HOUSE OF ASSEMBLY

Tuesday, 28 February 2017

The SPEAKER (Hon. M.J. Atkinson) took the chair at 11:01 and read prayers.

The SPEAKER: Honourable members, I respectfully acknowledge the traditional owners of this land upon which this parliament is assembled and the custodians of the sacred lands of our state.

Bills

SUMMARY PROCEDURE (INDICTABLE OFFENCES) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 February 2017.)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide) (11:03): I am continuing on from the debate that concluded towards the end of the day when we were last here. Before getting into the detail of the matter, this set of proposals, which includes both the summary offences (major indictable) reform and the sentencing reform, has been the subject of an enormous amount of consultation with all of the interested players over a couple of years, so there is nothing here that has not been the subject of a great deal of discussion and there has been an extensive consultation process.

I want to go into a little bit of detail because it is necessary when having regard to what was said by the deputy leader last time. Before going into that, I make the observation that we have, in formulating these packages, based our proposals on taking the existing South Australian practice and procedure and seeking to modify it in order to achieve significant improvements. We have not gone to the legislative supermarket and picked out a product sitting somewhere on the shelf. We have actually done the hard work of working things up, in effect, from the ground.

There were several matters raised by the deputy leader on the last occasion that were demonstrably incorrect and indicate a failure to understand both the substance of the reform and the content of the bill before us. The deputy leader spent some time reading out letters received from various members of the defence bar raising concerns about various provisions. The defence bar is perfectly entitled to have a view about these matters, but they are expressing a view about what is, in effect, their business and they are expressing that view from that perspective. There is nothing wrong with that. It is entirely reasonable. Indeed, we have been listening to members of the defence bar at some length, but we need to bear in mind that they are not exactly dispassionate observers.

In any event, after reading out a number of those letters, some of which contained matters of substance and some of which did not, it seemed to me that the deputy leader has not appeared to realise that the letters from which she was reading raised concerns about provisions appearing in a previous consultation draft version of the bill which was released last year. The government considered the concerns that were raised in correspondence in response to that draft bill last year, as well as other feedback, and changes were made as a result of that process—and that is how you would expect consultation to work.

Indeed, I recall meeting on more than one occasion, I think, with Mr Boucaut and other members of the criminal bar to discuss matters and I can assure the house that modifications were made to the consultation draft taking into account feedback that we received. As a result, many of the provisions which were criticised by the deputy leader either do not say what she says they say or, in some cases, do not exist. In fact, some of her outrage (contrived though it might have been) was in respect of matters which did not find their way into the bill before the parliament.

When I raised it on the last occasion, I said I would try to go through the deputy leader's comments to correct inaccuracies in an orderly fashion, and I will try to do so insofar as it is possible to do that in response to her contribution. The deputy leader suggested that there are five main areas of reform and proceeded to give a brief summary of those. It seemed to be the case that she was reading the division heads in the bill and suggesting or implying that they were separate areas of reform in this package.

Obviously, how the deputy leader proposes to go about her contribution is a matter for her, but I do not think it is reasonable to characterise all of the elements of this package as being a departure from current practice. The first area that she referred to was clause 100, which deals with informations. This substantially re-enacts provisions that already exist in the Criminal Law Consolidation Act and in the Summary Procedure Act 1921 in order to marry up the procedures into one bill setting out criminal procedure. We have had some feedback from the Chief Justice about the drafting of these provisions, and, in the committee stage, we will be moving some housekeeping amendments which essentially ensure the status quo remains, as was our intention all along.

The deputy leader then said that the fourth area of reform is the forum for trial or sentence, and, referring to clause 116, in reference to major indictable offences, that a magistrate can hear a guilty plea if the prosecution and defence agree. Again, clause 116 substantially re-enacts existing sections 108 and 114 of the Summary Procedure Act and provides minor clarification of the process, but it is not a substantial area of reform.

Whilst I am on this and before getting to the substance of the reform, I also noted that the deputy leader spent some time proffering suggestions about the merit of rolling lists and a docket system. I need to make it clear to members that were it to be the case that the parliament sought to impose or regulate the manner in which the courts disposed of the matters before them (matters which I am absolutely confident the courts would consider to be entirely within their domain), I think we would, perhaps, find ourselves being quite justifiably accused of overstepping the boundary between what is legitimately a matter for the parliament and what is legitimately a matter for the courts.

The deputy leader then refers to the second and third areas of reform as the 'pre-committal process' and the 'committal process', and this is indeed an area in which significant changes are proposed. Those areas of change were set out in my second reading speech, and I am obviously not going to set them out again. However, the complaint that the deputy leader makes—that 'a lack of early disclosure creates the fundamental flaw in the approach the government has taken in respect of this reform'—is wrong. I will point out a few elements here.

First of all, the proposals suggest introducing a tiered prosecution disclosure scheme which will allow for enhanced earlier disclosure of primary evidence to defendants. I would like to make that point really clearly. The first step in these reforms is that the prosecution gives more to the defence: more information and more detail, and it gives it right at the beginning. That is the first step in the process—requiring major indictable matters to be the subject of charge determination by the Director of Public Prosecutions prior to the commencement of committal proceedings, which is intended to make sure that the right charges are the charges that are actually in place early on. This is intended to avoid downgrading, or upgrading for that matter, of charges later in the proceedings.

We also intend giving the courts the discretion to set a realistic adjournment time frame that reflects the needs of individual cases and reduces unnecessary court appearances for indictable matters when they are in the Magistrates Court. Under these measures, the prosecution will be required to provide a document containing a brief description of the allegations on or before the first court appearance. In most cases, this is likely to be the narrative portion of the police apprehension report, which is usually provided as a matter of practice.

The inclusion of this requirement in the bill is in direct response to a request by the Law Society of South Australia and the Bar Association to assist them in providing early advice to their clients. It was a sensible suggestion and we agreed to it and adopted it. The preliminary brief will contain key evidence available to provide elements of the offence that is alleged to have been committed. In some cases, this may include evidence that is technically not yet in an admissible form, but which is available in a timely way, is reliable and is sufficient for both the prosecution and the defence to understand what evidence exists and is capable of being provided, should the matter

ultimately go to trial. Again, this ensures early disclosure of the nuts and bolts of the prosecution case to assist a defendant to know the case against them.

The deputy leader said that because the government has indicated that a major purpose of this reform is to encourage early guilty pleas, it is implied that the government was trying to penalise defendants because it is all their fault. The government has said nothing of the sort. The point of this reform is to have the whole system working better. Yes, that does include facilitating pleas earlier, where pleas are appropriate to be made. We have not said this is solely the fault of the defendant. That is precisely why we have introduced the tiered disclosure scheme and case statements by the prosecution, to ensure the defendant has all the material they need to make a decision about their plea and to make that decision early.

The deputy leader said the bill removes a requirement for a defendant to make a plea during a committal hearing. I am not sure why she thinks this, but it is clear that this requirement continues under clause 113. The deputy leader also says that clause 107 prohibits pre-committal subpoenas. As she rightly points out, this has caused much concern and is the basis of submissions from a number of key stakeholders.

However, she seems to have failed to notice that, as a result of those submissions, the government has already amended clause 107 to address the concerns raised. She says she has looked at the amendments we filed, and because there is no filed amendment relating to subpoenas she will be opposing the clause and enabling the filing of an amendment in the other place. The reason there was no filed amendment was that the government had already amended the clause. We did it before we introduced the bill and long before she complained about it.

Clause 107 of the bill before this parliament clearly provides that a subpoena can be issued before the completion of committal proceedings in various circumstances. For example, a registrar can continue to issue subpoenas, as they do now, if the defendant is charged with a minor indictable offence and is not electing for trial in a superior court, or if it is to compel a witness to give evidence, or if each party to the proceedings and each person to whom the subpoena is directed consents to the issue. If any of the above do not apply, the parties seeking the subpoena must simply apply to a magistrate for an order for the subpoena.

That is what the bill says. It does not prohibit defendants getting the information they need. Instead of just being able to have the registrar rubberstamp a subpoena—which is basically how it works now, putting the onus of objecting to a subpoena, which is vexatious or a fishing exercise, on a party who has been served with it after the event, and requiring them to bring an application to have it set aside—the party asking for material will instead, in the absence of an agreement from other parties, need to be prepared to justify why they need a subpoena before it is issued, instead of afterwards. Those who are seeking documents at this stage, to which they generally should have access, will not be stopped from so doing. I cannot elaborate on this point any more. It is fairly simple, if you read the clause.

While on the topic of subpoenas, I mentioned that clause 126, which deals with subpoenas in a superior court, has also been amended in response to the submissions of various interested parties whom the deputy leader has mentioned. Again, the registrar can issue a subpoena if it is to compel a witness to give evidence or, if the parties agree, as long as the party has filed their case statement. If the parties do not agree to the registrar issuing a subpoena, a master or a judge has to decide whether the subpoena sought would be likely to provide material of relevance to matters that will be in issue at the trial. And, it is in the interests of justice to issue it.

I am not sure why the deputy leader thinks that parties should be permitted to subpoena material that is not relevant to matters in issue at the trial. If a defendant has filed a case statement, for example, indicating that self-defence is to be raised, and they seek to subpoena CCTV footage from the pub to show the altercation—this is in the rare situation the police have not already seized the footage and provided it to them—they will be able to get it. It is clearly relevant.

The deputy leader makes much of complaints raised by various interest groups complaining that the rules that apply to prosecution and defence are not equal; that the consequences for noncompliance are one sided. Again, this complaint appears to be based on the previous version of clause 125. She has suggested that, in respect of the obligations to provide a case statement, there

is no penalty whatsoever if the prosecution does not do the right thing but there are penalties on the defendant. This is simply not the case.

The court may refuse to admit evidence sought to be adduced by either party—and I emphasise 'either party'—who has failed to comply with their disclosure obligations. The court may grant an adjournment to either party if the other party has failed to comply and this prejudices their case. Again, as for the subpoena issue, the government has already consulted with those interest groups. They voiced their concerns about various aspects of the provisions, we listened and we changed it, even before we brought it to the parliament. It would seem that the deputy leader has not bothered to read the bill laid before the house and appears to be riding on the coat-tails of complaints made about a previous draft of the bill, which have already been taken into account and amended accordingly.

We wrote to all of those interested parties in November 2016, providing them with a copy of the bill after we had made changes based on their concerns. We invited further comments after we had taken into account their initial concerns, and they did not come back to us and say, 'There is still an issue,' or, 'The change you made did not fix the concern we had.' The only response I can recall was a homily from Mr Edwardson QC, which came on the evening before the debate and did not substantially raise matters continuing to be of concern, other than a reiteration of the earlier comments about the earlier bill.

The deputy leader suggests that, rather than the process set out in the bill, the most effective way of dealing with inadequate compliance by any party to proceedings is to direct that they pay the legal costs of the other party and their costs as well. I will come back to this ridiculous suggestion, but first perhaps it would help if I explained in brief how the criminal process currently operates. The prosecution has a duty to disclose its case to the defendant. It does not get to pick and choose what to disclose. It must disclose whatever it has that is relevant to the case, even if it is helpful to the defence and unhelpful to the prosecution.

That is the way it should be, for the prosecution has the burden of proof and the defendant is presumed to be innocent. This means the prosecution must obtain witness statements from any and every witness it proposes to call. Those witness statements must set out the detail of what that witness will say if the matter goes to trial, but the witness statements themselves are not evidence. The witness must still come to court and give oral evidence—leaving aside for the moment recent arrangements surrounding vulnerable witnesses and suchlike.

The defendant comes to court knowing in detail what the prosecution case is. They know what each witness is going to say. They know this months, sometimes years, in advance. If it so happens that a prosecution witness deviates from their statement, whether that is because they are being dishonest or their recollection has changed or they become confused during cross-examination, the defendant's counsel is able, under the existing law, to cross-examine them about the deviation. This is known as a prior inconsistent statement. That is how the system currently works and has worked for a long time.

The change in story can then become the subject of a careful comment to the jury—let me be clear—as a comment by the defence about the reliability of a prosecution witness. If the witness has a good explanation for the change in the story, the comment may not be made. It may not be helpful to the defendant's case. But if there is no good reason or it points to a possible inconsistency in the witness's account or it prejudices the defendant in any way, you can guarantee that prior inconsistent statement will be commented on by the defendant's solicitor or the trial judge or both when it comes time to address the jury. I repeat: this is how the law currently operates and will continue to operate under the proposed changes.

Let us consider the current position for the defendant. The defendant has a right to silence, so, of course, that means they do not have to provide a statement to the prosecution about what they say happened. Some defendants provide a statement of sorts to police, perhaps without even having had legal advice. If they do but they change their version at trial, that too can become the subject of comment to the jury. But remember that the defendant does not have to talk to the police, and the defendant does not have to give evidence.

However, under the existing law, the defendant already has to give prior notice of some matters—for example, alibi evidence or expert witness reports. It is common for a comment to be made to the jury under the current law to make sure that the jury does not draw an adverse inference from the silence of the defendant. That is right and it is fair and it is how our system of justice operates. The onus of proving a criminal charge is fairly and squarely on the prosecution, not the defendant. We are not arguing about that, nor are we attempting to change that, but because of that the prosecution is already open to having comment made to the jury if anyone of tens, or, in some cases, hundreds of witnesses deviate from their account.

The defendant is not generally in that position because they do not have to provide their own statement or statements of any witness they might call in advance of the trial, with some exceptions, as I have mentioned before. What we are doing here is saying, if the defendant, for example, says in their case statement, made after there has been an opportunity to obtain legal advice, that they are relying on self-defence (in other words, they are admitting that they were there—they may be admitting, for example, they threw the punch—and they were just saying that they were acting in self-defence) and they go to trial and say, 'No, I've changed my mind, I wasn't there, it wasn't me, you've got the wrong person,' why shouldn't the jury know about that?

If the prosecution has not allowed evidence from five eyewitnesses who say they know the accused and saw him there, or the DNA evidence that proves his or her blood was left behind at the scene of the crime, suggesting they were there, and the prosecution has conducted its case in this way because the defendant said those things were not in dispute, there is no need to prove those things, then why should the jury not be told about that if the defendant turns around and changes his story at the last minute? Or, if the defendant says it was not them, they were not at the scene of the crime, but later comes along and runs a defence of provocation, why shouldn't the jury hear about that if the defendant does not have a good reason for the change in story?

The deputy leader has criticised the provision that permits comments to be made to the jury if the defendant does not comply with his or her disclosure requirements or conducts their case in a manner inconsistent with their case statement, as being a new and a novel approach to punishment. It has nothing whatsoever to do with punishment. There is nothing new or novel about it. I have just explained that the current system already permits comments to be made in some circumstances of prior inconsistent statements. Things are currently skewed against the prosecution due to the nature of their existing disclosure obligations.

Under the bill, the defendant is not expected to provide disclosure of their case, even remotely close to the level of detail that already applies to the prosecution. The deputy leader is correct in suggesting that the playing field is not level, but the very onerous obligations are, and will continue to be, on the prosecution, in keeping with the nature of the adversarial criminal process. There appears to be a misguided belief that the provision of permitting comment to be made will be used in a way that is unfair to the accused.

Firstly, it must be noted that comment can only be made to the jury with the permission of the court. This is an important safeguard. It ensures those fears that the provision will be misused will not be realised. It means that the trial judge will decide whether such comment is appropriate before it is made and, in doing so, will take into account whether there is, in fact, a good reason for the departure from a case statement or good reason for noncompliance with the disclosure requirements. Trial judges are required to make decisions about material going before the jury on a daily basis throughout the trials before them. They weigh up whether evidence is likely to be more prejudicial to an accused and probative on a daily basis and we trust them to do so.

There is no reason to think that they will not continue to weigh up the competing issues and make correct decisions in this context. I point out that both New South Wales and Victoria have similar, though different (having regard to their differing circumstances), provisions, permitting for comment to be made to the jury in appropriate circumstances, with the leave of the court. New South Wales has had their provision since 2013 and Victoria since 2009. The sky has not fallen in in those jurisdictions and we have not heard of outrageous miscarriages of justice as a result. In New South Wales, the Criminal Procedure Act 1986 sets out that, after an indictment is presented or filed in proceedings in the District Court or Supreme Court, the prosecution is required to submit a prosecutor's notice setting out the case against the accused.

The defence is required to serve and file a response to the notice. This is in New South Wales, and has been for some time. The prosecution must then file a prosecutor's response to the defence, responding to any issues raised. Pursuant to section 146A, in circumstances where the prosecution has complied with the requirements for pre-trial disclosure and the accused has failed to comply, the court, or any other party with leave of the court, may make such comment at the trial and the court or jury may then draw an unfavourable inference.

This particular sanction is similar to the sanction allowed for in clause 125(6) of the bill currently before us. The provision seeks to ensure that a defendant cannot game the system if the accused tells the prosecution they are going to say one thing and then gets to court and says another. Then, in the absence of a good reason for the departure, why should the jury not know about that?

While on the topic of existing trial procedure, the deputy leader made comments suggesting that a defendant is usually kept in custody once they are committed for trial, even if they have been on bail up to that point. Although bail is not the subject of this bill, it would be remiss of me not to correct this assertion. Bail is not revoked upon being committed for trial unless there is some other independent reason for revoking it.

I now turn to the suggestion that a costs order would be an effective way of dealing with inadequate compliance. I understand the appeal of that suggestion to a lawyer who does not practise in criminal law.

Ms Chapman: You never have.

The Hon. J.R. RAU: That might be—

The DEPUTY SPEAKER: Do you need my protection?

The Hon. J.R. RAU: —no, I don't—why I understand it. I agree that in the civil jurisdictions, cost penalties can be very effective. Litigants in those areas are often fighting over money in one way or another, whether it be distribution of property, a claim for entitlements or a claim for damages. The criminal jurisdiction, however, is quite different. Perhaps most obviously, it should be noted that a very large proportion of criminal defendants are of very limited means. That is why the Legal Services Commission made over 12,800 grants of legal aid in the 2015-16 financial year.

If you do not have any money or assets, such that you cannot pay for your own defence, then you are not going to be swayed to comply with court orders by a costs order that you know you cannot be forced to pay. Not only is there no point in making costs orders if people cannot pay them but there is no incentive for the indigent offender not to incur them. The deputy leader's comments only make sense if she is talking about costs orders being made personally against lawyers, based on defaults by their clients over which they have no control. I am sure the defence bar would love to hear more about that from the deputy leader.

As an aside, the deputy leader complains about provisions in the previous draft permitting the imposition of costs orders on solicitors. I do not know what provisions she is referring to. She goes on, in relation to case statements, to suggest that the obligation for continuing disclosure is a problem because it somehow allows the prosecution to get away with filing an inadequate case statement in the first place.

I have already explained the process that applies. The prosecution is already obliged to disclose everything. The case statement has not changed that. It just means that the prosecution now has to prepare a case statement in addition to that disclosure. At the moment, the defendant's solicitor has to read all the statements. They should obviously still do that, but now they will also have a summary of the prosecution case provided to them.

It is a fact of litigation that sometimes new material comes to light; it must be disclosed. It should be remembered that this provision applies to both prosecution and defence. Should we be holding the prosecution to a case statement, notwithstanding that new evidence has come to light, while letting only the defendant change their position? It is clear that the prosecution must disclose their case and the evidence they intend to lead to prove it to the defendant before they should be called on to advise whether they dispute any part of it or intend to run a positive defence. The government is not willing to impose a blanket guillotine order that may prejudice the interests of the community and victims of crime unfairly either.

In relation to the timing of sentencing discounts, as I explained in my second reading, the timing of the relevant maximum discounts has been amended in this bill (and those amendments are replicated in the Sentencing Bill to be consistent) in order to correlate with the procedural changes proposed. It is probably not surprising that some interested parties have opposed this because the changes mean that a defendant will generally need to plead guilty earlier in the process to attract the 30 per cent and 20 per cent discounts. This really needs to be viewed against the procedural changes in the bill, which include the provision of more information to defendants at earlier times. The availability of the maximum 40 per cent discount remains unchanged.

The deputy leader made some comment that it was too early to conduct the review into the operation of both the guilty pleas act and the supergrass act. She also commented that it may be too early in the operation of the supergrass act to expect significant results. That is due to the nature of what that act was trying to achieve and really has no bearing on the reform, the subject of this bill. However, the impact of the guilty pleas act, which came into effect in March 2013, was ripe for review in October 2015, some 2½ years after the introduction of the scheme. As the reviewer said, the results of the guilty pleas legislation demonstrated a significant impact in that time, and it cannot be said that aspect of the review was premature.

I want to finish by responding to the point the deputy leader made, that the new requirements are not consistent with providing just and equitable access to a trial process to protect the interests of the innocent. She does not go on to explain how the interests of an innocent person are even remotely compromised by this reform, and that is because they simply are not.

The Bar Association stated in their submission that a 'criminal trial is not and cannot be considered a pursuit for the discovery of the "truth"'. I read that again: a 'criminal trial is not and cannot be considered a pursuit for the discovery of the "truth"'. Victims of crime and the public would be very surprised to hear that, but that attitude does help to put some of the comments that have been made into context. I, for one, am interested in the criminal process getting to the truth. It should not be a cynical game of gotcha and evidentiary concealment. The eminent jurist, Sir Robin Auld, who has held a myriad of senior judicial appointments in the United Kingdom, has said:

> A criminal trial is not a game in which a guilty defendant should be provided with a sporting chance. It is a search for the truth in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself, the object being to convict the guilty and acquit the innocent. Requiring the defendant to indicate in advance what he disputes about the prosecution case offends neither of those principles.

There is nothing here which removes the right to silence. The defendant is not obliged to answer police questions during the investigation stage. In fact, the defendant is not required to give evidence at all. The defendant remains entitled to put the prosecution to proof and to remain silent throughout, requiring the prosecution to prove each and every element of the matter. The burden of proof remains on the prosecution.

Asking the defendant to indicate which aspects of the trial are in dispute and which aspects are not after they have received a prosecution case statement and the prosecution evidence, as well as having had the opportunity to seek legal advice, does not alter the burden of proof. Asking the defendant to identify a positive defence which they intend to raise at trial does not change the burden of proof, just as it does not change the burden of proof when they raise it at a trial now. Bringing the timing of that disclosure forward to pre-trial instead of during trial allows the parties to narrow the issues and focus trial preparations on those issues, rather than wasting time preparing for every possible permutation of the facts. There is nothing in the bill which removes the right to silence.

The deputy leader, frankly, appears to be preoccupied with the spoiling politics of this argument. Her position is formulated, essentially, at the expense of victims of crime and the proper use of public resources in the interests of the broader community. There is a wide acknowledgment that our criminal justice system needs reform. This proposal represents a significant part of this reform.

I invite the deputy leader to join me in taking the lead in this matter. This reform has undergone rigorous consultation and had balanced and passionate views of many aspects of the criminal justice system heard. What we have seen so far here from the deputy leader is putting an arm around the defence bar at the expense of those reforms. She has continually blamed the

government for not acting on court delays, yet offers no constructive solution. This is a constructive solution.

The deputy leader would be better placed to support this proposal for the benefit of the entire criminal justice system and the broader South Australian community.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

Ms CHAPMAN: I indicate on behalf of the opposition that we will support clause 1. The general reform and thrust of what this act is to cover, as outlined in the proposed title, is a model, as the government presents and, largely, as is accepted, to introduce a regime, of which there is, as far as possible, early disclosure in major indictable offences. The opposition supports that ethic.

What we have highlighted is that the government's aspiration to reduce its trial times and to reform the criminal justice system in this model is inadequate without dealing with a whole number of other issues, which we have listed for the government and which need reform.

We accept the general principle that the criminal justice system is open to reform, the model of which we have to ensure both prosecution and defence do disclose sufficiently, whether it is early or otherwise (ongoing is the general principle), to give an opportunity for early resolution of cases. That can be an instructive and useful instrument.

It appears, however, that the government, in particular the Attorney, are either so ignorant or so arrogant on this issue that they cannot even see the further submissions that have happened since we have been here in this house debating this matter from representatives in the legal profession who, inconsistent with his statement today, suggest that the areas of concern in some way have been modified in the bill presented to the parliament and that there is no justification for complaint anymore. That is a superficial and insincere comment, and its approach is wholly rejected.

He only has to read today's paper, he only has to read the further correspondence that has been presented to the Attorney since this bill was tabled, to understand that it is not a bill that has reflected, or given consideration to, the concerns raised by those largely in the legal profession.

We all accept that the whole criminal justice system is to ensure that we acquit the innocent and convict the guilty—that is obvious. What we are looking at here in this bill is how to introduce a model of procedure, where there are obligations on the parties who are being represented in that process in the court, as to how they are to behave and what can be improved before we even get to the acquittal or the conviction stage at a trial.

I think the Attorney needs to reflect on the voice of opposition to key areas of this bill. Whilst most of it is accepted, the key areas of this bill remain unacceptable and put the general public at risk. Bear in mind that the representatives who have been putting to the government and to us these submissions that have been outlined to this parliament are the ones who ensure we protect everyone who comes before the criminal justice system.

We cannot have a system where the innocent cannot be protected, that they will be identified and they will be protected. We have certain rules for both sides that are exclusive to them. We have the right to silence for the defendant; the Attorney has repeated that. It is not even in this bill; it has nothing to do with this bill. We have special rules that mean that if an indictable offence is prosecuted and it is ultimately withdrawn—a nolle prosequi is entered, or there is an acquittal—the defendant, the person who has been acquitted, cannot come back and get a costs order. It is a rule that is exclusively to their detriment.

What we are talking about here is a process where there is room for improvement. Everyone agrees that there are aspects of this bill which provide that improvement, but there are key areas about which the Attorney continues to put his head in the sand and refuses to accept. To hear today that there is some kind of accommodation of this in the bill that has been presented to the parliament is completely and utterly false and a misdescription of what has been continually presented to him.

Take the blinkers off, take off the earmuffs and understand that this is a very serious issue. Those who are innocent and yet to be charged need to be protected here in this parliament. He ought to understand what his responsibility is in that regard.

We also looked at the question of how we improve the model in the whole process of the cases. We were asked as a parliament 10 years ago, in a 2005 bill on procedure in relation to criminal processes, to look at what should be the obligation, to try to codify this disclosure process in some way during the trial, including early disclosure, and to identify issues in dispute, just like we do in civil cases, but to make sure that we kept a fair model.

At that time, there was a regime put in place to which there had been some improvement. Most of it failed, but it was to set out a model which was to provide some improvement. Again, the government continued to ignore the submissions being put, even by the Director of Public Prosecutions, repeatedly in the annual reports, and I will refer to that in one of the amendments that is coming up. I make the point that we are not here to object to there being improvement—in fact, we support most of the bill—but there are certain aspects of this which are unconscionable and unacceptable, and we will continue to fight for those.

Clause passed.

Clause 2.

Ms CHAPMAN: Has the Attorney yet prepared regulations to be implemented with this, and/or are there draft rules of court to be implemented with it?

The Hon. J.R. RAU: No, we do not have any regulations. Obviously, it would be a bit presumptuous to have regulations prepared before the bill has even gone through this house, let alone the other one. As for the rules of court, that is entirely a matter for the court. I presume the court will be watching with interest the way in which the bill proceeds and, assuming the bill passes in the contemplated form, I am confident the rules committee of the court will turn their mind to what, if any, rule changes are required. However, at this stage neither of those pieces of work are necessary.

Ms CHAPMAN: Have those who are going to prepare each of these sets of subordinate procedures and regulations yet examined the New South Wales and Victorian rules of court and regulations?

The Hon. J.R. RAU: I certainly have not gone into great detail at that level. I emphasise again that the rules of court are a matter for the court, no matter what school of thought you belong to in the many schools of thought about where the separation of powers lands, where the dividing line is between the parliament and the court. As I said before, I personally think the idea of rolling lists is a good idea. I think the idea of docket systems is a good idea, but my view is irrelevant because I am not making the rules of court, and I am in the happy position of having that opinion and never having to implement it because I am not sitting in there.

Those are things for the court, and I am not going to wade into that at all. As for the regulations in New South Wales, I have not looked at them in detail. However, some months back I had a very useful conversation with the New South Wales Director of Public Prosecutions about how their system works, and his views and experience were one of the factors that we took into account, amongst many other things, including submissions from the defence bar here, when amending our draft bill.

Assuming the bill goes through in the current form, I think we would be talking to colleagues in New South Wales and, to some extent, in Victoria. Victoria has its own way of doing things which is not exactly transferable to here, but to the extent that we can pick up things there, we would obviously be talking to them too. We have not done any of that work in detail.

The other point is that, given the amendment that I have foreshadowed to clause 7, much of what would potentially have been a matter for regulation will become a matter for court rules. So that means our role, inasmuch as we have a role in regulating this matter, will be less than would otherwise have been the case.

Ms CHAPMAN: Apart from having a conversation with the DPP in New South Wales and indicating that you personally have not done much about this, you did conclude your statement with 'some work that we had done'. I assume that to be your advisers on the matter. I note the foreshadowed amendment to supplant some of the regulatory material into the rules of the Superior Court, in the amendments we have seen. Have you had any discussion with the Chief Justice or the new Chief Judge of the District Court in respect of rules of court?

I heard you, presenting in response, that some of these amendments were as a result of discussion with the judiciary as to whether they have turned their mind to rules of court. What we are really looking to see is when we expect that this bill is proposed to be proclaimed, if we do not have any machinery material to get it started.

The Hon. J.R. RAU: I have had conversations, in particular with the Chief Justice, about this matter, and it is fair to say that the clause 7 that we are proposing is a direct consequence of discussions I have had with him. I have come to the view that given that the court, on a daily basis, has to manage these matters, it is appropriate for us to minimise the extent to which the parameters here are circumscribed by the parliament, and give the court and the court rules work to do.

Exactly how long it will take the courts to do these things I do not know, but I can say that my observation of the courts is that their capacity for drafting rules is significant. The Supreme Court has a formidable output of rules, and I have no doubt whatsoever that the new head of the District Court and the current head of the Magistrates Court will turn their mind to these matters quickly. I have every reason to believe they will regard this as a priority matter, so I would not have any expectation that there would be any inordinate delay created by the need for these rules to be prepared.

Ms CHAPMAN: Is it the Attorney's intention to seek that this bill, once it has gone through the process of the parliament, be proclaimed in the ordinary course, or is it proposed that it will await proclamation until after at least draft rules are circulated?

The Hon. J.R. RAU: Obviously—it seems to me, anyway—the scheme, as contemplated, cannot work without rules. Assuming the thing goes through, we would be saying to the courts, 'Look, we have now got this through. Here is the known quantity and here is what is now the new law. We are at your disposal to be of whatever assistance you may require of us to assist you'—

Ms Chapman: You have it proclaimed, so there will be no delay in the proclamation?

The Hon. J.R. RAU: As soon as we can make sure that this thing is functional we will proclaim it, absolutely.

Ms Chapman interjecting:

The Hon. J.R. RAU: They will have to be prepared before we can proclaim it, otherwise we will only have half a thing going.

Clause passed.

Clauses 3 to 5 passed.

Clause 6.

Ms CHAPMAN: I move:

Amendment No 1 [Chapman–2]—

Page 6, lines 18 and 19 [clause 6(1), inserted definition of *case statement*]—

Delete the inserted definition of *case statement*

This deletes the inserted definition of case management, similar to clause 2, which deals with an interpretation reference to the defence case statement, and then to deal with amendments Nos 2, 3 and 4 which, again, are minor amendments to deal with the proposed reform we have for case statements, which is largely outlined in number 11 of my amendments. I indicate I will not be speaking at length on those and we will deal with them at clause 11, so I ask that the amendment No. 1 in 178(3) be put.

The Hon. J.R. RAU: First of all, the amendments, which were actually filed today, are significant. This is an interesting example of what we are trying to stop happening in the courts, which is last-minute filing of things and last-minute changes in direction. What we effectively have here is a last-minute proposal—inspired I think I know by whom—which, it seems to me, largely attempts to pick up Victorian practice and substantially alters this legislation.

Because it has only been filed today, I obviously have not had time to study it all in detail. For that reason, I will not be supporting any of it but, in so doing, it may be that there are elements of this that are worthy of consideration and, given the time between the houses, I may do that, but I want to make a couple of points that are readily apparent at the moment.

There is, as I see it anyway, a requirement that the prosecution opening and notice of pre-trial admissions be filed 28 days before trial. Can I just make it absolutely clear that that is no good. It is no good because it is way too late. If that is the first articulation of what is going on, it is occurring so late in the piece that we are not going to make any fundamental improvement here at all. There is then a requirement for a defence response 14 days before trial. Again, the reality is that you cannot just take a criminal trial, or probably even a civil trial for that matter, out of the list at a few days' notice.

I will have a look at these things. It appears that somebody has got a photocopier and copied what goes on in Victoria, notwithstanding the fact that Victoria has a fundamentally unique and different underpinning of criminal justice procedure that has evolved independently of us since colonial days. Does that mean that everything that happens in Victoria cannot be of benefit to us? No, it may be that there are some things in here from which, if we have a look at them and think about them, there may be some benefit. I am not dismissing it as being of potentially zero value, but if the proposal is fundamentally, as it seems to be, to completely destroy these changes in terms of time lines, disclosure, subpoenas, etc., then we are just not going to be able to agree on that.

Because I have only just seen it, I do not really want to be any more definitive about the position presently, so I will be opposing these measures. However, in opposing them, I make the point that that does not mean I am not prepared to have ongoing discussions. If there are some elements there that we can usefully improve, then that would obviously be something I would be open to.

Amendment negatived.

Ms CHAPMAN: I move:

Amendment No 2 [Chapman–2]—

Page 6, lines 20 and 21 [clause 6(2)]—Delete subclause (2)

Amendment negatived.

Ms CHAPMAN: I move:

Amendment No 3 [Chapman–2]—

Page 6, lines 24 and 25 [clause 6(4)]—Delete subclause (4) and substitute:

(4) Section 4(1)—after the definition of *minor indictable offence* insert:

notice of pre-trial admissions—see section 127C;

Amendment negatived.

Ms CHAPMAN: I move:

Amendment No 4 [Chapman–2]—

Page 6, after line 28—After subclause (5) insert:

(6) Section 4(1)—after the definition of *summary offence* insert:

summary of the prosecution opening—see section 127C;

Amendment negatived; clause passed.

Clause 7.

The Hon. J.R. RAU: I move:

Amendment No 1 [DepPrem–1]—

Page 7, lines 14 and 15 [clause 7, inserted section 100(2)]—Delete 'will not be open to objection in respect of its form or contents if it is framed in accordance with the requirements (if any) prescribed by the regulations' and substitute:

and laid in a court will not be open to objection in respect of its form or contents if it is framed in accordance with any requirements prescribed by the rules of that court

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 2 [DepPrem–1]—

Page 7, lines 16 to 18 [clause 7, inserted section 100(3)]—Delete inserted subsection (3)

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 3 [DepPrem–1]—

Page 7, lines 28 to 31 [clause 7, inserted section 102(1)]—Delete inserted subsection (1) and substitute:

(1) Subject to this Act, charges for 2 or more offences may be joined in the same information if those charges are founded on the same facts or form, or are a part of, a series of offences of the same or a similar character.

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 4 [DepPrem–1]—

Page 8, line 25 [clause 7, inserted section 102(5)(b)]—After 'proceedings' insert:

(provided that a court may only direct that charges contained in separate informations be tried together if the charges could, in accordance with subsection (1), have been joined together in the same information)

Amendment carried.

Ms CHAPMAN: I move:

Amendment No 5 [Chapman–2]—

Page 13, lines 1 to 17 [clause 7, inserted section 107]—Delete inserted section 107

This amendment deletes the proposed inserted section 107, which introduces a new regime for pre-committal subpoenas. Whilst I canvassed this during the second reading debate, I wish to present the following remarks for consideration. The government's position is that it is not abolishing the right to pre-trial subpoena use to ensure early discovery of the facts of the case but is in fact allowing it, but in certain circumstances.

There are two gatekeeping processes under the proposed section 107; that is, the registrar may only issue a subpoena—which currently is without conditions in its law—with three requirements: firstly, in a circumstance where the registrar is satisfied that the defendant will not be electing, in accordance with the rules, for trial in a superior court; or that the subpoena is issued for the purpose of compelling a witness to give oral evidence in committal proceedings; or that each party basically agrees.

Essentially, that means that it is a process that is highly restricted. The government says the alternative under this new regime is that, if you are unhappy with that or you do not get the resolution you want from the registrar by the issuing of the subpoena, having gone through that process, you can go to a magistrate—not necessarily on appeal; you can go straight to the magistrate, in fact—under this proposal and set out your case as to why you need to have a subpoena issued.

This new process is in itself utterly absurd in the envelope that one of the purposes of the subpoena is to ensure that the prosecution has disclosed all that they have that is relevant to this

case. The practical application of this is really important. How does the defence or the accused person know what is in the possession of all the repositories of evidence that may or may not be presented at some later date? They have to assume at this stage, if you are going to rely on paragraph (a)(iii), which is the consent arrangement, that the DPP and/or the police prosecutor have produced everything that is going to be relevant.

The fact is that, by virtue of how this operates, unfortunately that is frequently not the case, not necessarily because of any mala fides of the police prosecutor or anyone in the police department or the DPP but because of what actually happens in a serious offence. The police are involved and they collect the evidence. As the Attorney points out, they might take several statements from witnesses, especially in a circumstance where witnesses give one statement, then the police and other investigators find other material and go back to some of these witnesses and get extra statements.

They follow through when they have the forensic material. They might get further material, which they collate. They do not collate it all through one police officer's desk. They do it sometimes in multiple areas across the police force, with their other investigators and forensic people. It is an exercise in which the responsible identification process of the investigation by those personnel is frequently at multiple locations and through multiple offices. Sometimes that information does not all come together. Sometimes information comes to the attention of those investigative officers that slips through the net. It is not identified or it does not come into some central pool, and it is not then even put in the brief that goes to the DPP.

This is the weakness in the system of saying that you have a high bar that you have to jump over to be able to get access to material that should have been disclosed but was not. It is not necessarily anybody's fault, especially at the primary level of those undertaking the investigation. They have done their job. They have interviewed witnesses, taken photographs and sent things off for forensics. They have done the hard slog of pulling together sufficient evidence for a decision to be made either to refer it to the DPP to make a decision to prosecute or indeed to present a case for others up the ranks to make those decisions.

All too often, as the Attorney well knows from cases that have been presented to him one after another by people who are doing this every day in the courts, commonwealth or state prosecution offices present material which they later find is not comprehensive or not complete and further material is presented at a later time. And what happens at the moment? Sadly, cases that have waited sometimes years to get on the list and come up for trial or come up for committal are put off. The witnesses go home, the defendant goes back to the prison, the lawyer goes back to his office, counsel goes back to their chambers, and they start all over again. That is what is happening as we speak. That is the real world.

If the Attorney wants any confirmation of this, he ought to have a look at some of these cases and see what has happened and understand that sometimes the DPP, who makes a decision on the primary information that is given to them that there is a case to answer, will make the decision to prosecute even without this other evidence, but then it comes to light months or years later. It might add to the prosecution, and the prosecution maintains the view, but they disclose it sometimes very late. Why does that happen? Because very frequently in these big cases the DPP allocates a file for preparation for trial at a very late stage in the process. That is unfortunate, but that is the real world.

One is not to deny, when dealing with serious criminal offences, the right of the state to protect its civilians against wrongdoers and those who are felons and who are doing the wrong thing and to prosecute. In fact, we protect them. We put an umbrella over them to say that they cannot even have a costs order made against them—that is how important it is in the process. But we are wasting trial days and times. We are inconveniencing people, not just the lawyers or counsel but judges, court officers and witnesses. Victims are waiting out there in the wings for something to happen and these cases are put off time and time again.

The real world is that the DPP has the primary carriage of these cases at the pointy end. From committal to trial, Senior Counsel come in and find further material, but they are late in the process and they are putting off these trials. Is that going to change? It will only change if the DPP

is in a position as an office to allocate these cases at an early stage to deal with the management and carriage of these cases, not by some rule the Attorney puts in.

They need enough people down there in the DPP's office to actually do the work, conduct those searches and examine the material that has been put in a primary brief to them and investigate that to see the material that sits behind it. That is when that happens. When it does happen, other material comes to light in some of these cases but, unfortunately, it is too late to save state money or to save all these people this shocking inconvenience and sometimes deprivation of liberty if they are innocent. That is what we are trying to address. The Attorney has a situation now where that is critical to the process of early disclosure, even at the moment if it comes later than we want, because, at the very least, when senior people get that brief and conduct it, they are able to present that material.

At the moment, the subpoena process at least at a relatively early stage—that is, at the pre-committal stage—allows them to require that the prosecution team do that search, provide that information and present it for examination. That is what is so critical. For the Attorney to dismiss this as not a key and critical element of ensuring at least some of them the opportunity for early disclosure is completely bewildering. It is absolutely critical that we leave this process in the system, uncorrupted by such a high threshold of obligation to go through court processes on applications when they are in the dark about the extent of that information.

That is why we have the subpoena process. The Attorney might not have sat in criminal courts, but he ought to know that that is absolutely required if we to have the system that he and I both agree on is to make sure that we protect the innocent, that we prosecute the wrongdoers and that we ultimately acquit and/or convict as is required.

The CHAIR: You have moved your amendment so, if there are no further comments, we can put it.

Ms CHAPMAN: I present this amendment to ensure that we maintain a level of integrity in the system which at the very least, once you have a structure of case statement disclosure which comes later in the model—I do not think they have the right model but they could improve it and I am pleased to hear the Attorney indicating that at least he will have a look at it. He has had an opportunity to look at it; his whole department that is advising him in relation to this has had an opportunity to look at it; it has been operating in Victoria for a long time; it has been presented in submissions; he knows what is in it and he could have adopted it. However, let us at least keep a key element in protecting those who we need to protect.

The CHAIR: Do you have any remarks before it is put?

The Hon. J.R. RAU: Yes. This is going to be a recurrent theme, so we might as well have the conversation about it now. The situation with subpoenas is this: basically, everything the deputy leader said about the inadequacies of the present system I totally agree with. If you ask her, 'What is the problem?'—and I am saying that metaphorically—the problem is that people do things late instead of in a timely fashion, which means that everybody wastes money and time and everyone is inconvenienced, including witnesses, victims, the assets of the state being tied up having judges either hearing cases they should not be hearing or not being able to hear a case because the matter is adjourned, or whatever, too late—all those things. All those things come from people not concentrating early enough.

As for the subpoenas, I say this: there is nothing to stop a person getting a subpoena, either because they want a witness or because they have agreement, without going to the court at all—full stop. The second point is that if they cannot get an agreement from the prosecution that the subpoena they want is in some respect relevant to the matter that is before the court, then they have the opportunity to go to a magistrate in the first instance and ask for an order. They have a chance to plead their case. I make a very simple proposition here which should not be startling for anybody: if anybody wants an order of the court to be made against another person, is it not reasonable that the onus of persuading the court that that order should be made rests on the person asking for the order? Is there something revolutionary and crazy about that?

If I want an order for somebody to stop doing something, or I want an order to make somebody do something and that order has to come from the court, what is so crazy about saying,

'I bear the burden of going to the court and asking for the order'? What is so crazy about that? All we are saying is that the present situation is reversed, in that somebody who might have a problem, a legitimate problem with the order being made, does not even get notice of the order being sought and finds out about the order only after it has been made and then has to go to court to unpick something made against them without notice.

If we were talking about anything in court, anything at all—orders for production of documents, orders for discovery, or anything else—you would always have an application made by the applicant to the court for the court to exercise its jurisdiction to make the order, unless you had agreement. There is no intention here whatsoever to prohibit parties, as early as they like, from seeking orders (initially by consent) for material that is relevant to the matter before the court—no problem at all. If there is a dispute about whether the order they are seeking is relevant, the dispute is heard at the beginning, before they get the order, not at the end after they present the order to whoever it is that the order is made against.

For the life of me, I cannot see what, philosophically, is wrong with the idea that if you want the court to give you an order for something you ask the court for that order and the person against whom you are seeking the order has the right to be heard about that order if it is a contested order. It is very clear when you read this that if the order is seeking something which is within the scope of the allegations made against the defendant, the court must grant the order. In any relevant matter the court must grant the order.

If we are trying to grab the whole criminal process by the scruff of the neck and make people concentrate earlier, I do not see what is wrong with saying to the involved parties, 'If you have a dispute about subpoenas, we are going to drag the court in to manage you right at the beginning and not wait until the end. We are going to drag you right in, right at the beginning.' Then, the court is actively involved in case management.

I do not see anything wrong, as I said, with a party seeking to obtain an order from the court to be the party that makes the application, and the other side, if there is an objector, being entitled to say whatever they have to say about it and the order then being made or not made, according to the determination of a judicial officer. That is all we are saying. We are not prohibiting anything. We are simply saying there is now a gatekeeper there and that gatekeeper is a judicial officer. So, for those reasons, I oppose it.

Ms CHAPMAN: Not only has the Attorney failed to outline why it is necessary to have a gatekeeper, he still does not appreciate the significance, in indictable matters, of why we need this rule. We do not have it in civil cases. We frequently issue subpoenas in civil cases to command witnesses to attend or to produce documents, and there are processes through which the recipient of the subpoena can challenge the obligation to produce or attend, based on funds being available to produce or collate that material, and that sort of thing. It is a damn insult to the most serious offences and those involved in them that they must have a gatekeeper, but that the same is not required in the rest of our litigation.

I find the government's idea of having this gatekeeper process on the subpoenas completely unsubstantiated. Why should we accept it? It demonstrates to me, firstly, that the Attorney does not have a clue about what is actually happening on this, and, secondly, that he is inconsistent with all other areas of the law where we do not impose that (in minor criminal matters or, indeed, in civil matters). I find it a completely flawed argument to suggest that this amendment should stay in here in those circumstances, especially when we know there is a level of inadequate production of primary material, usually by the South Australia Police to the DPP's office, which then comes in to have command and carriage of these matters.

The DPP made this very clear in his last annual report—after the review on his office, reported in 2016—when he referred to the consultation with the Attorney about this particular reform and about how it might be approved:

> Part of this has been to invite input into how the committal process might be improved with but one goal being my office having more information from SAPOL at an earlier time. This might then contribute to a reduction in the number of court appearances for a matter and a reduction in delay.

He himself—this is the principal officer, the DPP—manages an office on about $20 million a year to try to deal with these serious cases, and he highlights this again. I do not know whether the Attorney does not read this, or does not care about it, or just thinks, 'Well, this is going to be my panacea for dealing with that disgusting delay in the courts of trials in our criminal justice system.' He makes it harder for the very people who are looking for protection of the innocent and conviction of the guilty.

The committee divided on the amendment:

Ayes 17
Noes..... 21
Majority..... 4

AYES

Bell, T.S.	Chapman, V.A. (teller)	Duluk, S.
Gardner, J.A.W.	Goldsworthy, R.M.	Knoll, S.K.
McFetridge, D.	Pederick, A.S.	Pengilly, M.R.
Pisoni, D.G.	Sanderson, R.	Tarzia, V.A.
Treloar, P.A.	van Holst Pellekaan, D.C.	Whetstone, T.J.
Williams, M.R.	Wingard, C.	

NOES

Atkinson, M.J.	Bettison, Z.L.	Bignell, L.W.K.
Brock, G.G.	Caica, P.	Close, S.E.
Cook, N.F.	Digance, A.F.C.	Gee, J.P.
Hildyard, K.	Hughes, E.J.	Kenyon, T.R.
Key, S.W.	Koutsantonis, A.	Mullighan, S.C.
Piccolo, A.	Picton, C.J.	Rankine, J.M.
Rau, J.R. (teller)	Snelling, J.J.	Wortley, D.

PAIRS

Griffiths, S.P.	Weatherill, J.W.	Redmond, I.M.
Vlahos, L.A.	Speirs, D.	Odenwalder, L.K.

Amendment thus negatived.

Ms CHAPMAN: I move:

Amendment No 6 [Chapman–2]—

Page 24, line 34 to page 25, line 12 [clause 7, inserted section 120(1)]—

Delete inserted subsection (1) and substitute:

(1) Where the Magistrates Court commits a defendant to a superior court for trial, the Magistrates Court must fix a date for the defendant's arraignment, having regard to any relevant information provided by the prosecution and the defendant.

Amendment negatived.

Ms CHAPMAN: I move:

Amendment No 7 [Chapman–2]—

Page 25, after line 22—After inserted section 121 insert:

121A—Information to be presented

Subject to section 122, where the Magistrates Court commits a defendant charged with an indictable offence to a superior court for trial, the prosecution must present, or cause to be presented, an information against the defendant.

Again, this relates to the new pre-trial disclosure provision.

Amendment negatived.

The Hon. J.R. RAU: I move:

Amendment No 5 [DepPrem–1]—

Page 25, line 28 [clause 7, inserted section 122(1)]—Delete 'regulations' and substitute:

rules of the superior court

Amendment No 6 [DepPrem–1]—

Page 25, line 33 [clause 7, inserted section 122(2)(a)]—Delete 'regulations' and substitute:

rules of the relevant court

Amendments carried.

Ms CHAPMAN: I move:

Amendment No 8 [Chapman–2]—

Page 26, line 1 to page 31, line 40 [clause 7, inserted sections 123, 124 and 125]—

Delete inserted section 123(10)

The CHAIR: The deputy leader will appreciate that the Attorney has an amendment halfway through, so I ask her to consider moving part of her amendment No. 8 up to the word 'regulations', which is on page 28, line 40. Are you happy with that?

Ms CHAPMAN: Yes.

Amendment negatived.

The Hon. J.R. RAU: I move:

Amendment No 7 [DepPrem–1]—

Page 28, line 40 [clause 7, inserted section 123(11)]—Delete 'regulations' and substitute:

rules of the superior court

Amendment carried.

Ms CHAPMAN: I think I now have to move the balance of amendment No. 8; is that right?

The CHAIR: That is not necessary in light of what has just happened. I am advised that your amendment No. 1 on schedule 1 comes at this point, deputy leader.

Ms CHAPMAN: I move:

Amendment No 1 [Chapman–1]—

Page 31, lines 24 to 28 [clause 7, inserted section 125(6)]—Delete subsection (6)

This amendment relates to the adverse comment rule. The amendment deletes subsection (6) of proposed section 125, which sets out the penalties for failure to comply with the disclosure requirements. The Attorney quite rightly points out that, in the course of consultation, the government accepted that putting the obligation on legal counsel in respect of costs orders was rather draconian. It has been removed in the form it was presented.

That is welcomed to an extent, but it does not cure the ill and is just seen as some sort of punishment to these lawyers who the Attorney describes as people who deliberately do such things as issue vexatious and fishing expedition subpoenas, these people who are not acting in a manner which suggests that they are, indeed, to act as officers of the court, to comply with their undertakings as senior counsel, etc. It is not to say that there are not times that lawyers do not act as properly as they should, and we have a process to deal with that. It is not to say that they do not do things, or fail to do things that are up to a certain standard, and we have processes to deal with that. To put it into this bill was completely, I suggest, improper, but at the very least on that, they have considered it.

What has happened here is that, in the absence of having some sort of punishment process for defence complying strictly with the obligation, they face the risk that a judge can make an adverse

comment about that practice, or the act or their failure to act, to the determining body, which, of course, is usually the jury. To do that, we have raised two options to say that if we are going to have a regime in which there is going to be some sort of punishment for not everyone sticking to the rules, then it should cover both the prosecution and the defence.

The Attorney's response to that is that we do not need to do it to the prosecution because they have obligations to do it anyway. As I have reported to this house before, that is not the view of the DPP. Of course, I am not in any way reflecting on his behaviour or his conduct and that he is not acting properly in the cases that he conducts. I make the point, though, that there is not a penalty for his office in this regime if he does not do the right thing, or if his officers do not do the right thing. So, we have said to the government, if that is the case and you want to introduce this approach, then it should apply to both.

The government's position is to reject that and to maintain a position of only punishing the defence as being the group that is at risk if they do not comply with the rules, and this is the case statement regime. It is more than that, but, if I can put it in a general sense, to their not complying with the timely and, what is to be, prescriptive model of obligation of, not just early disclosure, but identification of the principal issues of the case, defences that are going to be raised, etc. That is just completely unconscionable to us.

The second aspect of this is the concern that is being raised not just by defence counsel but others we have consulted with who do raise the spectre of whether that will result in the opportunity for further appeal, that is, further time being spent on cases unnecessarily. The Attorney says today that on his inquiry, presumably from this chat with the New South Wales DPP, that that has not been a problem. It is possible that they do not use it in these other jurisdictions that have this capacity to make adverse comment because the judges know, wisely, that if they do not give an instruction or make a comment that is within the lines but just traverses or transcends what is acceptable, they might end up in the appeal court.

So, they are smart enough to think that they will not make an adverse comment because it might completely corrupt the process of this being able to continue, forcing a mistrial, or ending up in an appeal court. Fortunately, we have smart judges who are able to identify some of these things, and that may be an explanation; that is, it is not actually used as an instrument of discipline toward defence and those working in it, whether that is counsel or their instructions from their clients.

The approach is inconsistent of the government with the Attorney's comments that we are introducing a regime which is fair for all; they all know what they have to do, it is going to produce the early result, take this out and have this timely effect and therefore reduce the out-of-court list, but there is no penalty. There is no penalty for the prosecution, only the defence. It is not only inconsistent, it is unconscionable; it ought not to be there and we suggest that it should be removed.

The Hon. J.R. RAU: I fundamentally disagree with that proposition. If the defence says one thing one day and then wants to turn up in front of the jury and say something completely different, I cannot for the life of me see why it is not relevant for the jury to be—

Ms Chapman: It might be because of late disclosure of documents.

The Hon. J.R. RAU: The deputy leader says it could have been because of late disclosure of documents. If that is the case, as I explained in my remarks before, there is an opportunity for the buttons to be reset. The case does not inevitably roll down the slipway, come what may. If there is a late disclosure of something which is material to the case, either the defence or the prosecution can apply for an adjournment of the proceedings, and the court manages whether or not it is in the interests of justice for that to occur.

The court would also manage whether or not it is in the interests of justice for comments about a prior inconsistent statement to actually be put to the jury. If the trial judge could be persuaded by defence counsel that 'the only reason we said that before and now we are saying this is because these characters have bobbed up at the last minute with a new piece of material which changes the context of things', that is a conversation they have with the judge. The judge makes that decision.

I go back to the quote I have mentioned before. This is not from me; this is an eminent jurist in the United Kingdom:

A criminal trial is not a game in which a guilty defendant should be provided with a sporting chance. It is a search for truth in accordance with the twin principles that the prosecution must prove its case and that a defendant is not obliged to inculpate himself, the object being to convict the guilty and acquit the innocent. Requiring a defendant to indicate in advance what he disputes about the prosecution case offends neither of those principles.

If in advance the defendant says something which subsequently turns out to be very different from what the defendant says ultimately at trial, and if the trial judge thinks there is sufficient difference between those things without explanation, that it should be put in the interests of fairness to the jury, then and only then will it be put.

I cannot for the life of me see anything wrong with that. It happens in New South Wales, or at least it is part of their law, and New South Wales does not appear to be a place where the wheels have fallen off the criminal justice system. In fact, from speaking to the Director of Public Prosecutions there, he says this whole system works very well. It might well be not just that judges are clever and do not give these directions because they want to avoid tripping over them, it might well be that the fact of the judge being able to make such a direction is part of the reason why people actually get to the program in the first place, so I oppose it.

Ms CHAPMAN: Again, unfortunately the Attorney has not given any basis upon which we need to have this. Raising the question of inconsistent statements is a legitimate matter which can be presented in a court case. If he had done any of these, he would understand that. We do not need this clause for that to happen. You think about it. This clause says:

If a defendant in proceedings for an indictable offence in a superior court fails to comply with disclosure requirements—

This is a process; then the judge can say to the jury, 'They didn't get their form in on time'—

or conducts the defendant's case in a manner that is inconsistent with the defence case statement.

Again, that is a process and not to do with inconsistent statements in a witness box. If the minister had any clue about this, he would understand the difference. This is completely unnecessary. This is designed to intimidate the defence and does not bring to account the prosecution.

If this is going to be a punishment for process, then both have to be in line. I have given an indication and made absolutely clear the warning I will personally give to this parliament if we pass legislation that starts to give advice to juries about people who do not do the right thing, or do not tick the box, or do not put the right comma in the right spot, or do not comply with the production of a document at the right time, or introduce another element to their case statement at a later date because of some other fact. That is procedure.

This is punishment for failing to cover a procedure—a risk that the judge can make an adverse comment if one side does the wrong thing and the other one gets off scot-free. That is completely unacceptable, and it has nothing to do with inconsistent statements by a witness. The minister should know better; he has a whole army of advisers to give him that advice.

The committee divided on the amendment:

Ayes 17
Noes 21
Majority 4

AYES

Bell, T.S.	Chapman, V.A. (teller)	Duluk, S.
Gardner, J.A.W.	Goldsworthy, R.M.	Knoll, S.K.
McFetridge, D.	Pederick, A.S.	Pengilly, M.R.
Pisoni, D.G.	Sanderson, R.	Tarzia, V.A.
Treloar, P.A.	van Holst Pellekaan, D.C.	Whetstone, T.J.
Williams, M.R.	Wingard, C.	

NOES

Atkinson, M.J.	Bettison, Z.L.	Bignell, L.W.K.
Brock, G.G.	Caica, P.	Close, S.E.
Cook, N.F.	Digance, A.F.C.	Gee, J.P.
Hildyard, K.	Hughes, E.J.	Kenyon, T.R.
Key, S.W.	Koutsantonis, A.	Mullighan, S.C.
Piccolo, A.	Picton, C.J.	Rankine, J.M.
Rau, J.R. (teller)	Snelling, J.J.	Wortley, D.

PAIRS

Griffiths, S.P.	Weatherill, J.W.	Redmond, I.M.
Vlahos, L.A.	Speirs, D.	Odenwalder, L.K.

Amendment thus negatived.

Ms CHAPMAN: I move:

Amendment No 9 [Chapman–2]—

Page 32, lines 9 to 11 [clause 7, inserted section 126(2)]—Delete inserted subsection (2)

Amendment negatived.

Ms CHAPMAN: I move:

Amendment No 10 [Chapman–2]—

Page 32, line 16 [clause 7, inserted section 126(4)(a)]—Delete 'as disclosed in the case statements'

I will deal with this at amendment No. 11.

Amendment negatived.

Ms CHAPMAN: I move:

Amendment No 11 [Chapman–2]—

Page 32, after line 41—After inserted section 127 insert:

Division 5A—Pre-trial disclosure in superior court

127A—Directions hearings

At any time except during trial, the trial court may conduct 1 or more directions hearings.

127B—Powers of court at directions hearings

(1) At a directions hearing, the court may make or vary any direction or order, or require a party to do anything that the court considers necessary, for the fair and efficient conduct of the proceeding.

(2) Without limiting subsection (1), the court may do any of the following:

(a) require the defendant to advise whether the defendant is legally represented and has funding for continued legal representation up to and including the trial;

(b) require the parties to notify the court of any pre-trial applications that the parties intend to make;

(c) set a timetable for the hearing of pre-trial applications;

(d) require the parties to provide an estimate of the length of the trial;

(e) require the parties to advise as to the estimated number and the availability of witnesses (other than the defendant) and any relevant requirements of witnesses and interpreters;

(f) order a party to make, file in court or give to another party (as the case requires) any written or oral material required by the court for the purposes of the proceeding;

(g) order the prosecution to file in court and give to the defendant a copy of any material on which the prosecution intends to rely at the trial;

(h) determine any objection relating to the disclosure of information or material by the prosecution;

(i) allow a party to amend a document that has been prepared by or on behalf of that party for the purposes of the proceeding.

(3) At a directions hearing, the court may make any order or other decision that can be made or decided before trial by or under this or any other Act.

127C—Summary of prosecution opening and notice of pre-trial admissions

(1) Unless the court otherwise directs, at least 28 days before the day on which the trial of the defendant is listed to commence, the prosecution must give to the defendant and file in court—

(a) a summary of the prosecution opening; and

(b) a notice of pre-trial admissions.

(2) The summary of the prosecution opening must outline—

(a) the manner in which the prosecution will put the case against the defendant; and

(b) the acts, facts, matters and circumstances being relied on to support a finding of guilt.

(3) The notice of pre-trial admissions must identify the statements of the witnesses whose evidence, in the opinion of the prosecution, ought to be admitted as evidence without further proof, including evidence that is directed solely to formal matters including—

(a) continuity; or

(b) a person's age; or

(c) proving the accuracy of a plan, or that photographs were taken in a certain manner or at a certain time.

(4) If a defendant has not already received a copy of a statement identified in a notice of pre-trial admissions, the notice must contain a copy of the statement.

127D—Response of defendant

(1) After being given a copy of the documents referred to in section 127C, the defendant must give to the prosecution and file in court, at least 14 days before the day on which the trial of the defendant is listed to commence—

(a) a copy of the response of the defendant to the summary of the prosecution opening; and

(b) a copy of the response of the defendant to the notice of pre-trial admissions.

(2) The response of the defendant to the summary of the prosecution opening must identify the acts, facts, matters and circumstances with which issue is taken and the basis on which issue is taken.

(3) The response of the defendant to the notice of pre-trial admissions must indicate what evidence, as set out in the notice of pre-trial admissions, is agreed to be admitted as evidence without further proof and what evidence is in issue and, if issue is taken, the basis on which issue is taken.

(4) Despite subsections (2) and (3), the defendant is not required to state—

(a) the identity of any witness (other than an expert witness) to be called by the defendant; or

(b) whether the defendant will give evidence.

127E—Intention to depart at trial from document filed and given

If a party intends to depart substantially at trial from a matter set out in a document given and filed by that party under this Division, the party—

(a) must so inform the court and the other party in advance of the trial; and

(b) if the court so orders, must inform the court and the other party of the details of the proposed departure.

127F—Continuing obligation of disclosure

(1) This section applies to any information, document or thing that—

(a) comes into the possession of the prosecution after a defendant is committed for trial; or

(b) is in the possession of the prosecution when, or comes into the possession of the prosecution after, an information is laid ex officio in a superior court in accordance with section 103,

and would have been required to be listed, or a copy of which would have been required to be given, in the preliminary brief under section 106 or the committal brief under section 111.

(2) Subject to subsection (4), the prosecution must give to the defendant a copy of the document or list as soon as practicable after—

(a) the information, document or thing comes into the possession of the prosecution; or

(b) the ex officio information is laid in accordance with section 103,

as the case requires.

(3) If the information, document or thing cannot reasonably be copied, the prosecution must advise the defendant of the existence of the information, document or thing and make it available for inspection at a time and place agreed between the defendant and the prosecution.

(4) The prosecution need not provide any information, document or thing under this section if it has already been provided to the defendant by the prosecution.

127G—Disclosure of address or telephone number of witness

(1) The prosecution must not disclose the address or telephone number (including a private, business or official address or telephone number) of any person in any information, document or thing given to the defendant under this Division unless—

(a) the prosecution believes that—

(i) the information, document or thing does not identify the address or telephone number as that of any particular person; or

(ii) the address or telephone number is relevant to the offence charged and disclosure is not likely to present a reasonably ascertainable risk to the welfare or physical safety of any person; or

(b) the court permits the disclosure in accordance with subsection (3) on application made by the prosecution or the defendant.

(2) For the purposes of this section, the prosecution may delete, or render illegible, an address or telephone number included in the information, document or thing before giving it to the defendant.

(3) The court may grant an application made under subsection (1)(b) if the court is satisfied that—

(a) the address or telephone number is relevant to the offence charged; and

(b) 1 of the following applies:

(i) disclosure is not likely to present a reasonably ascertainable risk to the welfare or physical safety of any person; or

(ii) having regard to the matters referred to in subsection (4), the interests of justice outweigh any risk referred to in subparagraph (i).

(4) For the purposes of subsection (3)(b)(ii), the court must have regard to—

(a) the safety and privacy needs of the witness; and

(b) the right of the defendant to prepare properly for the trial.

127H—Previous convictions of witness

(1) The defendant may request the prosecution to provide particulars of previous convictions of any witness who the prosecution intends to call at the trial.

(2) A request under this section does not require the prosecution to give to the defendant particulars of any previous conviction of any witness if the previous conviction is, because of its character, irrelevant to the proceeding but the prosecution must advise the defendant of the existence of any undisclosed previous convictions.

127I—Prosecution notice of additional evidence

(1) In this section—

additional evidence means any evidence that is not included in the depositions in the proceeding;

depositions means the transcript of evidence given in a committal proceeding and any statements admitted in evidence in committal proceedings under Division 3.

(2) If the prosecution intends to call a witness at trial to give additional evidence, the prosecution must give to the defendant and file in court—

(a) a notice of intention to call additional evidence; and

(b) a copy of the statement of the proposed witness containing the additional evidence or an outline of the additional evidence that the witness is expected to give.

127J—Expert evidence

(1) If the defendant intends to call a person as an expert witness at the trial, the defendant must give the prosecution, and file in the trial court, a copy of the statement of the expert witness in accordance with subsection (2)—

(a) at least 14 days before the day on which the trial of the defendant is listed to commence; or

(b) if the statement is not then in existence, as soon as possible after it comes into existence.

(2) The statement must—

(a) contain the name and business address of the witness; and

(b) describe the qualifications of the witness to give evidence as an expert; and

(c) set out the substance of the evidence it is proposed to adduce from the witness as an expert, including the opinion of the witness and the acts, facts, matters and circumstances on which the opinion is formed.

127K—Alibi evidence

(1) A defendant must not, without leave of the court—

(a) give evidence personally; or

(b) adduce evidence from another witness,

in support of an alibi unless the defendant has given notice of alibi within the period referred to in subsection (2).

(2) A notice of alibi must be given to the prosecution within 14 days after—

(a) the day on which the defendant was committed for trial on the charge to which the alibi relates; or

(b) if paragraph (a) does not apply, the day on which the defendant received a copy of the information charging the offence.

(3) A notice of alibi must contain—

(a) particulars as to time and place of the alibi; and

(b) the name and last known address of any witness to the alibi; and

(c) if the name and address of a witness are not known, any information which might be of material assistance in finding the witness.

(4) If the name and address of a witness are not included in a notice of alibi, the defendant must not call that person to give evidence in support of the alibi unless the court is satisfied that the defendant took reasonable steps to ensure that the name and address would be ascertained.

(5) If the defendant is notified by the prosecution that a witness named or referred to in a notice of alibi has not been traced, the defendant must give written notice to the prosecution, without delay, of any further information which might be of material assistance in finding the witness.

(6) The court must not refuse leave under subsection (1) if it appears to the court that the defendant was not informed of the requirements of this section.

(7) If—

(a) a defendant gives notice of alibi under this section; and

(b) the prosecution requests an adjournment,

the court must grant an adjournment for a period that appears to the court to be necessary to enable investigation of the alibi unless it appears that to do so would prejudice the proper presentation of the case of the defendant.

127L—Offence to communicate with alibi witness

(1) If a person (other than a person referred to in subsection (2)) has been named or referred to as a proposed witness in a notice of alibi given under section 127K—

(a) a person acting for the prosecution; or

(b) a police officer,

must not communicate with that person directly or indirectly with respect to the charge or any related matter before the conclusion of the proceeding, including any new trial or rehearing, without the consent and presence during the communication of—

(c) the legal practitioner representing the defendant; or

(d) if not legally represented, the defendant.

Maximum penalty: Imprisonment for 1 year.

(2) Subsection (1) does not apply to a person who the defendant has been notified may be called as a witness for the prosecution at the trial.

127M—Introduction of evidence not previously disclosed

(1) If the trial judge gives leave to do so, the prosecution or the defendant may introduce at the trial evidence which was not disclosed in accordance with this Division and which represents—

(a) in the case of the prosecution, a substantial departure from the summary of the prosecution opening, if any, as given to the defendant and filed in court; or

(b) in the case of the defendant, a substantial departure from—

(i) the response of the defendant to the summary of the prosecution opening; or

(ii) the response of the defendant to the notice of pre-trial admissions,

if any, as given to the prosecution and filed in court.

(2) If, after the close of the prosecution case, the defendant gives evidence which could not reasonably have been foreseen by the prosecution having regard to—

(a) the response of the defendant to the summary of the prosecution opening; and

(b) the response of the defendant to the notice of pre-trial admissions,

as given to the prosecution and filed in court, the trial judge may allow the prosecution to call evidence in reply.

(3) Nothing in this section limits any other power of the trial judge to allow the prosecution to call evidence after the prosecution has closed the prosecution case.

127N—Comment on departure or failure

(1) Subject to this section, the trial judge or, with the leave of the trial judge, a party may make any comment that the trial judge thinks appropriate on—

(a) a departure referred to in section 127M(1); or

(b) a failure by a party to comply with a requirement under an Act or law relating to the trial or an order relating to the trial.

(2) The trial judge may grant leave to a party to comment on a departure or failure only if satisfied that—

(a) the proposed comment is relevant; and

(b) the proposed comment is not likely to produce a miscarriage of justice.

(3) A comment made by the trial judge or a party must not—

(a) in the case of a departure, suggest that an inference of guilt may be drawn from the departure except in those circumstances in which an inference of guilt might be drawn from a lie told by a defendant; and

(b) in the case of a failure—

(i) suggest that an inference of guilt may be drawn from the failure except in those circumstances in which an inference of guilt might be drawn from the failure of a defendant to adduce evidence from a particular witness; or

(ii) suggest that the failure may be taken into account in considering the probative value of the prosecution evidence except in those circumstances in which a failure of a defendant to give evidence or adduce evidence from a particular witness might be taken into account for that purpose.

This amendment supports the proposition that the opposition is agreeable to, after our consultation, with some reform to basically the disclosure through a case statement model with the Victorian system. The Victorian model, which is in amendment No. 11, as outlined, has, unlike the Attorney's suggestion, been carefully considered by our parliamentary counsel and has provided great assistance to us in the preparation of ensuring that, if this part of the process is brought into this bill, which is otherwise cherrypicked from other jurisdictions and the Attorney's brain, this model will sit neatly within the structure of reform he intends and that it is one that we think is not only practical in resolving the problem but effective in that jurisdiction and ought to be introduced into the parliament.

It sets out that regime. It is demonstrably effective and sets out a good program, which we suggest will bring about reform that we say is effective. The one thing it requires is for the Attorney to go back and read the review of the DPP's office, published in about June last year, read the annual reports of the DPP over the last six or seven years, which cite repeatedly that requirement of extra resources. It is money, and that is what in the end this skinny model we get from the government, this oppressive model we get from the government, is wrong. This one should be adopted.

The committee divided on the amendment:

Ayes.....17
Noes 21
Majority 4

AYES

Bell, T.S.	Chapman, V.A. (teller)	Duluk, S.
Gardner, J.A.W.	Goldsworthy, R.M.	Knoll, S.K.
McFetridge, D.	Pederick, A.S.	Pengilly, M.R.
Pisoni, D.G.	Sanderson, R.	Tarzia, V.A.
Treloar, P.A.	van Holst Pellekaan, D.C.	Whetstone, T.J.
Williams, M.R.	Wingard, C.	

NOES

Atkinson, M.J.	Bettison, Z.L.	Bignell, L.W.K.
Brock, G.G.	Caica, P.	Close, S.E.
Cook, N.F.	Digance, A.F.C.	Gee, J.P.
Hildyard, K.	Hughes, E.J.	Kenyon, T.R.
Key, S.W.	Koutsantonis, A.	Mullighan, S.C.
Piccolo, A.	Picton, C.J.	Rankine, J.M.
Rau, J.R. (teller)	Snelling, J.J.	Wortley, D.

PAIRS

Griffiths, S.P.	Weatherill, J.W.	Redmond, I.M.
Odenwalder, L.K.	Speirs, D.	Vlahos, L.A.

Amendment thus negatived; clause as amended passed.

Sitting extended beyond 13:00 on motion of Hon. J.R. Rau.

Remaining clauses (8 to 10) passed.

Schedule 1.

The Hon. J.R. RAU: I move:

Amendment No 8 [DepPrem–1]—

Page 64, table entry relating to section 184(1)(c)—Delete the table entry relating to section 184(1)(c)

Amendment carried; schedule as amended passed.

Schedule 2 and title passed.

Bill reported with amendment.

Third Reading

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide) (13:05): I move:

That this bill be now read a third time.

Bill read a third time and passed.

Sitting suspended from 13:06 to 14:00.

HISTORIC SHIPWRECKS (MISCELLANEOUS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

NATIONAL PARKS AND WILDLIFE (CO-MANAGED PARKS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

SUMMARY OFFENCES (DECLARED PUBLIC PRECINCTS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

GENE TECHNOLOGY (MISCELLANEOUS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (PLANNING, DEVELOPMENT AND INFRASTRUCTURE) BILL

Assent

His Excellency the Governor assented to the bill.

Parliamentary Procedure

ANSWERS TABLED

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

PAPERS

The following papers were laid on the table:

By the Speaker—

Assembly of Members of Both Houses—For the Election of a Member to fill a Vacancy in the Legislative Council Minute

Auditor-General—

Adelaide Oval redevelopment pursuant to section 9 of the Adelaide Oval Redevelopment and Management Act 2011 Report for Period 1 July 2016 to 31 December 2016 [Ordered to be published]

Examination of governance in local government Report February 2017 [Ordered to be published]

By the Minister for the Public Sector (Hon. J.R. Rau)—

Regulations made under the following Act—

Freedom of Information—Exempt Agency No. 2

By the Minister for Health (Hon. J.J. Snelling) on behalf of the Minister for Mental Health and Substance Abuse (Hon. L.A. Vlahos)—

Regulations made under the following Act—

Controlled Substances—Poisons No. 2

By the Minister for Education and Child Development (Hon. S.E. Close)—

Regulations made under the following Act—

Adoption—Qualifying Relationship

Ministerial Statement

INNER CITY STREET CREW

The Hon. Z.L. BETTISON (Ramsay—Minister for Communities and Social Inclusion, Minister for Social Housing, Minister for the Status of Women, Minister for Ageing, Minister for Multicultural Affairs, Minister for Youth, Minister for Volunteers) (14:04): I seek leave to make a ministerial statement.

Leave granted.

The Hon. Z.L. BETTISON: In mid-2016, Housing SA implemented an extreme weather response for people sleeping rough in partnership with inner city homelessness services. The Code Blue response provides emergency shelter, food, clothing and respite for homeless people during

extreme weather events. While Code Blue was activated during July 2016, 128 people received assistance, 92 of whom were not known to the system or engaged with a support service.

Owing to its success, the extreme weather response has now been expanded to include Code Red for extreme heat events, and in February 2017 alone Code Red activation assisted 107 people over three nights. These initiatives are part of a redesign of the inner city service response for rough sleepers, which also includes the development of an updated Street to Home service commencing shortly, with implementation over the next six months.

While Street to Home is being updated, an immediate response known as Street Crew has been put in place. The initiative aims to connect rough sleepers to case management support, health services and housing outcomes by undertaking assertive street work. The Street Crew works from 1pm to 7pm seven days a week, complementing the 7am to 1pm Street to Home service.

This initiative is a collaboration between the state government and non-government agencies, and we will be providing $440,000 to existing inner city homelessness agencies to deliver the program, including Baptist Care, Hutt Street Centre, Uniting Communities, HYPA, and Housing SA. I am also pleased to inform the house that Uniting Communities are expanding their current Streetlink service as part of the initiative to assist rough sleepers of all ages to access general practitioner and registered nurse health services.

South Australia's specialist homelessness services sector is vital to the community and currently receives about $50 million in assistance from the federal government through the National Affordable Housing Agreement and the National Partnership Agreement on Homelessness. The sector is comprised of 40 providers who coordinate 75 programs across the state.

Street Crew is just another example of the fine work our NGO sector is able to do with support from government. Unfortunately, like other programs, it will be at risk if the Turnbull Liberal government decides to cut funding in the upcoming federal budget.

Mr Pederick: They might raise it too.

The SPEAKER: I call the member for Hammond to order.

The Hon. J.M. Rankine interjecting:

The SPEAKER: Was that the member for Wright I heard interjecting?

Members interjecting:

The SPEAKER: I call to order the member for Wright.

Question Time

OLYMPIC DAM

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:08): My question is to the Premier. Given that Andrew Mackenzie, Chief Executive of BHP Billiton, said last week that the company will not consider a major expansion of Olympic Dam unless they can be confident there is a reliable and affordable source of power, what assurances has the government subsequently given to the company about future power supply in this state?

The Hon. J.W. WEATHERILL (Cheltenham—Premier) (14:08): I thank the honourable member for his question. Of course, it's pretty orthodox that a company wouldn't consider a major expansion to its mining operations without having a secure and reliable source of energy. That is—

Mr Marshall: So what have you done about it?

The SPEAKER: The leader is called to order.

The Hon. J.W. WEATHERILL: So, the statement was unexceptional. In relation to BHP, I simply say this. There have been two occasions on which BHP have decided they are going to dangle in front of the people of South Australia the notion of some massive expansion at Olympic Dam. On both of those occasions, they have been totally and utterly supported at every step of the way by this South Australian government and every step of the way they have acknowledged that support, yet

on both of those occasions they have decided to actually back away from the expansion opportunities.

Members interjecting:

The Hon. J.W. WEATHERILL: It is the objective of this government, because of the broken National Electricity Market, for us to take control of our own energy future. By taking control of our own energy future, we will provide assurances for not only BHP but for every company in South Australia to ensure that they have not only reliable but affordable and clean power to operate their businesses in South Australia. That is precisely what the community expects of us, it's what the business community expects of us, and that is why we will be revealing our plan to secure our energy future very soon.

Mr MARSHALL: A supplementary, sir?

The SPEAKER: Before the supplementary, I call to order the members for Schubert and Colton, the deputy leader, the member for Hartley and the member for Finniss, who should enunciate clearly when he interjects rather than interject on the side in the hope that I don't see him. I warn the leader, the deputy leader and the member for Schubert, and I warn for the second and final time the member for Schubert. Leader.

OLYMPIC DAM

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:11): A supplementary: can the Premier tell us whether he has made contact with Andrew Mackenzie subsequent to him making those comments in the press on 23 February?

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:11): Yes, the government has been in contact with BHP subsequent to those—

Mr Marshall: The question was for the Premier.

The Hon. A. KOUTSANTONIS: We are the government—in a large part, thanks to you. We contacted BHP immediately after the statements by Mr Mackenzie again reiterating our support for BHP and our support for an eventual expansion. But, of course, the Premier is absolutely correct: there have been a number of times when BHP have promised to expand—

Mr Knoll interjecting:

The SPEAKER: The member for Schubert is on two warnings.

The Hon. A. KOUTSANTONIS: —the Olympic Dam mine and, of course, on two occasions BHP have not proceeded with that expansion. This government has done everything we possibly can to facilitate the expansion and development of our mineral resources and energy. We have, I think, an unblemished record in our support for the mining industry.

We don't propose to ban any form of mining. We don't propose to ban the exploration of gas. What we do is support companies like BHP. What we do with companies like BHP is give them indentures. We give them guarantee, certainty and a rule of law so that they can invest with certainty. We give them unprecedented certainty.

Mr Marshall interjecting:

The Hon. A. KOUTSANTONIS: I have to say that members opposite interjecting, in the absence of a policy alternative, show you exactly where the Liberal Party is. Fake laughter and interjections are not a substitute for a policy. At the last election, members opposite went to the polls and to the people of South Australia without a resources policy, and now they attempt to lecture us.

Mr PISONI: Point of order, sir: the minister has introduced debate by referring to—

The SPEAKER: I uphold the point of order. I thank the member for Unley. In that pause created by the member for Unley, I call to order the members for Stuart, Mount Gambier and Morialta. I warn for the first time the members for Hammond and Stuart, and I warn for the second and final time the leader, the deputy leader and the member for Hammond. Has the minister finished? No.

The Hon. A. KOUTSANTONIS: Much more.

Mr Whetstone: The minister for blackouts.

The SPEAKER: The member for Chaffey is called to order.

Mr Marshall interjecting:

The SPEAKER: The leader is on a full set of warnings.

Mr Marshall interjecting:

The SPEAKER: Yes, I know what the question was. If the leader interjects again, he will be leaving. Minister.

The Hon. A. KOUTSANTONIS: The government has been in contact with BHP and we have reiterated our support for BHP. As I say again, we agree with BHP that there needs to be a national approach to reform. We agree with Andrew Mackenzie when he says there needs to be reform of the National Electricity Market. We agree with BHP when they say carbon needs to be priced. We agree with BHP when they support measures like an energy intensity scheme. We agree with BHP when they say things like the National Electricity Market are not serving the people of this nation and there needs to be reform.

Who is not supportive of Andrew Mackenzie's comments? Members opposite who say, 'All is well. The National Electricity Market is fantastic, working beautifully. Beautiful thermal coal-fired generation—

The SPEAKER: Minister, members opposite haven't held office since February 2002. I don't think they are relevant to this answer.

The Hon. A. KOUTSANTONIS: Thank you, sir. We have seen in jurisdictions like New South Wales, which has one of the largest reliance on coal generation in the world—

The Hon. J.W. Weatherill: 2,000 megawatts.

The Hon. A. KOUTSANTONIS: 2,000 megawatts, I am advised, they were short and they had to shed one of their largest employers and one of the largest loads they have in New South Wales, the Tomago smelter. We saw the National Electricity Market attempt to take power away from the people of Victoria to keep the lights on in the North Shore—

Members interjecting:

The Hon. A. KOUTSANTONIS: —but apparently, according to members opposite, all is well.

The SPEAKER: The member for Mitchell is called to order and the members for Morialta and Mount Gambier are warned a first time. The leader.

BHP BILLITON

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:16): My question is to the Minister for Mineral Resources and Energy. Does it remain the minister's position that it is BHP Billiton's responsibility to provide sufficient generation capacity at Olympic Dam?

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:16): Olympic Dam built its own powerline to guarantee certainty. They were contemplating building their own desalination plant, which was very controversial. They have contemplated building their own ports. Indeed, where they have gone in other jurisdictions around the world, they have built infrastructure like ports, like rail lines, like generation, but obviously it's not optimal. I can't stop tornadoes taking down powerlines, and any member of parliament who says that they can is lying.

Mr Wingard: The whole state.

The Hon. A. KOUTSANTONIS: Ignorant comments like the member for Mitchell's about 'the whole state' fundamentally misunderstand what occurred. This wasn't renewable energy

spiralling the system out of control, leading to some frequency event. This was a massive disruption of transmission lines where the spine of the state's transmission network was cut in half.

How are we to guarantee BHP supply if, through a weather event, the two lines that link Olympic Dam to the grid are cut? Are we to build a generator for them at their mine site, just for them and no-one else? Is that what members opposite are saying? But you get ignorant comments from the member for Mitchell, who probably can't spell electricity, to try and tell us that the whole state went out. There's an AEMO report—

The SPEAKER: The member for Stuart.

Mr VAN HOLST PELLEKAAN: Point of order: the minister is debating and, by his own admission, responding to interjections.

The SPEAKER: Yes, I uphold the point of order and I would like the minister to address the substance of the question or wind up.

The Hon. A. KOUTSANTONIS: Thank you, sir. There is no way that any government can guarantee continuous supply in the face of weather events. If BHP want to have continuous supply regardless of the conditions that they are operating in, regardless of whatever occurs to the national electricity grid, then they will need to put in their own redundancy, because no government can guarantee that level of continuous supply because it is impossible.

Mr Marshall: BYO power in South Australia.

The Hon. A. KOUTSANTONIS: The Leader of the Opposition interjects 'BYO power', because we used to own our power—that's how we came to this situation. We absolutely believe we should own our own power. We absolutely believe we should own our own generation. We absolutely believe we should own our own poles and wires. I voted against it and the member for Playford voted against it and members opposite supported the privatisation of ETSA, so don't lecture us about not owning our own power supply because, if members thought it was so important, why did they sell it? Why did they sell it? If it was so important to keep that power asset, why sell it?

Members interjecting:

Parliamentary Procedure

VISITORS

The SPEAKER: I would like to acknowledge the presence of a distinguished former member for Schubert in the gallery, Ivan Venning. Before the next question, I warn the members for Chaffey and Mitchell, and I warn for the second and final time the members for Mitchell, Chaffey and Morialta.

Question Time

ELECTRICITY MARKET

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:20): My question is to the Minister for Mineral Resources and Energy. Does the minister stand by his claims made on 9 February, and repeated elsewhere, that ENGIE's second unit at its Pelican Point plant had gas and was able to enter the National Electricity Market?

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:20): On Wednesday, the day of the load shedding, ENGIE wasn't directed on.

Mr Pengilly: Answer the question, Tom.

The SPEAKER: The member for Finniss is warned.

The Hon. A. KOUTSANTONIS: The next day, they were directed on and they had gas and they were available and they produced electricity. Members came into this house and asked me questions about whether I supported my statement that they could be ready within an hour, instead of the four hours that ENGIE had claimed, yet the transcripts, and of course in the AEMO evidence that they released, showed that ENGIE could start within an hour.

Everyone knows that ENGIE owns the Hazelwood coal-fired power station. Everyone knows that ENGIE are closing that power station in Victoria. Everyone in the industry also knows that ENGIE are making preparations for the possible return of that second unit. They are in negotiations for gas. They are in negotiations. There are engineers working on making sure that plant could operate. In fact, the evidence that that plant could operate wasn't directed on. It was members opposite trying to play games and play tricks, quite frankly—

Mr GARDNER: Standing order 98: the question was direct. The minister is not answering it: he is debating.

The SPEAKER: As a matter of fact, the minister did answer the question early on and his remarks now are superfluous.

ELECTRICITY MARKET

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:21): To clarify, can the minister explain to this house how he reconciles his commitment to his statements on 9 February with the representation made by ENGIE executives at the Senate inquiry which state:

> ENGIE in Australia is not able to make the capacity of the second unit available to the market given there are no firm gas supply arrangements in place to operate this unit. Under the National Electricity Market rules, generators cannot bring a plant into the market if supply cannot be guaranteed. In the case of the events at the start of the week of 6 February, the second Pelican Point unit has no gas contracts in place which means ENGIE in Australia is unable to guarantee supply to the market.

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:22): That just shows you how broken the NEM is because as—

Mr Marshall interjecting:

The Hon. A. KOUTSANTONIS: I have said two words, sir—two words—and the Leader of the Opposition immediately interjects and you watch him do it, sir. I have to say that I just got up to make a point—that that just goes to show you how broken the NEM is that you have a generator that says it can't turn on, yet the evidence shows that it did turn on. We are working in a system that says that, unless you have gas contracts across—

Members interjecting:

The SPEAKER: The minister will be heard in silence. The leader has been warned that his next utterance will see him ejected.

The Hon. A. KOUTSANTONIS: We are witnessing a national market that runs through this farce, where they say that you can't bid into the market unless you have these other things operational, but we can direct you on, and all of a sudden those things that you need to be operational are ready to go. It is a farce. The national market is broken. We had spare capacity that could have been directed on to avoid load shedding and the national operator decided not to turn that on, yet the following day they were able to do so. What does that tell you about the preparation of the national operator? What does that tell you about the management of the National Electricity Market? It's broken and, in fact, it's so broken—

Members interjecting:

The SPEAKER: The member for Chaffey is on a full set of warnings.

The Hon. A. KOUTSANTONIS: It's so broken that 90,000 people were shed who didn't need to be shed. They shed more than they needed to. The private operators of our own networks here had a software glitch that took more people off than were necessary, yet members opposite are trying to blame us. This is becoming a farce. The national market is broken. It needs to be reformed.

Members interjecting:

The SPEAKER: The member for Adelaide is called to order.

The Hon. A. KOUTSANTONIS: People are passing around lumps of coal as if it's a solution. This needs serious reform. This needs things like an energy intensity scheme. It needs rule changes. It needs engineering solutions.

Members interjecting:

The Hon. A. KOUTSANTONIS: This needs a complex debate—

The SPEAKER: The member for Adelaide is warned.

The Hon. A. KOUTSANTONIS: —not slogans and shouting by members opposite, who didn't even take a resources and energy policy to the last election. So, don't lecture us.

Ms Chapman: Don't take any notice of him. You can lecture him as much as you like.

The SPEAKER: Leader.

ELECTRICITY PRICES

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:25): That's right, sir. We will stand by you. My question is to the Minister for Mineral Resources and Energy. Does the government agree with comments made by prominent Australian entrepreneur Dick Smith when he publicly stated this morning in the media that, as a businessman, 'the only reason I can see why we can't compete with France is the very high power costs in South Australia'?

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:25): I will go further than that. The AI report today is showing that prices across the country are becoming unmanageable.

An honourable member: He didn't talk about across the country.

The Hon. A. KOUTSANTONIS: I'm going further. Basically, the AI Group—Innes Willox, not exactly a great friend of the Labor movement—has put out a report saying that wholesale prices are going up nearly 47 per cent in New South Wales. Safe, base load coal generation, cheap and affordable, has a 47 per cent increase. The NEM is broken. In Victoria, the increase is 52 per cent for brown coal base load. The NEM is broken. Prices are increasing, yet members opposite want to blame renewable energy. They want to blame the wind and the sun.

The SPEAKER: I think the Treasurer has fully canvassed that line of argument.

The Hon. A. KOUTSANTONIS: Thank you for your advice and help, sir; it is greatly useful. I think what industry is saying across the country is that the NEM is so fractured and so broken that prices are increasing in Queensland, they are increasing in New South Wales, they are increasing in Victoria and they are increasing here. They are too high. They need to come down, and it needs national leadership because this is not a state issue: this is a national issue. Why is it that, after coal has been championed for so long, we are seeing price increases of 47 per cent in New South Wales? If coal is so cheap and so reliable, why has its price increased by 47 per cent?

An honourable member interjecting:

The Hon. A. KOUTSANTONIS: Exactly. If it's so reliable, why was one of the largest employers, the largest load user in New South Wales, shed? This is a national issue that needs a national response. In the absence of national leadership, we will act.

POWER OUTAGES

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:27): My question is to the Minister for Mineral Resources and Energy. Following BHP and Adelaide Brighton Cement's announcements last week that they have lost $137 million and $13 million respectively from electricity outages in South Australia, can the minister advise the house of the total economic loss to South Australia from the six major power outages we have experienced since May last year?

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:27): It is very hard to know what insurance levels a lot of these companies have and what they are claiming back from their insurer, so it is very hard to quantify the economic loss.

Mr van Holst Pellekaan interjecting:

The SPEAKER: The member for Stuart is warned for the second and final time.

The Hon. A. KOUTSANTONIS: All the interruptions to power, bar the load shedding, which is also indirectly a result of this, have been related to weather. That is the inconvenient fact nobody wishes to acknowledge. Whether it's storms, whether it's wind, whether it's lightning, whether it's trees taking down powerlines, whether it's inaccessible land to restore power quickly or it is a lack of available supply being directed on in times of high demand because of heat, it is weather. It is not intrinsically a problem of generation.

The problem we have in the National Electricity Market is that there is an oversupply of generation. That oversupply of generation is not coming on when we need it. We have an oversupply of gas-fired generation to meet our average demand. We have an oversupply of other forms of generation.

Mr MARSHALL: Point of order, sir: I ask you to bring the minister back to the substance of the question, which is the total economic loss to South Australia.

The Hon. A. KOUTSANTONIS: I'm getting to that. When you have this imbalance in the NEM, you get perverse outcomes. The perverse outcomes are these: price spikes. Those price spikes cause harm to a lot of our manufacturers, and that is occurring across the country.

Mr MARSHALL: Point of order, sir: I ask you to bring the minister back to the substance of the question, which was economic loss from the intermittency. It had nothing to do with high prices.

The SPEAKER: I think talking about the cost to business—

Mr MARSHALL: But this was talking about economic loss from the intermittency issues, not the high cost issues.

The SPEAKER: I think that's enough interruption. We will let the minister go for the remaining time.

The Hon. A. KOUTSANTONIS: It's gone now from interruptions to intermittency. Apparently, intermittency is causing blackouts. Well, please show me an example of where intermittency has caused a blackout in South Australia. Again, the Leader of the Opposition needs to get a briefing, actually understand the language that we are using, instead of sitting there—

The SPEAKER: The minister will return to the economic cost of interruptions.

The Hon. A. KOUTSANTONIS: There have been no intermittency issues with electricity in South Australia. The issues that we have—

Mr Marshall: What do you call them?

The Hon. A. KOUTSANTONIS: Well, what do I call it when a tornado rips down a powerline? I call it an act of weather. What else is it? Did the wind farms get out and rip down the powerlines?

Mr Marshall interjecting:

The Hon. A. KOUTSANTONIS: Those blackouts—

The SPEAKER: Leader!

The Hon. A. KOUTSANTONIS: Those blackouts—

Mr Marshall interjecting:

The SPEAKER: Leader!

The Hon. A. KOUTSANTONIS: No government can guarantee that you can predict the weather to a point where you can build infrastructure that will never ever take away supply from industry. It is impossible. There is no jurisdiction in the world that operates in that way. If members opposite are talking about requiring our infrastructure to be at a level where power is guaranteed at 100 per cent, the cost of business will drive them out of the country.

Mr VAN HOLST PELLEKAAN: Point of order: I ask you to bring the minister back to the substance: what was the cost to the economy of the blackouts?

The SPEAKER: The minister appears to have finished.

Members interjecting:

The SPEAKER: The member for Kavel is called to order for dissenting from the Speaker's rulings in other than the accepted way. The member for Light.

Members interjecting:

The SPEAKER: The minister is called to order. The member for Light.

INFRASTRUCTURE PROJECTS

The Hon. A. PICCOLO (Light) (14:31): My question is to the Minister for Transport and Infrastructure. Can the minister update the house on infrastructure projects in South Australia?

The Hon. S.C. MULLIGHAN (Lee—Minister for Transport and Infrastructure, Minister for Housing and Urban Development) (14:31): I thank the member for Light for his question.

Members interjecting:

The SPEAKER: The member for Chaffey is on thin ice.

The Hon. S.C. MULLIGHAN: This year, in 2017, a record number of South Australians will be working on new infrastructure projects worth more than $1.5 billion here in South Australia. These projects include:

- the $238 million Torrens rail junction project;
- the Festival Plaza redevelopment, which ramps up after the northern promenade works started at the end of January;
- the Gawler line electrification, which is of keen interest to the member for Light;
- the Flinders Link extension, which is extending the electrified Tonsley rail line to Flinders University;
- the extension of the tram down to the other end of North Terrace and to the Festival Centre;
- the $55 million Gawler East link road, also of interest to the member for Light;
- the $32 million upgrade to the Upper Yorke Peninsula road network, which has been of keen interest to the member for Goyder; and
- an upgrade to Her Majesty's Theatre.

Together, these projects will support more than 1,300 jobs. These projects are in addition to the more than 130 infrastructure projects already underway as part of the government's $12.1 billion investment over the next four years.

Important projects, like the Torrens to Torrens upgrade of South Road, the Darlington upgrade of South Road, and the Northern Connector project are well underway, with construction to continue this year. But there are other projects around the rest of South Australia: the APY lands road upgrade; the Mount Gambier and Port Augusta prisons upgrade; the new city high school; the Flinders, QEH and Modbury Hospital upgrades; and the 1000 Homes in 1000 Days new home-build project, as well as the 4,500 Housing Trust homes that will be upgraded under the Renewing Our Streets and Suburbs program. Upgrading the north-south corridor is vital to improving not only freight transport productivity but access for local communities as well as safety on the road transport network.

It was pleasing to see yesterday in Canberra that officials from the commonwealth Department for Infrastructure and Regional Development confirmed the commonwealth's commitment to completing the corridor over a 10-year period, between 2013 and 2023. In just the

first three years of that time period, we have secured over $2½ billion of funding from both the state government (with $750 million) and $1.75 billion from the federal government.

But it was a very different story when these same officials were asked about the Globe Link project. The commonwealth department responsible for evaluating, planning and investing in infrastructure confirmed yesterday during Senate estimates, 'We don't have information on Globe Link.' Again, they were asked by a Senator, 'So, you don't have any information on that?' The official said, 'I don't have any information on that.'

Not only has this opposition not consulted with key industry groups, including the Freight Council, the Adelaide Airport, the Australian Airports Association, not only have they been criticised by local councils, like the Coorong District Council, but the federal government responsible for disbursing funds for infrastructure projects here in South Australia knows nothing about it—nothing, no information whatsoever. Such is the hard yakka the Leader of the Opposition has put into his infrastructure projects. We can still see he is but a hair's breadth away from his core belief that infrastructure is a false economy, both now and into the future.

INVESTMENT AND TRADE STATEMENT

The Hon. P. CAICA (Colton) (14:35): My question is to the Minister for Investment and Trade. Can the minister provide details about the state's actions to create jobs detailed in the 2017 Annual Investment and Trade Statement?

The Hon. M.L.J. HAMILTON-SMITH (Waite—Minister for Investment and Trade, Minister for Small Business, Minister for Defence Industries, Minister for Veterans' Affairs) (14:35): I thank the member for Colton for his question. There are a lot of small businesses in his electorate. That is why on 17 February I was pleased to launch the 2017 Annual Investment and Trade Statement with about 300 members of our business community. This statement is a snapshot of activity in South Australia's economic engine room. It highlighted many of the achievements we have made in the last year. A special guest at the event was independent finance journalist Alan Kohler. It was significant that Mr Kohler's keynote address acknowledged the contribution of state government initiatives in the creation of jobs.

Other speakers at the event who had been on official trade missions acknowledged the impact of the missions on their business opportunities. It is very interesting how quickly the opposition and the media fly to the negative—for example, the loss of jobs at Coca-Cola. Yet, on the very same day, an equivalent number of jobs were created at Big River Pork in Murray Bridge, including construction jobs, where the Premier and I announced a new success of the Investment Attraction agency. It is interesting how hard it is to get the good news out there when there is bad news to be portrayed. Of course, on this particular launch—

Mr Whetstone interjecting:

The SPEAKER: The member for Chaffey, I will not speak of him again other than to remove him under the sessional order.

The Hon. M.L.J. HAMILTON-SMITH: At this particular launch, a number of facts were revealed. Three hundred and eighteen local companies took part in six business missions to 13 countries. More than $8 million in direct export deals were concluded during those missions, and many more will follow. Nearly 2,000 business connections were made as a result of the outbound missions. In China alone, 730 new business connections were made, with 205 export leads at an estimated value of $50 million. Our merchandise exports were up to $11.5 billion in 2015-16. In the past year, another 83 South Australian businesses have become exporters for the first time—all good news. Try to find it reported upon.

In the 16 months since we established the new agency, Investment Attraction SA, we have secured almost $1 billion worth of investment, created 5,000 jobs and attracted investment in 13 projects which is an extraordinary outcome, including Ingham's, $275 million, 1,470 jobs; Orora, $52 million investment, 110 jobs; Neoen, $250 million, 160 jobs; Datacom, $22 million, 795 jobs. Then there is NEC, Babcock, Buddy Platform, ScreenAway, Australian Global Wine Solutions, Micromet, Latitude, Greaton, Blue Lake Dairy, and Big River Pork, mentioned a moment ago.

My colleague the Minister for Tourism has championed the government's attraction of Qatar Airways and China Southern Airways who now fly direct here. The Bank of China has opened its first branch in South Australia. We face challenges—businesses in South Australia have always faced significant challenges—but the successful South Australian business culture is out there kicking goals. Adelaide was recently ranked the fifth most liveable city in the world. KPMG says we are the most cost-competitive city in the country.

Our tax reforms have made us an extremely low taxing state, our housing costs are low, our commercial office space comes at savings of up to 60 per cent, and we tabled a report from Flinders University making these exact points. On many cost drivers, we are the most competitive place in the country. Of course there are challenges, but the launch simply underlined the point that there is plenty of good news out there to be told; all that is needed is a willingness to tell it.

ELECTRICITY GENERATION

Mr VAN HOLST PELLEKAAN (Stuart) (14:40): My question is for the Minister for Mineral Resources and Energy. Does the minister stand by his claim that we have sufficient electricity generation capacity within South Australia? With your leave and that of the house I will explain.

The SPEAKER: No, we have an understanding, in order to maximise the number of opposition questions, that there won't be explanations. Minister.

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:40): I do stand by the remarks that I have made in this place and in many other places that the problem with the National Electricity Market is not available generation; it is its dispatch. There is an oversupply of generation in this state for average demand. There are times of peak demand across the country when places like New South Wales are short, Victoria can be short, South Australia can be short, and the reason they are short is that these types of high demand come around maybe once or twice at most five times a year.

The idea that you would have 3,000 megawatts continually operating in that kind of marketplace wouldn't be economical. The question is: how much generation do you have sitting idle in those periods when you don't have that peak demand? Again, this is a complex matter for the National Electricity Market. How will investors invest in peaking generators and other forms of generation like battery and other things that come on and are there to meet peak demands that come along rarely? That is the problem with the National Electricity Market: it does not incentivise it.

The way that it attempts to incentivise it is through its pricing. You can have a price of up to negative $1,000 where you pay to take electricity up to $14,000 a megawatt hour, so you send price signals out into the market and those price signals are there to try to help recoup some of the holding costs of those generators that are sitting in the NEM. But in any one day there is sufficient supply of electricity to meet our demands. The problem we have is the way that the NEM is being run is not optimal for the profitability of our local generators. It is not conducive to their making money.

We need to change the system. The question fundamentally is this: do you prefer South Australian gas or Victorian coal? On this side of the house, we support South Australian gas. I know members opposite have an aversion to gas. They have an aversion to South Australian gas. They would much prefer to support coalmines in Victoria—

The SPEAKER: Point of order, member for Morialta.

Mr GARDNER: The minister is debating: standing order 98.

The SPEAKER: He is. I uphold the point of order.

The Hon. A. KOUTSANTONIS: We make no apology for doing everything we can to incentivise local generation, whether it be wind, solar, other forms of renewable energy and gas. The reason we incentivise that is so that we can have as much available thermal generation and renewable generation as possible to help us transition to a completely carbon-free future. The only way that you are going to transition to a carbon-free future is to have gas as that transitional fuel, and the only way that you can have gas as the transitional fuel is through a liquid market. Moratoriums

and bans do not work, and members opposite have finally got a mining policy: they are going to ban gas. The member is nodding.

ELECTRICITY GENERATION

Mr VAN HOLST PELLEKAAN (Stuart) (14:43): My question again is for the Minister for Mineral Resources and Energy. What action is the minister taking to prevent further blackouts in our state, given that AEMO has reported that South Australia is at risk of separation from the rest of the NEM 10 times in the next nine months?

The Hon. J.W. WEATHERILL (Cheltenham—Premier) (14:43): We have at a national level been advocating for a number of years—

Mr Pisoni interjecting:

The SPEAKER: The member for Unley is called to order.

The Hon. J.W. WEATHERILL: —for the policy initiative which will, on any view of it, provide the solution to South Australia's and indeed the nation's economic security issues. It will provide for cleaner, more affordable—

Ms Chapman interjecting:

The SPEAKER: Deputy leader, you are on a full set of warnings.

The Hon. J.W. WEATHERILL: —more secure power and all it requires those opposite to do is to wean themselves off their addiction to the coal industry and the money that flows into Liberal Party coffers, which is essentially driving—

Mr GARDNER: Point of order, sir: it's debate and imputing improper motive.

The SPEAKER: I'm sorry, what's the improper motive? I missed it.

Mr GARDNER: Talking about funding to political parties, sir.

The Hon. A. Koutsantonis interjecting:

The SPEAKER: The Treasurer is called to order. The Premier will address the substance of the question.

The Hon. J.W. WEATHERILL: The substance of the question is to have a functioning National Electricity Market, not a broken electricity market where private sector operators can game the market and decide to withdraw capacity to provide power and cause blackouts. Is anybody seriously suggesting that a system that can permit a generator, which is actually available to provide power, to withhold that power and cause a blackout is anything other than a dysfunctional National Electricity Market?

That is what we are dealing with here in South Australia, and it is extraordinary that those opposite defend that state of affairs. The reason we have that situation—

Mr Marshall: We're not defending it. You said you were going to come up with a solution. Where is it?

The Hon. J.W. WEATHERILL: Let me tell you. The reason—

Ms CHAPMAN: Point of order: the question was, very simply: what action is the government going to take?

The SPEAKER: Yes. Premier.

The Hon. J.W. WEATHERILL: Advocating at a national level for energy intensity schemes that will ensure we have a price on carbon, to make sure that we have the best—

Mr Pisoni interjecting:

The SPEAKER: The member for Unley is warned.

The Hon. J.W. WEATHERILL: —scheme necessary for those people to invest in cleaner generation, driving competition into the South Australian energy market, firming up our supply, driving

down prices and, in the process, cleaning up our energy generation. All those things are available. Don't take my word for it: take the Chief Scientist's word for it—

Mr Treloar interjecting:

The SPEAKER: The member for Flinders is called to order.

The Hon. J.W. WEATHERILL: This is precisely the scheme that he recommended to the Turnbull government. It is precisely the scheme that the minister, Josh Frydenberg, publicly floated before he had that cut down when the coal industry interests grabbed hold of Queensland federal MPs, reached into the heart of the Liberal Party and got this Prime Minister, who believes that renewable energy is the future for this country, to turn his back on that.

What does this Prime Minister now stand for? He has sacrificed everything he has ever believed in, and for the most venal of reasons: his own political survival. It is as simple as that. The answer is absolutely clear, the answer that we have been advocating for at a national level is absolutely clear.

Mr VAN HOLST PELLEKAAN: Point of order: the Premier is debating the substance—

The SPEAKER: The Premier was debating the matter. He now seems to be returning to the substance.

The Hon. J.W. WEATHERILL: Precisely, sir. This issue—

Mr Pengilly: Keep the lights on, Jay.

The Hon. J.W. WEATHERILL: We are attempting to do that, and we would be grateful for your assistance. The great difficulty, to quote a headline from today, is that we are witnessing the end of the Liberal Party. We are seeing the disintegration of the Liberal Party at a national level. They cannot work together in the national interest.

Mr Williams interjecting:

The SPEAKER: The member for MacKillop is called to order for interjecting, 'Another bloody wind farm.'

Mr Williams: Sir, I said, 'Build another bloody wind farm.' They are generating about 12 megawatts out of about 2,000. They are fantastic.

The SPEAKER: Thank you. Leader.

EMISSIONS INTENSITY SCHEME

Mr MARSHALL (Dunstan—Leader of the Opposition) (14:47): A supplementary: can the Premier outline to this house exactly how his proposed energy intensity scheme is going to operate, what modelling he has done to see the impact upon costs for ordinary consumers here in South Australia and what prospect is there that this is going to be taken up and implemented immediately?

The Hon. J.W. WEATHERILL (Cheltenham—Premier) (14:48): There are three questions there. I was a little anxious to get up because I am so pleased to be able to answer that question. I won't offer my modelling; I will offer the modelling of the Australian Energy Market Operator, the Australian Energy Market Commission, because they have, in fact, modelled the operation of the emissions intensity scheme. This is the—

Mr Marshall interjecting:

The SPEAKER: If the leader interjects outside standing orders once more, I shall have to remove him under the sessional orders.

The Hon. J.W. WEATHERILL: The first, best position is for there to be a form of the National Electricity Market. It is unlikely that will be achieved because of the various reasons I have explained earlier about the Liberal Party being utterly dominated by coal interests. Nevertheless, to answer the leader's question, because it is an important question, this is the first, best policy position.

The way in which the emissions intensity scheme works is this. It ensures that the rank order of the dispatch of, essentially, bids in the National Electricity Market means that more often a

gas-fired generator will be given the opportunity to bid into the market. At the moment, they are always outbid by coal because they can come in at a cheaper price, yet we know that coal is dirtier and more emissions-producing.

So, it means that, on every occasion when we want to try to clean up, in a sense, our power electricity system, the very fuel that will allow us to do that—gas—is being excluded because of the way in which the National Electricity Market works. It actually conducts itself as though all forms of generation are equal. It does not consider the various emissions intensity of each of the schemes.

An emissions intensity scheme would shift the rank ordering between coal and gas and mean that gas would come on more often. What that would do is drive more generation into South Australia and indeed around the nation, and it would also ensure that we have more competition. More competition would drive down prices, firm up our supply and, in the process, clean up our energy generation system.

It also has the other benefit, and the other benefit is for coal. It actually sends a very clear price signal into the market so that coal-fired operators can work out whether they should reinvest in their clunky old coal-fired power stations. This is precisely what is happening in Hazelwood. Hazelwood is going to close on 22 March, and one of the reasons it is going to close is that it needs $400 million worth of investment. The reason its owners won't invest in the $400 million is that they don't know the rules of the game. They cannot take a long-term position in relation to this market because they know a price on carbon is coming; they just don't know what it is or when it's going to come.

Until we do that, you do not get the investment certainty necessary for existing coal-fired generators to make a judgement about how long they should operate, and so you get the unplanned closure of coal-fired power stations around the nation, devastating communities, putting pressure on the National Electricity Market and fundamentally ensuring that the system is broken. That is why all the sensible commentators in the National Electricity Market debate are advocating for an emissions intensity scheme. The only reason why those opposite, cheering on their federal colleagues, are opposed to it is because they are dominated by political interests that are tearing the federal Liberal Party apart. We are seeing it being played out in Canberra as we speak.

Mr VAN HOLST PELLEKAAN: Point of order: the Premier is debating and imputing an improper motive.

The SPEAKER: I uphold the point of order. The member for Stuart.

POWER INFRASTRUCTURE

Mr VAN HOLST PELLEKAAN (Stuart) (14:51): My question again is for the Minister for Mineral Resources and Energy. Has the minister convinced COAG to allow South Australia to retake control of our power network, as he told this house that he would in his statement of 16 February? If not, will he introduce legislation in our parliament to do so without COAG support?

The Hon. J.W. WEATHERILL (Cheltenham—Premier) (14:52): We are determined, because of the stalemate that has occurred at a national level because we don't see national leadership in relation to the National Electricity Market, to take control of our energy future. People believe that the supply of electricity is a public good. They believe it belongs in public hands, and that's why they are so angry with the Liberal Party for privatising the Electricity Trust of South Australia.

Members interjecting:

The Hon. J.W. WEATHERILL: You may not like it, but you only need to ask the community about this, and this is what they will say. Of course, it is a very difficult matter to unscramble a privatisation of an electricity market, but we are seriously examining that option because it is something that we are duty-bound to examine. We need to be able to explain to the South Australian community all the options for taking control of our energy future. We are absolutely determined to ensure that we can warrant to the people of South Australia, and also the businesses of South Australia, that they have a secure energy future.

We believe, on this side of the house, that climate change is real. We believe that renewable energy represents our energy future. We believe that investment in new technologies will assist us to provide a secure energy future for ourselves here in South Australia. We are not looking to the past. We are looking to the future, and we are going to take control of our future in South Australia's interests.

The SPEAKER: I call to order the member for Davenport. I warn the member for Kavel, who is living up to every calumny cast at him by the Deputy Premier. I warn the Treasurer, and I warn the member for Unley for the second and therefore the last time. Deputy leader.

OAKDEN MENTAL HEALTH FACILITY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:54): My question is to the Minister for Health. Considering that commonwealth funding for the Oakden Older Persons Mental Health Service was suspended in 2008 and a senior clinician lodged serious concerns in 2015, why is the current SA Health review limited to 2016 only?

The Hon. J.J. SNELLING (Playford—Minister for Health, Minister for the Arts, Minister for Health Industries) (14:54): The Minister for Mental Health and Substance Abuse I think addressed the issues in her ministerial statement in the last sitting week. I will see if there's any other information that can be offered, but at this stage all I can do is reiterate that the Chief Psychiatrist has been asked to undertake a review into the Oakden facility and three staff have been stood down.

OAKDEN MENTAL HEALTH FACILITY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:54): Supplementary: did the Minister for Health discuss the terms of reference with the Minister for Mental Health before they were finalised?

The Hon. J.J. SNELLING (Playford—Minister for Health, Minister for the Arts, Minister for Health Industries) (14:55): No, I didn't because this is entirely within the purview of the Minister for Mental Health and Substance Abuse. She is not my junior minister. She doesn't report to me. She is able to—

Mr Duluk: She actually is. When it comes to estimates, that's how she behaves.

The SPEAKER: The member for Davenport is warned.

The Hon. J.J. SNELLING: —make decisions entirely on her own. She doesn't operate under my direction.

OAKDEN MENTAL HEALTH FACILITY

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (14:55): Supplementary then to the Minister for Mental Health—is she here?—to the Premier or to the minister, of course (anyone can take this question): would the government then support the broadening of the terms of reference to take into account the standards back in 2008?

The Hon. J.J. SNELLING (Playford—Minister for Health, Minister for the Arts, Minister for Health Industries) (14:55): I am more than happy to refer the question to the Minister for Mental Health and Substance Abuse and report back.

MINING INDUSTRY

The Hon. T.R. KENYON (Newland) (14:55): My question is to the Minister for Mineral Resources and Energy. Can the minister inform the house about the current status of the South Australian mining industry and the government's role in supporting this industry's important contribution to the South Australian economy?

The Hon. A. KOUTSANTONIS (West Torrens—Treasurer, Minister for Finance, Minister for State Development, Minister for Mineral Resources and Energy) (14:56): I would like to thank the member for Newland for his question. He is a true fan of the mining industry. It's fair to say that the past few years demonstrate that our mining industry is one that is built on resilience. I am confident that the industry has weathered the storm and that 2017 will be marked by renewed growth and increasing optimism.

The fundamentals tell the story: continued improvement in commodity demand and prices that support an upswing for our miners. Mining is an industry that directly employs around 10,000 people in South Australia, not to mention all the additional businesses across South Australia that support miners and our explorers.

In the past year, 450 additional mining jobs have been created across this state. These jobs have come from OZ Minerals' Carrapateena project, which employs 50 people; WPG Resources' Tarcoola goldmine and renewed production at Challenger goldmine, creating 215 jobs; new operations at Cu-River's Cairn Hill mine, employing more than 60 people; and Olympic Dam's southern mine area extension, adding 120 jobs to BHP Billiton's already significant workforce.

That is the reality, but the outlook is also promising. Analysis published by the Resources and Engineering Skills Alliance found that 111 mining and resource jobs were advertised in South Australia in January, traditionally a very quiet month for that type of recruitment. January's result was the eighth straight month of positive jobs growth in the South Australian mining sector and the second highest number of jobs advertised in a month since 2014.

Almost 60 per cent of those jobs were in regional South Australia. Mr Speaker, as you know, these new direct jobs have flow-on benefits that impact on businesses and on families across the state and, in particular, on those regional communities where those people live. South Australia has reported 17 consecutive months of employment growth, generating a record number of South Australians in work, and the mining sector is playing its role. This government recognises that the future prosperity of our state will continue to be built on the diversification of our economy and, of course, the resources sector.

We know that maintaining our longstanding commitment to encouraging exploration investment will unlock new discoveries that will deliver jobs in this sector for future generations. To maintain the state's edge as a top 10 destination in the world for investment attractiveness in the minerals sector, I have instructed my department to undertake a comprehensive and transparent legislative review of the Mining Act. In developing those legislative reforms, we are consulting with all stakeholders in this critical industry.

We believe on this side of the house that we don't just roll out policies without first talking to the people who are affected by them. We want to make sure that we consult with them so they understand what the impacts will be so we can make better informed decisions. I am confident that our mining industry has weathered the challenging times and that our strategies, developed in partnership with the mining industry and the community, are perfectly placed to seize the opportunities created by the recovery of commodities prices.

Jobs growth is just one indicator that highlights the benefits that flow to the South Australian economy through this government's efforts to unlock the full potential of our state's mineral assets. Banning mining and stopping exploration of these resources that belong to all South Australians is folly. It hurts the economy, not helps it.

CALICIVIRUS

Ms WORTLEY (Torrens) (15:00): My question is to the Minister for Agriculture, Food and Fisheries. What has the response been to the advice to rabbit owners to vaccinate their pets before the new national release of the calicivirus?

The SPEAKER: I hope there will be some reference to the killer bunny of Caerbannog.

The Hon. L.W.K. BIGNELL (Mawson—Minister for Agriculture, Food and Fisheries, Minister for Forests, Minister for Tourism, Minister for Recreation and Sport, Minister for Racing) (15:00): I thank the member for the question. We put out a warning a couple of weeks ago ahead of tomorrow's release around Australia of the latest strain of the calicivirus—the virus, of course, that was first introduced into Australia in 1996. This is a new, more potent strain and one that we hope will clean up a lot of those wild rabbits out there that do about $206 million worth of damage each year to our agricultural lands, as well as placing under threat 306 vulnerable plant and animal species. We know that the rabbit is Australia's greatest vertebrate pest and that we need to take action against it.

I am pleased to say that responsible rabbit owners out there—pet rabbit owners—have actually heeded our advice and taken their rabbits along to the vet to get a vaccine. I have spoken to one vet who said that she is doing about four times the number of rabbit vaccinations she normally does. That is terrific news, but it has also sparked a lot of discussion amongst people whom I might describe more as conspiracy theorists, rather than as rabbit experts. In fact, one of these people put on my Facebook page, 'There are rabbits and there are rabbits.' I said, 'No, rabbits are rabbits.' She said, 'No, they're not. Next you will be saying hares are rabbits.' I said, 'No, I will never say that hares are rabbits, but rabbits are rabbits.' So, you can judge—

Members interjecting:

The Hon. L.W.K. BIGNELL: Exactly. I must say that most of the people I was having the discussion with on Facebook weren't actually South Australians. They were mainly from Byron Bay and Tasmania, and they had some outstanding theories on the way the world runs. I think what we need to do is probably set the record straight so that people who are responsible pet owners aren't concerned by these crazy claims. The vaccine does work against this latest strain of the calicivirus, so people can rest assured that it will work.

I must also say to the conspiracy theorists that, unlike your claims, the ability for K5, this latest strain, to jump species and kill dogs, cats, guinea pigs, sheep, pigs and even human beings isn't possible, so you can be safe in the knowledge that this won't kill anyone here or any of your other animals.

I picked up some interesting facts because my first Facebook post was so popular, with over 900 comments, that the next day I put out another one: #rabbitfacts. In Queensland, it is illegal to own a pet rabbit unless you are one of two things and then you can get a permit: (1) a scientist, and we expect that; the No. 2 profession to own a pet rabbit and have a permit for it is a magician. I put it on Facebook and these conspiracy theorists said, 'Now, you are just taking the—' and, 'Stop having a joke about the rabbits.' But it's true. It's an actual fact.

Then there was a story I linked to it from *The Guardian*, where some guy in Queensland was caught with a pet rabbit and told the coppers that it was a guinea pig. It was this big and had big floppy ears and he tried to tell the police it was a guinea pig.

I also want to say a couple of other things to the conspiracy theorists: the Great Wall of China was not built to keep the rabbits out, we can't build a wall and ask the rabbits to pay for it and there is no biological control that specifically targets politicians, which is what some of the Facebook people were hoping could work on me. I did love the little picture they did of me with the rabbit ears and the little finger up giving them the bird.

STUDENT ASSAULT

Mr GARDNER (Morialta) (15:04): My question is to the Minister for Education and Child Development. Is the minister aware of a serious incident at a DECD school where a child was allegedly physically assaulted in retaliation for reporting issues relating to drug dealing?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:04): No I'm not, and I will look into it.

STUDENT ASSAULT

Mr GARDNER (Morialta) (15:04): Supplementary: has the minister discussed or corresponded, or has her office discussed or corresponded, on any matters relating to the matter just described with a parent of one of the accused students and, if so, what did the minister say?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:05): Clearly, as I have just said, I am not aware of the matter and it is unlikely that I have had those conversations. But, as you have asked about the office also, I will investigate and report back.

STUDENT ASSAULT

Mr GARDNER (Morialta) (15:05): Supplementary: while the minister is making those investigations, can she please identify what measures have been put in place to protect the victim in this case, to enable that victim to return to school without fear?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:05): Again, I will take that question on notice.

EDUCATION AND CHILD DEVELOPMENT DEPARTMENT AUDIT

Mr GARDNER (Morialta) (15:05): My question is to the Minister for Education and Child Development. What has the government done to respond to the Ombudsman's audit of DECD's education-related complaint handling practices, released in November last year?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:05): There was a report by the Ombudsman on the way in which complaint handling was undertaken. The department has taken on board all the recommendations and is working through them. I think the difficulty the department had been encountering was being able to ensure that the same level of information and detail was provided across all the nearly 1,000 sites, schools and preschools, that the department operates. The department has taken the Ombudsman's report very seriously and is in the process of ensuring that it is able to comply with all the recommendations.

EDUCATION AND CHILD DEVELOPMENT DEPARTMENT AUDIT

Mr GARDNER (Morialta) (15:06): Supplementary: are there any recommendations the government is not proposing to comply with fully, and by when will the government have completed their compliance with those recommendations?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:06): I will bring back an answer on those questions.

TRANSGENDER STUDENT POLICY

Mr GARDNER (Morialta) (15:06): My question is to the Minister for Education and Child Development. Is the education department's new transgender student policy mandatory for all schools to implement?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:06): The transgender student policy is our way of making sure we articulate how schools can be compliant with the law, which requires that students not be discriminated against. Inasmuch as there is a law that requires students not to be harassed or to be discriminated against, then that is mandatory. There may in fact be some elements of the policy that are discretionary, and I can look into the detail. If the member has a particular question he is concerned about, then I am happy to look into that.

TRANSGENDER STUDENT POLICY

Mr GARDNER (Morialta) (15:07): Supplementary: from what age are schools required to consider a student's request, or their family's request, for their gender preference or their identified gender to be taken into account?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:07): I am reasonably certain that is publicly available, but I will do the research for the member and bring it back for him.

TRANSGENDER STUDENT POLICY

Mr GARDNER (Morialta) (15:07): Supplementary: are schools required to proactively inform students of their transgender rights, or is the policy instead a reference for when schools are uncertain of what the appropriate response to a situation is?

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills) (15:08): Again, the policy is a public document, so the

member could do his own research into that, but I am happy to read it for him and convey the answer to him.

GILLMAN LAND SALE

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:08): My question is to the Attorney-General. Has the Attorney-General caused any supervision of the sale of Gillman, in particular the current expressions of interest process, to be undertaken by any of his departments?

The Hon. S.C. MULLIGHAN (Lee—Minister for Transport and Infrastructure, Minister for Housing and Urban Development) (15:08): As Minister for Housing and Urban Development, I am responsible to the parliament for Renewal SA. They have been conducting the expressions of interest process, which is underway and has not yet finished.

Grievance Debate

EDUCATION AND CHILD DEVELOPMENT DEPARTMENT

Mr GARDNER (Morialta) (15:08): I am very pleased in particular to see the member for Florey is still with us in the parliament. I was very saddened that *The Advertiser* has reported today her political demise, as they have identified internal Labor Party documents that have presupposed the outcome of a preselection we are told is still to happen. Apparently, female candidates whom the Labor Party internal head honchos, the factions, have determined are going to get a run, do not include the member for Florey. But all is not lost, because the government has come to the rescue and there is indeed a new job that may well suit the member for Florey's needs.

I was interested to see today advertised an Executive Director for Strategic Policy and External Relations in the Department for Education and Child Development. It might be right up the member for Florey's alley. I know that she enjoys taking the school tours. There are some job descriptions in this role that might well fit in with the ambassador for the Muriel Matters Society. It has a princely salary of $367,270 a year for another spin doctor for the Labor government. Let me tell you about the job, Deputy Speaker, and I am so pleased that you are here to hear about it: it could be useful. The role includes:

> Reporting to the Chief Executive, the new Executive Director Strategic Policy and External Relations will join a recently re-aligned senior executive team and play a vital role in facilitating the development of strategic policy and effective engagement with key partners of the Department. This is an outstanding opportunity to provide proactive and collaborative leadership—

And get this—

> in the identification of strategic policy priorities and the development of insightful, innovative and practical policy solutions which are focused on achieving improved education outcomes for South Australian children and young people.

Who would not want to do that? I cannot help but notice the irony. This is a job that is apparently to 'assume leadership for internal and external communications'. Clearly, that is needed in the education department because what I have just described could benefit from some internal and external communications advice.

This $367,000 role—another spinner for the Weatherill Labor government—comes on top of a $4 million education department communication budget—$4 million. Think of the empire you would command, Deputy Speaker. It would be like having the member for Frome's portfolio, except it would have a few more staff to be in charge of.

This is a contract or term vacancy of up to 60 months. We used to say five years, but apparently 60 months is the vernacular now. The successful applicant will be determined after they have applied to Jo Fisher Executive. Jo Fisher is, I am sure, a very successful employment HR agency based in Victoria, of course, with offices around the place—not in Adelaide—but why would the Weatherill Labor government be expected to possibly support South Australian industries?

This is a new spin doctor for $360,000 a year managing a $4 million communications department budget within the education department. Why are we not spending this money on supporting our schoolchildren? Why are we not spending this money on delivering outcomes in the

classroom, improving literacy and numeracy standards? There were 5,000 truant students reported to the department in the last three years—5,000.

The DEPUTY SPEAKER: Name them.

Mr GARDNER: 'Name them,' the Deputy Speaker says. There is a level of frivolity, but this is a very serious matter, Deputy Speaker. There were 5,000 truant students, and the opposition has announced a package of measures that will deal with the truancy crisis in our schools because we know that if a student is a truant for a day, a week, or for the entire year, they will end up losing years of their school performance. How can they possibly catch that up?

We should be focusing our resources on teachers in the classroom. There are more than 1,000 bureaucrats in the education head office and hundreds of school staff—principals and school leaders—on secondment to the education department head office. This government has failed our children when it does not put the resources of the education department—every possible resource of government—into giving our students the best start possible.

We need literacy outcomes and we need numeracy outcomes. We have come last or second last in 18 out of the 20 categories in the NAPLAN results. We have failed our students. They are performing less well than their interstate and international colleagues, when we used to lead the nation and the world in education. The sum of $360,000 for a new spinner is not give good enough. We need to be putting that sort of resource into giving our students a better start in the classroom.

WEST TORRENS DISTRICT CRICKET CLUB

The Hon. P. CAICA (Colton) (15:13): Goodness me, that was rushed. I am tired after listening to that, and I am sure it is the same that happens when you are discussing preselections with Christopher.

Today, I am going to talk about two matters in particular. The first is an outstanding club in my electorate: the West Torrens District Cricket Club. Members in this chamber are aware of the move by SACA to force a merger between West Torrens and another great club, the Port Adelaide District Cricket Club. Members are also aware that a select committee was established by this house to inquire into SACA's decision. I make no further comment on the select committee, as it is still deliberating and yet to report to the house. What I can say is that it came as a great relief to the players and supporters of West Torrens and Port Adelaide (and I expect many other cricket lovers), when SACA abandoned the notion of a merger, and many might say that common sense finally prevailed.

In focusing on West Torrens, I can say that, as its patron and the local member, I could not be more proud of the way in which the club has responded to the very real threat to its future that was posed by the ill thought-through proposal of the SACA-forced merger. On Sunday, West Torrens District Cricket Club's premier team played off against Glenelg District Cricket Club in the premier grade one-day cup final. I am proud to report that the final took place at the beautifully picturesque Henley Oval, and I am also pleased to report that the West Torrens team passed Glenelg's total of 154 with 10 overs to spare and six wickets in hand. We are the SACA one-day champions.

This Sunday, West Torrens and Glenelg will do battle again at Adelaide Oval for the premier league Twenty20 title, and I hope the result will be the same as last Sunday. West Torrens is also currently sitting on the top spot on the ladder for Premier Cricket and will remain in that position after this coming weekend, given that we have already claimed first innings points against Tea Tree Gully last Saturday.

From all other aspects of West Torrens operations, they are going well, both on and off the field. As President Denis Brien has stated, West Torrens has never had the high number of sponsors it has this season. It has never been as financially well off as it is today and has an ever-growing supporter base. The future looks bright for the West Torrens District Cricket Club. I want to thank all those people and organisations that have helped to get us to the position we find ourselves in today. I thank our players, coaches, volunteers, committee, sponsors and others from outside our club, who have helped the West Torrens District Cricket Club not only to survive but to thrive.

On a sad note, I inform the house of the passing of West Torrens legend and club stalwart Ian Edgley who passed away on Saturday 25 February after a courageous battle with leukaemia and

bone marrow cancer. 'Edge' was an A grade player for over 15 seasons. He played 163 games during his stellar career. He made 4,995 A grade runs. He also captained our A grade team. He also served as president/chairman before succumbing to his first bout of cancer in 2007. The club owes a huge debt to this man. I offer my sincere condolences to his family. Vale, Ian Edgley.

The second matter I wish to briefly speak about is a South Australian success story that is worth highlighting. Many here would have visited the fine dining restaurant Osteria Oggi. I have been once with my wife, Annabel, and our son, Simon. It has amazing food and is a beautifully designed and laid-out establishment. Osteria Oggi recently beat a world-class field to win the Restaurant Interior category at the prestigious World Interior News (WIN) Awards ceremony held in London at London's Design Museum.

On any assessment, this is an outstanding achievement worth crowing about. Oggi's designers, Graham Charbonnea and David Bickmore, of local firm Studio-Gram, attended the awards ceremony and gratefully accepted this award. Studio-Gram is a firm I had not heard of until learning of their success at the WIN Awards. It is something I believe that South Australians can be rightly proud of, a small but effective company strutting the world stage and being recognised at a global level for the work that it does. I congratulate Osteria Oggi and Studio-Gram on the award.

Studio-Gram's work also includes Pirie Street patisserie Abbots & Kinney, East End drinkery Mr Goodbar, Level 1 on King William Street, and Kutchi Deli Parwana in Ebenezer Street. They are currently working on new Leigh Street yakitori diner, Shobosho. Finally, I know Graham through my friend Fuzz, who is the partner of his daughter, Lucy. They are having a baby in eight weeks. I am pleased that they have settled in Adelaide, and that will be an award that I am sure will surpass the one they won in London.

LOXTON MARDI GRAS

Mr WHETSTONE (Chaffey) (15:18): One thing that never ceases to amaze me in the Riverland is the way that the community gathers to support events. This was evident on the weekend at Loxton's feast of colour, excitement and pride, the 60th Loxton Mardi Gras, which was another outstanding success. It is one of the longest running festivals in Australia and one of the oldest festival in South Australia. Many people associate Mardi Gras with the Sydney event, but in Loxton the meaning behind the name is religious—Mardi meaning Tuesday and Gras meaning grand. It is a family religious festival to eat up big before the austerity of Lent.

The Loxton Mardi Gras contributes significantly to the local economy and cultural wellbeing of our community and is a drawcard to the region. World War II flight engineer Harry Tickle founded the event as a means to raise money for a swimming pool after seeing similar events in his time serving in Europe. Since its inception, the Mardi Gras has raised over $1 million for the community, funding a range of local projects. Aileen Auld was crowned the first Mardi Gras queen in 1958. The next challenge is now to ensure that there are enough volunteers to continue running this event, and I am sure that the Loxton community will band behind this event.

The 2017 Mardi Gras had over 70 floats and was described by the chair, Peter Magarey, as 'one of the most wonderful experiences'. Paula Nitschke was crowned Mardi Gras Ambassador for 2017, Emma Reichstein was awarded the charity ambassador title, Rose Auricht was awarded senior ambassador title and Lachlan Carter was awarded junior ambassador. Thirty three former queens and ambassadors returned to Loxton for the event, and $33,587 was raised for the local community.

On the same weekend, Loxton also held the ever popular Nippy's Loxton Gift. For those athletes in this chamber, the event was held for the 16th year at the Loxton Oval in front of a very strong crowd. The winner of the men's event was Adelaide's Jack Norris, Ryelie McMullan won the women's event and Chan Mayol was named the outstanding athlete of the carnival. It was fantastic to see local football and netball clubs participating in relays on the night. Barmera-Monash footy club won the men's footy relay, Loxton North footy club was second and Loxton footy club came in a close third. In the netball relay, Loxton claim the honours, and Berri and Loxton North were second and third respectively.

It was great to see Riverland Little Athletics supporting the act and to watch the five and six year olds running the track was a sight to behold. I would like to pay respect to the volunteers that

make this event happen every year. It is without doubt one of the great drawcards, bringing volunteers, athletes and tourists to the region. While I have time, I would like to mention the Riverland Mallee Vocational Awards held recently at the Berri Hotel.

It was a great night for the largest regional apprentice and vocational trainee awards in the state. Amongst the main award winners, Apprentice of the Year went to Cody Milne, from Riverland Data and Security and runner-up went to Melanie Cranmer, from Loxton Community Hotel Motel. Trainee of the Year was Casey Cocks, from Pure Skin Beauty and Spa and the runner-up was Mark Featherston, from the local MP's office, Tim Whetstone MP—he was a great trainee.

The School-based Apprentice of the Year winner was Chernoa Morrow, from Cindy's Hair and Beauty, and the runner-up was Braydon Eckermann, from G.J. Dix Engineering. The School-based Trainee of the Year winner went to Tayla Kingham, from the Bonney Lodge Nursing Home, and the runner-up was Emma Ziegler, from Illalangi Gourmet Foods. Illalangi does a great job in promoting not only the region but the unique food culture of the Riverland. The VET Student of the Year winner was Erica Austria, from Waikerie High School, and the runner-up was Chloe Warrick, from Loxton High School.

Moving on to the industry winners, the automotive winner was Mark Pickering, from Gibbs Auto and Electrical; the building and construction award went to Will Carr, from Prestige Kitchens and Cabinets; the electrical award went to Keenan Wilksch, from Statewide Group Training hosted by the Central Irrigation Trust; the commercial cookery winner was Melanie Cranmer, from the Loxton Community Hotel Motel; the data and voice communications winner was Cody Milne, from Riverland Data and Security; and there is nothing like a good hairdresser, and the hairdressing award went to Jacqueline Goldfinch, from Cindy's Hair and Beauty.

It was a great night and always provides me with an opportunity to promote great trainees and apprentices from the Riverland, and I was once an apprentice at GMH Holden.

LIBERAL PARTY

Mr PICTON (Kaurna) (15:23): There is now less than 13 months until the next state election and we are witnessing the four-yearly cycle of the Liberal Party tearing itself apart with its intergenerational factional feuds. In seat after seat across the state, there is turmoil underway in the South Australian Liberal Party. Their factions are as divided as ever, squabbling over the spoils of parliament rather than focusing on developing policies for the people of South Australia. InDaily's Tom Richardson has been writing a very interesting series of articles that reveal the level of dysfunction in the Liberal Party across the state.

In the western suburbs, the opposition has been grooming Matt Cowdrey to run for the seat of Colton. He has been lauded as a star candidate, only for the wet faction to go into overdrive to try to put a former premier's son into the seat. The member for Morphett himself, who is under preselection speculation, has reportedly signed the declaration for Alex Brown to run for the seat.

Then take the north-eastern suburbs and the seat of King, where the wet faction-backed Paula Luethen-Soper is so disliked that the former Liberal Party member and Mayor of Tea Tree Gully, Kevin Knight, has threatened to run as an Independent against her should she win preselection. He said, 'I wouldn't rule out running just to put a fact sheet [out about her].' If you want to learn more about this particular councillor and potential Liberal candidate you only have to read the excellent speeches of the member for Wright, who has held her accountable for her work on council, including the famous examples of ruined children's playgrounds and horses' heads in the park.

In the Mid North, we have former senator Sean Edwards, who has been forced out of the race to run for state parliament because he is actually pro growth, he has a pro growth agenda that sits opposite the anti growth agenda of the current Leader of the Opposition and the Liberal Party. He said to InDaily:

> My long-held position in obtaining cheap baseload energy with zero carbon emissions, desperately required, is likely to put me at odds with the parliamentary team's newly-stated views on gas exploration and nuclear, and providing a contest of ideas in this space.

In the southern suburbs, we have the seat of Davenport, where the former member and minister Wayne Matthew is aiming for a re-entry into parliament. In doing so, he has taken a swipe at the poor performance and experience of the current members of the opposition. He has said:

> There's certainly been a concern in business that the Liberal Party has lost a lot of their corporate knowledge…There's concern that they'll be very slow off the mark without some of that corporate knowledge…the only reason the Liberal Party is in opposition is because it tried to cut itself apart. They…lament they got [only] 53 per cent [of the vote] last time, but largely the Liberal Party is in opposition because it cut itself apart.

The factions are fighting back against that, with sources telling InDaily that his candidacy will be 'an unmitigated disaster'.

In the seat of Badcoe we have the Mayor of Unley, Lachlan Clyne, who has long been scoping out the seat and has moved a couple of times at least. This week, we have seen him backing down on a council proposal for developments that only four months ago he called a 'winning idea'. This is the same Mr Clyne who was, of course, previously charged with four counts of dishonestly dealing with documents and one count of using another person's identity information to commit an offence during the last council elections.

In the Hills, we have seen the likely candidate for Heysen, Stephen Blacketer, have this to say after Mr Turnbull took the prime ministership:

> Well, ain't that f****d. Turns out I'm a member of the Labor lite party. I'm not a Malcolm Turnbull fan. Duplicity should not be rewarded. He split the party badly last time he was leader. He will do it again.

In the seat of Finniss, the current incumbent has threatened to run as an Independent if he does not get his way to support his preferred candidate of David Basham. In seat after seat, we are seeing this dysfunction and factional plays. Then there is a senior Liberal who is quoted as saying, 'If Steven Marshall wins the election and becomes Premier, he's in the most dangerous spot in politics—he is the only thing between Vickie Chapman and a premiership.'

The chaos of the Liberals is further reflected in their lack of diversity in likely candidates, with a shocking predicted male-female ratio of winnable seats of 83 per cent to 17 per cent, compared with the government's much more respectable ratio. There is no plan in the Liberal Party to arrest this decline, and it looks very likely that the preselections will once again return a Liberal team with diversity better reflecting 1918 than 2018.

Once again, the Liberals have proven that they are a party too focused on their own internal factional fights, feuds, hatreds and backstabbing to develop the policies to put the people of this state first.

RENEWABLE ENERGY

Mr BELL (Mount Gambier) (15:29): I cannot let that speech go without a little rebuttal. I think what is annoying the Labor Party the most is the unity shown on this side—the fact that we are 100 per cent a Steven Marshall Liberal government in 2018. It is absolutely killing them. We do not have Peter Malinauskas coming down from the upper house to either challenge or step straight in with, of course, an up-and-coming minister here, but that is not what I am here to talk about.

I am here to talk about biomass. I want the state government to make sure that they remember biomass as a renewable energy source. In fact, biomass has been touted for a long time, but we need to make sure it is given full consideration going forward. A very prominent businessperson who was quoted as being 'light years ahead of his time', Adrian de Bruin, who unfortunately is no longer with us, was a very parochial South Australian and a passionate member of the Mount Gambier community. Back in 2008, he was championing the delivery of a biomass plant.

The reason he was doing this is that we have so much tonnage of waste just rotting in the forests or going to landfill because it is not being used. At a conservative estimate, one million tonnes of wood fibre is going to either landfill or just rotting, unused. This would power a 60 to 100-megawatt plant, and it would be best located, according to all the experts, alongside one of the timber mills, where the hot air could be used to dry either chips or wood product whilst producing electricity at the same time.

It feels a bit like back to the future because, back in the fifties, a state-owned mill there, Woods and Forests, used to have its own biomass plant that generated electricity and sold it into the grid. One of the opportunities for this state going forward is that we could see localised generation, whether it is up in Port Augusta with solar thermal or the wind turbines, or in the South-East with biomass, contributing to local supply and therefore protecting to some degree the stability of our grid so that we do not again have statewide blackouts as we did last year.

Unfortunately, the problem of power outages and blackouts is becoming all too common. I want to run through a letter I received from Jacqueline Rovensky. I wonder, if this were in a metropolitan seat, whether this would be tolerated. These are the outage dates, as confirmed by SA Power Networks. We will start in 2016 to give it some relevance.

On 2 January 2016, the power went off for 11.1 hours with the cause unknown; 5 January 2016, weather, 2.3 hours out; 25 February 2016, equipment failure, 1.4 hours out; 16 March 2016, equipment failure, 7.1 hours out; 9 June 2016, equipment failure, 4.7 hours out; 12 July 2016, 2.3 hours out; 27 July 2016, planned maintenance, three hours out; 16 August, 3.5 hours; 28 September, 14.5 hours; 26 October, 2.9 hours; 26 October, 1.3 hours; 4 December, 1.8 hours; 7 December, half an hour; 10 January this year, 1.2 hours out; 8 February, of course, load shedding, 0.5 hours out; and, 13 February, weather, 2.7 hours out.

I talk about this because this area is located in a rich dairy industry where we have many dairy farmers who need to tip their milk down the drain because power is what backs up their refrigeration. On particularly hot days, that milk spoils very quickly.

MID COAST COMMUNITY CHALLENGE

Ms HILDYARD (Reynell) (15:34): I rise today to speak about two excellent events I recently attended. Firstly, in my electorate of Reynell, in our magnificent southern community, together with the member for Kaurna and fellow lifesaver, on 29 January we supported and attended the Mid Coast Community Challenge. This event, held at our beautiful Christies Beach Surf Life Saving Club, was a fantastic day made perfect by the generous and collective efforts of many.

For a number of years, the Mid Coast Community Challenge has been developed and put on by our five Mid Coast surf clubs: the Christies Beach, Port Noarlunga, Southport, Moana and Aldinga lifesaving clubs, with strong participation by members of those clubs and clubs right along our South Australian coast. This year, an extraordinary organising committee of lifesavers, including Keith and Gaynor Holeman, Jane Roberts-Bristow, John Smith, Sheena Wilson, Jared Turner and many others, with the support of the presidents of each club, each of whom have dedicated many years to keeping our beaches safe, turned the annual event into the Mid Coast Community Challenge.

This community challenge focus engendered the development of strong partnerships and involvement of a number of community partners, including the City of Onkaparinga, Tribe FM 91.1, Southern Football League, Surf Life Saving SA, the world lifesaving championships group, the Lions Club of McLaren Vale and many others. Participation in this unique event saw an increased number of lifesavers and potential lifesavers of all ages compete in a one-kilometre community swim and a number of other events.

As I have said many times in this place, surf lifesaving is an excellent way to volunteer to provide service to our community, to engage in healthy competition and to bring people together as part of a club and a movement focused on keeping our fellow South Australians safe at our beaches. The Mid Coast Community Challenge does all this and more, and it is an event that I know the member for Kaurna and I look forward to supporting for many years to come. Thank you to everyone who made this happen.

The other event I speak about today is the ISPS Handa Women's Australian Golf Open. I was very pleased to attend a series of events as part of the open program and to watch some of the best golfers in the world display their extraordinary skills. The open is one of the world-class women's sporting events that I am very proud our government has supported. This event has, of course, seen the world's best golfers and thousands of fans flock to our state to enjoy the golf alongside thousands of South Australians.

The event's founder, Haruhisa Handa, is known for promoting and also introducing to Japan golf for people experiencing vision impairment. ISPS Handa is admirably also committed to promoting disabled golf to be adopted as an official event of the Paralympics. The Women's Australian Open supports our South Australian government's focus on growing and promoting women's sport, as well as golf tourism in South Australia.

South Australia is reaching new milestones in achieving gender equality in sport and hosting events like this one, which in its first year last year brought $6.5 million of economic benefit to our state and is one of the steps forward we are taking. By attracting and hosting such a world-class event televised to millions across the globe, we are demonstrating that we are committed to advancing women's sport and women in sport.

It was wonderful to see the number of girls and women watching the golf and also signing up to Golf Australia's Swing Fit program, which provides a unique opportunity for girls and women to connect, to get fit and to develop their golfing skills. This event was also part of our summer slam, an initiative of our South Australian Women in Sport Task Force aimed at encouraging attendance at a series of women's events over the summer period.

People were encouraged to take photographs of themselves at each of the summer slam events to show their support for women's events and to enter the draw to win a range of excellent prizes, including a run with Jess Trengove and a golf lesson with Tamie Durdin, amongst others. This initiative is something we intend to roll out during winter as well to keep encouraging people to support women's sport by coming along and watching the women.

We know that increases in attendance help demonstrate how important it is to invest in women's sport. We know that increases in attendance help improve sponsorship and other support, so I take this opportunity to encourage all my parliamentary colleagues to attend some of our fabulous women's sporting events. Whether it is one of our SANFL women's matches, an AFL women's match, our Adelaide Lightning, our Thunderbirds, our Adelaide United Women or the golf or women's tour, the atmosphere is incredible.

To return briefly to golf, congratulations to winner Ha Na Jang, world number six. Thank you also to Golf Australia, Golf SA, minister Bignell, Events SA and many others for the incredible promotion of women's sport through this event. I hope that we will continue to see this event held in Adelaide as it is an incredible boon for women, for every sports fan, for golf, for tourism and for our economy.

Parliamentary Committees

STATUTORY OFFICERS COMMITTEE

The Hon. S.C. MULLIGHAN (Lee—Minister for Transport and Infrastructure, Minister for Housing and Urban Development) (15:39): By leave, I move:

That the member for Fisher be appointed to the committee in place of the member for Enfield, by reason of ineligibility.

Motion carried.

Bills

SENTENCING BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 November 2016.)

Mr BELL: I draw the Deputy Speaker's attention to the state of the house.

A quorum having been formed:

Ms CHAPMAN (Bragg—Deputy Leader of the Opposition) (15:40): I indicate that I am speaking on the Sentencing Bill 2016 and that I will be the lead speaker, and quite possibly the only

speaker, and that I wish to make some remarks about this bill. I indicate that the opposition will be supporting the bill, other than amendments in respect of the proposals in relation to home detention.

Let me say that the bill was introduced by the Attorney-General on 16 November last year. It completely repeals the Criminal Law (Sentencing) Act 1988 and sets out a new regime for the sentencing of offenders in the criminal justice system. New options for sentencing discounts and home detention changes are included. In fairness, the bill is the result of considerable work done by former judge of the Supreme Court, John Sulan. His Honour was appointed in December the year before to undertake a review, look at the preparation of a new sentencing act and generally advise the government on where there needed to be some contemporary updating and also consider how it might best operate.

On 2 December, I attended a forum hosted by the Attorney-General at which John Sulan was present. He was most helpful in advising us that, in his opinion—and that is to be valued given his extensive experience on the Supreme Court—there needed to be a whole rewriting of the act. There were some concerns raised about the limiting of the discretion of judges in general commentary and other matters on this issue.

In the previous June, the government committed to investigating how we might better deal with sentencing. A discussion paper was issued and, with that, a home detention bill and a first principles bill, which were distributed for some limited consultation. The Statutes Amendment (Home Detention) Bill 2015 provided for home detention as a stand-alone sentence. Further minor changes, which we will now incorporate separately, or which we propose to, needed to be considered.

It is fair to say that during the public debate on this matter arising out of some fairly controversial cases, which reached a crescendo in the latter part of last year, there had been significant public disquiet about the application of the current home detention, particularly in circumstances where offenders had been given the opportunity to have home detention as part of their sentencing, or as their sentencing.

There were questions about the exploitation of that. These covered notorious cases of a person removing their bracelet, an electronic apparatus designed to track the detainee, usually from their place of residence. In particular, it identifies whether they were in breach of obligations in respect of their home detention, restrictions on where they go, when they leave the property, etc. Other controversial cases dealt with what type of remunerative employment was being presented for consideration of home detention, including leisure activity, employment and sport.

Before I come back to this more controversial area of home detention, I would like to mention a few areas of reform in this bill which we support and which we think need to be accommodated in contemporary laws in this area. Firstly, the bill makes protection of the safety of the community a primary consideration. All other matters are identified as secondary considerations. It is currently a factor, but it has been given prominence as a primary consideration. Secondly, it introduces a new way to provide compensation to victims of dishonesty offences. Presently, criminal offenders can be ordered to provide compensation.

The property of the convicted offender can only be seized if it is the proceeds of a crime or unexplained wealth. Any assets can be seized for drug dealers; this is an expansion. It is fair to say that it is a bit controversial, but that is a matter which is incorporated. Thirdly, it introduces community-based orders and also intensive correction orders. These regimes, firstly in respect of community-based orders, are designed to replace the good behaviour bonds and community service orders. They can be conditional and include social obligations, such as undertaking education and treatment programs. Privileges can be denied through curfews, drug and alcohol testing, restricting contact with others and restricting movement.

Perhaps some would say that is really just a matter of form and not any change of substance to that area, but nevertheless we have always accepted that this area is an important option for sentencing. The new option of intensive correction orders will apply to a person sentenced to imprisonment for less than two years. The offender is sent home and subject to intensive supervision by a non-government sector and community-based rehabilitation. The offender may be required to

pay the cost of any treatment or rehabilitation during that time. It is designed to apply to adult offenders.

Again, at first blush the proposal has merit on inquiry with interstate operators, including the judiciary in Victoria, where this option has been offered for some time. It appears to be little used, and that is largely because we have such a shortage of people available to provide supervision. Generally, providing this more intensive regime is near impossible and so it has been rarely applied. Nevertheless, we do not disagree with it being in there as an option and, if there is some capacity for the minister for corrections/law and order budgets to be expanded to provide for that, I suspect there will be some good use of it.

The fourth area is to introduce new sentence discounting guidelines that match the new time lines for the disclosure of evidentiary material in the Summary Procedure (Indictable Offences) Amendment Bill, which we have just dealt with in this house and which is on its way to another place for consideration.

The government has indicated that sentencing discount clauses will not be progressed if the indictable offences bill does not succeed. That is hardly surprising, as they are referred to in both bills. We have not expressed a disagreement with the change in the sentencing discount clauses, but I previously commented in the debate on the previous bill that reviewing the sentencing discount clauses is probably premature and that the reforms that we made in the last few years ought to have some time for consideration.

I note the Attorney advised the parliament that those previous initiatives have been the subject of review—I think he even suggested for the 2½ years that they have been operating. In fact, they only reviewed the first 12 months, and commentary was made in that report on the short time that new regime had oxygen and that therefore, whilst there were some signs of benefit, it needed some further time for review. In my view, in the absence of further information being brought forward, they ought to be given an opportunity to deliver.

Furthermore, I made a comment that in my view the appointment of the new head of the District Court, who carries a massive workload in relation to criminal matters, ought to have the opportunity to progress other initiatives before we start tampering with the sentencing discount clauses. Nevertheless, the government are insisting on progressing that at this stage.

The second aspect of this sentencing discount is that the reform does not vary the principles of sentencing discounts for assisting the court and pleading early; however, the maximum discount available reduces more quickly than the previous time frame. A new clause is added to provide a 10 per cent discount for an accused who has already pleaded guilty but who assists the court throughout the trial. So, there is some new novelty added to that and we will see whether it helps.

The fifth area of reform is covered by the provisions for home detention. According to the government, these new provisions state the purpose of home detention. The new provisions for court consideration are the length of time of the proposed sentence, a new provision noting that the court must consider if the home detention would affect public confidence in the administration of justice and a new provision making it a condition that the defendant be monitored by an electronic monitor at all times.

Secondly in this area, the provisions allow that the home detention officer can determine what appropriate remunerative employment is and at what times it is to occur. There is no specific definition provided. However, the bill we have in the parliament—as distinct from the previous draft proposals—sets out that remunerative employment (being one of four areas for which home detention may apply to have release from home incarceration) is qualified. In particular, the terms and conditions of remunerative employment are to be set by the home detention officer. The government consulted quite widely in this area. That was a fairly effective process under the helpful stewardship of John Sulan, in that it gave everyone an opportunity to put in a comprehensive submission, if they wished to.

The weakness, we would suggest, is in home detention. Over the last few months I have repeatedly sought that there be some restriction placed, or at least prescription inserted, in respect of the circumstances in which the relaxation of the home detention should occur, namely, allowing

people to leave the property. Unfortunately, that appears to have fallen on deaf ears. Accordingly, I foreshadow that an amendment will be tabled and progressed; I think it has already been tabled. The gist of it is to make some provision in the bill to say that the approval for a person who is subject to home detention to leave a residence for any purpose must be on the basis that the aggregate period of absence has to be less than 12 hours in a 24-hour period.

The second qualification, which I think is certainly common sense, is that participation by a person subject to a home detention order in a sporting activity for which they might receive a payment may not be approved for the purposes of remunerative employment. Some would say, what about a highly paid AFL footballer who has as his employment very significant remuneration? If they are the subject of a home detention order, they might miss out—and yes, they may.

That is a consequence of that amendment, and from our side of the house we see this as necessary to ensure that there is not exploitation of this opportunity to have a punishment which is laced with the opportunity to still undertake employment or have medical treatment or many other reasons, as I said, to leave the property. It should be treated as a privilege and not as something that is to be some optional home holiday. We, on this side of the house, otherwise recognise the importance of updating the sentencing law generally and accordingly, subject to those amendments, we will be supporting the bill.

I add one other matter, and that is that it seems rather curious that I pick up a schedule of CPD proposed forums for the forthcoming months and on 12 April there is to be a CPD event entitled 'The Sentencing Bill 2016 SA'. I raise this because it is either a very late opportunity to consult on the bill or it assumes that it will actually be an act by then and that there will be some briefing to the profession about how it is going to operate.

Of course, it is important that when legislation passes, once it is an act or indeed a promulgated regulation which is allowed to survive, it does avail itself of the appropriate advisers to inform the legal profession and the public generally. We have no issue about that whatsoever. It is a rather curious presentation as a bill. If it is to presume, on the other hand, that it will be an act by then, I see it as quite disorderly and quite inappropriate for the government to make those arrangements, publish them even, before we have even canvassed the bill in the parliament.

In the regime that will operate, the government also suggests that the eligibility for a home detention order will be denied if the adult offender has a non-parole period of two years or more for prescribed designated offences, for serious and organised crime offences and for specified offences against the police. Those incorporations do two things. Firstly, they incorporate the thrust of the legislation currently sponsored by the member for Stuart, who has a private member's bill before the house to cover the proposed exclusion of home detention for people who are convicted of various serious crimes such as murder, terrorism and serious sexual offences.

The Attorney has acknowledged that that is being incorporated, and we appreciate that, especially as this bill has been sitting there since November last year. Prior to that (I think in 2015), a bill presented by the member for Morialta in similar terms was again ignored by the government, and unfortunately it has taken a very long time for it to be accommodated; nevertheless, we note it and we appreciate it.

The second matter I point out in respect of home detention orders if the bill had already been dealt with is the recent conviction of Tabitha Lean, when she was sentenced to a prison term with the opportunity to serve in home detention a period of six years and eight months from memory (I am looking quickly at the sentencing remarks). In any event, she had a 3½ year non-parole period. This is an offence of which she was convicted. It was an extraordinary case where she and her partner orchestrated to fraudulently, and through deceptive means—sending threatening letters and bloodstained T-shirts, and it all sorts of other macabre aspects to it—attract the authorities to give her free hotel accommodation and have the benefit of very significant moneys to protect her and her family during that period.

I think the amount was $270,000 for a serviced apartment and significant other moneys to pay for holidays to minimise the stress to this family, who on the face of it, were the victims of horrible death threats and the like. The partner, in crime in this instance, was sentenced to imprisonment and not given any home detention. It is fair to say, on viewing the sentencing remarks, that His Honour

took into account that she had three children to care for and that that was a persuasive matter to enable her to stay out of gaol. She had an important and respected role in her Aboriginal community and she had employment in the Public Service.

These are all matters which, not unreasonably, are taken into account, but it seems that here we have a situation of the government saying, 'If you get more than a two-year non-parole period for certain offences you shouldn't be able to be eligible for home detention.' I believe—and I think the Attorney agrees, at least on this point—that there needs to be a level of discretion in most cases to allow the sentencing judges to access tools in the toolbox. This is one of them, to take into account the specific circumstances of the person convicted and accommodate that.

I am concerned that we have a situation now where, with the two-year non-parole period, which is to deal with only prescribed designated offences, this would not be captured. If it is, then why was this bill not progressed earlier? Why did we not deal with it here in the parliament two weeks ago when it was listed? Why was it simply removed from the list as a priority bill, and identified by the government as a priority bill, in that week's business and not dealt with?

If the government were seriously concerned about the importance of reforming sentencing law, which, in itself, would not attract immediate attention or priority, but, on the other hand, were serious about dealing with home detention and tidying that up, then why did we not progress that bill in the last session? Surely we then would have had some opportunity to deal with these continuing cases where there is public outcry about the accessibility to an opportunity to have home detention, either with or without adequate restriction, including at least the consideration of the amendments that we present.

Flexibility is one thing, but very serious offending should exclude a person from having access to this option. It is now going to be incorporated in this bill, and we welcome that, but the government cannot have it both ways. It has to either progress this and deal with it, which we have been begging them to do for some time, or at the very least accept the proposed amendments we will present to try to ensure that we have a fair compromise in respect of the home detention option surviving—and, in fact, being available and being utilised—while at the same time balancing the areas of concern that have been raised not just by us but by members of the public.

The final thing I want to say about this bill is that the recent public commentary about home detention, and the circumstances of its application about which a number of commentators have expressed disquiet, raises another ever pressing issue. We have a prison resource in this state that is burgeoning. We have something like, I think, 2,996 people in prison. Obviously that changes daily, some go out and more go in, but we have 3,000-odd people incarcerated.

There are two things I want to say about that. The first is that that obviously puts pressure on corrections officers to let people out, so that a person court-sentenced for imprisonment can come in the other door. Secondly, even with the opportunity to use court facilities, police cells, it is still full. There was a recent announcement that two of our prison cells would not be available—from memory one was at Port Adelaide, but I cannot remember now where the other one was—because the two areas were going to be renovated. Sure, we accept that we have to have these upgrades from time to time; however, they provided 20 or 30 extra capacity to be able to take up some of the shortfall.

They are unavailable for the next few months, so there is a very clear, pressing need to deal with the overcrowding in prisons. We see, almost on a daily basis, concerns raised by the correctional services officers' union themselves or riots or people who do not appear, on the face of it, to be apprehended when they should be. I am speaking about people who break out. We had a very sad case some months ago when a woman who was on work leave left her post, absconded and, two weeks later, was found dead. I find the whole circumstance of this crisis situation in the prisons to be totally unacceptable.

The second aspect I will raise about it is even more concerning. Because we have such inadequate court operations at the moment in respect of progressing cases through the system, and we have a huge backlog of cases, we now have a cohort of 25 to 30 per cent of prisoners at any one time who have not even been convicted of anything. These are people who are on remand, awaiting determination by the court process.

So, we have our prison population sandwiched between the walls of prisons in South Australia with a multiple number of people who really should be there only for short periods of three or four months before their case is heard. They are sometimes there for a much longer period, and they are clogging up the beds. If you ever want to talk about bed stoppers, it is in this capacity. Secondly, there is a demand by us here as a parliament, let alone the government, to ensure that there be this ranking up of prison terms that are to apply for offences. These terms are not just mandatory in some circumstances but are ever-increasing in their period of operation.

We have a very serious problem. It is alarming to read today in the paper that a person who is in prison received a $100,000 compensation settlement for an apparent failing of the Correctional Services community to employ sufficient access to the management of that prisoner's diabetes health issue. There is a lot of commentary about whether he should have got his $100,000 or whether the victim should get it and so on, and I think they are important matters, but for the purpose of this exercise I want to say that not only do we have prisoners crammed in there but we also have, in my view, totally inadequate rehabilitation programs in the prison.

Today's exposure highlights to me that there is clearly a problem in being able to ensure that adequate services are given for the medical, psychological and even dental treatment of prisoners. As has been clearly said many times, if you are in the custody of the state, whether you are in a prison or under the guardianship of a minister as a child, there is an obligation, a duty of care, to those persons to ensure that they are cared for to the extent of their medical needs, in particular.

I do not know the detail of whether this person should have been given a different diet or whether it enhanced his diabetes problem, or whether it has left him with some residual health problem that he should not have had, but a $100,000 settlement suggests that there is some acknowledgement, on the advice of the Crown Solicitor's Office, that there had been some dereliction of duty in the supervision and restraint of that prisoner, or more particularly a lack of service that was given to him while he was there.

I have raised a number of questions about what should be happening in prisons. I am not going to go through all those today, but I will remind the house of one, and that is that we are one of the few states in Australia that does not make any provision for women prisoners to keep their newborn children with them while they are in prison, to have care of those children for up to two years. In some jurisdictions they get to enjoy that for longer.

We have had that provision in this state before. With the crushing number of prisoners we have in our prisons, it does not surprise me that it is not available at present, but it should be. These are basic rights to ensure that we do not create another generation of problems by—

Members interjecting:

The DEPUTY SPEAKER: Order!

Ms CHAPMAN: —effectively requiring those newborn babies to be placed in the care of others. I make no criticism of others, particularly if they are in their immediate family, but I make the point that there is a lack of opportunity, sometimes for months and sometimes for years, for that mother to acquaint herself with her child.

The second matter, which I again raise because it infuriates me, is the inadequate number of forensic beds available for mental health patients, who are therefore required to be sent to prisons. Again, they are taking up a prison bed when they should be appropriately accommodated in James Nash House or such other facility that can give them the psychiatric care that they need. With those qualifications, I indicate our support of the bill.

Ms COOK (Fisher) (16:16): I rise to speak in support of the Sentencing Bill 2016, which represents a significant reform in the government's sentencing policy. This bill does a number of things: it legislates to adapt the early guilty plea discount regime to the new summary procedure bill that is being debated by parliament; it also expands the number of sentencing options that are available to the courts.

Courts having various sentencing options available to them is an important reform, as it allows the courts to tailor sentencing options to certain offenders to give them the best opportunity to rehabilitate and become contributing members of society. There is one other reform, however, that

I want to highlight in my speech, and that is that the bill makes public safety the paramount consideration of the courts in sentencing of offenders.

Under this bill, the consideration of public safety takes precedence over any other sentencing consideration. What this means is that violent and sexual offenders who represent significant concern to public safety can expect to receive custodial sentences. Offenders who commit nonviolent and non-sexual offences, however, will be able to be managed through a wider palette of sentencing options.

For example, this may include someone who is convicted of driving unregistered or without a licence. Although, yes, they have committed a crime, it is not necessarily good public policy to lock them away in a prison if the driving offence is their only offence. In fact, there is good evidence to suggest that their life outcomes will be negatively impacted by such an incarceration. They can be better managed through and alternative to custody. This does not compromise public safety.

This government has always placed public safety as a high priority in the sentencing of offenders and this is evident through various recent sentencing reforms. Section 23 of the current sentencing legislation allows for the indefinite detention of sexual offenders who are unwilling and unable to control their sexual instincts. Under this provision, paramount consideration for the courts is the safety of the community.

The government recently established a regime of extended supervision of particularly dangerous offenders. Under this regime, particularly violent and sexual offenders who are coming towards the end of their sentence but may still require supervision can be accordingly supervised under a high-risk offender order. This means that, although the head sentence has expired, the Department for Correctional Services is able to manage the offender within the community so that they are given the best opportunity to successfully reintegrate into the community. This is more evidence of using evidence-based practice in terms of rehabilitation of offenders.

When the court is considering whether a person should be subject to a high-risk offender order, the paramount consideration of the courts is community safety. In the home detention sentencing reforms that were recently passed by the parliament and are being refined in this bill, again, the paramount consideration for the courts is community safety. I feel it is important to outline the public safety element that has been present in all the recent government reforms to this sentencing regime. The bill represents a culmination of that principle—community safety is paramount. I commend the bill to the house.

The Hon. A. PICCOLO (Light) (16:19): I rise to speak in support of the Sentencing Bill 2016. It increases sentencing options for the courts, and I believe this is a good thing and should be embraced in a modern justice system. As a former minister for correctional services, this is a topic I am most passionate about.

In this debate, I wish to highlight some of the unfortunately misleading information put out in the public domain in a media release by the deputy leader of the Liberal Party recently. The growing furore about the use of home detention, which has been encouraged by the deputy leader, was unfortunately the result of some sensationalist statements made in the media that were often misleading, contributing to a false understanding of how the home detention system operates.

Notwithstanding this, the government included significant restrictions regarding home detention when it introduced the Sentencing Bill 2016. They include:

- a home detention order may not be made if it would lead to a lack of public confidence in the administration of justice, which is very important and about making sure that justice is not only done but also seen to be done in the view of the community;
- restrictions on the availability of home detention as a sentencing option in circumstances mirroring the existing provisions that restrict the availability of a suspended sentence;
- the introduction of the condition of mandatory electronic monitoring, which can only be varied for medical reasons;

- clarification that attendance at remunerated employment or educational training is conditional on approval by the home detention officer to whom the person is assigned; and
- making it clear that a sentence served as a home detention is to be treated as a custodial sentence.

The government has also filed amendments to deal with murderers, terrorist offenders and sexual offenders, setting out that these offenders will be ineligible for home detention. In her release, the deputy leader states, as follows:

> Allowing prisoners on home detention to work any time they like and giving them unrestricted access to community sport makes a mockery of the punishment they are receiving for breaking the law.

This seems to be consistent with some of the comments I heard in this chamber recently. I want to make it clear that prisoners subject to home detention have never been permitted to work any time they like, nor have they been given unrestricted access to community sport. Statements such as these have misled the public, creating unnecessary stress and angst, and they are the very type of statements that have created the public furore.

All prisoners subject to a home detention order are placed on a permanent curfew by the Department for Correctional Services. This means they are not permitted to leave their residence at all, except as permitted by their home detention officer. The existing process surrounding permission to attend employment is, as follows:

- In the case of a paid employment, the proposed or existing employment must be first approved by the home detention officer.
- The approval process involves consideration of factors specific to the prisoner (including the offence for which they are or will be serving the sentence), as well as the nature of the employment and any particular risks to the community.
- Employment is a significant predictor of success and reduced reoffending rates, thus prisoners are encouraged to seek work.
- However, the safety of the community is of paramount consideration when making an assessment about the suitability of work for offenders.
- In the case of a person who has been ordered to serve their sentence on home detention by a court, the suitability of any existing employment held by the prisoner would be assessed as part of the process of assessing the suitability of the prisoner for home detention generally and any concerns would be noted in the report prepared for the court.
- If the employment is approved, the prisoner is still required to seek permission from their home detention officer to be given an approved pass out to allow them to attend that employment.
- It is not the case—and I stress, it is not the case—that prisoners are permitted to leave their premises, even to attend paid employment, without prior approval by their allocated home detention officer.
- The timing of approved pass outs to attend employment depends on their work requirements or shifts that have been approved, and to take into account approved travelling time to and from work.
- In some cases, prisoners may have to take a prearranged travel route and may not deviate from it. It is made very clear that the prisoner continues to be detained in their residence, except as absolutely necessary to enable them to attend work. For example, a prisoner would not be permitted to make stops on the way to and from work. They would not be able to stop off and buy a carton of milk on the way home. Even this would need to be pre-approved by the home detention officer.

The deputy leader goes on to state:

> There needs to be far greater guidance as to who should be eligible for home detention and what is and isn't appropriate regarding activities outside the home.

In late December 2016, the Court of Criminal Appeal delivered two judgements: R v Filipponi and R v Dell. They set out appropriate guidance to sentencing courts on how to apply the provisions providing for home detention as a sentencing option. The court noted that the provisions already require the safety of the community to be of paramount consideration. I stress: the court noted that the provisions already require the safety of the community to be of paramount consideration in determining whether to make a home detention order.

The court points out that the safety of the community is not only threatened by violence but it is also threatened by, for example, the distribution of illicit drugs. The court makes it clear that a sentencing court will need to be astute to make sure that, even where making a home detention order will assist in the rehabilitation of a defendant and provide sufficient personal deterrents, the achievement of the objectives of punishment and general deterrence are not undermined. I stress: the achievement of the objectives of punishment and general deterrence are not undermined. Again, this is a clear indication to the courts. They state:

> The ultimate sentence imposed must always be appropriate having regard to the criminality of the conduct involved, and the Court's concern to achieve a level of punishment and general deterrence. The greater the weight to be attached to these objectives in an individual case, the less likely it will be appropriate that there be an order for home detention.

The Court of Criminal Appeal has made it very clear that there are strict rules on how this sentencing of home detention is to be applied. In the judgement, it went on to say:

> It is notable that the legislature has not chosen to circumscribe the courts' discretion by proscribing a home detention order in respect of any particular category of offence, or in respect of sentences of imprisonment beyond a particular period of length. However, this does not mean that home detention orders will not generally be inappropriate in respect of many types of offences, and in respect of defendants the subject of lengthy terms of imprisonment. To the contrary, there will be many cases in which the nature of the offending is such that the need to ensure achievement of the broader objectives of sentencing will for practical purposes foreclose any exercise of the discretion in favour of home detention.

The Court of Criminal Appeal has now given appropriate guidance as to who should be eligible for home detention. The purposes for which a person is permitted to leave their home are appropriately restricted already but provide some flexibility to home detention officers experienced in managing home detainees. The misinformation being encouraged by the deputy leader is unfortunately very unhelpful in properly informing the public about the utility of alternative sentencing options.

The government and I are supportive of custodial sentences for violent offenders, sexual offenders and others who pose a serious risk to the safety of the community. I am also in support of alternative means of custody for those offenders who do not pose such a safety risk; I said so when I was minister for correctional services, and I say so today. I wish to highlight to the house that this bill places protection of the community as the number one overriding principle of sentencing. I commend the bill to the house.

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide) (16:28): I thank everybody who has participated in this. It is something I know many members of the parliament have thought long and hard about, it is something that all of us have concerns about and it is something that we all know, as legislators, is a very difficult area because to get it right does not always make it most appealing to the commentariat and to people who want to sensationalise events.

The deputy leader spoke about a number of aspects of the bill. First of all, I appreciate her indicating her broad support for most of the initiatives. I also thank John Sulan, who, as the deputy leader mentioned, has been of great assistance. I also thank all those people who have participated in the consultation process. I will just point out that the consultation process on this bill and the consultation process on the major indictable matter, which has now been through this place, were basically operating in tandem because the two of them work off each other. That is why they have

been introduced as a tandem proposition. Necessarily, we have to debate one before the other, so this one is the second of the two.

As far as the home detention provisions are concerned, I would particularly like to pick up on some of the remarks the former minister for corrections made. The original way we framed up the home detention legislation was to say, 'Essentially the courts should apply common sense and good judgement to the decision on who and in what circumstances should be the beneficiary of court-ordered home detention.'

Perhaps foreseeably, but unfortunately, there was a diversity of opinion amongst the various judges and magistrates who are called upon to apply the law as to how exactly the law should be applied. That resulted in a couple of matters which I would say to the members of the parliament surprised me as being matters ordered as home detention matters. But can I say that the process (as I was confident it would) did work itself through because those particular matters of R v Filipponi and R v Dell that were referred to went to the Full Court. They considered them and produced a very extensive judgement that very much captures the spirit of the original intention behind those measures in the first place.

Of course, we get into this problem of timing. The original home detention provisions came in at the beginning of September. There were a number of decisions based on those. There was some public disturbance—not unreasonably, I might add—but some of it was unfortunately fuelled by people who were sensationalising it. In respect of the Filipponi matter, for example, there was not an unreasonable degree of concern by the members of the public. That then led to a situation where the government considered it was necessary, because there was at that point no determination by the Full Court about exactly where the boundaries were, for the government to articulate some boundaries in the legislation, which is what we have done.

In a perfect world, that is not the perfect way to do it. The perfect way to do it is to ideally allow the courts to come to their own jurisprudence about how these things should be dealt with and to let them apply those things. If their jurisprudence proves ultimately to be wrong, then you correct it. We should ideally not be getting into a case of second-guessing or in fact pre-guessing the courts, but I acknowledge that in this case we were presented with not really much alternative. We had to make clear to the public that we understood the public's legitimate concern about one or two of those early home detention decisions.

So, we have a degree of prescription that the government is bringing into this bill in order to put some outer boundaries around what courts might order. I am comfortable that by and large what we are doing is fine. We are not bringing those boundaries into an unreasonable degree—but it is heartening that the Full Court in those two decisions, R v Filipponi and R v Dell, which were handed down in December of last year did through the courts much of the work that we thought we might be required to do through here. I make clear on the record that ultimately the courts have corrected what the public was understandably concerned about.

Of course, many of the commentators in this space do not actually have a great interest in exploring the details of these matters, and they are interested in creating anxiety or agitation in the public mind. As I said, and I will say it again, in the case of Filipponi, for example, I completely understand why people were unhappy about a person who was convicted of quite a serious drug offence being a person for whom this type of punishment was ordered. That certainly was not what the government had in mind. It certainly was not what I had in mind, but I say again, and I know I am labouring the point, the court corrected that. In correcting that, the court went to some trouble to identify that the court actually understood what the philosophy behind this was and put some quite useful boundaries around it from the court's point of view.

The deputy leader mentioned something about prisons. Of course, anything to do with these things inevitably provokes some conversation about prisons. Yes, we are presently in a circumstance where a large number of people are in prison, and nobody is happy about that. It is not a good thing to have a large number of citizens in prison. Mercifully for us, compared with places in parts of the United States, we have relatively low rates of incarceration, but they are still unacceptably high.

I want to make a few comments about why those levels are high at the moment and what is driving them because I think that is important for us to understand. One thing that is driving them—

although it is not the main thing—is the subject matter of a bill that we dealt with earlier today, so I will not canvass all of that other than to say, in parentheses, that bill is intended to partially deal with the problem that the deputy leader referred to of people on remand for a lengthy period of time and not having been brought to trial. But that is not by any means the whole story.

In fact, if members are interested in having a look at the whole story, and the member for Schubert in particular might be interested in this because he is quite conversant with the ways of the web, there is a dashboard which AGD has put up in order to try to inform the public debate about what is going on in the courts and what is going on in the prisons. We are trying to make sure that people have an informed view about this. If you have a look at this, you can start dissecting some of these numbers, and I will give you a few. I will not give you numbers because they become quite tedious, but I will give you a few propositions you can draw out of those numbers.

The first one is that in the last few years the largest single driver of the increase in the number of people in prison, whether they be remandees or not, has been a change in public attitudes to domestic violence. Those attitudes have filtered across the whole system. At the beginning of the process, people are now reporting offences more frequently than previously they may have, and that is obviously a good thing. The police, especially in light of what they learned from the Abrahimzadeh case, have adopted a fairly clear zero tolerance policy, if that is the right way of putting it. They do not leave things in a state where there is any doubt. They always err on the side of safety for a potential victim of domestic violence, so the police are intervening more.

We have presumptions against bail for domestic violence offenders, and this bill does not deal with that but that obviously has an affect. Because more offences of this type are being brought to the notice of police and because police are investigating offences of this type, and because they investigate and identify a perpetrator and the perpetrator is charged and there is a presumption against bail, we are seeing larger numbers of these people finding their way into prisons.

Again, in the case of domestic violence, if a person is charged with a domestic violence offence, even if they are otherwise suitable to be remanded on bail, the question is: to what address, because you cannot remand on bail a person who is charged with domestic violence back to the place where they will be put back into close contact with a victim. So in some instances, there is an increase in the number of people who are remanded in custody because there is no safe place for them to be bailed to, so gaol becomes the default position.

Having said that, what is the big area for growth in prison numbers? Because these people are churning through relatively quickly, they are quite large in number but their stay is not long. What is actually blowing out the prison population on top of this is the fact that there are larger numbers of people who the courts are convicting of largely offences of violence—again, significantly many domestic violence offences—who are receiving stiffer sentences from the court than they used to receive, and these people are then being sentenced to gaol for periods of years, so these people are occupying beds for a period of years.

Whilst everybody is unhappy about the prison population, I think it is important that we understand that the people who are in prison on remand for domestic violence are the sort of people we have to be careful about if we are interested in public safety. The people who have been convicted of those types of offences and have been given increasingly stiff sentences by the courts are the sort of people who because of their threat to the community, in particular their partner, arguably are the sort of people who need to be detained for the safety of the public.

This is not one of those areas of public policy where there are simple answers; this is an area where everything is connected to everything else. Anyway, that was a slight digression but it was raised. As to the bill itself, we propose a number of amendments. I know the Deputy Leader of the Opposition has a number of amendments that she proposes. At a very high level, some of the amendments we have picked up from the opposition we do so because they do no harm, not because they actually improve the bill. For example, to say that murderers, terrorists and—

Ms Chapman interjecting:

The Hon. J.R. RAU: —serious sexual offenders should not get home detention—it is clear from the law, certainly post Filipponi if it was ever in doubt, that those people are never going to be

getting home detention but, if we have to say the obvious, it does no harm and that is sometimes what we have to do here. Sometimes stating what is so obvious that it would knock you over is necessary. It does no harm, so we are happy to do it. There are other things that I am more concerned about, and I no doubt will go into this in a little more detail, and the deputy leader's amendment in respect of working hours is one that troubles me. What she is basically saying is that she is going for this one-size-fits-all solution, that you can only have 12 hours in any 24-hour period.

What I would say to that is, first, if we are talking about the goal that the deputy leader is on about, which is saying that if you are on home detention you only leave to go to work, full stop, then I am fine with that. There is no argument from me at all. However (and we will get into this a bit more later), you do not have to be an AFL footballer to have strange working hours. If you work in the oil and gas industry, for example, you might have one of those jobs where you are three days on and four days off, or whatever the case may be.

There are other jobs where people have shifts, and if you include the shift and the travelling time you may not come within the 12 hours. It would be a perverse outcome for those people, who otherwise would be suitable candidates and who otherwise could continue to work, because continuing to work and being a productive member of the community, notwithstanding that you have committed an offence, is an infinitely better predictor of a good outcome in terms of recidivism than sticking you in gaol, which is the university for crooks.

If a person is a suitable candidate and they are not a risk to the public, which we have made as a precondition, why on earth would we not be bending over backwards to keep them in gainful employment, which roots them in some part of civil society in some way? I do not have any problem with the deputy leader's objectives that you should not have people swinging the lead and making up silly stories and saying, 'I want to go out for this and I want to go out for that.' I am fine with all of that. I do not have any difficulty with that, but I do have a problem with the one-size-fits-all, 12 hours in 24 prescription.

Ms Chapman interjecting:

The Hon. J.R. RAU: My answer to that is let us give the experts, who can actually analyse this, as hard a guideline as you want—'Don't have these characters off running around unless it is specifically for work'—but let us not, in this place, try to predict every, single working option that every person out there might have. Let us allow the people, the corrections officers who are dealing with these characters, to work it out.

Sure, if they put forward a proposition that is not in keeping with the spirit that I think we are all trying to embrace, then that is a reviewable decision—and so it should be. However, I just have a problem with this very prescriptive solution. As for other bits and pieces of it, we will go through them in the committee stage.

To summarise, I think it is a shame that the timing of everything came out the way it did, although I guess it was inevitable once the court had made a decision that was outside what all of us would have thought was what we intended, namely, the Filipponi decision. It was inevitable that once that happened it would cause trouble, and that has obliged the parliament to reconsider whether or not the boundaries we put around home detention were sufficiently prescriptive. That is what we have done here.

However, I am comforted that ultimately the court did do what the court should do, and what I expected the court to do, which was to look at that decision and give a lot more advice and guidance about how things should happen in the future. I do not think that anything we are doing today is going to actually take away from the concepts that are in those two cases, Filipponi and Dell; I guess they actually add a bit of value to this, or this adds a bit of value to them.

My last general comment is in regard to this question about the safety of the public. If you look at the current Criminal Law (Sentencing) Act, it directs the court to turn its mind to umpteen different things. It does not give any guidance as to which one of those umpteen things is the most important, and then, just to make it interesting, it states at the end 'and anything else you can think of'.

I do not subscribe to the view that the courts are going around handing out bags of lollies to people. In fact, if you look at the statistics I was talking about before from Corrections, you will see that they are, particularly for violent criminals, handing out stiffer sentences. That said, I want it to be crystal clear for all the judges, all the magistrates and the public that, when a person comes before the court, the main thing the court is thinking of is, 'Having regard to what this person has done and what they are capable of doing, how do we keep the public safe?'

There will be boundaries around that. For example, if someone has committed an offence that has a maximum penalty of two years' gaol, then the most they can give them is two years' gaol, but the issue about the threat to the public is something that I think is very important. I am very pleased to hear that the opposition embraces that concept as being an agreed position because it is important.

It is also consistent with things we have done in other legislation—for example, the case of people who are repeat paedophile offenders. They can be detained indefinitely, but they can apply to be released on licence. Up until not that long ago, the court was obliged by the way the law was framed to anguish about whether or not the liberty of that individual trumped the safety of kids.

I have to say that courts, understandably, are pretty jealous of people's liberty not being taken away frivolously, but it was not crystal clear, reading that legislation, that the paramount consideration was the safety of the public. This parliament, in the last year or two, has actually changed that law, and we have done it in more than one place. People might be interested to know that, by changing that law, we have moved the dial in the balance of whether some of these predatory paedophiles are released into the public and whether or not they get another chance to molest some poor child.

We as a parliament should be quite proud of the fact that we have pushed back on that and said that these characters have demonstrated by their repeated behaviour, and by the psychiatric analysis of them as individuals, that they are a serious risk to the most vulnerable people in the community—namely, kids—and we unashamedly say, if you are in that position, the state is not going to be overly sympathetic about whether or not you feel like you should be out having the chance to do it all over again. I think the parliament has made some very important reforms here in the past, and this one is completely consistent with those.

My objective in this is to try to align all these elements in the criminal justice system so that the swing point becomes what is safe for the community as the first and foremost consideration when any of these questions come up. I hope that, if this bill passes in broadly the form it is in, all of us as members of parliament will be able to say to our constituents and other people out there that we have made a very clear statement as members of parliament as to what the legislature has in mind for the criminal justice system.

I am not saying that because I am being critical of the courts, because they have to apply the law as the law is, but I think it is important that we as a parliament are prepared to make a fairly unequivocal statement about where we think the balance should be struck. This bill tries very, very hard to make that clear by having that paramount consideration or primary consideration up front in the bill and it is referred to, I think, multiple times throughout the bill. I am paraphrasing the words because I am not parliamentary counsel but, just in case you did not quite get the message, tune back into the primary objective here: this is all about keeping the public safe.

Yes, this bill does include additional options for sentencing. Yes, some of those are novel, but I do not think that is any reason for us not to try them. Again, I am pleased that the deputy leader has a similar view that these things are worth trying, of course as long as the safety of the public is always first and foremost in the mind of those who are exercising judgement, whether they be officers of the court, judges, corrections officers or whoever they might be.

I went on a bit longer than I expected, but I actually care about this. I think this is very important and I am very pleased that the deputy leader has indicated broad agreement with the major elements.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

Mr KNOLL: There will be a question at the end, Attorney, and the question will not be, 'How many steps have you done today on the new Fitbit?', which I see dangling in the moonlight. The minister made the comment that everybody is unhappy about the number of people in our prisons. I think that is a slight tangential shift. What I think he really meant to say was that everybody is unhappy about the fact that we have not planned for the prisoner population that we have.

I think South Australians take comfort from the fact that people who should be behind bars actually are behind bars, but it is up to the government to make sure that there are enough bars for those people to be behind. To try to suggest that everybody wants a lower prison population is not in and of itself correct. Sure, we would like to see fewer criminals, but this is about making sure that the community remains safe.

This bill does bring to account a number of things that the Department for Correctional Services will have to deal with. That is something that is more within my bailiwick, especially around these intensive correction orders and community-based orders, which we are happy to support for a number of reasons. First of all, as the Attorney said, we do not want to support people unnecessarily going into prisons where they learn the art of criminal activity for when they are released.

I think it could be a positive step that people are kept in the community where the general population has a better series of social norms than would be the case in the prison population, by dint of their offending, and keeping people in a place of better social norms is a good idea. We are supportive of those measures.

Especially in relation to the intensive correction orders, there is a high level of prescription about what will be put in as part of those orders. There is some discretion around the offender having to undertake an intervention program; submit to drug and alcohol testing—which I hope will be used by the courts in every instance where that is possible and appropriate; the offender not to consume or purchase alcohol; and the offender not to consume or purchase drugs, other than for therapeutic purposes. There is some discretion there from the courts, especially in relation to substance abuse. We will see how it plays out, but hopefully the courts use those provisions liberally to ensure that, through strict supervision, we can help those who have a propensity to drugs to reduce it.

The Attorney made a number of comments on giving judges discretion. I would like to highlight a recent instance that may undermine public confidence in the home detention/intensive bail supervision/intensive correction order system, where essentially we are trying to replicate a prison-like environment, while not putting people in prison, through a series of checks and controls that allow them to stay in a community but they are be subject to strict conditions that hopefully reduce their propensity and ability to offend—that is, the case of Jason Brady.

A District Court made a different decision from the one the Department for Correctional Services initially made in relation to Mr Brady's being allowed to attend the Mundine-Green fight, when he subsequently skipped his intensive bail supervision order. I do not think we have found the bloke, but I understand now that the police are looking, which is a good thing. What I would say, Attorney, is that those kinds of instances undermine the public's confidence in this system.

We have called it by various different names—intensive bail supervision, home detention, intensive correction order—but essentially we are talking about the same thing: people who are very likely to have an electronic monitoring bracelet around their ankle who should be home at night, rather than gallivanting on the streets, and who should have to report in to ensure that they are of sound mind and body and not under the influence of something that they should not be and that will potentially increase their likelihood to offend.

Instances such as the decision the District Court made in relation to Brady certainly undermine public confidence, and I think that is extremely important to note. That is why it is important to get this right and why, for instance, the shadow attorney is seeking to make amendments with a level of prescription—because we want to make sure that this is used as it is intended, as opposed to its becoming something the community would not be willing to accept.

The main thrust of my point comes down to this. Yes, we have a prison population that is somewhere over 3,000, and there are probably 150 to 200 more people in the system than it is designed to hold and, yes, we have in the order of 700-odd people from Corrections' last report who have gone through a home detention process and obviously a number of others under intensive bail supervision orders and the like, but it all comes down to resourcing.

Whilst we are attempting to set this up as a legitimate alternate form of incarceration—custody without remaining in prison—I have concerns about the ability of the department to resource these areas. I have heard concerns from police, for instance, who suggest that sometimes bail is granted based on the availability of police cells. I would hate to see that potentially influence decisions on whether or not people should be incarcerated, but also if someone becomes subject to one of these orders and is back out in the community.

If these people are locked up, we know that they are away from the rest of the community, but if we see a corrosion in the level of the ability of the department to respond to the number of people we are going to put under these orders, there will not be the same confidence in the community that these people are being monitored and observed in the way they should. It is also much more difficult to provide that absolute certainty to the public around whether or not these people are being measured and monitored in the way they should. If the minister has anything to update the house on what work has been done to understand the downstream effects of the decisions we are seeking to make here, it would be quite helpful.

Like many in the community, I want to feel reassured that the strict conditions that these people are being put under are followed to the letter and that it is not a case of, 'We'll do it when we have time,' or, 'We'll do it when we have enough people,' but that it is, 'We will do it in every single instance,' and that we make sure people comply and are looked after and monitored in the way that they should be.

The Hon. J.R. RAU: I thank the member for Schubert for his comments. We will get into the detail a bit more during the course of the committee stage. In general terms, obviously any supervision of people, whether it be in an institutional setting or otherwise, involves an allocation of resources. I understand that. That is one of those cost pressures we have to deal with. That said, subject to the overarching primary consideration of public safety, which trumps everything else, my main point was if you can supervise somebody in the community—the member for Schubert has raised the question of cost—it is actually cheaper than supervising them in gaol, I would have thought.

More to the point, the chance of them actually popping out the other end as a useful citizen who is not going to reoffend is much better. You save, not just in terms of dollars per day expended on this individual, but also in terms of future dollars when they do not become a frequent flyer. That is sound public policy, and it is also good for the people involved. The idea that we can have enlightened policies, which take people out of a cycle where they are behaving badly and offending against the law and get them into a cycle where they are law-abiding citizens, is a very good outcome.

I think we have to be imaginative and positive about ways to do that. Of course, no system is perfect, and sometimes humans will make an error. Even judicial officers can do that. That is why we have an appeal system, to try to deal with that. I think this Sentencing Bill tries to strike a balance between optimism for those who can be helped and a pretty hardline approach for those who refuse to be helped. I think that is the right balance. So, to those people who are not going to do the right thing, who are a risk to the public and who are going to hurt other people, this bill says you should not expect to be cut too much slack.

For those people who want to change what they are doing, who want to be positive about things and are prepared to try to turn their lives around, this bill gives us tools to work with them to try to give them a chance to get back on the right track and be a useful member of the community, which obviously is a great outcome from everyone's point of view. This strikes the right balance there, but I accept the comments made by the member for Schubert. There will be instances along the way where mistakes will be made.

Human errors will occur, and for those who wish to occupy the easy seats, the cheap seats where you just throw bread rolls at everything all the time and do not offer anything constructive, they

are the moments when they come out of the woodwork. But if we take a slightly more long-term approach to this matter and think about it properly, if we do not just rush into the cheap seats and get the cheap shots in, and if we think about it in a little bit broader way, I think this offers a real opportunity for us to do better than we do now.

Clause passed.

Clauses 2 to 35 passed.

New clause 35A.

The Hon. J.R. RAU: I move:

Amendment No 1 [AG–1]—

Page 28, after line 27—Before clause 36 insert:

35A—Application of Subdivision

Except where the contrary intention expressly appears, this Subdivision is in addition to, and does not derogate from, a provision of this Act or any other Act—

(a) that expressly prohibits the reduction, mitigation or substitution of penalties or sentences; or

(b) that limits or otherwise makes special provision in relation to the way a penalty or sentence for a particular offence under that Act may be imposed.

This provision reintroduces a provision that currently exists in the Criminal Law (Sentencing) Act 1988. It has the effect of ensuring that nothing in the sentencing act affects provisions in that act or another act prohibiting a reduction, mitigation, or substitution of penalties.

Together with the specific provisions contained in the Road Traffic Act 1961 and the Criminal Law Consolidation Act 1935, it ensures that nothing in the sentencing act could be interpreted—and so far it has not been, as far as we know—to permit the reduction, or to mitigate licensed disqualifications under those acts. Its reinsertion into the Sentencing Bill is intended to clarify that position, so perhaps it would be prudent for me not to say too much more about that.

The CHAIR: Yes, perhaps it would be. Any discussion on clause 35A?

Ms CHAPMAN: We will consider that during the sitting of the house, but I accept it will be going into the bill today so we will look at it. It seems sensible.

Amendment carried; new clause inserted.

Clauses 36 to 68 passed.

Clause 69.

The Hon. J.R. RAU: I move:

Amendment No 2 [AG–1]—

Page 57, lines 12 to 15 (inclusive) [clause 69(1)(b)]—Delete paragraph (b) and substitute:

(b) are not exercisable in relation to—

(i) a defendant who is serving or is liable to serve a sentence of indeterminate duration and who has not had a non-parole period fixed; or

(ii) a defendant who is being sentenced for—

(A) an offence of murder; or

(B) treason; or

(C) an offence involving a terrorist act; or

(D) any other offence in respect of which an Act expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

This amendment picks up some issues that were raised by the member for Stuart. As I mentioned briefly before, I do not think any thinking person would be of the view that there is any doubt about these not being appropriate matters for home detention but, as I said, it does no harm because I had

always intended that these would be captured. Generally speaking, I do not like the idea of just writing a long list of things that are captured. That leads to the conclusion that other things are not because they are not on the list. There is no harm to be done by this and for that reason I move it.

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 3 [AG–1]—

Page 57, after line 17 [clause 69(2)]—Insert:

terrorist act has the same meaning as in the Terrorism (Commonwealth Powers) Act 2002.

It is consequential.

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 4 [AG–1]—

Page 57, after line 17—After subclause (2) insert:

(3) For the purposes of this Division, a reference to an *offence of murder* includes—

(a) an offence of conspiracy to murder; and

(b) an offence of aiding, abetting, counselling or procuring the commission of murder.

This amendment is also consequential.

Amendment carried; clause as amended passed.

Clause 70.

The Hon. J.R. RAU: I move:

Amendment No 5 [AG–1]—

Page 57, after line 34 [clause 70(2)(b)]—After subparagraph (i) insert:

(ia) as an adult for a serious sexual offence unless the court is satisfied that special reasons exist for the making of a home detention order; or

I will speak briefly on this clause. This gives a limited amount of discretion to the courts not to observe the general proposition about serious sexual offenders where special reasons exist, and I will explain why in a moment.

So that it is clear, the basic rule is that a person who is convicted of a serious sexual offence cannot be sentenced to home detention; that is the starting point. The amendment states that there may be an exceptional circumstance where the court may, nevertheless, order home detention. It goes to amendment No. 7, so I will talk on amendment No. 7 as well because it goes into the special circumstances point, if that makes any sense.

I am talking about amendments Nos 5 and 7 simultaneously. As to serious sexual offence, you cannot get home detention, except in exceptional circumstances—that is five. Seven is: what are the exceptional circumstances? This is the circumstance where the court can say, notwithstanding the rule that you cannot get home detention for this sort of offence, in these particular circumstances you might.

This provides that when considering whether a special circumstance exists to enable a defendant who is being sentenced for serious sexual offences serve their sentence in a home detention order, the court must have regard to certain matters set out, and these matters are quite particular. They are, whether by reason of advanced age or infirmity, the defendant no longer presents an appreciable risk to the safety of the community and where the interests of the community as a whole would be better served by the defendant servicing the sentence on home detention rather than in custody.

Ms Chapman interjecting:

The Hon. J.R. RAU: There is no 'and'.

Ms Chapman interjecting:

The Hon. J.R. RAU: It would have to have regard to both. It says at the top that it is in regard to both, so it is sort of conjunctive. Anyway, the reason this is here is something which came to my attention towards the end of last year. There was a case called R v Ebert. The decision was delivered on 17 October last year.

In that case, the serious offending occurred approximately 40 years earlier, which in and of itself is not to the point, but obviously the accused was 40 years younger. By the time of the sentencing, the defendant was 82 years of age and suffering from signs of dementia. The court had a report indicating that both his physical and psychological problems would make prison particularly difficult for this elderly individual. Bear in mind that this is all subject to this person not posing a threat to the public.

It is clear that, while he needed to be punished, he was no longer a risk to the community because of his advanced age and infirm state. This is one of those examples where, as I said earlier, where the court having a discretion makes sense. It did not in the case of Mr Filipponi. I think it does in this case.

Contemplating that there may be other defendants who wind up in this category, people who really should be in a nursing home or some other facility perhaps for people with dementia, we are introducing this limited carve-out to say that in those exceptional circumstances there is a discretion vested in the court to say that, notwithstanding the fact that as a general rule these are serious sexual offences and there is no way you are doing your time at home, in these very unusual circumstances, the court has a discretion to consider an application based on those two grounds. So, that is amendments Nos 5 and 7.

Ms CHAPMAN: I thank the Attorney for bringing this matter to the attention of the parliament because my view is quite different. He has referred to the case of R v Ebert. The sentencing remarks, which only relatively recently came to my attention, present to me a very different view. I hope he has read them because, yes, he is correct that it relates to an offender who was being sentenced at the age of 82 for offences against a young girl—in fact, the daughter of a friend—over four years from age 9 to 13.

The details are outlined as to the particulars of the offence. I do not need to go into those, but they are horrific, in my view, because of both the prolonged perpetration of these offences for this victim and also the clear effect it had on her. At the time of sentencing, he was 82; the victim was then 42. There have been major problems in her life as a result of it. When His Honour considered this matter, he took into account a discount option of 10 per cent, which was available to him. In relation to accepting that a guilty plea was ultimately entered, he said:

> You showed no insight or remorse. It has had very considerable lifelong consequences for the victim.

He then went on to say:

> I accept that your physical and psychological problems would make prison very much more difficult for you than for many other people.

The Attorney just told the parliament that these matters were apparently taken into account. The remarks do not detail what these matters were, but he goes on to say of the doctor and of the evidence that was presented:

> I pause to say that in my view it is completely inappropriate for Dr Field to suggest that a custodial sentence would be particularly inappropriate for you and for him to go on to suggest that some appropriate community management be chosen instead. It is not his place to make such a recommendation.

He went on to talk about there being no prior convictions. In respect of age, which is a very prescriptive matter that the Attorney says should be taken into account in these isolated and rare circumstances, he says:

> You are of advanced age and you have done your best in bringing up your large family. However, in my view none of these things amount, even in combination, to good reason to suspend the sentence. I decline to suspend the sentence.

He goes on:

> However, the second consideration is whether I should consider ordering you to serve the prison sentence by way of home detention, pursuant to the new legislative provision.

I think he is referring to what the Attorney just mentioned—the new laws, in respect of taking a dim view and making sure that we do not allow matters to be other than, as he says:

> The primary consideration for such an order before such an order can be made is the safety of the community.

Primary consideration does not exist in our current law. I am not quite sure why he was applying those words, which are in this bill.

The Hon. J.R. Rau: They're in the home detention provisions.

Ms CHAPMAN: Well, they are now.

The Hon. J.R. Rau: No, they were.

Ms CHAPMAN: He is suggesting that they are there. The remarks continue:

> In the circumstances I do not think the community now is in any particular danger from you.

His Honour does not say why. He goes on:

> The home detention report says that you have appropriate accommodation to go to. The home detention report says that you are a suitable candidate for home detention. I am satisfied that that is so.

Having dismissed all the other grounds, he then says in the sentencing remarks that he takes into account what is said in the home detention report. He does not tell us in the sentencing remarks what that is. Presumably, he has a house to go to, not an aged-care facility, as you might have suggested he needed to go to. He actually had a home to go to.

The Hon. J.R. Rau interjecting:

Ms CHAPMAN: Well, I'm just making the point. Do not gloss the situation, Attorney. I was disturbed when I read these sentencing remarks to find a situation where what we would see as the usual circumstances—namely, apparent dementia, which you now raise as a factor which you apparently know about; it is not in the sentencing remarks—is the basis of the home detention report. This is a report prepared by home detention officers, which is presented for consideration.

When I get to the amendments in relation to clause 70, I will have a bit more to say about that, but this is exactly the problem. A judge, in this instance, has relied on a home detention report from a home detention officer who is under the pump. I do not know what he has put in that report but it was sufficient, apparently, not because this man was old or did not have anywhere to go. He was satisfied that it should be dealt with, notwithstanding what I would describe as an obscene period of behaviour.

He then went on to talk about one or two of the conditions requiring supervision and counselling. He actually made a finding in his sentencing remarks that he did not see any point in any of that, not even restricting alcohol. He clearly took the view that there was no benefit in counselling or treatment for this person, and he says that the lack of insight of this offender was such that it was not going to make a scrap of difference.

I do not know what was in that report, but I can honestly say that I would not be satisfied, on the face of this, as to why this offender, 82 or not, should not be in prison and should not have spent that non-parole period in prison. I do not know why there was not some consideration by the DPP to appeal. He may have considered it, and he may have considered that it was not able to be appealed. I am very cautious about this amendment that you have added in to allow for this to occur when, even in our current situation, under the current law, a circumstance can arise which is totally inappropriate, in my view.

I might be wrong, but on the face of it there is nothing explicit in that home detention report, which appears to be the sole factor he has relied on to give this man home detention. Perhaps we might need to look at what needs to be in that for the public confidence, because if anything would shatter public confidence it would be this determination: allowing this man, after what he did, to walk free and to go into home detention. I say to the Attorney that we will have a look at this, but to say

that it relates to advanced age or infirmity, that better be explicit when it comes to any allowance on this as to what the allegation is.

That suggests to me that it is because they are so old that Correctional Services cannot find a facility adequate to accommodate them. Let's be realistic about this. We have a number of mature-age males in our prison system who are there largely arising out of a focus on child sexual abuse, who years later have been prosecuted successfully and are now in prison or some are still waiting for a determination.

This does not protect against what I suggest is a very concerning matter. If you have any information about whether this was considered to be appealed, even applied to be appealed—I do not know, it may have been and failed, I have not searched that far. It only came to my attention recently, and I am appalled by it. I put on notice that we will consider amendments Nos 5 and 7 in due course and see whether we support them.

The Hon. J.R. RAU: I hear what the deputy leader is saying and, of course, I do not have any sympathy whatever for this offender. This particular provision was not drawn up with the express purpose of enabling him to be able to walk straight through it; it was that he identified for me, perhaps him not fitting the class himself for the reasons—

Ms Chapman interjecting:

The Hon. J.R. RAU: Let me finish. He may or may not pass this test. Maybe this should be a general provision, not just for these sexual offenders. I am happy to talk to the deputy leader about how we do this, but my fundamental point is this: if somebody is either very old and frail or they are mentally compromised, demented or they have advanced Alzheimer's—

Ms Chapman: If they have, they wouldn't be there.

The Hon. J.R. RAU: No, I am saying 'if' they have. I cannot think of anything less humane—and notwithstanding their crimes, the rest of us should try to be a bit humane—than putting a person such as that in prison with the general prison population. It might be that that is the only place you can put them. It might be that their offending is so bad that that is where you have to put them. It might be that they are still a risk, notwithstanding these things, and that is where you will have to put them. I am trying to provide a bit of room for the courts to deal with those outlying, exceptional cases of infirmity. If I have not captured the right words here, I am very happy to talk to the deputy leader about how we can capture something better.

I am just mindful of that fact. It may be that a better casting of this would be a general provision, rather than one specifically for these types of offenders—that is, if somebody is so old or so frail or so mentally compromised and they are not obviously (the first question) a risk to the public—they are not that but they have all these other things and basically it would be inhumane to stick them in the general prison environment—should we permit the court to have a discretion? I am troubled by this, too, but I do not think that we cannot think about it.

At this stage, I will proceed with it as it is but with a big caveat—that I hear what the deputy leader is saying, that I do not think the points she raises are insubstantial and that I am happy to talk to her further about it. If there is another way of providing some wriggle room for the courts in extreme circumstances—and we are talking about very rare circumstances—and if we can find a form of words that captures very rare circumstances, where it would be just (a) the public is not going to be put at risk (and that trumps everything), and assuming that the public is not going to be put at risk and the person is compromised in the way I mentioned, I think we should try to do something about that. The other point I make is that I think this fellow would be out of the loop anyway under the provisions as we have them because the non-parole period would have been in excess of two years.

Ms Chapman: I think it is nine months.

The Hon. J.R. RAU: Is it nine months? Fair enough.

Ms Chapman: I will have to check it but I am pretty sure it is nine months.

The Hon. J.R. RAU: I see, for designated offences. Anyway, let's talk more about this one amendment. I think it is difficult. I am not for a moment saying I am absolutely certain that this is perfect. What I am saying, though, is that in some extreme circumstances latitude for the court would

be prudent; otherwise, we will wind up with perverse outcomes, with very sick people or very frail people being put in a completely inappropriate place.

Ms CHAPMAN: I would like to clarify that because I indicated to the Attorney that it might have been nine months but, in fact, it was a 12-year sentence with a five-year non-parole period.

The Hon. J.R. RAU: That was my recollection, too. It would mean that this chap would have fallen foul of the two-year thing—it would be another strike against him.

Ms Chapman interjecting:

The Hon. J.R. RAU: That is something I need to look at, but it does occur to me that his non-parole period was sufficiently long that our putting in our two years—I think we need to look at this further. We need to look at this further because I think this is a matter where the non-parole period point may be the answer we are looking for. The non-parole period point might be where we capture the seriousness that the deputy leader was talking about and if we say, 'You have to come below that two years anyway,' maybe that is the answer.

Ms CHAPMAN: I thank the Attorney for his indication. Where do we currently hold mature-age people in the prison system—I am assuming that this is at Yatala but it may be at another prison—in this category who are there for usually a long time? Of course, they sometimes die whilst incarcerated, and I accept that. I do not have the recent data before me, but there are a considerable number of people who are of mature age and for different reasons, such as deteriorating health, are still in our prison system.

My last consideration of this was that there is a certain area in the prison for sexual offenders. That may or may not be the case now, I do not know, but I hope that we would have something between the houses as to the number of prisoners currently in the area the Attorney considers might be eligible for these circumstances if they were going to be sentenced today.

Let us assume that there are 10 people out of 3,000 in our prison system who are in the category of being not just mature aged but frail aged, who have some debilitating condition that effectively makes them incapable of being a safety risk to the community, as per what the Attorney is proposing. Where will we accommodate those? At the moment they go to get medical attention from time to time or services come to them—which I assume still happens—and sometimes they are transferred, under custody, to a health facility. That may be for a period of time pre expected death.

We need some data on that because, if you are going to have a separate unit in a prison for these people, or a separate facility altogether, that is one option. The alternative is that you let them out, on the basis that they can get access through this new formula that the Attorney indicates he will give some thought to modifying, because we need to deal with those as well.

The Hon. J.R. RAU: I will try to get the answers to those questions as best I can. I suspect that one of the difficulties in getting those answers will be a definitional threshold about who we are trying to capture in the answer, but we will do our best.

I just make this point: whatever the answer to that question is, I think there is a qualitative difference between a person who grows old in an institutional context and someone who is old and is being introduced into an institutional context. I know that one cannot rely on the popular media for these things, but one does read books and see films with portrayals of long-term prisoners who leave and actually feel so lost that they would rather be back where they were. They have become institutionalised.

Ms Chapman interjecting:

The Hon. J.R. RAU: I think *The Shawshank Redemption* is later than that. We will get the stats for you as best we can, but I make the point that if someone has deteriorated in situ, so to speak, at least they are in a familiar environment. That may not be a satisfactory environment, and I take the point, I understand the point, but I think it is qualitatively different from age into infirmity in a place rather than being introduced infirm into a place. I think that is a different proposition. However, certainly let us keep talking.

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 6 [AG–1]—

Page 58, line 3 [clause 70(2)(b)(iii)]—Before 'home detention' insert:

imprisonment (other than where the sentence is suspended) or

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 7 [AG–1]—

Page 58, after line 24—After subclause (3) insert:

(3a) In deciding whether special reasons exist for the purposes of subsection (2)(b)(ia), the court must have regard to both of the following matters and only those matters:

(a) whether the defendant's advanced age or infirmity means that the defendant no longer presents an appreciable risk to the safety of the community (whether as individuals or in general);

(b) whether the interest of the community as a whole would be better served by the defendant serving the sentence on home detention rather than in custody.

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 8 [AG–1]—

Page 58, line 36 [clause 70(4), definition of *designated offence*]—Delete paragraph (i)

This removes sexual offences from the list of designated offences, because those offences have now all been incorporated into the definition of serious sexual offences. As I understand it, it is just moving it from one part to another.

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 9 [AG–1]—

Page 59, after line 19 [clause 70(4)]—After the definition of serious and organised crime offence insert:

serious sexual offence means any of the following offences where the maximum penalty prescribed for the offence is, or includes, imprisonment for at least 5 years:

(a) —

(i) an offence under section 48, 48A, 49, 50, 51, 56, 58, 59, 60, 63, 63B, 66, 67, 68 or 72 of the *Criminal Law Consolidation Act 1935*;

(ii) an offence against a corresponding previous enactment substantially similar to an offence referred to in subparagraph (i);

(iii) an attempt to commit or an assault with intent to commit any of the offences referred to in either of the preceding subparagraphs;

(b) an offence against the law of another State or a Territory corresponding to an offence referred to in paragraph (a);

Amendment carried; clause as amended passed.

Clause 71.

Ms CHAPMAN: I move:

Amendment No 1 [Chapman–1]—

Page 60, after line 28—After subclause (1) insert:

(1a) The following limitations apply in relation to an approval that may be given by a home detention officer under subsection (1)(a):

(a) approval for a person subject to a home detention order to leave the residence specified by the court in the order at which the person must remain for any

purpose allowed under subsection (1)(a) may only be given if the aggregate of the periods of absence from the residence would be less than 12 hours in any 24 hour period;

(b) participation by a person subject to a home detention order in a sporting activity in respect of which the person receives remuneration may not be approved to be remunerated employment for the purposes of subsection (1)(a)(i).

(1b) The limitations imposed by subsection (1a) may only be varied or revoked by the court if the court is satisfied, by evidence given on oath, that there are cogent reasons to do so.

This deals with the clause in the bill which changes, from the current law, conditions for home detention. Under the current law, the four areas that allow you to have some exemption from remaining at the residence throughout the period of the home detention order are remunerative employment; attending for urgent medical or dental treatment; attendance at a course of education, training or instruction or any other activity as approved or directed by the order (in any event, it deals with education and training); and, fourthly, for other purposes as approved or directed by the home detention officer to whom the person is assigned.

The new bill covers those same four things but adds a provision in respect of the remunerative employment condition that allows you to leave the house by adding in the words 'at such times and places as approved from time to time by the home detention officer to whom the person is assigned during the period of the home detention order'. Clearly, this is the government's answer to say they are not going to be leaving that unrestricted. There have to be terms and conditions set by a designated person.

Herein lies the inherent weakness of that addition; that is, again, we are asking the terms and conditions to be set by the home detention officer who is the very person employed by the Department for Correctional Services who obviously has to deal with, in that envelope, the pressing demand of trying to find space within our current prison system. These are not independent court officers, these are not people who are psychologists brought in to give independent reports to the judge in sentencing dealing with home detention: these are correctional home detention officers.

In the course of the consultation on this matter, I asked the Attorney-General's office to provide some data in respect of who currently deals with these matters. He advised, by letter of 10 January 2017, that the home detention officers are persons who have been appointed under section 37CA of the Correctional Services Act 1982, and there are 58.56 full-time equivalents in the Intensive Compliance Unit. They undertake a range of compliance checks and electronic monitoring components, including home visits. There are also 216.3 full-time equivalents in Community Corrections who are responsible for the supervision of offenders subject to community-based orders, including those with conditions of electronic monitoring.

The Attorney also provided information to confirm that, within those cohorts—and we are talking about approximately 280 full-time equivalent personnel—there are additional and temporary staff added to the Department for Correctional Services Courts Unit to meet the increased demand of reports. This is, just as we did in the Ebert case, to highlight a situation where the home detention officer provides a report to the court. There was a backlog of these, and that is acknowledged by the Attorney. This letter I think is designed to give me some reassurance or shut me up, however you want to put it, that that is in hand and being managed.

The information is appreciated, thank you. Unfortunately, it does not satisfy me at least, but there may be others in the parliament who think, 'That's fine. They have plenty of time to do what is needed.' There is no indication of further personnel who will be appointed to do any of these intensive correction orders that are proposed in the bill we are currently addressing. However, most significantly for me, under the current cohort, it appears—again, I have to rely on media reports of the correctional service officers' union—that they are under the pump and that there is pressure.

There have been media statements to that effect in respect of the work that they are expected to do to manage their current job, so I do not get a lot of satisfaction from this. I also know that these people have another job to do. They are dealing with not just court supervision but also the supervision of persons who are already sentenced and who are allowed to undertake a role post release. That is another cohort who currently might be released on certain conditions, including home detention, and those officers have to deal with that cohort.

They support the judiciary in relation to dealing with people on the way in and they also have the pressure of people leaving the prison system to provide bracelets, conditions, supervision, home visits, etc. It is a big job and at the moment I, for one, given the number of cases that we are now reading about in our press of people who take their bracelets off and abscond, as we heard about before, believe they are in need of intense supervision one way or the other. We need to have these officers there and I am not satisfied that it is going to be sufficiently resourced to give me confidence that it is going to work.

The other thing that was provided was a copy of the ministerial determination of the corrections minister that I asked for, which on my understanding is similar to that which was provided for by the previous corrections minister, who in fact spoke on this bill today. The current determination is dated 14 September last year and it is signed by the current minister. He has already issued a ministerial direction which, as I said, repeats the previous one and confirms that there is no eligibility for home detention if they are convicted of a homicide offence—so, not murder, just a homicide offence—a sexual offence and the sentences of prisoners who have been convicted of a terrorist act under the law of the commonwealth.

In my view, that is going to be outdated within weeks, if this bill passes, and we need to deal with that. They then need to take into account what I would consider to be usual and reasonable things to consider when they are preparing their reports or making their assessment for the purposes of release, because they are the ones who are giving this advice. So, they are under the pump, for the reasons we have explained, and they have a double job.

It may be that you will be able to convince me or anyone else in the parliament that we have a sufficient cohort to be able to deal with this, but I am not satisfied that they can, in those jobs, quarantine themselves from their other master, which is not you, Attorney, and it is not the judge. Rather, it is the minister for corrections and the CEO of the prisons, of course, Mr Brown, who has to manage all those conflicting pressures that he has at present.

For that reason, I would have preferred to see the sentencing at the judicial end as being a determination left to the judge. Sure, they can ask for reports if they want to, but the conditions ought to be set by the judge and, if they want to change them—change of work or health condition changes where they need to be released from home detention for medical reasons or whatever—they come back to the judge. That would be my preferred option.

Now that you have gone down this path of placing these people in this capacity, we will consider that, if I have that reassurance, but it has to be with these two things; one is that there be some identified period of time when they have to stay in the house and that they will not be allowed to leave the premises. We are proposing this amendment that it be a minimum of 12 hours a day, for the very reason that they may have a full-time job and they may need some reasonable time to travel to and fro—fine. I accept that work is important; in fact, the value of work should never be underestimated. It is very important for rehabilitation, in this case, but for everybody, for the whole social inclusion concept.

But I make this point: I am quite happy to look at other ways of how we might restrict that. It may be that in the circumstances of employment that requires a week on or two weeks on and two weeks off, that the two weeks that they fly to a mining site is under other conditions—no consumption of alcohol, etc.—but that they, obviously, are not required to stay at home, but that, for the two weeks that they are back in their home or usual place of residence, the whole of that time they are to be on home detention. I am happy to look at that, but I make the point that the public expect, I expect, and I think most of the people here in the parliament expect, this is not some home holiday.

The second area is to ensure that the nature of their work, if it is a sporting or leisure activity—or one of the other cases, for example, was to say, 'Well, look, I need to go to coaching, I need to do other things, I play in a band, I need to have 24-hour restriction from the house lifted.' I do not think the public accept that. We have to have some restriction on that. Again, if there is a better way to deal with this, I am still happy to speak about it, but for the moment I put those points.

It is qualified also that, if there is a variation to this, they go back to court anyway, even if it is on the basis that the home detention officer is providing it with those two limitations or some variation of them. So, I put the motion.

The Hon. J.R. RAU: This is one of those cases where I do not think the deputy leader and I have a difference of opinion of where we want to land: the question is about the method. I am very wary of this proscriptive method, so I oppose it on that basis. I do not oppose it on the basis that I do not agree with what she is on about—I do agree with what she is on about.

Between the houses, we will try to assure her that the people who are doing this job are able to discharge these duties, and we can also have a chat about whether other forms of words might capture what I think we are both trying to achieve.

Amendment negatived; clause passed.

Clause 72.

The Hon. J.R. RAU: I move:

Amendment No 10 [AG–1]—

Page 61, line 29 [clause 72(4)(a)]—Delete 'direct that the following periods be taken' and substitute:

take the following periods

Ms CHAPMAN: Will the Attorney explain what this is about?

The Hon. J.R. RAU: This amends clause 72(4)(a) to clarify how the courts should take into account periods spent on home detention or in custody in the event of a breach. It is a minor change in terminology and is something that has come from feedback we had from the Magistrates Court.

Amendment carried; clause as amended passed.

Clauses 73 to 80 passed.

Clause 81.

The CHAIR: We have amendment No. 11 on schedule 2 in your name, minister.

The Hon. J.R. RAU: This is a typo. I move:

Amendment No 11 [AG–1]—

Page 65, line 28 [clause 81(1)(b)]—Delete 'order' and substitute 'officer'

Amendment carried; clause as amended passed.

Clause 82.

The CHAIR: We have amendment No. 12 in your name, Attorney.

The Hon. J.R. RAU: This is another typo. I move:

Amendment No 12 [AG–1]—

Page 67, line 20 [clause 82(2)(b)]—Delete '12 months' and substitute '2 years'

Amendment carried.

The Hon. J.R. RAU: I move:

Amendment No 13 [AG–1]—

Page 67, line 26 [clause 82(3)(a)]—Delete 'direct that the following periods be taken' and substitute:

take the following periods

This follows feedback from the Magistrates Court. It clarifies how the court should take into account periods spent in compliance with an intensive corrections order or in custody in the event of a breach. Again, it is a terminology change.

Amendment carried; clause as amended passed.

Remaining clauses (83 to 127), schedule and title passed.

Bill reported with amendment.

Third Reading

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide) (17:55): I move:

That this bill be now read a third time.

Bill read a third time and passed.

At 17:56 the house adjourned until Wednesday 1 March 2017 at 11:00.

Answers to Questions

NATIONAL DISABILITY INSURANCE SCHEME

252 Dr McFETRIDGE (Morphett) (27 September 2016). In reference to 2016-17 Budget Paper 5, page 20—

1. What are the details of the additional $50m in expenditure to support the transition to the National Disability Insurance Scheme?

2. How many people will be supported by the $40.5m in additional expenditure for disability support and will this expenditure item reduce the waiting lists for disability accommodation support, community access and respite services?

3. What are the details of the $40.5m in additional expenditure in 2016-17 for people living with a disability to access services such as accommodation support, community access and respite services and will this funding be delivered through Disabilities SA?

The Hon. L.A. VLAHOS (Taylor—Minister for Disabilities, Minister for Mental Health and Substance Abuse): I am advised:

The 2016-17 state budget includes an additional $50.2m over two years to enable transition to the National Disability Insurance Scheme (NDIS) by 2018-19. This additional funding will mean around 9,000 new clients, who have not previously received support through the South Australian government specialist disability services, are able to have earlier access to services under the NDIS.

The 2016-17 budget provides $40.5m over 3 years: $15.5m in 2015-16, $15m in 2016-17 and $10m in 2017-18. This funding will be used to continue to provide support to people with disability for a range of services including accommodation support, community support, community access and respite services. Levels and types of support vary according to individual need, therefore it is not possible to provide a definitive number of people supported. Unmet need data is published monthly by the Department for Communities and Social Inclusion. The NDIS' impact on unmet need will occur in 2017-18 when adults enter the scheme

The funding will be distributed by Disability SA in the form of individualised support packages with services primarily provided by the NGO sector.

NATIONAL DISABILITY INSURANCE SCHEME

253 Dr McFETRIDGE (Morphett) (27 September 2016). In reference to 2016-17 Budget Paper 5, page 23—how many people who have applied for funding under the NDIS have been rejected in South Australia?

The Hon. L.A. VLAHOS (Taylor—Minister for Disabilities, Minister for Mental Health and Substance Abuse): I am advised:

According to the National Disability Insurance Agency June 2016 Quarterly report, as at 30 June 2016, 449 or 4.3% of the 10,368 South Australian who have submitted an access request to enter the scheme have been deemed ineligible.

NATIONAL DISABILITY INSURANCE SCHEME

256 Dr McFETRIDGE (Morphett) (27 September 2016). In reference to 2016-17 Budget Paper 4, page 114—what is the 2016-17 and 2017-18 projection for children not eligible for NDIS funding but who will still require Disability SA or alternative government support for non-eligible or health related disabilities such as cystic fibrosis?

The Hon. L.A. VLAHOS (Taylor—Minister for Disabilities, Minister for Mental Health and Substance Abuse): I am advised:

There are no projections on the number of people who will be ineligible for the National Disability Insurance Scheme (NDIS), as this is dependent on people applying for the NDIS and having their eligibility determined by the National Disability Insurance Agency (NDIA).

Under the Bilateral Agreement for the Transition to the NDIS, children who currently receive specialist disability services who are deemed ineligible by the NDIA are eligible for continuity of support funded by the South Australian government.

COMMUNITIES AND SOCIAL INCLUSION DEPARTMENT

261 Dr McFETRIDGE (Morphett) (27 September 2016). In reference to 2016-17 Budget Paper 4, volume 1, page 95—why was $163.86m spent on brokerage care services in 2015-16 when only $134.223m was spent in 2014-15 by the Department for Communities and Social Inclusion?

The Hon. L.A. VLAHOS (Taylor—Minister for Disabilities, Minister for Mental Health and Substance Abuse): I am advised:

The increase in expenditure on brokerage services primarily relates to the growth in demand for disability services. Additional brokerage services are provided to meet the needs of high priority clients, including people with

disability being discharged from hospital, for a range of services including accommodation support, community support and community access and respite.

CHILD PROTECTION SYSTEMS ROYAL COMMISSION

277 Dr McFETRIDGE (Morphett) (8 November 2016). In relation to the Child Protection Systems Royal Commission Report (the Nyland Royal Commission Report)—

1. What criteria were used to select the case studies used in the report;

2. Who was notified of their use and the public release of the report. and when did this occur; and,

3. Why was it necessary to release the case studies publicly?

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

The Child Protection Systems Royal Commission ceased to exist on 5 August 2016 so questions on notice relating to the operational decision or processes of the royal commission cannot be provided, nor can decisions about the criteria used to select particular case studies, whether individuals were made aware of those case studies, or the decisions by the royal commission to publish the case studies. The conduct, procedures and processes of the royal commission were a matter for the Commissioner and the government was not privy to information or decisions made by the commission.

NATIONAL DISABILITY INSURANCE SCHEME

In reply to **Dr McFETRIDGE (Morphett)** (9 February 2016).

The Hon. L.A. VLAHOS (Taylor—Minister for Disabilities, Minister for Mental Health and Substance Abuse): I am advised:

A person meets the disability requirements for the NDIS if they have a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments, or to one or more impairments attributable to a psychiatric condition that results in substantially reduced functional capacity and is likely to require support under the NDIS for the person's lifetime.

There are no caps on the number of eligible children accepted into the scheme for a particular disability type.

SALISBURY EAST HIGH SCHOOL

In reply to **Mr GARDNER (Morialta)** (4 August 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

Prior to the 2015-16 financial year, completed projects were reported on a separate line. From 2015-16 onwards, projects that have reached practical completion and have no current year budget or expected expenditure are generally included against Small Projects. The redevelopment of Salisbury East High School was complete and had no 2016-17 budget or expected expenditure and therefore fit that category. This is why it was not listed on that table.

The Trade Training Centres had no budget for 2016-17, however all projects had not yet reached practical completion (Warriappendi was completed on 21 July 2016). Therefore it continued to be listed separately as an existing project.

Construction at Salisbury East High School was completed in September 2015.

The final expenditure for the project was $7.78m which included additional works requested and funded by the school.

CHILD PROTECTION

In reply to **Ms SANDERSON (Adelaide)** (20 September 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

Recommendation 39 was accepted on 8 August 2016 and on 29 November 2016 reported complete in 'Child Protection a fresh start', the government's response to the Child Protection Systems Royal Commission report 'The life they deserve'.

Reference to crisis care has been updated on the Department's website to reflect the true nature of the work undertaken by the service.

Non-government agencies who maintain websites with outdated information have been identified, contacted and provided with a new description of crisis care services.

SCHOOL AMALGAMATIONS

In reply to **Mr GARDNER (Morialta)** (27 September 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

The Unley and Pasadena high school governing councils have undertaken an extensive consultation process with their respective school communities in relation to the proposed merger.

The Unley Governing Council made a commitment that at the end of the consultation process they would meet to consider feedback and make a decision whether to continue with the merger or not.

On 6 October 2016, the Unley High School Governing Council met and unanimously affirmed its commitment to the merger with Pasadena High School.

Pasadena High School undertook polling of their parent community regarding the merger early this term. The result was that the Pasadena High School community did not vote in favour of the proposed amalgamation.

FAMILIES SA

In reply to **Ms SANDERSON (Adelaide)** (27 September 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

The breakdown for budgeted full time equivalents for regional child protection branches, as at the last pay of 2015-16, is as follows:

Directorate	Cost Centre Description	Total
Country	APY Services	7.0
	Ceduna Office	18.0
	Country Case Management Team	5.0
	Country Directorate Support	17.7
	Far North Services	22.0
	Kadina	13.6
	Limestone Coast Office	41.7
	Mount Barker Office	28.5
	Murraylands Office	35.9
	Port Augusta Office	31.3
	Port Lincoln Office	17.0
	Port Pirie Office	26.2
	Riverland Office	25.7
	Whyalla Office	24.4
Total		314

FOSTER CARE

In reply to **the Hon. J.M. RANKINE (Wright)** (27 September 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

During the 2015-16 financial year, the total number of foster care placements which have broken down is 122.

The following table provides the number of foster care placements and placement breakdowns per month for each agency during 2015-16.

Agency	July 2015	Aug 2015	Sept 2015	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Apr 2016	May 2016	June 2016	Agency Total No. of Breakdowns for 15-16	Agency Placement capacity for 15-16
AFSS*—Statewide	2	2		2	1		1	1		3	1	2	15	126
ac. Care Regional		2	3		1	3	5	2	3	1		2	22	209

Agency	July 2015	Aug 2015	Sept 2015	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Apr 2016	May 2016	June 2016	Agency Total No. of Breakdowns for 15-16	Agency Placement capacity for 15-16
Anglicare SA	1	4	5	1	1	1	5		1	3	1	3	26	443
Centacare Country		2		1			1				1		5	74
Centacare Metro													0	21
Key Assets		2		1		1	2				1	1	8	66
Life Without Barriers	1				2	1			2		2	1	9	81
Lutheran Community Care		1	1	1	1			2		2			8	129
UCW Country SA	3	5	1		1	9	1	2	1	2	1	2	28	120
Uniting Communities			1										1	4
Monthly Total	7	18	11	6	7	15	15	7	7	11	7	11	122	1273

*AFSS – Aboriginal Family Support Services

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): Although I did not have a discussion with the unit head about the matter, a general briefing was provided to me by the department about the matters raised by the Auditor-General.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

The Fines Unit has completed the review of the current process and has implemented further steps to monitor compliance.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

Since the 2015-16 audit was completed, the Fines Unit has finalised a further 12 policies and procedures which are now in use. The Fines Unit currently has 39 policies and procedures in total.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

AGD Financial Services administers the Victims of Crime (VOC) Fund. Delegates within the Crown Solicitor's Office certify and approve payment in relation to compensation claims.

The Manager, Business Services, within the Crown Solicitor's Office, is responsible for ensuring that internal quarterly reviews of VOC claims files are conducted.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

Quarterly reviews of VOC claim files commenced in October 2014. Internal reviews have been conducted every quarter since that time. The reviews are conducted by independent staff members, with no involvement in the VOC claim file process. These staff belong to the Business Services Section of the Crown Solicitor's Office.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

Public Trustee monitors the implementation of actions that arise from the Auditor-General's observations. This monitoring is provided to the Public Trustee Audit and Risk Management Committee and provides reassurance that the actions that have arisen from previous audit reports have been either fully completed or substantially progressed.

In the example of the sampling process, the number of batches that were being sampled were below the required level. The inadequate levels of sampling were rectified immediately upon audit bringing the problem to Public Trustee's attention. The sampling of batches is now occurring within defined levels and additional monthly reporting has been introduced to ensure that adequate sampling continues.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

I have not been advised of any other alleged frauds from July 2015 to June 2016.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

As the matter is currently being considered by the courts, and forms part of an ICAC investigation, further information cannot be provided at this time.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

As the matter is currently being considered by the courts, and forms part of an ICAC investigation, further information cannot be provided at this time.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public

Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

The investigation is a joint ICAC and SAPOL investigation.

AUDITOR-GENERAL'S REPORT

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (1 November 2016).

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been provided the following advice:

The Auditor-General was advised of an alleged theft in respect of customer property held by the Public Trustee in May 2016.

The accounting treatment of the alleged theft was discussed with officers of the Auditor-General's Department during the preparation of the Public Trustee's financial statements.

AUDITOR-GENERAL'S REPORT

In reply to **Mr SPEIRS (Bright)** (1 November 2016).

The Hon. J.W. WEATHERILL (Cheltenham—Premier): I am advised:

Details regarding the Department of the Premier and Cabinet's grant and subsidy payments are provided in the Auditor-General's Annual Report within Volume 4, Note 8, page 27, for the period ending 30 June 2016.

CARE AND PROTECTION SERVICE AGREEMENTS

In reply to **Ms SANDERSON (Adelaide)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

- As at 30 June 2016, 55 Care and Protection Service Agreements had expired.
- All 55 Care and Protection Service Agreements have re-commenced into the 2016-17 financial year.
- No service agreements expiring 30 June 2015 remain unexecuted.

CHILD PROTECTION

In reply to **Ms SANDERSON (Adelaide)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

The department has implemented a centralised approval arrangement. This allows for the approval of plans in advance rather than the retrospective process that was occurring.

All commercial care placements must be approved by an assistant director or director of an office or hub, and the Assistant Director, Placement Services prior to a child being placed.

CARER REGISTRATION

In reply to **Ms SANDERSON (Adelaide)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

There are currently 59 active care concern investigations.

All of the 123 reviews that were reported as being in progress have been sent to Carer Registration and finalised. The introduction, in this financial year, of more stringent quality assurance processes and increased staffing in Carer Registration will help to ensure timely submission and processing of annual carer reviews.

EDUCATION AND CHILD DEVELOPMENT DEPARTMENT

In reply to **Ms SANDERSON (Adelaide)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

Department for Education and Child Development does not have a separate budget to cover the cost of increased annual leave liabilities. Site and corporate leaders are advised on a fortnightly basis of all current leave entitlements for all employees appointed to their site, and are required to monitor and take action so employees use their accrued leave in a timely manner and within the set policy parameters.

PURCHASE CARDS

In reply to **Mr PISONI (Unley)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

A detailed listing of the number of purchase cards within the Department for Education and Child Development and the Department for Child Protection has been produced. This listing includes all active cards along with their credit limits.

The extract details that there are currently 445 active purchase cards being used within both departments with the following bands of credit limits:

$ limit	No of cards
300	2
500	16
600	1
800	1
1,000	195
1,100	4
1,200	1
1,500	7
2,000	155
2,200	4
2,220	0
2,500	24
3,000	5
3,500	3
4,000	3
5,000	24

Based on a review of purchase card transactions, it has been identified that for the 2015-16 financial year $45,509.38 was identified as spent on entertainment, in accordance with the department's corporate and site entertainment policies.

Spend associated with the purchase of alcohol falls under the provision of entertainment. A manual review identified three instances where alcohol was purchased for a total of $660.67.

Further investigation identified that these purchases were approved in accordance with the department's policy and relate to entertainment provided by the department's International Education Unit to overseas guests.

PURCHASE CARDS

In reply to **Mr PISONI (Unley)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

For the 2015-16 financial year, one card holder was identified by the Auditor-General as undertaking the inappropriate practice of splitting a single transaction into smaller payment to circumvent the pre-set transaction limit. In addition, internal reviews revealed that an additional four transactions from two cardholders were also split into smaller transaction amounts below the cardholders transaction limit.

The detail surrounding the one transaction identified by the Auditor-General is as follows:

1. $3,200 that related to a deposit for Early Childhood Leader/Principal Consultant Conference 18-20 May 2016, split into 2 payments of $2,000 and $1,200 respectively.

The detail surrounding the additional four transactions from two cardholders is as follows:

2. $1,055 that related to the purchase of attendance to the 2015 Australian Curriculum Studies Association (ACSA) conference, was split into two payments of $527.50

3. $1,055 that related to the purchase of attendance to the 2015 Australian Curriculum Studies Association (ACSA) conference, was split into two payments of $527.50

4. $1,055 that related to the purchase of attendance to the 2015 Australian Curriculum Studies Association (ACSA) conference, was split into two payments of $527.50

5. $2,805 (partial payment of $11,266.75 invoice) that related to the part-payment for 'supervisor training' invoice, split into payments of $1,000, one payment of $305 and one payment of $500 (totalling $2,805).

In each instance of non-compliance the cardholders were counselled and directed to comply with the Purchase Card Policy.

EDUCATION AND CHILD DEVELOPMENT DEPARTMENT EMPLOYEES

In reply to **Mr PISONI (Unley)** (3 November 2016).

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised:

Department for Education and Child Development does not currently have any cases of employees who are under investigation for taking unauthorised leave.

INVESTMENT ATTRACTION AGENCY

In reply to **Mr PENGILLY (Finniss)** (15 November 2016).

The Hon. M.L.J. HAMILTON-SMITH (Waite—Minister for Investment and Trade, Minister for Small Business, Minister for Defence Industries, Minister for Veterans' Affairs):

Investment Attraction South Australia (IASA) was established as a lead body within government for all major foreign investment attraction activity, with a focus on securing new inward investment into the state that delivers new and ongoing employment, as well as economic transformation. This includes attracting new Australian based companies and major projects to invest or re-invest in South Australia.

Australian Global Wine Services, in conjunction with Red Capital Pty Ltd, announced plans in early 2016 to construct a bottling, storage and container facility at Port Adelaide, which will cater predominately to the wine industry. This $55m venture will create up to 70 new jobs plus 170 construction jobs. A facility of this kind can and will have an across-the-board effect and induce follow-on job creation within the wine industry. The facility will increase bottling capacity and efficiencies within the South Australian export and domestic wine sector.

IASA worked closely with a range of government departments in support of the project, in particular with Renewal SA on the sale of the land. It also assisted with new labour requirements, and facilitated approvals processes for development permits.

IASA was created by consolidating resources across government that were allocated for investment attraction. Funding for IASA FTEs was provided from various agencies, including the Department of State Development and Primary Industries and Regions SA. On establishment, 26 staff transferred from the departments.

Estimates Replies

ECONOMIC DEVELOPMENT BOARD

In reply to **Mr MARSHALL (Dunstan—Leader of the Opposition)** (28 July 2016). (Estimates Committee A)

The Hon. J.W. WEATHERILL (Cheltenham—Premier): I have been advised:

1. The Economic Development Board's Utilities sub-committee is made up of the following Board Members: Mr Terry Burgess (Lead), Prof David Lloyd, Prof Tanya Monro, Prof Goran Roos, Dr Leanna Read, Dr Don Russell; and Mr David Garrard.

2. The Utilities Sub-Committee has made a presentation covering the current state of the electricity market in South Australia, including the closure of Alinta, to the Climate Change and Carbon Neutral Cabinet Taskforce.'

TAFE SA

In reply to **Mr PISONI (Unley)** (29 July 2016). (Estimates Committee A)

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills):

Negotiations for the 2016 TAFE SA Educational Staff Enterprise Agreement commenced on 30 June 2015.

Negotiations have since concluded with the Industrial Relations Commission of South Australia advising the Office of the Public Sector on 21 October 2016 that the TAFE SA Education Staff Enterprise Agreement 2016 has been approved.

TAFE SA

In reply to **Mr PISONI (Unley)** (29 July 2016). (Estimates Committee A)

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills):

The table referred to on page 114 is provided below:

2016-17 Budget	2015-16 Estimated Result	2015-16 Budget	2014-15 Actual
$000	$000	$000	$000
16,326	16,861	16,861	16,271

The 2016-17 budget number is a projected figure for the current financial year.

2015-16 budget number and the estimated result (final budget) number is confirmed and reconciled as follows:

Total: $16,861,000

Description: Aboriginal Education

Total: $6,300,000

Description: APY Lands Delivery

Total: $3,282,000

Description: Community Services Agreement Revenue-Not Hours Related

Total: $7,279,000

(Vet in Schools Auspice—$1,000,000; Student Support—$4,779,000; and Community Services Non-Vet Related Funding—$1,500,000).

OTHER PERSON GUARDIANSHIP

In reply to **Ms SANDERSON (Adelaide)** (29 July 2016). (Estimates Committee A)

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised of the following:

The information provided to estimates in July 2014 was a point in time count of different components of the OPG process.

To clarify the information presented in 2014 estimates, the 105 children with OPG orders is a count of all the OPG orders that had been granted up to 30 June 2014. The 85 children that were reported to have OPG assessments completed, were those completed since 2010 when the current OPG program commenced, some of whom progressed to formal OPG orders and are included in the total figure of 105. It's important to recognise that even where an assessment recommends OPG as an option, that doesn't guarantee that it will be pursued by the child and carers in question, nor that an OPG order will result if it is formally pursued through the court.

In relation to the length of the process, there are many highly variable factors to consider for each step that impact on timing, which are often beyond the control of the staff member managing the case. Factors such as physically locating and then establishing contact with the birth parents can take significant periods of time, as can the number of existing cases to be processed by the court at any given time. Therefore given all the variables, it is difficult to generalise how long the process takes. It is a case by case response.

SCHOOL FUNDING

In reply to **Mr GARDNER (Morialta)** (29 July 2016). (Estimates Committee A)

The Hon. S.E. CLOSE (Port Adelaide—Minister for Education and Child Development, Minister for Higher Education and Skills): I have been advised of the following:

The small projects category includes projects which have a 2016-17 budget which is less than $0.3m. This includes projects which are budgeted to be completed in 2015-16 and therefore have zero budget in the 2016-17 financial year. The escalations allowance is also included against the small projects line as it is unallocated at the time the budget papers are prepared.

Small Projects	15-16 ($'000)	16-17 ($'000)	17-18 ($'000)
Children's Centres	59	0	0

Cleve Area School	25	0	0
Co-located Schools	134	0	0
Continuous Monitoring of Screening	291	291	0
Eastern Fleurieu R-12 School	33	0	0
Education Works—Stage 2	126	0	0
Escalations	6,309	1,630	2,235
Glenunga International High School	6	0	0
High School Expansions	1,451	0	0
IT Equipment and Furniture	31	0	0
Kangaroo Island Community Education	472	0	0
Keith Area School	1	0	0
Nation Building—Economic Stimulus Plan—Primary Schools	1,535	0	0
Nation Building—Economic Stimulus Plan—Secondary Schools	186	0	0
Para West Adult Campus—Relocation	50	0	0
Port Noarlunga Primary School	2	0	0
Salisbury East High School	986	0	0
Seaford Rise Primary School	799	0	0
Site Funded Works	221	0	0
Special School Renewal Program	425	0	0
Windsor Gardens Vocational College	48	0	0
TOTAL 2015-16 ESTIMATED RESULT (REVISED BUDGET)	13,190	1,921	2,235

ATTRACTION AND RETENTION ALLOWANCES

In reply to various members (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide):

Attraction, retention and performance allowances as well as non-salary benefits paid to public servants and contractors within Shared Services SA, Service SA and Office for the Public Sector:

2014-15:

Dept/Agency	Position Title	Classification	Allowance Type	Allowance Amount	End Date
DPC	PROGRAM MANAGER	ASO803	Retention 15%	$16,539	11/12/2015
DPC	PROJECT MANAGER CHRIS21	ASO803	Attraction $	$10,757	3/3/2016
DPC	SAGSSA PRINCIPAL CONTRACT MNGR	ASO803	Retention 30%	$33,077	31/7/2017

2015-16:

Dept/Agency	Position Title	Classification	Allowance Type	Allowance Amount	End Date
DPC	PROGRAM MANAGER	ASO803	Retention 15%	$16,539	11/12/2015
DPC	PROJECT MANAGER CHRIS21	ASO803	Attraction $	$10,757	3/3/2016
DPC	SAGSSA PRINCIPAL CONTRACT MNGR	ASO803	Retention 30%	$33,077	31/7/2017
DPC	MANAGER RETURN TO WORK SVCS	MAS301	Retention allowance 10%	$11,226	

Note: Two retention allowances expired and were not renewed in 2015-16.

OFFICE FOR THE PUBLIC SECTOR

In reply to **Mr SPEIRS (Bright)** (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been advised:

Yes, there is a government policy in place regarding no performance bonuses for government employees.

OFFICE FOR THE PUBLIC SECTOR

In reply to **Mr SPEIRS (Bright)** (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been advised:

The relevant union organisations in regard to the Plumbing, Metal and Building Trades, Ambulance, Nurses and Midwives, Visiting Medical Specialists, Rail Commissioner (Maintenance), Rail Commissioner (Rail Operations and Infrastructure) Agreements and Adelaide Venue Management have been advised that as negotiations had commenced prior to the 2016-17 state budget for these agreements the 2.5% limit on future wage growth would apply.

Whilst the *SA Ambulance Service Agreement 2011* nominally expired on 3 February 2015 it remains in force, pursuant to section 83 of the *Fair Work Act 1994*, until it is superseded by a new Agreement or rescinded.

OFFICE FOR THE PUBLIC SECTOR

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been advised:

Year	Allocation	Placements	Graduated
2014	200	188	140
2015	200 + shortfall from 2014	178	80

The allocation for each year of the program is 200. Over four years of the program the global allocation is 800. Currently in the third round of the program. The global target for the end of 2016 is 600. As of 18 October 2016, 526 placements have been achieved, with a further 74 to be achieved this calendar year.

It should be noted that some participants in the 2015 round resigned, were terminated or secured contract or ongoing employment prior to the completion of their traineeship and therefore were ineligible for graduation.

SERVICE SA

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been advised:

Service SA's increase of 1.2 FTE for the forthcoming year (compared to 2015-16) is due to the transfer of JobsSA from the Office for the Public Sector.

As the customer facing arm of the South Australian government, over 85 per cent of Service SA staff are directly engaged in providing frontline services to the South Australian public.

The work Service SA performs in registration and licencing on behalf of the Department of Planning, Transport and Infrastructure (DPTI) is just one aspect of its business. The full suite of services provided by Service SA includes:

- 20 Customer Service Centres across the state—staffed by around 245 FTE serving an average of 6,000 customers per day on behalf of DPTI, South Australia Police, SafeWork SA, Consumer and Business Service, Revenue SA, Fines Enforcement, the Department of Primary Industries and Regions SA, Housing SA, and SA Water. In addition to registration and licencing, the primary services provided on behalf of these agencies include payment and application processing, and verification of identity.
- A Virtual Contact Centre network performs similar functions and is staffed by 40FTE that receives and average of 3,300 calls per day.
- SA.GOV.AU—the whole-of-government website service that receives almost 25,000 visitors per day.

- Web, print and data solutions—incorporating Government Publishing and leading a scan-to-data initiative to benefit the whole-of-government and deliver on customers' expectations of a digital by default public service.
- The whole-of-government switchboard—connecting an average of 245 customers per day to the right agency to assist with their needs.

SA HEALTH

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been advised:

The rollout of the e-Procurement Solution in SA Health was delayed so that it could be implemented at the same time as the new Oracle Finance and Procurement System. The costs to government would have been significantly higher had these two projects been progressed separately.

SHARED SERVICES

In reply to **Ms CHAPMAN (Bragg—Deputy Leader of the Opposition)** (28 July 2016). (Estimates Committee B)

The Hon. J.R. RAU (Enfield—Deputy Premier, Attorney-General, Minister for Justice Reform, Minister for Planning, Minister for Industrial Relations, Minister for Child Protection Reform, Minister for the Public Sector, Minister for Consumer and Business Services, Minister for the City of Adelaide): I have been advised:

Shared Services provide full services to the following nine South Australian Government Agencies:

- Attorney-General's Department
- Department for Communities and Social Inclusion
- Department for Correctional Services
- Department for Education and Child Development
- Department of Primary Industries and Regions
- Department of State Development
- Department of the Premier and Cabinet
- Department of Treasury and Finance; and
- South Australian Fire and Emergency Services Commission.

Shared Services does not provide services for the following two Agencies:

- Courts Administration Authority; and
- SA Water.

The table below, reflects services provided by Shared Services SA.

Service/Agency		Aud Gen	Defence SA	DEWNR	DPTI	El com SA	EPA	Funds SA	Green Ind SA	Parliament SA	Renewal SA	SA Health	5 x Health Networks	SA Amb	SACA	SAPol	SAHT	SATC	TAFE SA
Payroll	Pay	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	P	Y	Y
AR	Inv	N	Y	N	Y	N	N	N	N	N	N	Y	Y	Y	N	Y	N	Y	Y
Financial Services	Acctng	N	Y	Y	Y	N	Y	N	Y	N	N	N	N	N	N	Y	N	N	Y
	Tax	N	Y	Y	Y	N	Y	N	Y	N	Y	N	N	N	N	Y	Y	N	Y
	F Asset	N	N	Y	N	N	Y	N	Y	N	N	N	N	N	N	Y	N	N	Y
AP	AP	N	Y	Y	Y	N	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y
	P Card	N	Y	Y	N	N	Y	N	Y	N	N	N	N	N	N	N	Y	Y	Y

System Support	HRMS	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	P	Y	N
	Fin	N	Y	Y	Y	N	N	N	N	N	N	N	N	N	N	Y	Y	N	Y
	Proc	N	Y	Y	Y	N	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y

Full Implementation	Y
Partial	P
Nil	N