they are not interested in those, he might even come up with a third option. Depending on the response from crossbenchers, I assume the Hon. Mr Maher will only move one of those amendments. I will outline the reasons why the government will oppose both amendments, whichever one happens to be moved.

In relation to the first amendment, which is No. 1 [Maher-1], as the Hon. Mr Maher has outlined, the government will be opposing that. The effect of this amendment is to prohibit the appointment of any Queen's or King's Counsel. The appointment of Queen's or King's Counsel is the prerogative of the Governor, and this amendment will prohibit the Governor from exercising the prerogative. Further, this amendment prohibits the Attorney or another minister from making such an appointment. These ministers do not have the power to make these appointments. Such appointments can only be made by the Governor.

The amendment further prohibits the Governor from also making this appointment. This bill was introduced to give legal practitioners who have been appointed as Senior Counsel by the Supreme Court the option of being appointed as Queen's Counsel. Many senior advocates consider the title of QC (or KC, as it may be known in the future) to be a more universally recognised title, and it gives them the flexibility of choosing that title if that is what they wish.

This is evidenced already in the government's second reading explanation on the bill, where 67 per cent of legal practitioners in South Australia voted to support the option of QC once someone has been appointed as an SC. The amendments completely undermine the purpose of the bill and

are opposed. The bill is a bill of choice, and it is abundantly clear that the opposition does not agree with that freedom. The bill guarantees the appointment of SCs by the Supreme Court without political interference and ensures that those appointees who would like to be referenced as a QC can do so if they wish.

The government also opposes the second in the smorgasbord of amendments proposed by the Leader of the Opposition, which is the deletion of the word 'must' and substituting it with 'may'. The reasons for the government opposing that amendment, if that is the one moved, is that the effect of this amendment is to give the Attorney of the day a discretion as to whether to recommend to the Governor whether someone should be appointed as a Queen's or King's Counsel.

The bill currently requires that the Attorney recommend to the Governor the appointment as a Queen's or King's Counsel of any Senior Counsel who makes application to her. The Attorney-General and her staff have been very clear throughout briefings on this bill that there is absolutely no desire or intent for the Attorney to be picking and choosing who should be a QC once they are appointed as an SC: this ensures no political interference.

The recognition of senior advocates as senior counsels is a matter for the courts in accordance with its rules. The use of the word 'may' means that the Attorney could have a role in considering whether those appointments to Senior Counsel have the required qualities or are otherwise suitable to be appointed as Queen's Counsel.

Senior Counsel have already gone through a process to be appointed by the Supreme Court and have their abilities and their leadership within the profession assessed, and the Attorney has no role in undertaking any further assessment before they are appointed as Queen's Counsel. As detailed in a letter from the Law Society of South Australia to the Hon. Mr Parnell on 13 July 2020, the Law Society wholeheartedly supports the bill. Depending on which particular amendment is moved by the Leader of the Opposition, the government will be opposing either or both.

The Hon. J.A. DARLEY: For the record, I indicate that I will be opposing both amendments.

The Hon. F. PANGALLO: I acknowledge the Leader of the Opposition in indicating that it is Labor Party policy and has been for some time. I will indicate that both my colleague the Hon. Connie Bonaros, who is unfortunately ill today, and I will not be supporting either amendments. As the Treasurer has pointed out, certainly with the second amendment, it actually does raise more questions regarding political interference just by using that three-letter word 'may'. It would complicate matters even further.

I do not think we really want to get back to the situation, as I mentioned in my speech, of some years back, when David Edwardson, an eminent silk in South Australia and Australia, was initially denied the opportunity to be a QC simply because he defended outlaw motorcycle gang members. To me, that was just blatant political interference in that regard.

Lawyers have difficult jobs; QCs have difficult jobs. Their job is to defend people who go before the courts. They go before the courts as accused rapists, murderers, paedophiles—you name it. They need to go there to try to uphold justice and the law as they see it and also defend their clients so that their client receives fair justice for their accused crime. In saying this, we cannot support that second amendment, even though I see what the intent is from the Leader of the Opposition, because it will raise even more questions than it will deal with.

The Hon. M.C. PARNELL: It probably will not surprise people to know that I can count. I have a law degree, but I studied accounting as well, so I can count and I can see where the numbers lie on this. Just for the record, our position would have been to support the first of the Labor amendments and our fallback would have been to support the second amendment. I note the Attorney's comment—and I think the Hon. Frank Pangallo repeated it—that replacing the word 'must' with 'may' would allow for picking and choosing. I think that is the evil that they seek to overcome; in fact, it does not really overcome that because it just puts the picking and choosing in a different set of hands.

I would challenge what the Treasurer said. He talked about this as a bill of choice. Let's be clear: that choice will not apply to a republican government that might be elected in this state or parties whose strong views are republican. Under the government's bill, a republican state

government would be forced to hand over, for acceptance by the Governor, a list of QCs or KCs, so there is no choice involved in that at all.

We will leave it to the Leader of the Opposition to determine whether, having seen the numbers, he is inclined to divide on any of the amendments that he is moving. I will just put on the record now that, regardless, the Greens do see this as an important bill. We want to make sure that the record shows exactly where people stand at the end of the committee debate, so we will be dividing on the third reading.

I want to finish my brief contribution now with a quote from a commentator in *The Guardian*, some six years ago, when they were reporting on the move in other states to go down the path of QCs:

> …it exposes that Australian tendency to desperate insecurity, which can only be cured by blessings and baubles from the motherland.

The Hon. K.J. MAHER: I thank honourable members for their contributions. Given where the numbers lie, I think we will maintain our policy purity and move the one that is most consistent with Labor policy and most against monarchist throwback tendencies, and that is amendment No. 1 [Maher-1]. Accordingly, I move:

Amendment No 1 [Maher–1]—

Page 3, lines 4 to 19 [clause 4, inserted section 92]—Delete inserted section 92 and substitute:

92—Prohibition on appointment as Queen's Counsel etc by State government

> A person may not be appointed as a Queen's Counsel or King's Counsel by the Governor or by the Attorney-General or another Minister.

The committee divided on the amendment:

Ayes................9
Noes 10
Majority 1

AYES

Bourke, E.S.	Franks, T.A.	Hanson, J.E.
Hunter, I.K.	Maher, K.J. (teller)	Ngo, T.T.
Parnell, M.C.	Scriven, C.M.	Wortley, R.P.

NOES

Centofanti, N.J.	Darley, J.A.	Hood, D.G.E.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I. (teller)
Pangallo, F.	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.		

PAIRS

Pnevmatikos, I.	Bonaros, C.

Amendment thus negatived; clause passed.

Schedule and title passed.

Bill reported without amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (12:30): I move:

That this bill be now read a third time.

The Hon. M.C. PARNELL (12:30): I was not going to make a long third reading speech; however, I did offer a quote at the very last contribution I made and I did not have the information to hand, so I just wanted to put on the record that the quote I attributed to a commentator was in fact Richard Ackland writing in *The Guardian* on 9 October 2014, and the title of his article is 'Counsel to whom? Australian barristers run back to the Elizabethan bosom'.

The council divided on the third reading:

Ayes 18
Noes 2
Majority 16

AYES

Bourke, E.S.	Centofanti, N.J.	Darley, J.A.
Hanson, J.E.	Hood, D.G.E.	Hunter, I.K.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I. (teller)
Maher, K.J.	Ngo, T.T.	Pangallo, F.
Pnevmatikos, I.	Ridgway, D.W.	Scriven, C.M.
Stephens, T.J.	Wade, S.G.	Wortley, R.P.

NOES

Franks, T.A.	Parnell, M.C. (teller)

Third reading thus carried; bill passed.

SENTENCING (SERIOUS REPEAT OFFENDERS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 9 September 2020.)

The Hon. K.J. MAHER (Leader of the Opposition) (12:36): I rise to speak on this bill and indicate the support of the opposition for this bill. In simple terms, this bill seeks to clarify and simplify the laws on serious repeat offenders. It amends the Sentencing Act as it applies to serious repeat offenders and the provisions that make it easier for the administration of justice, in particular the police, prosecutors and the courts. It does not make any substantive changes to the application, such as substantially expanding the offences to which the system applies or the circumstances in which it is used.

The Labor Party first introduced the serious repeat offender system, and it will be supporting this bill and making sure that our support ensures it passes as quickly as possible. We welcome improvements to a system that has already improved community safety over many years. When a person is found guilty of committing a certain number of specified offences they are deemed to be a serious repeat offender for sentencing purposes. This can apply when two relevant sexual offences or three relevant violent offences are committed.

After being deemed a serious repeat offender, those who commit crimes are punished more severely for any further offending. This includes ensuring that non-parole periods for further offences will be for at least 80 per cent of the head sentence. It is also important to note that the provisions apply to future offending, whether or not the future offending is within the group of offences that can trigger a declaration of a serious repeat offender.

The crimes of serious repeat offenders have devastating consequences on their victims and the community more generally. Serious offences covered under the system include murder and manslaughter, various sexual offences, criminal trespass, robbery and serious drug trafficking. All of these should be treated with grave concern. Through sentencing, serious repeat offenders are more severely dealt with for subsequent offending, and we are trying to minimise the future harm to victims or members of the community.

We support any effort to clarify provisions, given the significant impact it could have on community safety. Specifically, this bill amends sections 52 and 53 to be clearer and more concise. It repeals the definitions of category A serious offences, refers directly to the provisions of the Criminal Consolidation Act and has two categories instead of four. There are more inclusive definitions of serious offences and serious sexual offences.

The bill amends and makes clearer the threshold of section 53, which defines serious repeat offenders. The bill proposes that serious repeat offenders are offenders with convictions for at least three serious offences on separate occasions or two serious sexual offences on separate occasions. The government's section 53 amendments do not dramatically redefine the threshold for serious repeat offenders. Essentially, this bill administratively changes the phrasing of sections 52 and 53 for increased clarity.

In current statutes, there are four categories of offending, which, if met, mean a person is taken to be a serious repeat offender. As well as clearly specifying that serious repeat offenders are those who have committed three serious offences or two serious sexual offences, the bill's amendments move around distinctions based on the age of victims for serious repeat sexual offences from section 53 to section 52. The bill removes the section 53 category of serious repeat offenders where offenders have committed serious sexual offences to victims under 14 on at least two occasions. It is worth noting that the bill does not soften the law on these child sex offenders.

I repeat that the opposition will be supporting this bill in making sure the positions are clear and well clarified. I also repeat that this is something we have done. We have either supported or led the government on many of these occasions when we have sought to make sure the community is safer. These have included a number of areas and changes to our laws in relation to things like offenders who are unwilling or unable to control their sexual instincts, where the opposition led with proposed legislative changes. Some of those have found favour with the government and some have not.

In addition, there were guilty plea sentence reductions, where the opposition put up a private member's bill in July, before the winter break. That did not find favour with the government, but in relation to the government's bill on it I reiterate that the opposition stands ready to pass that bill. It has our full support. We were ready to pass that bill on Tuesday, Wednesday and again today on that particular measure, the reduction in sentences on guilty pleas from 40 per cent to 25 per cent. It is up to the government as to when it wishes to move that along, but I reiterate that on this bill we stand ready to support the government.

The Hon. M.C. PARNELL (12:41): Sentencing is indeed an incredibly complex matter, and the position the Greens have always taken, and will take again on this bill, is that we believe that task is best suited to the judge, the person who has heard all the evidence and heard all the circumstances. The role of the parliament in establishing crimes is to also establish penalty ranges, and I support that as an approach, that the parliament determines, on behalf of the community, the appropriate maximum penalties for offences. However, what the Greens have always done—and what we will continue to do—is oppose minimum mandatory sentencing, and we will oppose the removal of judicial discretion.

If we go right back to first principles of sentencing, as set out in the Sentencing Act, the general principles of sentencing are, number one, proportionality: let the punishment fit the crime, as *The Mikado*, I think, said. That is not a Gilbert and Sullivan play I have ever performed in, although I did perform in *Trial by Jury* as part of the Warrnambool Players in 1986, that much critically acclaimed performance. I have never done *The Mikado*, but the line we all remember from it is, 'Let the punishment fit the crime.'

That is sentencing general principle number one in South Australian law. The purpose of this bill is basically to overturn that number one sentencing principle to say, 'Well, we are not going to sentence offenders proportional to the offence they've committed; we are going to have different rules in place.' The other of the four general principles of sentencing are number two, parity; number three, totality; and number four I will paraphrase, 'Don't sentence people for what you think they might have done, only sentence them for the offences they have been convicted of.' That is, effectively, general principle number four.

The purpose of this bill is to modify the special rules that have applied to people categorised as serious repeat offenders. The government has pointed out that there have been some anomalies, and that the major crime committed by judges—according to the minister in the second reading explanation—is, in her words, 'Confronted with this anomaly, some judges opted to construe this in the defendant's favour.' That is the crime: the crime of judges construing something in favour of a defendant.

Of course, what they have to do is construe it in favour of something the Attorney-General wants or someone else, a shock jock in the community maybe, wants. That is the crime our judges have committed. The government's response is, 'Let's clarify it.'

I acknowledge that special sentencing rules for serious repeat offenders have been around for some time. They existed in the criminal law before I came to this place. I have taken what opportunities have been given to me in my 14½ years to oppose these types of rules, as I have said, to oppose the removal of judicial digression, and to as far as possible allow judges who have heard all the evidence, heard all the circumstances and are bound by general principle of sentencing number one—proportionality—to let the punishment fit the crime. This bill overturns that fundamental principle and the Greens will be opposing it.

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

Sitting suspended from 12:45 to 14:15.

Parliamentary Procedure

PAPERS

By the Treasurer (Hon. R.I. Lucas)—

Reports, 2019-20—
- Section 47 of the Criminal Investigation (Covert Operations) Act 2009—Australian Criminal Intelligence Commission
- Section 47 of the Criminal Investigation (Covert Operations) Act 2009—Independent Commissioner Against Corruption
- Section 47 of the Criminal Investigation (Covert Operations) Act 2009—SA Police

By the Minister for Health and Wellbeing (Hon. S.G. Wade)—

Child Development Council—Outcomes Framework for Children and Young People—Report, 2019-20

Response to the Social Development Committee Recommendations on the Final Report: Inquiry into the provision of services for people with mental illness under the transition to the National Disability Insurance Scheme

Ministerial Statement

HOW ARE THEY FARING: REPORT CARD FOR CHILDREN AND YOUNG PEOPLE

The Hon. R.I. LUCAS (Treasurer) (14:17): I lay on the table a copy of a ministerial statement made in another place today by the Minister for Education, entitled 'How are they faring?—South Australia's 2020 report card for children and young people.'

PARTNERING ON HOMELESSNESS REFORMS

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:17): I seek leave to deliver a ministerial statement on the subject of partnering on homelessness reforms.

Leave granted.

The Hon. J.M.A. LENSINK: Last year, the Marshall Liberal government released a once-in-a-generation plan to modernise our state housing system. Our housing, homelessness and support strategy, entitled Our Housing Future 2020-30, set a road map to help more South Australians reach their housing aspirations, grow jobs and boost the economy, and we have already begun this important work.

We are focused on providing pathways for people out of homelessness, crisis and temporary accommodation, and rental stress and into safe, stable and affordable housing. We know we need to do better for those South Australians at risk of or experiencing homelessness, including as a result of domestic and family violence.

Reform in this sector is long overdue. We have heard loud and clear from service providers and people with lived experience that we need to change the way services are delivered—currently a fragmented system of disconnected services that are difficult to navigate for people in crisis—to achieve better outcomes for people experiencing homelessness.

We need to prevent people from falling into homelessness. We need to ensure that people get the right support they need when they need it and, if someone does experience homelessness, we need to rapidly rehouse them into safe, stable and long-term housing so they do not spend years in and out of homelessness. Today, this government is committing to achieving these outcomes with the release of Future Directions for Homelessness, which sets a new direction for homelessness and domestic and family violence services in this state.

With a new alliance model governing our services, South Australia will be leading the nation in homelessness service delivery. Services need to be integrated, collaborative, transparent and accountable. For people experiencing or at risk of homelessness, the reform system will ensure services are easy to access and tailored to need, with a focus on long-term outcomes.

Homelessness services will adopt a housing-first approach to better connect people to accommodation and housing options. They will also adopt a principle of cultural integrity and commitment to work with Aboriginal people and Aboriginal community-controlled organisations to deliver culturally appropriate services. Importantly, a domestic and family violence alliance with a safety-first approach will be supported to integrate with homelessness services.

Alliance partnerships will be created across the Greater Adelaide metropolitan area and country South Australia. A statewide, system-wide steering group will provide oversight and ensure linkages between alliances.

Perhaps the most well-known example of a homelessness alliance is the reform occurring in the city of Glasgow in Scotland. I have visited Glasgow and seen the benefits of creating structures that break down outdated and siloed service delivery and funding models. Clear direction, accountability and connection to what clients need, and with a focus on outcomes, will deliver services which are able to help more people more efficiently.

Our recent response to rough sleeping in South Australia during the COVID-19 pandemic has demonstrated what can be achieved for vulnerable people when government and providers join forces. Through this response, more than 540 people have been provided with short-term accommodation and support to address their housing and other needs from a base of stability rather than crisis.

The SA Housing Authority will now work with our service providers to shift from more than 75 individual program-based contracts to a smaller number of alliance-based contracts, with providers working together in a more formal and structured way. To support the service sector to develop their alliances, a series of workshops will be held through October and November before a tender is released for the new alliances, which are due to commence on 1 July 2021.

I invite our non-government partners to join with government to be part of this transformational reform. By working together, we can harness our collective impact to prevent and reduce homelessness across South Australia.

Members

PARLIAMENT WORKPLACE CULTURAL REVIEW PROJECT, PRESIDENT'S STATEMENT

The PRESIDENT (14:21): The council resolved yesterday to request me to urgently progress the SA parliament workplace cultural review project under the auspices of the Commissioner for Equal Opportunity. As members will be aware, the letter and proposal presented by the commissioner asks for the full cooperation of the authorities of both houses of parliament. The

resolution passed by the council yesterday was a resolution solely of this house and did not seek nor did it obtain the concurrence of the House of Assembly.

As the issues to be considered in any review will necessarily involve matters of privilege for both houses as well as management and administrative responsibilities for the Presiding Officers and Clerks of both houses and the Joint Parliamentary Service Committee, just as the previous president wrote to the previous Speaker, I have written to the current Speaker of the House of Assembly informing him of yesterday's resolution of this house and provided him with a copy of the commissioner's letter and proposal and advised him that I look forward to discussing this matter.

INDEPENDENT COMMISSION AGAINST CORRUPTION INQUIRY, PRESIDENT'S STATEMENT

The PRESIDENT (14:23): I have to advise the council that I have received correspondence from the Independent Commissioner Against Corruption concerning a notice of intention to refer to a public authority. The commissioner advises that a report has been made to the Office for Public Integrity concerning the conduct of the Hon. David Ridgway in allegedly signing blank time sheets for former ministerial chauffeur, Mr Barry Jeisman. In compliance with section 38 of the Independent Commissioner Against Corruption Act 2012, the previous commissioner sought to obtain the views of the public authority—in this case the Legislative Council—as to his proposed referral of the allegation to the council.

The previous president sought advice from the current commissioner to assist in informing an appropriate response. The commissioner has advised that she does not think it is for her to suggest a procedure through which the council could formulate a view and convey it to her; however, she has suggested that I might think it is within my province to acquiesce in the proposed referral.

The commissioner advised that she would not be making any recommendation as to what action should be taken by the council, nor would she be asking me to report back to her. I am of the mind to consult with members of this chamber prior to providing a response to the commissioner.

MEMBERS, ACCOMMODATION ALLOWANCES, PRESIDENT'S STATEMENT

The PRESIDENT (14:24): I wish to provide an update to the council on the statement I made on Tuesday this week concerning the request for information from the Independent Commissioner Against Corruption relating to country members' accommodation allowance. Having considered the matter further, I have decided, pursuant to standing order 31, to give express leave to the Clerk to provide documents, papers and other information belonging to the council, and identified as categories of information sought by the Independent Commissioner Against Corruption, that are purely of an administrative nature and do not pertain to proceedings in parliament. Some categories of information identified by the commissioner can best be provided by the member concerned.

Question Time

CORONAVIRUS, TRAVEL

The Hon. K.J. MAHER (Leader of the Opposition) (14:25): My question is to the Minister for Health and Wellbeing regarding the COVID travel exemption scandal. After it was revealed that 11 Victorian family members of AFL players were granted border exemptions, can the minister advise who particularly in SA Health signed off on this, and did the minister or his office receive any notification, advice or briefing about these particular exemptions before they were raised in the media yesterday?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:26): I thank the honourable member for his question. An officer of the Department for Health and Wellbeing made an error of judgement in granting exemptions under the Emergency Management (Cross Border Travel No. 13) (COVID-19) Direction 2020 for family members of Port Power AFL players. The exemption should not have been granted.

However, I want people to appreciate that the officer who made this decision is a member of a team that has been working long hours in a stressful environment for more than six months. Their dedication is unquestionable, and their service has been key to protecting the people of South Australia from COVID-19.

In any human process administrative errors and errors of judgement will be made. The COVID-19 team operates with a commitment to excellence and continuous improvement. They work to minimise errors, correcting them when identified and learning from them so that our response will be even stronger in the future.

In this case, an error has been made. The response of the leader of the public health team, Professor Spurrier, and the response of the Premier has been unequivocal. It is disappointing that an error has been made. A review will help avoid errors in the future, but the government backs and appreciates our team.

CORONAVIRUS, TRAVEL

The Hon. T.A. FRANKS (14:27): Supplementary: how was the error made identified as having been made?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:27): My understanding is that it first came to the attention of the Premier at a press conference yesterday, where a member of the media queried whether exemptions had been granted. My understanding is that, as a result of that question being asked, questions were raised with SA Health and it was confirmed that in fact exemptions had been granted.

CORONAVIRUS, TRAVEL

The Hon. T.A. FRANKS (14:28): Supplementary: has an audit been undertaken of the exemption committee's decisions to ensure that no other errors have been made?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:28): My response to that will be in two parts: first, these are human processes and, as I said, there will be administrative errors, there will be errors of judgement. We need to strive to minimise those errors. At the press conference yesterday afternoon, Professor Spurrier indicated that she would be looking at—

The Hon. T.A. Franks interjecting:

The Hon. S.G. WADE: Sorry, if I can finish my answer—Professor Spurrier indicated that she would be looking at exemptions previously granted. She also indicated that it was her intention to modify the process for exemptions.

As the pandemic has progressed, SA Health, as I said, committed to continuous improvement, changed the exemption process. My understanding is that there's been an exemptions committee for some time, but in the not too distant past a review process was established whereby if they got a decision from the exemptions committee that they thought should be reviewed, they could have it reviewed by, I think, two other members.

One of those members was Professor Spurrier. One of her responses to this error of judgement coming to light is that she has decided to go back onto the exemptions committee so she can have better oversight of the decisions being made. Also, that would presumably mean that another officer would join what I understand is two officers who undertake reviews.

CORONAVIRUS, TRAVEL

The Hon. K.J. MAHER (Leader of the Opposition) (14:30): Supplementary arising from the original answer given: who was the officer within SA Health who granted this exemption originally and what was their position title within the department?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:30): An error of judgement has been made. A review is underway to look at the circumstances and how to reduce the risk of errors in the future. I have asked for a briefing on what has happened, but I am not intending to identify the officer involved.

CORONAVIRUS, TRAVEL

The Hon. K.J. MAHER (Leader of the Opposition) (14:30): Further supplementary: does the minister know what position title the person held?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:31): As I said, I have no intention of identifying the officer.

CORONAVIRUS, TRAVEL

The Hon. K.J. MAHER (Leader of the Opposition) (14:31): Supplementary arising from the original answer: without in any way identifying the individual officer, is the minister aware of and can he inform the chamber what the position of the individual was?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:31): I refer the honourable member to my previous answer.

CORONAVIRUS, TRAVEL

The Hon. K.J. MAHER (Leader of the Opposition) (14:31): Supplementary arising from the original answer: is the minister aware if any pressure was placed on the individual who granted those exemptions and, if so, by whom?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:31): I'm not aware of any inappropriate pressure, but I am looking forward—

The Hon. E.S. Bourke: Inappropriate or just pressure?

The PRESIDENT: Order!

The Hon. K.J. Maher: What's appropriate?

The PRESIDENT: Order! The minister is answering.

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: As I said, I've asked for a briefing. I'm also looking forward to the outcomes of the DPC review.

CORONAVIRUS, TRAVEL

The Hon. K.J. MAHER (Leader of the Opposition) (14:32): Supplementary arising from the original answer, sir.

The PRESIDENT: The absolute last one.

The Hon. K.J. MAHER: Is the minister aware and can he inform the chamber if the individual, whose job title he refuses to identify, has been removed from their duties in the exemption process?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:32): In relation to the error of judgement, my understanding is the chief executive of the Department for Health and Wellbeing has counselled an officer and will consider further action in the context of the outcome—

The Hon. K.J. Maher: So they are still doing the same thing?

The Hon. S.G. WADE: Sorry, I'd like to give an answer to your question.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order! The Leader of the Opposition will be silent! The minister is endeavouring to finish his answer, or he has finished his answer. The Deputy Leader of the Opposition has the call.

Members interjecting:

The PRESIDENT: The Deputy Leader of the Opposition has the call, and her colleagues on either side will be silent.

CORONAVIRUS, TRAVEL

The Hon. C.M. SCRIVEN (14:33): I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing a question regarding border exemptions.

Leave granted.

The Hon. C.M. SCRIVEN: On radio this morning, Professor Spurrier said there would be an external investigator. She said, 'we're looking forward to having an external person come in and just go through all of our processes'. My questions of the minister are: what happened between Professor Spurrier saying this morning there would be an inquiry from an external person and the Premier just hours later announcing his own department would conduct the investigation internally? Will the scope of the investigation include any other border exemption approvals that should not have been granted?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:33): I am not aware of any proposal for a review other than the DPC review. My understanding is that when Professor Spurrier used the word 'external' she meant not SA Health.

CORONAVIRUS, TRAVEL

The Hon. C.M. SCRIVEN (14:34): Supplementary—

The Hon. K.J. Maher interjecting:

The PRESIDENT: I want to hear the deputy leader not the leader!

The Hon. C.M. SCRIVEN: Will the investigation report be publicly released?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:34): The Premier has already indicated the findings in the review would be made public.

CORONAVIRUS, TRAVEL

The Hon. C.M. SCRIVEN (14:34): Further supplementary: will the minister ensure that any and all records—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order! The Hon. David Ridgway is out of order. I would like to hear the deputy leader.

The Hon. C.M. SCRIVEN: Shame on you!

Members interjecting:

The PRESIDENT: Order! Conversations across the chamber are totally out of order and you have been here long enough to know that.

The Hon. C.M. SCRIVEN: Will the minister ensure that any and all records and witnesses from his office and his departments are available for examination within the investigation?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:35): Yes.

CORONAVIRUS, TRAVEL

The Hon. C.M. SCRIVEN (14:35): Further supplementary: will the full investigation report be made public or only the findings?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:35): The Premier made a commitment to release the review this morning. I would have thought the findings are what matters most, but I understand the Premier to mean the full report will be released.

CORONAVIRUS, TRAVEL

The Hon. F. PANGALLO (14:35): Supplementary: can the minister tell the chamber will the head of the Department of the Premier and Cabinet be involved in that inquiry?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:35): My understanding is that the review won't be undertaken by Mr McDowell himself.

The PRESIDENT: The Hon. Mr Pangallo, a supplementary.

CORONAVIRUS, TRAVEL

The Hon. F. PANGALLO (14:35): Is he going to be involved in the inquiry per se—not individually, but is there a committee, a panel, that is going to be set up for it, and will he be involved in oversight of that?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:36): Certainly, the Chief Executive of the Department of the Premier and Cabinet, Mr McDowell, will provide oversight of the review because, if you like, it's being taken on by the Department of the Premier and Cabinet, but my understanding is that it is not the intention of Mr McDowell that he would be the reviewer. Also, I am not aware of whether it will be a sole reviewer or a group of reviewers.

The PRESIDENT: Final supplementary, the Hon. Mr Pangallo.

CORONAVIRUS, TRAVEL

The Hon. F. PANGALLO (14:36): Thank you, Mr President. Does the minister not see that Mr McDowell is also a member of the state Transition Committee and that perhaps could be a perceived conflict of interest?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:36): As I said, Mr McDowell is not undertaking the review himself—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: —is my understanding. I think we are using the term 'conflict of interest' a bit broadly there anyway. All of us have an interest in government departments undertaking continuous improvement, and we have seen that—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: We have seen that in the context of COVID-19 in relation to the—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Hunter and the Hon. Clare Scriven are out of order. Now I want to hear the minister.

The Hon. K.J. Maher: The minister is covering up again.

The PRESIDENT: I would like to listen to him.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: We have seen that in the context of the hotel quarantine review initiated by the federal government. We have seen that in the context of the work done within the South Australian government in relation to—

There being a technical disturbance:

The Hon. S.G. WADE: I'm sorry, I'm not sure what I need to do to avoid that.

The Hon. K.J. Maher: Tell the truth.

The PRESIDENT: Order!

The Hon. J.M.A. Lensink: That's a dad joke.

The Hon. S.G. WADE: It's not a dad joke: it's a childish interjection.

Members interjecting:

The PRESIDENT: Order! I want to hear the minister conclude his answer.

The Hon. S.G. WADE: As I said, it is not new practice. We have right through this pandemic been undertaking a number of reviews—

The Hon. I.K. Hunter: Not into yourselves. This looks crook.

The Hon. S.G. WADE: Sorry, they have been into ourselves. We have had—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: —SA government officers looking at SA government processes to see how they can be improved.

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: Is this bizarre? Is the opposition really suggesting—

The Hon. I.K. Hunter interjecting:

The PRESIDENT: Order, the Hon. Mr Hunter!

The Hon. S.G. WADE: —it's inappropriate for somebody within the South Australian government to suggest how the South Australian government can improve its processes? Well, that's another indication about why they were such a hopeless government for 16 years.

The PRESIDENT: The Hon. Ms Bourke has the call.

MEMBERS, ACCOMMODATION ALLOWANCES

The Hon. E.S. BOURKE (14:38): Thank you, Mr President. My question is to you regarding correspondence from the ICAC. Sir, is there any reason that would prevent you from tabling correspondence from the Independent Commissioner Against Corruption that you quoted from earlier this week, and will you table it?

The PRESIDENT (14:39): The great majority—

Members interjecting:

The PRESIDENT: Order! I'm on my feet. The great majority of the material in the commissioner's letter was included in the statement that I read. There is no reason not to table the full letter; however, there are some personal and other details in the attached summons that would need to be redacted. I will give consideration to tabling the full letter as long as we can make sure that those personal and other details are not included.

TRAIN DRIVERS, ENTERPRISE BARGAINING

The Hon. D.W. RIDGWAY (14:40): My question is to the Treasurer. Can the Treasurer update the council on the enterprise bargaining offer that was made to train drivers today?

The Hon. R.I. LUCAS (Treasurer) (14:40): I'm pleased to be able to advise the chamber that I believe that at around about 10 o'clock this morning the government, through the government negotiators, provided details of, on behalf of the taxpayers of South Australia, a very reasonable and generous enterprise bargaining offer to train drivers in an endeavour to resolve an ongoing difference of opinion, if I can understate the current position, between the union bosses representing the union and the government negotiators negotiating on behalf of the taxpayers, the hardworking long-suffering taxpayers of South Australia.

The train drivers this morning have been offered a new enterprise agreement which includes pay rises of 2 per cent per annum for three years—in broad terms the same offer that has already been accepted by their fellow colleagues the tram drivers in May this year. As I said, on behalf of taxpayers, particularly during the ongoing impacts in financial terms of the COVID-19 pandemic, the pay increase that is being offered to train drivers is in the government's view, and I think in the taxpayers' view, fair and reasonable.

Other governments, both Labor and Liberal around Australia, have actually frozen wage increases for public servants within their jurisdictions. This government has resisted that particular temptation on the basis that we believe hardworking public servants deserve reasonable wage increases that taxpayers might be able to afford. As has been publicly revealed, the union bosses' position has been until recent times a 4 per cent per annum wage increase for four years, which the government on behalf of taxpayers said is completely unreasonable and unacceptable and something which the government on behalf of taxpayers just could not afford or could not accept.

I am pleased to note that we have been advised by Mr Gary Collis, who represents the Australian Employment Alliance, that he contends that he now represents a breakaway group of up to 100 train drivers out of a total number of just over 300 who have not accepted the position of the union bosses of the RTBU and are prepared to negotiate and accept a wage increase in and around the 2 per cent that the tram drivers have previously accepted. This particular group of, as Mr Collis indicates, up to 100 train drivers is prepared to accept that as well.

As part of a range of other conditions which have been included in the detailed offer which has been made to train drivers, there are a range of employment arrangements, work health and safety initiatives to prevent driver fatigue, special leave with pay provisions and maintaining existing employment conditions which are part of what we believe to be a generous package which has been offered.

In addition to that, consistent with the practice of the former Labor government when they offered a guarantee in 2017 to facilities management staff such as cleaners in SA Health to resign and accept employment with Spotless—of course, members would be aware that Spotless is now part of the Keolis Downer group. The former government offered an incentive payment to transfer to Spotless, which is now part of Keolis Downer. They offered $35,000 to transfer from their cleaning jobs in SA Health to being employed by Spotless.

Whilst the RTBU sought a payment of $60,000 in terms of an incentive payment, the government offer is much less than the former Labor government's offer to cleaners—which was $35,000—at $15,000, which has been consistent with some other transfer payments in relation to outsourcing agreements that have been entered into by the former Labor government and former Liberal governments as well. The offer also includes a three-year employment guarantee and a range of other benefits.

It is the government's wish to try to prevent industrial disruption. It is the government's belief that this is a fair and reasonable offer to train drivers, which a not insignificant number of their members would appear to be willing to accept, albeit there would appear still to be not a majority of members in that particular breakaway group, the Australian Employment Alliance. It is the government's intention to try to proceed to a ballot of train drivers through the month of October, and we would hope to have the result of that ballot by the end of October or the first week of November.

We would hope that the union bosses of the RTBU would move completely away from their demands for 4 per cent over four years in pay increases and a $60,000 transfer payment to move to the outsourced provider, and be prepared to see that this is a generous offer that taxpayers have made. It is similar to the offer that the tram drivers have accepted and therefore one that, in the interests of the taxpayers of South Australia, should be accepted by the train drivers.

HOMELESSNESS SERVICES

The Hon. T.A. FRANKS (14:46): I seek leave to make a brief explanation before addressing a question to the Minister for Human Services on the emerging topic of older women's homelessness.

Leave granted.

The Hon. T.A. FRANKS: It is deeply concerning that older women are the fastest-growing cohort of homeless people in our nation, with 34 per cent of women aged over 60 living in poverty and over 30 per cent of the newly unemployed or underemployed aged between 51 and 65 and female. When the COVID supplement is cut this week, it will actually be older women who will be struggling even more to keep a roof over their heads. My question to the minister is: what measures is the Marshall government taking to stem the growth of older women's homelessness?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:47): I thank the honourable member for her question and, indeed, note her commitment to this area. I think it was last year that the Zonta community organisation invited a range of political parties to speak about this topic of older women and homelessness. I have also met with former Senator Kay Patterson, who has raised similar issues which clearly relate to the areas within the federal domain, such as superannuation and those issues.

It is a complex area, but homelessness for all cohorts is a complex area given that there can be a range of reasons why people fall into homelessness, whether they are economic, domestic and family violence, mental health issues or other challenges that people experience. We know that there is quite a number of people in South Australia who are quite vulnerable because they are in either rental stress or mortgage stress and so can just be a few pay packets away from falling into that homelessness cycle.

I have spoken already about the measures in terms of the recent response to COVID, which we believe have been highly successful, together with our partners. There is a range of measures in terms of financial counselling and specialist support services, particularly for those who are experiencing domestic and family violence. We have a range of services that we fund, including Women's Safety Services, which are well known to people. We also have the expectation, through the homelessness services, that services into the future are going to be more effective and more focused on that prevention side. These areas are important for all cohorts.

At the moment the system is quite disconnected, in that the government funds specific services rather than outcomes. A lot of this is driven by the way the systems are funded, so we are looking towards having services working more effectively to produce better outcomes for all people experiencing homelessness.

We also have a program that was targeted towards women who might want to get back into the housing market, through a pilot of affordable homes. We set aside nine properties which were, I think, a shared equity product. That has been a really useful learning, because the experience we had with a range of people who were interested was that they lacked either the deposit or the income stream. That meant we needed to adjust those programs, and we are still working on that particular aspect of how we can assist women into homeownership.

I think there may be three contracts either close to or having been signed for those properties, but there is a range of services that are available. The financial counselling area is one we are also very interested in, to assist women to know what services are available and to manage their finances.

We are certainly looking at this area not just as individual cohorts but as a system-wide approach, because a lot of the drivers can affect people of various ages and circumstances. It is more holistic than just a specific or particular response to certain people, but the affordable homes program was one that was particularly directed to older women.

HOMELESSNESS SERVICES

The Hon. R.P. WORTLEY (14:51): I seek leave to make a brief explanation before asking the Minister for Human Services a question regarding the Glasgow model for homelessness reform.

Leave granted.

The Hon. R.P. WORTLEY: Today's *Advertiser* has an article about the government's homelessness reforms. It says:

> The government says it is funding about 75 separate homelessness programs in South Australia delivered by more than 30 organisations, creating a confusing web for people in crisis.

In contrast, the CEO of the Hutt St Centre said on radio today, 'The greatest demand is a shortage of housing for people to flow through to out of homelessness', and, 'We all work very well together quite collaboratively.' My questions to the minister are:

1. Given the minister's criticism of the number of services and organisations, exactly which services and providers does the minister think should close down?

2. Why is the minister building and selling homes for $400,000 each when the sector is telling us that we need more social housing?

3. Why is the minister rushing this reform through when the $20 million Homelessness Prevention Fund tender closed in June but still hasn't been announced?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:53): I am not sure I've got enough time to answer this question; it might depend on how much leeway you give me, Mr President. There is a lot to unpack in that question—a lot of which was actually factually incorrect.

Since we came to government, we have been on the journey for homelessness reform for a very long time. We have consulted widely with the sector, and they will tell you that the system is broken. The contracts for homelessness services were rolled over and rolled over and rolled over, and what we are seeing with people experiencing homelessness is not that the overall numbers of people are increasing but that the people experiencing some form of homelessness experience it for longer and cycle back into the system. Clearly, that says something is not working.

The sector itself will say the system is broken and we have been working closely with it through a range of different mechanisms. In terms of consultation, we have a homelessness sector reform group, which has been guiding this document that we have just released today, and it is clearly supportive of the reforms.

I just remind everybody about why we have homelessness services: it is because it is the person who has the experience whom we need to serve. That is the primary purpose of funding services. What they also tell us, and there are quotes in the public document of which people can avail themselves, is that it is not working for them. I have spoken to people who have told me some pretty absurd stories, like, 'I went to a particular service and I was turned away because I wasn't their cohort.'

We need to have an approach where we have what is referred to as a 'single door'. A number of people, particularly if they are experiencing rough sleeping, might not have ID and might not have a phone, so for them to turn up to a service and be told, 'You have come to the wrong service,' is completely absurd. We need to reorient the service so that it is about the individual whose circumstances must be considered—their individual circumstances.

What we want to move towards is what is called a housing-first approach. What we have seen work successfully through the COVID experience is that the services have collaborated much better than they have in the past in terms of providing exit points. Also, when people were in the hotel system, the support services, case management, mental health and drug and alcohol services were able to know where that person was because they had a fixed address, so they have had much more success in stabilising people and assisting them through their journey back to doing all the things that the rest of us take for granted. That is where we want to go.

The way these services are funded at the moment is something you will often hear criticised by the community sector in that they need to compete. The government sets the priority and sets the parameters, organisations fit those particular parameters and that particular tender document, and then they all go and do their separate thing. Sometimes, the KPI can be about referring someone who has one particular issue to another service. We want to focus on outcomes. What we are interested in is actually getting people off the street and providing them with the services they need at the point in time that they need them.

We also believe that there needs to be a much greater focus on using the private rental sector. Not everybody is able to be housed in the public housing sector—that is just reality. There is going to be much more of that going forward. Particularly if it is managed, we think that that is much more feasible. It is about actually providing the service to the person at the point at which they need it—a roof over their head, stability, the services that wrap around them and going on that journey.

We have particular beds and services in the system that are tagged for a particular cohort, which means that they are not accessible to other people. There are a whole lot of things in the system which, from an overall point of view, don't make sense. The alliance model is going to assist services to work together and to have much more flexibility internally, within their alliance, on how

they manage those allocations. Rather than a competitive approach, it will be much more collaborative.

I have also noted the occasional criticism from some in relation to the Affordable Homes Program. We believe that we can walk and chew gum at the same time. We have also looked at the system from a system point of view. We want to shift it from the crisis end. With the gracious benevolence of our Treasurer, the SA Housing Authority received four years' worth of funding up-front, which means we have working capital. We might as well put it to work to deal with an area that has been sadly neglected in South Australia, with these 46,000 people who are in housing stress of some form or another. They welcome the advent of affordable homes.

If anybody looks at the Affordable Homes website, they can see that there are houses that are priced very modestly. I think I saw one quite recently that was less than $200,000, which puts it in the price bracket for people on quite modest incomes. There has never been a better time to buy, in our generation, than at the moment. If we can take the pressure off the people who may fall into homelessness—prevention, which we know is much cheaper than having to assist people through that process—then we will not just save them the trauma of their experience but they will have much better outcomes.

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

HOMELESSNESS SERVICES

The Hon. R.P. WORTLEY (15:00): Can the minister tell me exactly how much expenditure the authority has been granted by the Treasurer for the $600 million equity injection?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:00): I was referring to the 2019-20 budget, which was the up-front grant. What that does is give the authority funding certainty. There is a range of programs in terms of what it does—maintenance, a whole range of programs. If you want to use the analogy of pouring a bucket of water into a swimming pool and trying to pull the same bucket of water out at the end, that is a very difficult thing to do because there are a lot of ins and outs—grants from NAHA, land tax, a whole range of ins and outs.

So in terms of the exact details that the member is asking, I think it is some sort of technical accounting issue which I don't think there is an exact answer to. However, obviously the strategy that we released late last year is something that has the approval of cabinet.

DRUG AND ALCOHOL TREATMENT SERVICES

The Hon. T.J. STEPHENS (15:01): My question is to the Minister for Health and Wellbeing. Can the minister please update the council on services available to support both people with substance abuse problems and their families and friends?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:01): I thank the honourable member for his question. Substance use problems are a major cause of preventable disease and illness in Australia. Illicit use and other substance use problems cause death and disability and are risk factors for many diseases. We also see the impact of these behaviours in our emergency departments where challenging behaviours put stress on our clinicians and disrupt services.

The Marshall Liberal government is committed to working with the community to improve the outcomes for families affected by drug and alcohol issues, as well as to reduce their incidence. The 2019 National Drug Strategy Household Survey provides some encouraging data, showing that fewer Australians are smoking, more Australians are giving up or reducing their alcohol intake, rates of substance use are falling amongst younger generations, and non-medical pharmaceutical use is down. However, the survey also found that 16 per cent of Australians aged 14 and over had used an illicit drug in the previous 12 months.

The consequences of illicit drug use and substance use problems touch all facets of a user's life—their health, their relationships, and employment and education opportunities. It can also have a profound and life-changing impact on the user's family and friends. Families, support people and peers can be critically important for people who have problematic alcohol and other drug use.

Very often, they find themselves being the first responders in emergency situations, and their quick responses in times of great stress can be vital in reducing fatal overdoses or other critical health incidents. Families may provide important emotional support as well as practical assistance. They can provide an important link to treatment, encouraging and supporting their loved ones towards the health services that can assist them.

Family Drug Support is a non-government organisation that offers support and education services to the family and friends of people with problematic alcohol and other drug use, offering a family-focused approach to responding to alcohol and other drug issues. Family Drug Support officers work tirelessly to help reduce the stigma, shame and discrimination experienced by people with substance use problems.

In South Australia, Family Drug Support is funded by SA Health under the specialist drug and alcohol assessment and treatment service program to provide family support and education services to families directly affected by substance misuse. Services include the Stepping Stones to Success program; a telephone support service for crisis support and counselling for families; Stepping Forward information and education sessions to various community and family groups as well as treatment services; group meetings for interfamily support; individual support where appropriate; and training sessions to teach potential leaders and facilitators of the Stepping Stones to Success course and volunteers on taking calls on the telephone support service, including technical knowledge of drug issues and listening skills.

Family support group sessions are held at important locations in metropolitan Adelaide, as well as Port Augusta, Barossa and Mount Barker. We are fortunate to have Family Drug Support providing support to families in South Australia. Their strong advocacy for families and improvements and access to service continues to be very important. I would like to thank all those involved for their ongoing efforts. I also want to pay tribute to the families and friends of those with substance use problems. Their strength and resilience is vital and key to the welfare of the person for whom they are providing support.

AFL GRAND FINAL

The Hon. F. PANGALLO (15:05): I seek leave to make a brief explanation before asking a question to the Minister for Health and Wellbeing about the AFL finals.

Leave granted.

The Hon. F. PANGALLO: As we know, the South Australian government made an impassioned bid to host the AFL grand final next month. As far as I am aware, Adelaide remains the fallback venue should Queensland be forced to relinquish the game if there are fresh outbreaks of COVID-19. My question to the minister is: what did the government intend to do if Adelaide hosted, or hosts, the grand final and, God forbid, Port Adelaide didn't make it and two Victorian clubs faced off? Would they have allowed families and fans from Victoria or interstate to attend?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:06): Clearly, that's hypothetical, but in terms of the detailed planning in relation to the bid for the AFL grand final, that was coordinated, as I understand it, out of the Department of the Premier and Cabinet. Certainly there was consultation with SA Health, but I was not involved in that.

AFL GRAND FINAL

The Hon. F. PANGALLO (15:07): How can it be hypothetical if you are putting a plan—

The PRESIDENT: No explanations. Just ask the question.

The Hon. F. PANGALLO: I challenge that it is hypothetical, minister, because detailed plans would have been given to the AFL about who would be allowed into South Australia.

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:07): I am happy to give way on whether it is hypothetical or not. I am also happy to seek information from SA Health on the strategies they used. It might be a good opportunity just to pay tribute yet again to the Stadium Management Authority, one of the most creative agencies that SA Health has been working with, for being, in my view, a testbed for COVID-safe practices which will be useful for years to come.

I think it is really important for every member of this council, as leaders within their community, to try to guard against what seems to be a prevailing attitude that we will have a vaccine in January and it will all be over. The reality is there is a long way to go in this pandemic. It is very unlikely that a vaccine will serve as a silver bullet. Even if it did, it would take months to roll out. We have a long way to go in terms of maintaining a dynamic approach to mitigating the risk of COVID-19. The answer to the question on notice may well give us further food for thought as to what we need to do as a society to be COVID-safe.

AFL GRAND FINAL

The Hon. F. PANGALLO (15:09): Thank you for the response, minister, and perhaps we could also congratulate Port Adelaide on winning the minor premiership. Just to clarify—

The Hon. T.J. Stephens interjecting:

The Hon. F. PANGALLO: I am a man of all seasons, Mr Stephens.

Members interjecting:

The PRESIDENT: Order!

The Hon. F. PANGALLO: Just to clarify the question on notice to the minister: would they have allowed family and fans from Victoria and interstate to attend if South Australia hosts, or would have hosted, the grand final?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:09): I am certainly happy to ensure that the answer to the question on notice addresses that issue. Having been challenged by the honourable member, I am actually a very flexible man: I am willing to barrack for Port Adelaide whenever they are not playing the Crows. Being a man for all seasons, I hope you have a better life expectancy than your predecessor.

HOMELESSNESS SERVICES

The Hon. I. PNEVMATIKOS (15:10): I seek leave to make a brief explanation before asking a question of the Minister for Human Services regarding the homelessness reform Glasgow model.

Leave granted.

The Hon. I. PNEVMATIKOS: *The Advertiser* today reported on the minister's preference for the Glasgow model to address homelessness. The model was first piloted in 2010, and since then has not been used widely in the UK outside of Glasgow. A UK parliamentary reporter said:

> It is claimed that Housing First is a better model to help those with severe and complex needs, but it is not seen as a replacement for all homelessness services and strategies. Its value is primarily as a supplement to existing strategies.

The Glasgow evaluation report also said:

> Any dissatisfaction expressed by service users has related predominantly to substantial delays in the allocation of flats, reflective of current high demand for housing…

My questions to the minister are:

1. If the Glasgow model is the solution, then why did 43 homeless people die during 2019 in Glasgow? That is a city that has a population that's half the size of Adelaide.

2. Did the minister even inspect any other homelessness models when she visited the UK, and what were they?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:11): I thank the honourable member for her question. In relation to other places that we visited in the UK, I am happy to double-check all the places we visited, but there was The Passage and some other services as well that we spoke to when we were there before we went to Glasgow.

Part of the purpose of going to Glasgow was to attend the Institute of Global Homelessness conference, which is the organisation which accredits, if you like, the Adelaide Zero Project, and of which Adelaide is a vanguard city. There were a range of people from around the world, including

Sydney, people from India, from northern America, particularly Chicago, which is also a city that has done a lot of work in this space. There were a lot of learnings from each of those.

Dame Louise Casey is the matriarch of a range of these programs and is the head of IGH and she attended. She has been to Adelaide a number of times–I think initially at the invitation of Mr Ian Cox, who at the time was running Hutt St Centre–and she has been instrumental in ensuring that we align the Adelaide Zero Project with the learnings from her work for governments of various persuasions in the United Kingdom.

I think I would take issue with some of the assertions that the honourable member has in her question, which are probably quite selective and inappropriate. The Glasgow model is basically a funding model for the non-government services. We fund the services we have in South Australia by individual contracts, as I explained in response to a previous question. The government sets the parameters, sets how much the funding amount is, then organisations individually bid against that competitively. It has resulted in what is a fractured system in South Australia, where people find it hard to navigate and where, if they happen to not fit the cohort of the offering available, they can sometimes be turned away, which is quite absurd.

What we are hoping and very confident will take place through the alliance model is that for each of the alliance regions the funding will match largely what is existing in those regions and that the alliance partners will form and they will then make decisions about how those services operate on a day-to-day basis. It means that if you have a service provider that's providing counselling, financial support, mental health support, they can all work across those services rather than having to make a formal referral between those particular services, which is what often happens at the moment.

I recognise that in regional areas the collaboration is often much better because they all know each other, and so a lot of those workarounds take place. Particularly in the metropolitan area, where we have a large number of outlets focused on different areas, we believe the arrangement is going to be much better. We are very pleased that the sector has been engaged throughout the process in terms of the consultation.

It is a new funding model for them to work with us, but there will continue to be a lot of support through workshops to help the sector to understand how those funding models will work into the future. We continue to work in collaboration and through lengthy consultation to ensure that we have robust, responsive services that provide the best outcomes for people experiencing homelessness.

HOMELESSNESS SERVICES

The Hon. I. PNEVMATIKOS (15:16): Supplementary: in terms of the collaboration, what agencies and organisations have been involved?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:16): They have all been able to be involved in one way or another and, certainly, as we roll out the workshops, that will continue. The working group includes Baptist Care, Service to Youth, Women's Safety Services, Neami National, Uniting Country SA, Junction Australia, Kornar Winmil Yunti, AnglicareSA, Uniting Communities, Centacare and Nunga Mi:Minar, which we believe have been representative of the broader sector so that they could work through with SAHA in terms of the details of everything that needed to be considered with this process going forward. The sector more broadly will continue to be engaged in those conversations.

HOMELESSNESS SERVICES

The Hon. I. PNEVMATIKOS (15:17): In terms of the model, why weren't Drug and Alcohol Services regions also included?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:17): DASSA is funded through a different a different portfolio. They are not formally part of the homelessness sector. They have certainly, I think, through the period of COVID, where we have had people in hotels, we have had fixed addresses, been able to more effectively assist people through that service. We believe that when people are provided with a roof over their head and are able to stabilise, they are much better able to engage with those other services.

COVID-19 YOUTH GRANTS

The Hon. J.S. LEE (15:18): My question is to the Minister for Human Services and about supporting young South Australians respond to the impacts of COVID-19. Can the minister please provide an update to the council about the Marshall Liberal government's new COVID-19 youth grants, which are now on offer?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:18): I thank the honourable member for her question. We were very pleased that, through this COVID period, we have been able to provide a specific COVID-related round of funding to the youth sector, given that normally there's a range of activities that young people are engaged in, particularly through their local councils, which may not have been taking place. In recognition of that, we have a youth-led recovery grant that we are running in partnership with the Local Government Association.

The total funding pool is $500,000. Up to $20,000 in funding is available for individual councils, or $50,000 for collaboration between councils or not-for-profit organisations. The programs, as you would be very interested in, include a particular focus on mental health and social and emotional wellbeing and resilience. We are also seeking to address social isolation and digital inclusion as particular priorities.

In addition to these particular grants, which will close shortly, we have also reoriented the Strong Futures/Youth Action Plan projects to provide $120,000 to the Working Women's Centre for a 12-month youth project officer position, and $120,000 to YACSA for a dedicated 12-month recovery project officer. There are additional questions in the regular wellbeing SA survey to continue to monitor the views and feelings of young people to help the government to shape recovery projects. We are reorienting the youth support and development stream of the Community Services Support Program to align with youth-related COVID-19 recovery directions, including offering two-year contract extensions for critical services and seeking additional resources to assist with the expected surge in demand for youth services.

So there are a range of things that we are doing as an agency, in addition to the work in other portfolios across health and employment, to assist young people who have been disadvantaged in their own individual ways, particularly in relation to their social interactions. It is pleasing in South Australia that education has been the least interrupted possibly of all jurisdictions in that schools, particularly, remained open during the highest level of restrictions, and we have been able to ease restrictions in this state much sooner than other jurisdictions.

SMALL BUSINESS COMMISSIONER

The Hon. M.C. PARNELL (15:21): I seek leave to make a brief explanation before asking a question of the Treasurer about telephone access to the Office of the Small Business Commissioner.

Leave granted.

The Hon. M.C. PARNELL: I have been contacted by a constituent who has expressed concern that a major communication method to the Office of the Small Business Commissioner has been shut down. As they said, if the staff are still working they should answer the phone. I note that when my team were working from home early on in the pandemic, our office number was diverted to the phone number for my office manager—it wasn't that hard to do. But on checking the Small Business Commissioner's website, it has a note on the homepage saying:

> Due to the current COVID-19 situation, this office will be operating online only. Please email us…and we will contact you as soon as practicable. Alternatively you can contact us via the 'contact us' page on this website. We apologise for any inconvenience.

I looked at the contact page and I could find no telephone number there either. A Google search does bring up a telephone number, but when you ring it you get a recorded message telling you that due to COVID-19 the office has moved to a working-from-home system. It then invites you to email; and you cannot leave a message on that phone number.

My question of the Treasurer is: given the importance of small business to our state and given the impact of the COVID-19 health pandemic on small business, given the fact that the Office

of the Small Business Commissioner is responsible for providing dispute resolution services in relation to retail and commercial tenancies, and given my understanding that the current advice from the government is that people should go back to work if they can, when will the Small Business Commissioner reopen their phone lines?

The Hon. R.I. LUCAS (Treasurer) (15:23): The Small Business Commissioner reports to, I think, the Attorney-General or the Deputy Premier, so I am happy to take the question on notice. I must say that my experience of working with the Small Business Commissioner, particularly on the commercial tenancies legislation, is that he in particular is very accessible. I am unaware of this issue in relation to the general phone number, but I know on a number of occasions he has conveyed his own number to various constituents and undertaken to take calls from them directly on his phone or, indeed, for him to ring individual constituents in an endeavour to try to resolve what was a commercial leasing issue.

I certainly don't believe it's indicative of the general approach of the Small Business Commissioner that he seeks to closet himself away and be as inaccessible as possible. That has not been my experience, and I place on the record my thanks to him and his team for what they are doing during COVID-19 in relation to the complexities of COVID-19.

In relation to the specifics of the honourable member's question, I will certainly refer the issues to the Attorney-General or will take them up directly with the Small Business Commissioner and seek a response. I do believe that someone had advised me recently that the Small Business Commissioner might have been moving office, and I don't know whether that is in part caught up with the issue of telephone numbers at the moment. I don't know, but I can certainly clarify whether that is indeed the case or not.

In relation to the honourable member's contention: is it the government's current advice to encourage people back to operate from their work office, I think either as of late last week or early this week the Commissioner for Public Sector Employment (I believe) did send an email out to indicate that it now was the default position that we were encouraging public servants, wherever possible, to work from the office as opposed to, in the alternative, working from home, whilst acknowledging that people with vulnerabilities and others may well still choose to have to work from their home office environment. So the member is correct in relation to that part of the explanation.

I am happy to take the issue up but, as I said, my experience with the Small Business Commissioner has been entirely favourable in terms of his willingness to be accessible and it would surprise me that he and his team were trying to make it difficult for people to contact them, but I will take the issue up.

Parliamentary Committees

CRIME AND PUBLIC INTEGRITY POLICY COMMITTEE

The PRESIDENT (15:26): I have to advise the council that at its meeting held yesterday, the Crime and Public Integrity Policy Committee was unable to come to a decision as to who is to be its presiding member. Therefore, pursuant to section to 15N(4) of the Parliamentary Committees Act 1991, the matter is referred to the council for its determination. I call on the Treasurer.

The Hon. R.I. LUCAS (Treasurer) (15:26): I move:

> That the Hon. D.W. Ridgway be appointed Presiding Member of the Crime and Public Integrity Policy Committee.

In moving the motion and speaking to it, as I recounted just over two years ago, I am disappointed that I am having to move this particular resolution or a similar resolution to one that we moved two years ago. That particular motion in the end resulted in the government-nominated appointee being appointed but I am advised that that may not be the case in relation to this particular motion that is before the chamber at the moment.

In speaking to the motion and in speaking in support of my colleague being appointed, I do want to make the point and make it quite strongly; that is, there has been from the government and the opposition, whether that be a Labor government or a Liberal government, for many decades a

longstanding convention that the standing committees of the parliament have been chaired by the government nominee.

There has been, over the last 10 or 20 years, a longstanding convention that in the Legislative Council select committees have been chaired by non-government members, and that has been accepted by the former Labor government and the former Liberal government unless, of course, the non-government members decided they did not want to chair a particular committee. There have been some isolated or rare exceptions. So that has been the practice in relation to the arrangements in relation to standing committees.

I accept the view that the Hon. Mr Parnell, for example, is on the record as saying that he did not subscribe to that particular view, and given that he is not a member of the government or the alternative government and with great respect is highly unlikely ever to be so—

The Hon. M.C. Parnell: You short-changed me.

The Hon. R.I. LUCAS: Well, given he has announced that he is about to retire before the next election, it is highly implausible—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —it's highly implausible that that is going to be the case. My criticism in relation to what looks like being a breach of this longstanding convention is directed—because this has only occurred since the 2018 election—to the Leader of the Opposition in another place, Mr Malinauskas, and the Leader of the Opposition in this chamber, the Hon. Mr Maher.

It is quite clear that those two gentlemen have led a charge to tear up longstanding conventions that have governed the operations of the parliament in relation to standing committees. I want to make it clear that it is my view that if at some stage in two years, six years,10 years or 14 years, when the Labor Party manages to find itself back in government, all bets are off in relation to the longstanding convention regarding government leadership of standing committees.

The Labor Party cannot expect, as they are seeking to do, that when in government for the 16 years prior to 2018 they could say, 'There is this convention and we expect you to abide by it as the alternative government'—which the Liberal Party did—but then in 2018, the Leader of the Opposition, Mr Malinauskas, and the Leader of the Opposition in this particular chamber, the Hon. Mr Maher, can decide, 'What the heck. We will just tear up those conventions. There is a different rule when there is a Liberal government and a Labor opposition.'

As I said, in the unfortunate circumstance for the people of South Australia that in two, six, 10 or 14 years' time there is another Labor government, all bets are off because the precedent the Labor Party are now establishing will come back, and come back to their particular cost. These issues are important issues. The Crime and Public Integrity Committee has important work to do. The chair of that particular committee has always been a government member—in the past Labor, in recent times a Liberal member, because that has been the colour of the government of the day.

In the event of there being a tied vote at some stage in the future, the chair has two votes, a deliberative and a casting vote. The actions that are being contemplated today are actions that mean that for the first time this particular committee will be controlled by non-government members. The actions, as I understand it, potentially will mean that the person who has both a deliberative vote and a casting vote will actually be a member of the crossbench, the Hon. Mr Pangallo.

With great respect to the Hon. Mr Pangallo, there are a number of issues where we are in furious agreement and there are a number of issues where we are in furious disagreement. Having observed and read some of the transcripts of the Crime and Public Integrity Committee, some of the views and some of the approaches the honourable member has adopted with witnesses before that particular committee, particularly in relation to issues that might have related to investigations at the Sturt Police Station, and indeed others, and general approaches that he has indicated in relation to the work that he believes ought to be done in relation to looking at specific cases, as opposed to a general oversight of the operations of integrity bodies in South Australia, I am in furious disagreement with.

I respect the fact that he is entitled to his particular view in relation to these issues, but as a member of the government—and even if I had been a member of the alternative government at this particular stage—that is not an approach that I would want to see being adopted in terms of governance of the committee which has oversight of something as critical as the integrity bodies in South Australia.

That is the contention I put to the chamber today. I know that the Hon. Mr Parnell, when he spoke on this issue a couple of years ago, pooh-poohed the idea of conventions. I quote his words—

The Hon. M.C. Parnell interjecting:

The Hon. R.I. LUCAS: I quote:

> To suggest that there is some unwritten rule—and that it is really all a convention is: some sort of unwritten rule—that says that the government that we are seeking to hold to account somehow has a right to run the committee and to have a deliberative and casting vote on the committee that holds the government to account is, I think, an absolute nonsense.

As the Hon. Mr Parnell interjected, there are some conventions he wants the government and the parliament to abide by. He sent an email today in relation to a convention we abide by, when the Labor Party came to us and said, 'The government and the opposition want to jam the sentencing bill through today,' on 24-hours notice.

We were being criticised in the media by the Labor Party because we were not prepared to jam the bill through, and how many paedophiles or other criminal offenders were going to be let loose because we were refusing to jam the bill through without notice today. I maintained the convention and position, on behalf of the government, that if the opposition and all the crossbenchers were prepared to debate the bill today, I was prepared to debate it.

The Hon. Mr Parnell I have defended to my lower house colleagues who do not understand the conventions of this chamber perhaps as well as upper house members do. However, in the interests of good government and good governance, there are unwritten rules that help govern the sensible operations of our committees, our parliament and our procedures. They are for the good, and that is the reason we generally abide by them. On behalf of government members I refused—

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —when we were advised at, I think, 2 o'clock today that the honourable member, consistent with the position he adopted last evening, was unprepared or unwilling to proceed. He indicated in a note to both whips that he was pleased that the convention, which we had abided by, had been adopted by the whips.

These unwritten rules are not some arcane tradition to be laughed at or scoffed at, they are important mechanisms to ensure the proper operation of committees, the parliament and procedures in this particular house. We can pick and choose and say, 'That's a good convention because it suits me,' or 'That's a bad convention because I don't happen to agree with that,' and that is fine.

However, my major criticism here is not directed to the Hon. Mr Parnell because, frankly, this particular convention is one that has existed between the government and the alternative government. There are other conventions in relation to it in terms of how we constitute the committees: the government and the alternative government negotiate in terms of the numbers, in terms of the chairing of those committees. All those things are longstanding conventions that the government and the alternative government have acknowledged and abided by.

However, for some reason the Leaders of the Opposition in both houses have torn up those conventions and said, 'Stuff it, it doesn't matter. We are now in opposition and if there is a Liberal government there are different rules we're going to abide by, and that's going to be the case.' If that is going to be the case when the vote is taken today, then let it be quite clear that if at some stage in the future a Labor government says, 'Now that we're back in government we want you to abide by these conventions,' it will certainly be my earnest entreaty, if I am still alive, to my younger colleagues to tell the Labor government to 'Stuff it.' If the conventions are going to be torn up by the Labor opposition, the same rules will apply if there is a Labor government at some stage in the future.

I urge members in this chamber to reconsider this particular position for the reasons I have outlined. I certainly urge members, particularly members of the Labor Party, to abide by what has been a worthwhile and longstanding convention that has served us well, in particular in relation to this critical position, which is an oversight of the public integrity bodies in this state. I believe there had been some views shared by members of the Labor Party and the opposition in relation to reform of the integrity bodies in South Australia, but who knows what the position of the Australian Labor Party is in relation to these particular issues from this day forward.

The Hon. K.J. MAHER (Leader of the Opposition) (15:39): I move to amend the motion as follows:

Leave out the words 'the Hon. D.W. Ridgway' and insert the words 'the Hon. F. Pangallo'.

I will speak to this amendment. The Treasurer speaks of longstanding conventions. Quite frankly, we will not take that from that man. I will briefly go through the litany of offences committed by the Treasurer's party in the last two years against what he says are longstanding conventions.

I will start with perhaps the most fundamental convention we have in the operation of not just this parliament but Westminster parliaments around the world and that is the operation of pairs, which allows good governments to function, allows oppositions to function and allows the democratic will of the people to be reflected in the parliament when a member, for good reason, cannot be in the chamber.

There is nothing more fundamental to how we work and how the public expect us to work than the trust that is built with the operation of pairs. Well, the Treasurer's party said 'stuff it' to the longstanding operation and the longstanding convention of pairs. In the lower house, on a critical vote—

Members interjecting:

The PRESIDENT: Order!

The Hon. K.J. MAHER: —they said 'stuff it'. In the Treasurer's words, they said 'stuff it' on pairs. They did not abide by the longstanding convention on pairs. They deliberately and sneakily hid one of their own, who was not supposed to vote, and then brought them into the chamber on a vote. There has been no bigger breach of trust and faith in the South Australian parliament than the sneaky, devious way the Treasurer's party broke the convention on pairs earlier in this term of parliament.

Then, after the apology, after the Treasurer's party had to come grovelling into parliament and apologise for their huge breach of trust on pairs—I think it was the very day—they refused leave and pairs were off again in the lower house. Fortunately, that was not visited upon us here, but I will not have the Treasurer lecture and I will not have the Treasurer tell us that we are breaking convention when they have broken the most fundamental convention there is for the operation of parliament. We will not be lectured by this man about how parliament operates. They have made the most fundamental breaches of trust we have seen in this parliament in living memory, and even in the Treasurer's living memory.

Let's go back and have a look at when it is convenient to do things that the Treasurer would have said, if it were the other way around, were huge and the most fundamental breaches of convention ever. We remember when we were debating in this last parliament the tax on banks that was introduced as part of budget measures. The now Treasurer thought at the time it was politically expedient to break a convention by doing what he did then. At the time, he thought it was great politics.

Today, the Treasurer is talking about the opposition—myself and the opposition leader in the other chamber—breaking with convention when he personally has great form for this in this chamber. As I have said, the most fundamental breach of convention we have seen in living memory has occurred under his government with pairs in the lower house.

We will go further and talk about things people have regarded as longstanding ways of operation in this chamber. When there have been joint committees administered by this chamber, the very longstanding operation had been that the mover of the committee chaired the committee.

This party decided not to do that earlier in this term of government. They said 'Stuff it, we don't believe in that. We'll put up a government member to chair a select committee.' That is something the Treasurer just moments ago claimed never happens. Well, that is what his party did.

Let's have another look at what has been said are conventions: the mover in this place of a select committee has first right of refusal to chair that committee. Very recently, with the COVID-19 committee, the Hon. Stephen Wade decided to get involved and put someone else up as chair of that committee. It is coming home to roost now when they break pairs. The Hon. Stephen Wade thinks he has sneaky little political tactics that will do well. There were discussions between the Labor Party and the Liberal Party when the Hon. Stephen Wade thought he was being very clever with that, things like the voting for President. There was no agreement that the government-endorsed representative would be the President, and we saw that play out, sir, and you are now the President.

The Liberal Party had been on notice for breaches—what they have done—the breaking of pairs and the rolling of chairs of select committees, which the Treasurer uses as a defence that it has never been done. We will not be lectured to by that man. We will be supporting the Hon. Frank Pangallo as the Chair of this committee.

Mr President, because I do not have the benefit of *Hansard*, I wonder if I might ask that you read out the statement you read about the Liberal's proposed chair and an investigation by ICAC so that we can understand again—

An honourable member: Why didn't you listen?

The Hon. K.J. MAHER: I do not have the *Hansard*. We are being asked to vote for the Hon. David Ridgway as the chair of a committee that has oversight of a body that was referred to in a statement that you made earlier, Mr President. If I could ask for your indulgence to read that statement out again so that before members vote, they can understand what is going on with one of the candidates for this position.

The PRESIDENT: It is not my inclination to read that statement out again. I read it out less than an hour and a half ago. I think it was fairly evident what was in that statement so I do not intend to read it out again. Are there any other speakers?

The Hon. T.A. FRANKS (15:46): I am not rising to amend the motion, I am rising to support the amendment to support the Hon. Frank Pangallo. I did not intend to speak, but I have been so moved by the Treasurer's speech that I feel compelled to address some of the issues he has raised. I am sorry that he finds it disappointing that democracy was exercised in this place two years ago. As the person who broke convention and put themselves forward to chair a committee, I deeply apologise if I somehow brought democracy into this place. I would have thought that it would have found a home here.

I find it extraordinary to be told that some 10 to 20 years of an agreement between Labor and Liberal parties in this place is somehow a convention not to be breached. This is a place of democracy and the government has not held the numbers in this council for well over that 10 to 20 years. The people of South Australia have not given the government the final say on any of the matters that are voted on in this place for that period of time, and it is democracy that I will listen to.

I am also utterly bemused that the Treasurer decided to impugn the behaviour of the Hon. Frank Pangallo in his beseech to crossbench members and the Labor opposition to perhaps change our indicated support by reflecting upon his behaviour in a committee. I imagine that the Chair would have been beholden to address that behaviour if it was inappropriate at the time, and for us to actually have not just conventions about standards in committees but the right for witnesses to be treated fairly and processes in place—not conventions, not unwritten rules but actually written rules given to witnesses before they present evidence so they can take recourse when there is ill-treatment of them.

I note that so many times the Labor Party and the Liberal Party have colluded and rushed through bits of legislation in this place, contrary to the convention that was raised in some sort of lecture to my colleague, the Hon. Mark Parnell, in the last 20 minutes. Most notably, I think the first experience I had of this was when the media was in a budget lock-up, and the Labor and Liberal parties suspended standing orders to raise their own pays. We opposed that, but the opposition at

the time seemed very happy to support the government of the day to push that through in a few hours, completely unannounced prior to that, for their own personal benefit. To me, that would have seemed to break not only convention but the standards of decency.

Many times I have sat here on the crossbench as Labor and Liberal have rushed through pieces of legislation that have been controversial, when they wished to be shielded from the proper processes of democracy by ripping off the bandaid.

I will not be lectured to by the Treasurer either today. I note that the Treasurer also indicated his concern that perhaps, as the Chair, Mr Pangallo might not be able to be trusted with both a deliberative and a casting vote. I point out to the Treasurer the numbers on this committee will always have a majority of government and opposition members. The Chair, in and of himself, will not be able to influence a decision where, as usual, Labor and Liberal agree, as they more often than not do.

I find it quite extraordinary that the debate on this matter was made quite personal by the Treasurer, somebody to whom, each year now that he is the Treasurer, we give leave to attend the other place because he is in the upper house, which is actually not in keeping with convention or the tradition of a parliament. I put him on notice that, again, another convention of Westminster government is that the upper house participates in budget estimates. We give leave for ministers to participate in budget estimates because we do not. There are many conventions in this place that deserve an overhaul. I look forward to the Hon. Frank Pangallo getting the support of this council, I hope, in the next few minutes to assist that process to progress.

The Hon. F. PANGALLO (15:51): I would like to thank the honourable Leader of the Opposition for the nomination. I will accept the nomination and I thank him for his words. I also thank the Hon. Tammy Franks for her address in relation to this matter.

The definition of 'convention' is a general agreement or consent. It is not a formal, legislated undertaking that this place must adhere to old, cosy, accepted practices just because it suited the two major parties over history. I welcome the refreshing change of attitude by the Labor Party, particularly in this matter.

Parliament undertakes democratic reforms as part of its functions. As far as I am concerned, this is no different. I do not think this position should be exempted in this way in this parliament. I really cannot see any logical reason why a crossbencher, an Independent, cannot act as a presiding member of a standing committee. It is really no different than the role of a presiding member on a select committee.

I also believe it would be appropriate that a member of a committee reporting on crime and public integrity who is subject to an integrity investigation should perhaps stand aside until that inquiry is completed. We had that with the member in the other place, Mr Fraser Ellis, who decided that it was in the best interests of the Crime and Public Integrity Policy Committee that he stand aside pending that investigation. Now we learn that ICAC has also raised an issue with the Hon. David Ridgway. My comments are in no way a reflection on the Hon. David Ridgway. I have a great deal of respect for him, as I do for all members in this chamber.

I want to move to the references made by the Treasurer in reading the Hansard transcripts of the Crime and Public Integrity Policy Committee, having a crack at my line of questioning in that committee. He is perhaps referencing my line of questioning to the previous ICAC commissioner and also the police commissioner about some very important matters that actually involve the Crime and Public Integrity Policy Committee.

The Treasurer mentioned the issue of police officers at Sturt's Operation Mantle, which was the subject of one of the most expensive investigations perhaps in ICAC's history and which ended up being totally bungled: millions of dollars of taxpayers' money were wasted. The reputations of eight good police men and women were destroyed, and I really find it objectionable that the Treasurer would think that I should not stand up and ask some questions about the conduct of that type of investigation to that committee. It is ridiculous for him to suggest that I was out of order in trying to get some answers.

I think this is the issue that perhaps parliament and this committee will need to address with ICAC, because before the country allowances issue even blew up many matters relating to the

conduct of that integrity body have been brought to my attention—quite serious matters. I will not go into them here, but let me say that one of the things parliament overlooked in the ICAC Act is appropriate oversight of that integrity body, and that is something I am quite passionate about and something I will be working for, if not on that committee then elsewhere, and it is my intention that perhaps there be even a select committee of inquiry into the conduct of that agency and other anticorruption agencies. It is vital that we do that, but that is for another time.

I wanted to make clear that I found the comments by the Treasurer absolutely objectionable, that somebody would have the temerity to ask some hard questions to the previous ICAC commissioner and the police commissioner about the conduct of an investigation that involved millions of dollars of wasted taxpayers' money.

It is important that an independent eye is on a committee such as the Crime and Public Integrity Policy Committee. I have worked closely with all members in the two years I have been on it. I pay tribute to the outgoing presiding member, the Hon. Dennis Hood. We have had a very good working relationship with Mr Hood and I was sorry to see Mr Hood go because of the fine work he has put into that committee.

However, it is time that this parliament and this chamber appreciated the fact that there are actually other elected members of parliament who could also contribute to the conduct of committees. I think that I could do a good job on that committee because I have an extreme passionate interest in it, I have worked hard on it and I will continue to work hard on it.

The Hon. R.I. LUCAS (Treasurer) (15:58): I thank honourable members for their contribution to the debate. Let me address a number of issues. The Leader of the Opposition and the Hon. Ms Franks complain about being lectured to by 'that man', and about personal abuse. To quote a very famous phrase from a very famous film: frankly, I don't given a damn about the views of the Hon. Ms Franks and the Hon. Mr Maher. It is about time they toughened up.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: If they object to being lectured to or, in their view, be characterised by personal abuse—

Members interjecting:

The PRESIDENT: Order! This debate has been heard largely in silence and I would like that to continue.

The Hon. R.I. LUCAS: Then I think it is time to toughen up, because this is a place for free and frank exchange and if you cannot take the criticism then too bad in relation to these debates. In relation to the position of the Hon. Mr Pangallo—

Members interjecting:

The PRESIDENT: Order! Conversations are out of order. I am listening to the Treasurer.

The Hon. R.I. LUCAS: —as I indicated in my contribution, I will defend to the end the entitlement of the Hon. Mr Pangallo to prosecute whatever views he wishes to prosecute. Equally, I am entitled to express a view where I differ with him. It is not outrageous for me to express a view which is different to his; I hold it genuinely. I do not believe in the approach that he adopted.

He has highlighted again—and I think he has already flagged this on a previous occasion—that he is looking to, in essence, reprosecute certain cases of investigation by integrity bodies through a separate select committee. I think he has discussed this previously, and he has highlighted again that he is still contemplating a separate select committee to reprosecute various cases that integrity bodies might have investigated in the past.

That will be an interesting development if the Labor Party and the Hon. Mr Pangallo go down that path, either through a separate select committee or with their numbers, potentially now, through this particular committee because the Labor Party and the Hon. Mr Pangallo will be in a position to be able to reprosecute, reinvestigate, various issues in whatever fashion they so choose with the numbers they now have on this committee.

The Hon. Mr Pangallo has made it clear what his intentions are; he confirmed them again today in his contribution in the chamber. He previously placed on the public record what he would like to do and what he intends to do, and now, with the support of the Australian Labor Party and potentially others, is in a position to follow those intentions through to fruition.

Can I also say, on behalf of my colleague the Hon. Mr Ridgway, that I reject completely the smear that the Hon. Mr Pangallo placed across the Hon. Mr Ridgway by saying 'a member who was subject to an inquiry by ICAC' and similar words in his contribution. Mr President, the letter, which was only read to this particular chamber, as you indicated, an hour and a half or so ago, made it quite clear that somebody else has made a complaint to the ICAC. I am not sure whether we are aware of who exactly made that complaint, but anyway it was made.

The ICAC commissioner—both former, and the letter you read was from the current one, Mr President—has in essence said, by inference, that this is not an issue for them to resolve; it is an issue for the parliament, if it is to be resolved by anybody in terms of where this might go. To indicate that my colleague the Hon. Mr Ridgway is somehow unsuited for this particular office because he is the subject of an ongoing inquiry by the ICAC is a disgraceful slur and a smear on my colleague, and I will defend him in relation to the allegation made by the Hon. Mr Pangallo. I would hope that he might check the *Hansard* record and perhaps on reflection correct the public record at his earliest convenience.

In concluding, as the Hon. Ms Franks indicated in relation to various committees in terms of who managed them in the upper house, one of the committees that I sat on for many of the 16 years when we were in opposition was the Statutory Authorities Review Committee. Opposition members, or non-government members, had a majority on that committee for 16 years.

There were two Liberals and one Independent member. At any stage, we could have taken the position of president of that committee. There were only two government members on that committee, but we chose not to do that. We allowed one of the two minority government members on that committee to chair it for most of the 16 years; I think was established soon after 2002 or around about then.

In relation to the supposed atrocities of which I am meant to be guilty, I was waiting for it. In all of my period in this chamber, both in opposition and in government, more often in opposition than in government, we have respected the convention of pairs in this particular chamber.

Members interjecting:

The Hon. R.I. LUCAS: In this chamber we have, and it is an absolute nonsense—

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order, the honourable Leader of the Opposition!

The Hon. R.I. LUCAS: —for the Leader of the Opposition to seek to claim—

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order! The Treasurer and the Leader of the Opposition know well they should not be pointing at each other or in any form.

The Hon. R.I. LUCAS: The Leader of the Opposition knows that in the past—

The PRESIDENT: No pointing.

The Hon. R.I. LUCAS: There is nothing in the standing orders that prevents me from pointing in this direction; I am not pointing at any individual member. The Leader of the Opposition knows that in this particular chamber we have abided by the conventions of pairing—not just for Labor members, whether they be in government or opposition—but even as of today some members of the crossbench have been away for understandably extended periods, or for occasional periods, and we have in this chamber abided by those particular principles.

The Hon. C.M. Scriven interjecting:

The PRESIDENT: The Hon. Ms Scriven!

The Hon. R.I. LUCAS: The inference from the honourable Leader of the Opposition that in some way as Leader of the Government in this chamber—indeed, when I was Leader of the Opposition, or another member of this chamber—I was complicit in breaching those longstanding conventions in this particular chamber is an absolute nonsense. The Leader of the Opposition knows it is a nonsense. It has no basis in fact at all in terms of the chamber.

In terms of select committees in this particular chamber—select committees of the Legislative Council—we have respected that convention in relation to non-government members if they so choose to chair those particular committees.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The joint select committees require an agreement between the House of Assembly and the Legislative Council and we, the members of the Legislative Council, do not control those particular issues in and of ourselves. We are part of the joint party room.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: But in relation to the Legislative Council, in relation to the many select committees over many years that have been established in this Legislative Council, we have abided by the principle when opposition, or indeed when in government, that non-government members, if they have so chosen, have chaired the particular select committees in the Legislative Council. So the nonsense that the Leader of the Opposition—

The Hon. T.A. FRANKS: Point of order: I seek leave to make a personal explanation just to—

The Hon. R.I. LUCAS: That is not a point of order.

The PRESIDENT: That is not a point of order. I think you can—

The Hon. T.A. FRANKS: Alright, I go back to the point of order. The Treasurer is currently saying that the government members have not supported another member for a select committee in stark contrast to the truth, because they supported me—

The Hon. R.I. LUCAS: What standing order?

The PRESIDENT: Order!

The Hon. T.A. FRANKS: —for the Hon. Kyam Maher's recent COVID select committee.

The PRESIDENT: I will listen to the Hon. Tammy Franks conclude her point of order.

The Hon. T.A. FRANKS: I point out that the government members supported myself instead of the Hon. Kyam Maher.

The Hon. K.J. Maher interjecting:

The PRESIDENT: No. The honourable Leader of the Opposition knows better than that. It is a bit hard to actually hear what the Hon. Tammy Franks has said. I take the point that she has contention with what the Treasurer has said.

The Hon. T.A. FRANKS: Indeed.

The PRESIDENT: The Treasurer wants to take a point on the point of order. I think we have covered the issues involved in this matter, which is an important matter, at some length, and I think it is time that we got to the point of determining it. But I will allow the Treasurer to make a point on the point of order, or he could conclude his remarks.

The Hon. R.I. LUCAS: Mr President, I will take up your invitation to make a point on the point of order. It is not a point of order in my view. She has not quoted a standing order. If the member wants to make this a personal explanation, there is a process for doing so—not in the middle of a particular debate—and that was not the contention she was making.

The Hon. I.K. Hunter: What is the point of order?

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It is not a point of order. I am contesting it.

The PRESIDENT: I am not going to rule that there is a point of order. What I am going to say is that the honourable member can, at the conclusion of this debate, seek leave to make a personal explanation. The honourable Treasurer to conclude the debate.

The Hon. R.I. LUCAS: To conclude the debate: as I said, we reject in their entirety the false accusations made by the Leader of the Opposition in a feeble attempt to defend the indefensible. The Leader of the Opposition knows that for him to seek to justify occurrences in this place on the basis of occurrences that have occurred in another place has no basis in fact.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: For those reasons, I make it quite clear, as I said, that should in the end this motion go the way that members of the Labor Party have indicated, then all bets are off if at some unfortunate stage in the future there is ever a Labor government in this place again.

The council divided on the amendment:

Ayes................11
Noes 8
Majority 3

AYES

Bourke, E.S.	Franks, T.A.	Hanson, J.E.
Hunter, I.K.	Maher, K.J. (teller)	Ngo, T.T.
Pangallo, F.	Parnell, M.C.	Pnevmatikos, I.
Scriven, C.M.	Wortley, R.P.	

NOES

Centofanti, N.J.	Darley, J.A.	Hood, D.G.E.
Lensink, J.M.A.	Lucas, R.I. (teller)	Ridgway, D.W.
Stephens, T.J.	Wade, S.G.	

PAIRS

Bonaros, C.	Lee, J.S.

Amendment thus carried; motion as amended carried.

Bills

SENTENCING (SERIOUS REPEAT OFFENDERS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading (resumed on motion).

The Hon. D.G.E. HOOD (16:14): I rise to speak to the Sentencing (Serious Repeat Offenders) Amendment Bill. The bill seeks to resolve practical difficulties that have arisen in the serious repeat offender provisions since they were initially inserted into the Criminal Law (Sentencing) Act 1998 in 2003 and then re-enacted in the current Sentencing Act of 2017. The serious repeat offender provisions provide that once an offender has committed a certain number of offences for which a term of imprisonment has been imposed the offender must be sentenced more

harshly than would otherwise be the case. Furthermore, any non-parole period must be at least four-fifths of the head sentence.

The Criminal Law (Sentencing) Act previously provided one automatic category for being a serious repeat offender. This category includes an offender who has committed three category A serious offences. The Criminal Law (Sentencing) Act also provided three discretionary categories, which were (1) if an offender committed three serious offences, (2) if an offender committed two serious sexual offences against a person under the age of 14 or (3) if an offender committed two category A serious offences.

When the Criminal Law (Sentencing) Act was replaced with the Sentencing Act in 2017, section 53(1) was amended so that offenders automatically became serious repeat offenders in all four of the circumstances listed above. The former Director of Public Prosecutions raised several issues with the Attorney-General in relation to the drafting of these provisions, which has led to difficulties for the DPP, the courts and the police in the application thereof.

The bill seeks to amend section 53 so that a person will automatically become a serious repeat offender if they have been convicted of at least three serious offences committed on separate occasions, or at least two serious sexual offences (defined to be offences where the victim was under the age of 14 at the time of the offence).

Once an offender meets the threshold in any of these four categories, they automatically, under this bill, become a serious repeat offender and must be sentenced as such for all subsequent offences (whether the subsequent offences are serious or not) for the rest of their life. There is no need for a designation of category A offences, as they are already included in the list of serious offences.

Additional problems with the current drafting will be addressed by describing offences by reference to the relevant section of the Criminal Law Consolidation Act 1935 that creates them, adding aggravated criminal trespass to the list of serious offences, omitting the specific reference to violent offences, as they are already covered by the other provisions, and providing that offences committed in other states and territories are to be assessed by reference to the conduct involved. This is in order to determine whether they count as serious offences under the South Australian regime.

The court can exercise discretion regarding the sentence and non-parole period to be imposed if there is evidence on oath of exceptional personal circumstances and it is determined that it is not appropriate to sentence the defendant as a serious repeat offender. It is important to note that the bill does not seek to amend this judicial discretion. The government supports that important capacity as it currently exists within the framework of the new proposed legislation. These changes will have a positive impact on the workability of the serious repeat offender provisions and streamline the process by which serious repeat offenders are identified and dealt with.

Other matters of detail to note include the replacement of the term 'home invasion' with the offence of 'serious criminal trespass in place of residence', namely, an offence under section 170 of the Criminal Law Consolidation Act, and the addition of aggravated criminal trespass to the list of serious offences.

The reference to violent offences been omitted, noting that this category of offence is already covered by the inclusion of all offences under part 3 of the Criminal Law Consolidation Act. An offence under section 51 of the Criminal Law Consolidation Act (sexual exploitation of a person with cognitive impairment) has been added to the definition of serious sexual offence—and so it should, in my view.

Consultation has been extensive and has included the DPP, the Commissioner of Police, the Chief Magistrate and other key stakeholders. Following consultation, the transitional provisions have been modified to ensure that persons sentenced after the commencement of the provisions are sentenced in accordance with the new provisions, regardless of whether the offence was committed before or after their commencement. This is consistent with other recent changes to the Sentencing Act, as members would be aware. At the Legal Services Commission's suggestion, the issue of resentencing has been clarified so that if a sentence imposed under the current provisions is overturned on appeal, and the defendant has to be resentenced, they will be sentenced in accordance with the new provisions.

The community rightly expects us, as legislators, to ensure that offenders who have committed a certain number of serious offences, and who continue to offend, are punished more severely for their subsequent reoffending. There is a list of serious offences that, upon conviction, count towards the threshold for becoming a serious repeat offender and being sentenced as such.

In its present form, serious repeat offender legislation makes it very difficult for police investigators generally, particularly those assessing interstate matters, and the courts as well, when trying to work out where they should start with the application of this law without the clarity that it is going to continue, which this bill provides.

This bill is important, as it will ensure the serious repeat offender provisions are more readily understood and applied. They mandate a robust sentencing response to those who repeatedly flout the law by ensuring they can be more harshly punished for reoffending once a threshold of serious offences has been reached, and that any non-parole period is at least 80 per cent of the head sentence. I strongly support this bill.

The Hon. F. PANGALLO (16:20): I rise to speak in support of the Sentencing (Serious Repeat Offenders) Amendment Bill 2020. Once again, members of the Legislative Council are being asked to rush through a bill that we received only on 9 September 2020.

Although the Law Society of South Australia received a draft well before this date, we mere members of the Legislative Council are not deemed worthy to also look at a draft so that we have a little over two weeks to consider it. Even worse is the fact that, although we can access the Law Society's submissions to the Attorney-General on its excellent website, the Attorney-General herself will not circulate submissions received from stakeholders, claiming they are cabinet-in-confidence.

This is especially concerning when the government reports no adverse comments were received or that a stakeholder supports a bill, only to find out later there was substantial and well-reasoned opposition to the bill, and that it was not supported by experts who know their stuff. So much for open and transparent government, or trying to learn and use the knowledge and expertise of experts in their field.

I think I speak for many South Australians when I say that each time I read reports of serious repeat offenders, particularly where the offences are child abuse, rape, sexual assault and aggravated violence and reoffending, I am absolutely incensed. Take for example the recent case of Gary Tipping. He was convicted of sexual offences against boys who were between the ages of eight and 15 years.

The court was told in May that Tipping was unwilling and unable to control his sexual urges and was at significant risk of reoffending. Forensic psychiatrists told the Supreme Court that they believed Tipping remained at high risk of reoffending, had poor insight into his crimes, and had not engaged well in treatment. Dr Narain Nambiar told his trial:

> What the problem is is that he has been in situations over many years now where whenever he has been in that situation it's led to offending.

The Parole Board and another psychiatrist issued similar warnings that Tipping would reoffend.

Surprise, surprise: on his release, on the very day he was ordered to stay off the internet, he was in breach of his parole order by using dating apps to have sexual communications with a person under the age of 18. Just two months later, Tipping was arrested again for breaching his release conditions.

The need for these amendments is also well demonstrated in the case of R v Ross [2018]. Coincidentally, this case also illustrates the serious problems with sentence discounting, which saw this offender gain a 30 per cent discount for a guilty plea for the offences of rape of a 14-year-old child and distributing child pornography. I will take up that issue separately when we consider the sentencing act discounts bill, which is currently on its way to us from the House of Assembly.

In the R v Ross case the Appeals Court encountered difficulties with the Sentencing Act in regard to the criteria to define the defendant as a repeat serious offender. The court considered and

answered the question of whether Ross was a serious repeat offender within the meaning of section 52 of the Sentencing Act at the time.

The court found a person will be a serious repeat offender if they had committed on at least three separate occasions an offence to which part 3 division 4 of the act applies. Part 3 division 4 applies to the offences of rape, disseminating child exploitation material and possessing child exploitation material because they are very serious offences, all carrying a maximum penalty of imprisonment for at least five years.

The appeal court determined a sentence of imprisonment other than a suspended sentence was the appropriate penalty. The respondent committed the four offences for which he was to be sentenced on separate occasions within the meaning of the act. The respondent therefore satisfied the definition of serious repeat offender. It beggars belief that the original court could have given such an offender, found guilty of these types of offences, a suspended sentence.

This bill fixes a problem that was created for the DPP, the courts and SAPOL when the Criminal Law (Sentencing) Act was replaced by the Sentencing Act and offenders automatically became serious repeat offenders in four limited circumstances with overlaps. There was an additional difficulty with how interstate offences are addressed for equivalence with the listed South Australian serious offences.

I welcome the amendments this bill seeks to make to the act to ensure that a person will automatically become a serious repeat offender if they have been convicted of at least three serious offences committed on separate occasions or at least two serious sexual offences; that is, where the victim was under the age of 14 at the time of offending. We should not give anyone who commits this type of offence on more than one occasion the opportunity to keep reoffending.

I also welcome the retrospectivity of this bill, which is consistent with the retrospectivity applied under the current serious repeat offender provisions. I acknowledge, as the Law Society of South Australia points out, that some offenders may now have a suspended sentence unavailable to them, which may have been previously available. Yes, some of them might not have entered guilty pleas had they known that a suspended sentence was not an option, but I would think that a suspended sentence would be a very remote option for a serious repeat offender, so I do not think that this is a strong argument against retrospectivity.

As R v Ross showed, judicial discretion can sometimes be misapplied and then has to be appealed, which is a costly exercise that ties up more of our limited court time and more members of our judiciary. While I have supported and, indeed, promoted judicial discretion being available to the judiciary in relation to summary and traffic offences, in regard to these types of serious repeat offenders it is imperative the judiciary has crystal clear guidance about what the parliament intended.

This bill should assist the courts to get it right the first time in regard to serious repeat offenders. More importantly, the public will be very clear on what constitutes a serious repeat offender and know there are strict sentencing provisions applicable to them. They will also know the government has addressed a grey area, with the intended outcome being serious repeat offenders are appropriately detained and the community better protected.

These serious repeat offenders are in a category all of their own and I want them to be easily recognised and defined as such when facing the courts, so that they can be appropriately sentenced. With those comments, I commend the bill to the Legislative Council.

The Hon. R.I. LUCAS (Treasurer) (16:29): I thank honourable members for their contributions to the second reading of the bill and I look forward to consideration of the bill in the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. K.J. MAHER: My question to the Treasurer is: when was this bill first drafted by the government?

The Hon. R.I. LUCAS: My advice is that it was in 2019.

The Hon. K.J. MAHER: I appreciate a lot has happened since 2019 in South Australia and the world but without an exact date—but a bit more specific—was it early, mid, or late 2019?

The Hon. R.I. LUCAS: I am sorry but we will have to take that on notice. We do not have with us at the moment a rough estimate as to what part of 2019 the first draft was. We have various drafts of early 2020 but we are not sure how many went before it.

The Hon. K.J. MAHER: Can I ask the Treasurer, both in the preparation of the bill and once it was drafted, who was consulted in relation to the bill?

The Hon. R.I. LUCAS: I am advised that it was the Chief Justice, the Chief Judge of the District Court, a judge from the Youth Court, the Chief Magistrate, the Law Society, the Bar Association, the Legal Services Commission, ALRM, the Commissioner of Police, the Director of Public Prosecutions, the Chief Executive of the Department for Correctional Services, the Crown Solicitor and the victims of crime commissioner.

The Hon. K.J. MAHER: What was the result of consultation, particularly with any elements of the judiciary or those who investigate or prosecute?

The Hon. R.I. LUCAS: I think it is probably public that the Law Society and the Bar Association had indicated concerns publicly, but in relation to those within the judicial system the characterisation I have been provided with is that they were broadly supportive of the proposals. The concerns that have been expressed I think have been expressed publicly by the Law Society and the Bar Association.

The Hon. K.J. MAHER: Was there any specific case or cases that found their way through court that this legislation was drafted in relation to, or was it generally to remedy the problems it is seeking to remedy? Were there any things that really highlighted its intention and, if so, what were those cases?

The Hon. R.I. LUCAS: My advice is that there were no specific cases that prompted it. It was a general view that had obviously been taken that these legislative provisions needed to be improved.

The Hon. K.J. MAHER: I appreciate the answer from the Treasurer. If there were no specific cases, was there a general type of case or a general type of offence that prompted this particular review and the legislation?

The Hon. R.I. LUCAS: My advice is that, amongst others, the DPP put a view that these provisions were difficult to work with, difficult for all concerned to clearly understand what we, the legislators, had intended, and there was a need, from their view and indeed others who obviously were part of reviewing the adequacy of the legislation, that it needed to be clarified. That ultimately is what has led to what we are being asked to consider in the parliament today.

Clause passed.

Clause 2.

The Hon. K.J. MAHER: In relation to clause 2, if this bill is passed today, when does the government expect that it will come into force?

The Hon. R.I. LUCAS: My advice is as soon as possible.

The Hon. K.J. MAHER: I thank the Treasurer for his answer. Can he be a little bit more specific? Does the government see this as an urgent priority in terms of getting assent to this bill?

The Hon. R.I. LUCAS: I am not sure what adjective I should use, but certainly it is seen as a high priority of the government to get on with it and do it. I am not aware, I am not advised, that there is any reason why, if the parliament passes it, we would not process it as quickly as possible.

I do not think it is of the nature where, if we pass it now, we would ask the Governor in Executive Council to make himself available late tonight to do it, but in the normal process to do it as quickly as possible, whatever other procedures we might have to do. Get on with it—that is my advice and my understanding.

The Hon. K.J. MAHER: The Treasurer half answered what was going to be my next question. If the government was minded, could the government pass this bill this week? What are the next steps? It has to be assented to by the Executive Council. Theoretically, when could this bill come into force?

The Hon. R.I. LUCAS: Just the usual process of proclamation. Hopefully we pass the bill here before our House of Assembly colleagues get up today so that the message can get down to them, but we are in the hands of the committee in relation to that. Then we will proceed as quickly as possible in terms of proclamation after that. There is no intention to delay—I cannot see why anyone would wish to—if the parliament passes it, doing it as expeditiously as possible.

Clause passed.

Remaining clauses (3 to 5), schedule and title passed.

Bill reported without amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (16:43): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 9 September 2020.)

The Hon. K.J. MAHER (Leader of the Opposition) (16:44): I rise to speak on this bill and indicate that I will be the lead speaker for the opposition. This bill contains various amendments to seven pieces of legislation within the Attorney-General's portfolio across both criminal and civil law. As admitted by the Attorney in the other place, this is another mop-up bill that institutes minor changes. I think the Attorney went so far as to describe her own bill as a rats and mice piece of legislation.

Whilst the parliament must consider legislation that is housekeeping, we certainly encourage the government to bring forward legislation that also makes a real difference for our community. We know that there have been big things that we have been dealing with, including responses and powers in relation to the COVID-19 pandemic. This bill contains a range of measures that are mainly intended to increase efficiency and productivity across the justice system.

Labor generally supports the provisions in this bill, but there are elements that we will seek to more closely examine in the committee stage. There is one particular area that we will seek to better understand, and I will come to that later. With regard to the technical aspects of the bill, it first amends the Bail Act 1985, it names the Youth Court as a bail authority and explicitly confirms the court's power to make rules regarding bail.

This amendment aims to clear up inconsistencies and doubt arising from the government's prior bail authorities bill and remedies concerns raised by the Youth Court. On this point, it is disappointing that the government brought in earlier legislation with such clear flaws, when the Attorney-General spends so much time chastising others for getting legislation wrong or even potentially getting legislation wrong. We find that so often it is the Attorney-General who has botched legislation that has us coming back time and time again to fix up her mistakes.

The final clause of the bill also amends the Youth Court Act to clarify that the Youth Court is a bail authority pursuant to the Bail Act. This change is again to avoid doubt and rectify ambiguity on

this topic. Next, the bill amends multiple provisions of the Criminal Law Consolidation Act 1935. It discusses certain offences involving human biological material. Section 20AA relates to the offence of causing harm or assaulting emergency workers.

The bill removes the immediate assumption that harm is caused by virtue of it being biological material. It does this by adding that harm may be caused by biological material but is not automatically taken to have caused harm. This means that harm must be established as a separate element of the offence. The Attorney-General has provided an assurance that this will in no way reduce protections for frontline emergency workers.

The bill also increases the consistency of certain definitions in the act. In the same section, the bill clarifies the definition of the term 'recklessly' to align with other parts of the Criminal Law Consolidation Act. The bill adds a definition of 'harm' in section 20AB, involving offences of human biological material against another person. The bill makes the meaning of 'harm' consistent with the definition of 'harm' in division 7A of the Criminal Law Consolidation Act.

The bill updates outdated terms in the Criminal Law Consolidation Act in the offence of using a motor vehicle without consent pursuant to section 86A. Here, it substitutes the act's terms of 'children's court' and 'Children's Protection and Young Offenders Act 1979' with the 'Youth Court' and the 'Young Offenders Act 1993' respectively.

The bill makes larger changes to section 269X of the Criminal Law Consolidation Act. That section deals with the court's power to deal with the defendant before their proceedings are complete, particularly about their places of detention, when they are undergoing mental competence investigations. Some defendants in the justice system may need investigations by mental health professionals during a trial. This could include an assessment of a defendant's mental competence to commit an offence or their mental fitness to stand trial.

As the current law states, when the court is waiting for such an investigation to finish or when considering whether there should be such an investigation, the court can do two things: the court can either release the defendant on bail or commit them to an appropriate form of custody until the investigation ends. The current act specifies that custody is, and I quote, 'not a prison unless the court is satisfied that there is, in the circumstances, no practicable alternative.'

When a defendant's mental competence or fitness to stand trial is being investigated, the bill allows courts to order detention in custody until the investigation ends. The bill repeals the stated preference to avoid prison as a place of appropriate custody for these defendants. The bill also proposes that the minister can determine an appropriate form of custody where a court places a defendant under supervision orders. For defendants who are involuntary inpatients at a treatment centre but are released before their mental competence investigation ends, the bill proposes that they should be detained in custody as if awaiting trial or sentencing.

Finally, on this matter, the bill proposes that, if a designated officer deems a defendant's existing custody circumstances are inappropriate, they may determine an appropriate form of custody. While supporting this provision, it is important that vulnerable detainees are appropriately supported.

Next, the bill deals with the Oaths Act 1936. It amends section 28 to change who can authorise a commissioner for taking affidavits. The bill amends the act to permit the Attorney-General to appoint commissioners for affidavits via notice in the *Gazette* rather than via the Governor as per the current legislation. We have been advised that this is intended to be an efficiency measure, as the government claims that appointment by the Governor can be cumbersome and time consuming.

Next, the bill amends the Professional Standards Act 2004 in two provisions to redefine occupational liability to include equitable liability. This is a simple measure to bring South Australia in line with other states and other jurisdictions around the country. The bill amends the interpretation of the act by expanding the scope of 'occupational liability' to include equitable liability, not just liability in tort, contract or statute. The bill also amends the SA Civil and Administrative Appeals Tribunal Act 2013, or the SACAT Act. The amendments to this act allow that the President of SACAT may be a judge of the District Court or the Supreme Court.

Currently, only Supreme Court judges can fill that position. The government advises that this is arising from cost impacts of the recently established Court of Appeal. We were advised that if a SACAT president with dual roles across SACAT and the Supreme Court resigned, the government would need to absorb another judge into the Supreme Court or Court of Appeal. Whilst not objecting to this amendment, it is noted that the government may have failed to properly plan for the Court of Appeal that it pushed so hard to establish.

The bill also introduces amendments to the Young Offenders Act regarding escape from custody when a young person is under a youth treatment order under part 7A of the Controlled Substances Act. For these young people, the bill provides that escaping from lawful custody will no longer be a criminal offence. The bill excludes such youths under treatment orders from the six-month maximum detention penalty for escaping custody.

I will direct my final remarks to clause 14 of the bill that amends the Summary Offences Act 1953. In particular, it amends section 21OC relating to the supply of liquor in certain areas. The bill inserts a new exclusion provision, subsection (1a), to exclude certain people from the offence under section 21OC of supplying, transporting or possessing liquor in prescribed areas or dry zones. This includes, as it was discussed in briefings, Aboriginal lands under the Aboriginal Lands Trust Act, the Anangu Pitjantjatjara Yankunytjatjara Lands Act and the Maralinga Tjarutja Lands Act.

The existing offence penalises people who supply, transport or possess liquor to supply it illegally to another person in a dry zone—sometimes colloquially known as grog running. It carries heavy penalties of $20,000 or $40,000, depending on the seriousness of the offence. Unfortunately, the offence under section 21OC has not yet come into force, but it was passed as part of the Summary Offences (Liquor Offences) Amendment Act in 2018.

The government has stated that the offence under section 21OC was introduced to address alcohol-related harm and abuse in some Aboriginal communities and to support APY and Aboriginal Lands Trust by-laws that prohibit the consumption or possession of alcohol within their communities. As an opposition, we are still unsure why it is necessary to introduce an exclusion clause for this offence.

The amendment would exclude guilt of the offence of grog running under three circumstances: firstly, if liquor is not prohibited by another law; secondly, if it is not prohibited where the supply takes or is intended to take place; or thirdly, where a person may in the circumstances be exempt from any prohibitions on liquor consumption or possession.

We would be keen in the committee stage to tease this out as to what is the reason that this is required? Could this make it easier for grog running or the possession or consumption of alcohol in areas where Aboriginal communities have determined that they do not want alcohol? We are very keen to find out the genesis of the need for this.

In the other place, the Attorney spent time talking about entities like Anangu Pitjantjatjara Yunkunytjatjara, Maralinga Lands Council, regional community councils and Aboriginal corporations as relevant stakeholders; however, when asked what discussions had actually taken place with owners and managers of statutory Aboriginal landholding authorities, the Attorney said, 'I have just listed a whole lot of them. A number of them did not respond at all.'

I am very concerned about that statement that it is thought to be good and relevant consultation where emails were sent and nothing was done to elicit a response or to follow up from those and that is counted as consultation with Aboriginal communities. I do not think that is proper consultation and I will foreshadow that we will be spending some time in the committee stage understanding what Aboriginal communities' views are on this.

I will foreshadow as well that, despite having asked questions during briefings and asked for follow-up information, we are not much wiser about why this is needed and what its intended purpose is. This may be a clause that we cannot support unless we can get a better understanding of it during the committee stage. The Attorney-General says this clause was initially intended to be introduced in 2018 but was delayed until now. Again, we do not understand that and we would be keen to understand why it was necessary, what it seeks to overcome and who was consulted with.

To foreshadow further as we look at this clause in committee if, for example, APY has introduced a by-law that alcohol is not permitted in communities, what work does this particular clause do in overriding the wishes of APY making a properly constituted decision in relation to that? We would be very keen for the examples of where this actually has work to do and if it does not have work to do, why are we introducing it?

Having said that, we look forward to the passage of this bill but outline that we are keen to get a better understanding of that particular measure and flag that if we do not get a better understanding of it than we have already we might not be in a position to support that particular amendment in this bill.

The Hon. F. PANGALLO (16:57): I rise to speak on the Statutes Amendment (Attorney-General's Portfolio) Bill 2020. This bill makes a range of miscellaneous amendments to eight acts within the Attorney-General's portfolio. Some of these amendments are minor but some of them are not and are worthy of more intense scrutiny; however, all of the amendments are remedial, the kind of repairs that are inevitably needed when government rushes through legislation at the last minute, as is the habit, giving the Legislative Council limited time to perform its proper function as the house of review.

Notwithstanding the resources and expertise available to the government and our wonderful Office of Parliamentary Counsel drafters, this bill illustrates the serious risks of pushing through legislation with urgently scheduled briefings, truncated timelines, a lack of opportunity to thoroughly interrogate the bill or seek second briefings, an absence of real consultation and without access to feedback received.

As a case in point, we have had this bill that makes changes to no less than eight pieces of legislation for about two weeks, receiving it in the Legislative Council on 9 September 2020. We were recently made aware of another bill, only because we read the Law Society of South Australia's submission on the said bill. When we subsequently requested a copy of the draft bill, on the understanding that it was a draft, we were denied it. So much for open and transparent government.

I often contemplate what good laws and quality legislation we would make in this place if there were a spirit of cooperation and collaboration. I have no issue with the amendments to the Bail Act 1985 and the Youth Court Act 1993, expressly prescribing the Youth Court as a bail authority. As I understand it, that is a clarification only for the avoidance of doubt.

I accept the government is responding to questions raised by the Youth Court following the passing of the Statutes Amendment (Bail Authorities) Bill 2020 and that this amendment is to answer that question clearly and unambiguously. Similarly, the amendments to the Criminal Law Consolidation Act 1935 offence of causing harm to or assaulting certain emergency workers are some administrative fixes, as well as a welcome addition of the insertion of recklessness being defined and added as an element of the offence.

The amendments of section 269X, which concerns the power of the court to deal with the defendant before proceedings are completed, are sensible and provide an additional safeguard that the custody will be in an appropriate form. The Attorney-General's advice that this amendment was drafted in close consultation with the Chief Psychiatrist gives me confidence that the intent of this amendment is prisoner focused; that is, it is designed to give a level of protection to prisoners and provide that their custodial circumstances are within the responsibilities of the chief executive, who will be held accountable.

The bill prescribes that under the chief executive's delegation a designated officer can determine the appropriate form of custody for a prisoner on remand. This is a safeguard that people such as those with mental illness will not be held in situations that are unsuitable. However, I understand the main purpose of this amendment is to remand a defendant in a prison pending a determination on their mental capacity by a court, or a defendant assessed as requiring detention due to mental competency already established or as being unfit to plead.

This gives the designated officer a great deal of discretion about appropriate custodial arrangements, which is all very well as long as it does not mean that those in custody with mental illness are left neglected in prison with no treatment or support. Prisons are harsh enough places

without having to deal with untreated or undiagnosed mental illness. Personally, I would like to see more stringent time limits applied to how long the court can take to determine mental capacity. I would also like to see some data on how long people are on remand and if those periods are getting longer.

Only yesterday, my colleague the Hon. Mark Parnell quoted statistics in this place about the prevalence of mental illness and trauma among the prison population, so it is very important that people be placed in appropriate accommodation and that help is immediately available. I am sure we can all recall how shocked we were to see the footage of young adolescents with mental health issues locked up in solitary confinement at the Don Dale Detention Centre for long periods of time. As you know, the use of spit hoods on youth detainees is now banned, and I hope that soon, thanks to the tireless work of my colleague the Hon. Connie Bonaros, these barbaric hoods will be banned for adults too.

I am less convinced of the need for the amendment to section 86A of the CLCA allowing the Attorney-General to appoint commissioners for the taking of affidavits in the Supreme Court under the Oaths Act 1936. Currently, it is just the Governor under section 28(1)(e) who authorises people like Forensic Science SA employees to certify over 1,500 documents in-house each year. Of course, a range of professionals, such as solicitors, barristers and justices of the peace, are already commissioners for taking affidavits, but there are some that the Governor currently appoints. Apparently the Governor finds this very time-consuming, so it makes more sense to delegate it to the Attorney-General.

With all the changes to arrangements around witnessing documents and taking affidavits due to COVID-19, I do not think now is the time to amend this. However, if a convincing argument is able to be mounted about how many of these appointments the Governor does, I am prepared to be persuaded otherwise.

I strongly support the changes to the Professional Standards Act 2004 to make it clear that claims of breach of fiduciary duty or unconscionability fall within the definition of occupational liability. I am surprised it took us this long to come into line with other jurisdictions, and I wonder how many cases have encountered this problem and how many plaintiffs might have had their cases proven had the definition been beyond doubt.

I also support the president of SACAT being appointed from a pool of Supreme Court judges and District Court judges although, of course, I make no secret of the fact that I would like to see our judiciary and presidencies, such as those at SACAT and the SAET, enriched and refreshed with appointments from outside our jurisdiction and from other courts.

It was disturbing to learn, in the briefing provided by the Attorney-General's Office, that section 210C provisions of the Summary Offences Act 1953, which make it an offence to supply liquor in certain areas, need to be fixed before the provisions have even commenced. This really confirms to me that the legislation was done on the run, but I support this amendment making it very clear who is exempted, so that we can stop the grog and drug runners as soon as possible.

I applaud the APY lands, and in particular the ongoing leadership and authority of the APY Executive and the amazing advocates of the NPY Women's Council, who have fought for decades to keep their lands free of alcohol and drugs in accordance with their decisions. It is great to see young women like Sally Scales on *The Drum* on the ABC speaking authoritatively as an APY Executive member on a diverse range of issues like women's rights, alcohol, community safety, domestic violence.

I support the compassionate amendment to section 48 of the Young Offenders Act 1993 to ensure that this offence does not apply to youth detained under the Controlled Substances Act 1984 via a youth treatment order. As we heard yesterday, gaols largely fail and they fail most spectacularly for youth with substance abuse issues and/or mental illness.

In summary, I support all the provisions of the bill before us. Had we had sufficient time I would have liked to have delved deeper into the changes sought in regard to the Oaths Act, and may have devised some amendments to deal with any concerns raised. As it is the bill is being rushed through, like so many in recent times, but I am still prepared to give it my support.

The Hon. R.I. LUCAS (Treasurer) (17:08): I thank honourable members for their contributions to the second reading, and look forward to the committee stage of the debate.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. F. PANGALLO: I have one question. In relation to the change to the witnessing of documents, did the government seek any advice or has it had any engagement with the Law Society about this?

The Hon. R.I. LUCAS: Yes, the Law Society was consulted, but they did not provide any advice on those particular amendments.

Clause passed.

Clauses 2 to 13 passed.

Clause 14.

The Hon. K.J. MAHER: Why is this needed, Treasurer?

The Hon. R.I. LUCAS: I am advised that, currently, lands under the Maralinga Tjarutja Land Rights Act 1984 (the MT act) are dry as a matter of community policy rather than through by-laws under the MT act. Therefore, under part 7 of the bill, the offence in section 21OC will not apply to instances where the third person, i.e. a recipient, is on those lands as there is no current by-law under the MT act that makes possession or consumption of liquor unlawful.

There are areas of land within the Aboriginal Lands Trust Act 2013 (the ALT Act) that are dry through regulations and there are areas that are not subject to regulations; for example, Yalata and Umoona are dry through regulations made under the ALT Act. Currently, Davenport is not dry under regulations. Therefore, the exclusions are necessary to make it clear that the offence should not apply when a third person is in an area where consumption or possession of liquor is allowed. The exclusions in part 7 of the bill will mean that the application of section 21OC may change in the future depending on whether any by-laws or regulations are made under the MT act or the ALT Act.

The APY lands are dry pursuant to by-laws under the Anangu Pitjantjatjara and Yankunytjatjara Land Rights Act 1981. However, there are certain exemptions under those by-laws, such as use of liquor for sacramental purposes. Part 7 of the bill will mean that use of liquor by the third person (i.e. recipient) in those circumstances is not an offence.

In relation to dry zones under section 131 of the Liquor Licensing Act 1997, these dry zones are often conditional. For example, they can apply only during certain times. Therefore, under part 7 of the bill the offence in section 21OC will only apply during those times and circumstances where possession and consumption of liquor is unlawful.

The Hon. K.J. MAHER: I thank the Treasurer for the answer. I do not fully understand it. When we had briefings, an example used was the APY dry zone and the use of sacramental wine. Am I understanding correctly, and can the Treasurer confirm, that currently under the by-laws that APY have made, through their elected APY Executive, they have an exemption for sacramental wine and it is able to be used and does not breach their by-laws. Specifically, do the by-laws passed by APY allow for that exclusion of sacramental wine; is that correct?

The Hon. R.I. LUCAS: I will read the advice again: there are, however, certain exemptions under those by-laws such as use of liquor for sacramental purposes. Therefore, there are certain exemptions. Part 7 of the bill will mean that use of liquor by a third person (i.e. recipient) in those circumstances is not an offence.

The Hon. K.J. MAHER: The Treasurer has made it clearer in a couple of minutes than in many of our briefings and exchanges. In the example where there are dry zones as a matter of policy rather than as a matter of by-law or regulation, can the Treasurer explain why the amendment to

section 21OC is needed? What changes as a result of this passing when the community has decided to institute a dry zone that is not by regulation or by-law?

The Hon. R.I. LUCAS: I will just highlight the first section of the advice that I read previously that relates to this question: 'Currently, lands under the Maralinga Tjarutja Land Rights Act are dry as a matter of community policies'—that is the question the member is asking—'rather than through by-laws under the MT act. Therefore, under part 7 of the bill the offence in section 21OC will not apply to instances where the third person (i.e. recipient) is on those lands as there is no current by-law under the MT act that makes possession or consumption of liquor unlawful.' I am further advised that if they move beyond community policy and make a by-law, then the provisions under part 7 of the bill will be energised, activated, elevated and will apply.

The Hon. K.J. MAHER: I appreciate the Treasurer's explanation. In relation to this, however, is the Treasurer saying that, under the current Summary Offences (Liquor Offences) Amendment Act, in the case of Maralinga Tjarutja lands, where it is a community policy decision not a by-law or a regulation, at the moment there is no offence created for possession or supply of alcohol in relation to those lands, as it currently stands? If that is the case, what work does this amendment do in relation to that?

The Hon. R.I. LUCAS: It is pretty simple: it is not an offence at the moment. Therefore, this will have no work to do at the moment, as long as it stays a community policy. It will only be if the Maralinga Tjarutja move it from community policy to a by-law. Once they do that, this particular provision will have work to do. But in and of itself, as I am advised, at the moment it is not an offence and, with the passage of this bill, it will still not be an offence and there will be no penalty. It would only be if the Maralinga Tjarutja actually pass a by-law that this particular provision would be activated.

The Hon. K.J. MAHER: Who instigated this particular clause? Who asked for this, and what was the reason for this being drafted?

The Hon. R.I. LUCAS: My understanding and my advice is that, during consultation on these issues, the view from legal advisers to the government in the Attorney-General's Department was that it would be clearer to all concerned in relation to these complicated provisions if this particular provision was changed in the act.

The Hon. K.J. MAHER: I thank the Treasurer for his response. Can I ask who was consulted with in relation to this particular provision and which Aboriginal communities, organisations or groups participated and provided a response in relation to this? Who were responses sought from and who were responses received from, in terms of Aboriginal groups and organisations?

The Hon. R.I. LUCAS: I can read a long list of people, but I think the honourable member may have referred earlier that, whilst there are a long list of people, he might have been advised who was consulted and that not all replied. I think he referred to that in his second reading. Do you want me to read the long list of people?

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: The Aboriginal Legal Rights Movement, the Anangu Pitjantjatjara Yankunytjatjara, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (Women's Council Aboriginal Corporation), Aboriginal Lands Trust, Yalata Anangu Aboriginal Corporation, Umoona Community Council Incorporated, Far West Aboriginal Corporation, Ceduna Aboriginal Corporation, Aboriginal Drug and Alcohol Council (SA) Incorporated, Office of the Commissioner for Aboriginal Engagement, South Australian Aboriginal Advisory Council, Maralinga Tjarutja, Davenport community, Gerard Aboriginal community, Koonibba community, Nipapanha Community Council, Point Pearce Aboriginal Community Council, Raukkan Community Council, District Council of Ceduna, District Council of Coober Pedy, Australian Hotels Association, the Legal Services Commission of South Australia, the Law Society of South Australia, Port Augusta City Council, Aboriginal Affairs and Reconciliation, Department of the Premier and Cabinet, Drug and Alcohol Services SA, Minister for Health and Wellbeing, Liquor and Gambling Commissioner, Consumer and Business Services, the Premier (who is also the Minister for Aboriginal Affairs) and the Commissioner of Police.

The Hon. K.J. MAHER: I thank the Treasurer for reading out that list and for getting, by and large, most of the names pronounced reasonably correctly. In relation to all those who were sent letters or emails, which organisations responded and with more than just an acknowledgment that they had received the letter? Are you able to let us know if any at all took part meaningfully in consultation?

The Hon. R.I. LUCAS: Without taking an inordinate length of time, I can broadly indicate the ones, on the advice I have, that did not reply. A number of the others had written submissions and some had verbal discussions. For example, Yalata Anangu Aboriginal Corporation is listed here as verbal discussions, together with the Aboriginal Lands Trust.

The ones where there is no listed reply include: the Aboriginal Legal Rights Movement, APY Lands, the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (Women's Council Aboriginal Corporation), Far West Coast Aboriginal Corporation, Ceduna Aboriginal Corporation, Aboriginal Drug and Alcohol Council, Office of the Commissioner for Aboriginal Engagement, Gerard and Koonibba communities, Nipapanha Community Council, Point Pearce Aboriginal Council, Raukkan Community Council, the district councils of Ceduna and Coober Pedy, and the Hotels Association. All of the others are listed as having replied or had verbal discussions, together with other organisations as well.

The Hon. T.A. FRANKS: Did the Aboriginal Lands Trust support this amendment?

The Hon. R.I. LUCAS: My advice is that there were discussions with the ALT and they did not oppose the provisions.

The Hon. T.A. FRANKS: Sacramental wine on the APY lands was mentioned in the previous response. Where does this occur on the APY lands?

The Hon. R.I. LUCAS: I have no idea, we have no idea whereabouts on the lands. In their by-laws, under the act there is an explicit provision under 5B which states that liquor is possessed for the purposes of or consumed in the course of a sacramental or other like observance in the course of or constituting part of any religious service. It is their by-law and I assume it could occur anywhere on the lands; it is not limited to a particular location.

Clause passed.

Remaining clauses (15 and 16) and title passed.

Bill reported without amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (17:32): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CORRECTIONAL SERVICES (ACCOUNTABILITY AND OTHER MEASURES) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 10 September 2020.)

The Hon. T.A. FRANKS (17:33): I rise to speak very briefly to the Correctional Services (Accountability and Other Measures) Amendment Bill 2020. I received correspondence this morning in response to my request for certain submissions from stakeholders. I was advised by the minister's office:

> You will need to seek them directly from the stakeholders (i.e. to ensure they permit to providing them).
>
> Sorry I couldn't be of further assistance.

This I thought had been addressed under the Weatherill government. It is a most unnecessary obfuscation of the democratic process, so I seek leave to conclude my comments.

Leave granted; debate adjourned.

COVID-19 EMERGENCY RESPONSE (EXPIRY AND RENT) AMENDMENT BILL

Final Stages

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

Parliamentary Procedure

ADJOURNMENT

The Hon. R.I. LUCAS (Treasurer) (17:35): I move:

That the council do now adjourn.

The council divided on the motion:

Ayes 12
Noes 7
Majority 5

AYES

Centofanti, N.J.	Darley, J.A.	Franks, T.A.
Hood, D.G.E.	Lee, J.S.	Lensink, J.M.A.
Lucas, R.I. (teller)	Pangallo, F.	Parnell, M.C.
Ridgway, D.W.	Stephens, T.J.	Wade, S.G.

NOES

Bourke, E.S.	Hanson, J.E.	Hunter, I.K.
Maher, K.J. (teller)	Ngo, T.T.	Scriven, C.M.
Wortley, R.P.		

PAIRS

Bonaros, C.	Pnevmatikos, I.

Motion thus carried.

At 17:39 the council adjourned until Tuesday 13 October 2020 at 14:15.