LEGISLATIVE COUNCIL

Thursday, 2 March 2017

The PRESIDENT (Hon. R.P. Wortley) took the chair at 11:32 and read prayers.

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

Parliamentary Procedure

SITTINGS AND BUSINESS

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:33): I move:

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

Motion carried.

Bills

STATUTES AMENDMENT (JUDICIAL REGISTRARS) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 February 2017.)

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (11:34): I would like to thank honourable members who contributed to the second reading of this bill. This bill amends a number of acts to create the judicial office of judicial registrar in the Magistrates, Youth, District and Supreme Courts.

The appointment of judicial registrars will produce efficiencies in the courts to which they are appointed. The primary benefit is expected to be that uncontested high-volume and less complex proceedings, and matters likely to resolve, could be redirected to judicial registrars thus allowing other judicial officers of the Magistrates, Youth, District and Supreme Courts to devote more time to complex matters and the criminal and civil case load of the courts.

A number of interstate and federal jurisdictions have judicial registrars in their courts, especially Victoria, where there are provisions for judicial registrars throughout the court system in that state. Although there are some differences in these other jurisdictions, there are many similarities in the qualifications and functions of the judicial registrars in their courts which are also reflected in this bill. In this state, under the bill, the powers of judicial registrars would be largely a matter for the head of the relevant court to prescribe in rules or assign on a day-to-day basis but subject to the regulations.

The bill provides a strong framework for independence of judicial registrars from the executive branch of government. This includes, in particular, requiring the concurrence of the head of the relevant court before a judicial registrar is appointed or reappointed by the Governor. The head of the court's concurrence is also required in respect of a judicial registrar's term of appointment, their remuneration and their conditions of service and before they can be removed from office. The Hon. Mr McLachlan has filed two sets of amendments which are in the alternative. The government opposed both sets of amendments in the lower house and continues to oppose them.

I will speak first to the first set of amendments. This set of amendments is in the alternative to the second set filed simultaneously, and proposes that judicial registrars, as fixed term appointees,

will not be able to hear contested civil matters. The opposition is of the view that fixed terms would compromise the independence of judicial registrars, particularly where they are hearing matters in which the state is a party. As I noted earlier, this set of amendments is opposed by the government.

The requirement that in civil proceedings judicial registrars would only hear uncontested applications would severely compromise the effectiveness and efficiency of courts having judicial registrars. Although the Deputy Leader of the Opposition informed the House of Assembly that the amendments would apply to trials only, uncontested means uncontested.

The opposition's amendments would rule out judicial registrars hearing simple, albeit contested, interlocutory proceedings, such as adjournment requests, applications for discovery of documents, and the like, as well as contested trials. The opposition's amendments would detract from the intent of the bill to save as much of the time of tenured judicial officers as possible, by having the routine or low-level work of the courts able to be performed by judicial registrars.

The scope of a judicial registrar's jurisdiction should be left to the individual courts to determine by their rules, or at the discretion of the head of the court, and for the Governor to make regulations where necessary. This is what, broadly speaking, occurs in the Family Court and in several interstate courts that also have judicial registrars.

Research conducted by the Attorney-General's Department indicates there is no strict correlation in legislation interstate between fixed term appointments and whether judicial registrars can hear contested matters. The legislation appears to be silent on the matter. One can reasonably assume that the jurisdiction of judicial registrars is left to the discretion of the head of the court for listing decisions, taken on a day-to-day basis, or in the rules of the court or practice directions. That is, in fact, what occurs under the practice directions of the Queensland Magistrates Court, which excludes judicial registrars from hearing contested domestic violence orders and certain contested applications where the amount claimed exceeds $50,000.

The head of the relevant court can be entrusted with the discretion to list proceedings that are suitable to be heard by a judicial registrar according to their competency and expertise and the complexity and sensitivity of the proceedings. The Chief Justice, Chief Judge of the District Court, the Judge of the Youth Court and the Chief Magistrate, as heads of relevant courts, will exercise that discretion sensibly and will not list matters for judicial registrars that are inappropriate for them to handle.

The opposition is misconceived in its concern that a judicial registrar would not be able to exercise an independent judgement in contested cases involving the state simply because they are appointed to fixed terms, rather than hold tenure. If the argument were valid, it would apply also to auxiliary judges appointed for 12-month terms or on a case-by-case basis. However, as the Attorney-General observed in the House of Assembly, the opposition has not made any complaint about the impartiality of auxiliary appointees. As the Attorney also observed, judicial registrars would generally perform highly routine matters and not sensitive commercial litigation or other significant proceedings in which the state or any other person was a party.

It is also inconsistent that the opposition would propose that a judicial registrar could not hear a contested civil matter, but could theoretically hear a contested criminal matter such as a not guilty plea, provided he or she did not impose a sentence of imprisonment. This fact alone highlights the weakness of the opposition's proposed amendments because in virtually all criminal matters the state is a party through the agency of either the police, the Director of Public Prosecutions or other government agencies as prosecutors.

I will now address the second set of amendments filed by the Hon. Mr McLachlan. This set of amendments is in the alternative to the first set and proposes that judicial registrars be appointed up to the age of 70 years. On that basis, the opposition would not demand that judicial registrars only hear uncontested civil matters. All the opposition's proposed amendments in this set are opposed by the government. For the sake of flexibility, the government proposes that judicial registrars be appointed for a minimum of seven years, with the potential for renewal. This is broadly similar to what occurs in other courts.

The research conducted by the Attorney-General's Department indicates that only in the Land Court of Queensland is there no option to appoint judicial registrars to fixed terms, but rather,

judicial registrars are appointed up to the age of 70 years. In other courts, registrars are appointed for fixed terms, or, in some cases, with an option to appoint up to the age of 55 or 70 years. For example, in the five Victorian courts that have judicial registrars—namely, the Children's Court, Coroner's Court, County Court, Magistrates' Court and Supreme Court—judicial registrars are appointed for up to five years.

In the District Court of New South Wales, judicial registrars are appointed for up to five years. In the Magistrates Court of Queensland, judicial registrars are appointed for a specified period or until the age of 70 years, and in the Family Court of Australia judicial registrars are appointed for up to seven years or to the age of 65. Appointing judicial registrars to fixed terms is also more consistent with the nature of high-volume, routine functions likely to be undertaken by a judicial registrar. The government considers that fixed seven-year terms provide sufficient independence of judicial registrars, taken together with other provisions that require the head of the relevant court to concur with appointments, reappointments, terminations and terms and conditions of appointment, including remuneration.

The heads of the relevant jurisdictions have been consulted on the drafting of the bill and support its terms. No objection was expressed by their honours in respect of the proposed fixed terms of office of judicial registrars. The Chief Justice wrote to the Attorney-General on 1 March this year that the provisions of the bill, whereby the heads of the relevant jurisdictions will control the matters which a judicial registrar may determine and be consulted on their appointments, sufficiently ensure the independence of judicial registrars, notwithstanding their limited tenure.

The Chief Justice expressed the view that the bill would, if enacted, substantially benefit the administration of justice and that there are many procedural applications which needlessly take the time of judicial officers which could be more usefully spent on matters of substance. I commend this bill to members.

Bill read a second time.

STATUTES AMENDMENT AND REPEAL (SIMPLIFY) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 March 2017.)

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:46): I would like to thank honourable members who have contributed to the debate on the second reading of this bill. This bill was introduced in the other place on 15 November 2016, coinciding with the government's first Simplify Day. The bill makes a number of changes to 26 acts, including, amongst others, the Electronic Transactions Act 2000 and the Motor Vehicles Act 1959.

As an example, and I think this is an important example, the bill will assist in modernising current legislation through amendments to the Electronic Transactions Act 2000 and the Motor Vehicles Act 1959 to allow the issuing of documents by means of electronic communication. These amendments also enable the introduction at a future time of secure access to the provision of digital licences, permits, exemptions or other authorisations or documents, such as land agent licences.

Further, the bill proposes the repeal of 11 spent and redundant acts, some of which have remained on the statute books despite fulfilling their purpose or being superseded many years ago. These include the Financial Institutions Duty Act 1983, the Debits Tax Act 1994, the Industries Development Act 1941, the Wilpena Station Tourist Facility Act 1990 and the South Australian Meat Corporation (Sale of Assets) Act 1996.

I am pleased to reiterate this government's commitment to regulatory simplification through holding Simplify Day as an annual event. Future Simplify Days will help us deliver the crucial task of reviewing and refreshing our legislation to ensure business and consumers can interact with legislation in a simple and meaningful way. The Hon Andrew McLachlan mentioned that he thought the 30-day public consultation leading up to government's inaugural Simplify Day was too short.

I would like to clarify that 30 days was the length of the consultation held on the government's YourSAy website. Further consultation, I am advised, has taken place through face-to-face interactions with stakeholders, as well as a dedicated inbox which is open for regulatory simplification suggestions. This email, by its nature, is available 24/7 and is promoted through channels such as the commissioner for small business, amongst other avenues.

The government has already started speaking to businesses about the next Simplify Day. For example, my parliamentary colleague in the other place, the member for Light, ran a business round table last week and heard concerns about red tape in some areas. Regulatory simplification is an ongoing process that this government is committed to, and committed to this reform.

In his contribution, the Hon Andrew McLachlan also queried when the government's report on the progress of the first Simplify Day will be released. I am pleased to advise that the government will report on the progress of the inaugural Simplify Day reforms with the introduction of the second annual simplify bill, which I am advised is aiming to be introduced in August of this year.

With that, I would like to thank those who have contributed to this bill, particularly the member for Kaurna in another place and his research assistant, Gemma Paech, as well as others in the Simpler Regulation Unit headed by Julie Holmes, and to all the department staff who contributed to this bill in various ways and at various briefings. I thank honourable members for their contributions and look forward to dealing with this at the committee stage, hopefully this afternoon.

Bill read a second time.

CRIMINAL LAW CONSOLIDATION (MENTAL IMPAIRMENT) AMENDMENT BILL

Committee Stage

In committee.

(Continued from 28 February 2017.)

Clauses 2 to 4 passed.

Clause 5.

The Hon. S.G. WADE: Minister Malinauskas advised us on Tuesday that the government was negotiating with the Hon. Kelly Vincent in relation to her amendments. Can the minister update the chamber on the progress of those negotiations?

The Hon. P. MALINAUSKAS: My advice is that there have been discussions between the Attorney-General's office and the office of the Hon. Ms Vincent but as it stands there has not been a specific resolution reached. The government's current position is to maintain its opposition to the Vincent amendments.

The Hon. S.G. WADE: I thank the minister for his update. Could the minister clarify if the definition of 'drug' in clause 5 includes a therapeutic drug?

The Hon. P. MALINAUSKAS: The answer is yes.

The Hon. S.G. WADE: Considering that a therapeutic drug is included in that definition, I presume therefore that clause 6(3)—which is proposing a new subsection (2) in section 269C(b)—that intoxication in that context could be intoxication by a therapeutic drug.

The Hon. P. MALINAUSKAS: No, unless the therapeutic drug has been taken in a way that is contrary to the prescribed instructions or the instructions of the drug manufacturer.

The Hon. S.G. WADE: Can I ask the minister to reconcile that answer with the previous answer? I cannot see any limitation in 5(2) to relate to therapeutic use. The sort of answer the minister is giving is what is anticipated in clause 5(8), which relates to control orders—it does not relate to the definition. Could the minister reconcile the inconsistency between his answers?

The Hon. P. MALINAUSKAS: My advice is that, when you look collectively at three separate definitions in their respective context, the issue or concern you raise is dealt with, namely, the definitions of 'therapeutic, 'recreational use' and also 'self-induced intoxication'.

The Hon. S.G. WADE: With all due respect, I will give further consideration to that, but I am not convinced by a mere assurance that the government knows best.

I highlight to the minister that, whether or not therapeutic drugs are included in 269C(2) is relevant to both the impairment and the intoxication. The government's bill, as currently drafted, seems to me to suggest that your impairment could be produced by the use of a therapeutic drug. On the basis of the government's advice on Tuesday, that could relate to therapeutic use of a drug decades before—let's say an adverse outcome on a pharmaceutical drug—yet, you would lose access to this defence.

It also applies at the time of the offence. If your intoxication at the time is related to use of a therapeutic drug—perhaps cough mixture that has alcohol in it—you lose access to the defence. I give an undertaking to the minister that I will reflect on his words and see whether I cannot gain more reassurance at a later date.

With the next definition I would like to explore, in relation to intoxication, could the minister clarify whether the word 'temporary' in clause 5(3) applies not just to disorder but also to abnormality and impairment?

The Hon. P. MALINAUSKAS: The answer to that question is yes. To provide a bit more of an explanation around that, rather than the way it has been worded, intoxication by its nature is a temporary state.

The Hon. S.G. WADE: I ask the minister: what is the effect of deleting the words 'but does not include intoxication' at the end of the current definition of mental impairment? Clause 5(5) deletes those words.

The Hon. P. MALINAUSKAS: That simply reflects the object of the bill, which is to make it clear that intoxication is being removed as a defence and does not constitute a mental impairment.

The Hon. S.G. WADE: Reflecting on the minister's answers on Tuesday, he basically advised us that if your brain injury was related to your own consumption of alcohol, for example, an alcohol-related brain injury, you would not be able to rely on the claim that you are mentally incompetent to be guilty of an offence, but that if it was your mother's consumption of alcohol, for example, through foetal alcohol syndrome, you would. In functional terms, the same person is impaired to the same extent, so what we are introducing here is an element of moral opprobrium for how your IQ was arrived at.

My understanding—and the Hon. Kelly Vincent is much better informed on these things than I am—is that to have an intellectual disability, and I presume to have a brain injury that relates to an intellectual disability, you need to have an IQ of 70. Whether or not it was produced by your own actions or those of your mother, it does produce the same level of mental competence. It seems to me—and the minister can correct me if I am misunderstanding the government's policy intent—that we are punishing people in relation to a contemporary offence for behaviour perhaps decades previously. Could the minister clarify what the government's policy intent in this area is?

The Hon. P. MALINAUSKAS: We have to understand the context of this bill. We are talking about where a criminal act has transpired and what is being used as a defence. You ask about the policy objective of the government. It is that where someone, through a conscious decision of their actions, has intoxicated themselves, they are subject to the full force of the law.

Clearly, for a person suffering from an impairment or a mental disability as a consequence of actions that have nothing to do with themselves, for instance someone suffering from a condition that is the consequence of their mother's behaviour as distinct from their own, there is a significant distinction between that and someone else who has developed an impairment as a result of their own intoxication, at whatever point in time that occurred. I find it surprising that the concept of one taking responsibility for their actions is something I am having to explain to the conservative side of politics.

The Hon. S.G. WADE: I beg to differ with the minister's interpretation of the operation of criminal law. At this stage in the Criminal Law Consolidation Act, we have not even determined a criminal offence has occurred. This relates to the mental competence of somebody to commit an

offence. Everyone is familiar with actus reus and mens rea. This is before you even have a criminal offence established. Again, I will take the minister's words into account, but I think he has mischaracterised the criminal law.

The Hon. P. Malinauskas interjecting:

The Hon. S.G. WADE: I am sorry, you asserted that a criminal offence has been committed; I say that that is not the case. If a person has a mental impairment when they commit a criminal offence such that they do not have the understanding, moral awareness or control that they are considered to be mentally competent to commit the offence, they do not commit an offence, so a criminal offence has not been committed.

The Hon. T.A. FRANKS: Obviously I am not a lawyer, but I am certainly someone who pays attention to the media and I am listening to the minister's answers. If someone had taken Stilnox for their insomnia, it is well known that people can actually drive in their sleep and they can come to grief in some way, injure someone. Would the effect of the Stilnox be taken into consideration in their defence in that instance? Could you clarify that?

The Hon. P. MALINAUSKAS: That is a really good example, because it demonstrates exactly why the format of the bill, as it stands, is appropriate. Where someone has taken Stilnox to treat insomnia then either they would have been prescribed it or they would have taken it over the counter in a way to treat a genuine condition. Provided they were using Stilnox in a way that was consistent with their medical advice or prescription or consistent with the instructions of the issuing authority, be it the manufacturer or the pharmacist, then they would be taking the drug in a way that would be therapeutic and that would be fine.

The Hon. T.A. FRANKS: My understanding is that Stilnox is in a class of drugs that people who have an acquired brain injury are often prescribed. Would the acquired brain injury, the condition itself, be considered?

The Hon. P. MALINAUSKAS: A good example, again, from the Hon. Tammy Franks. It would be up to the court to determine what caused the injury or caused the incident. If the court determined that consumption of the Stilnox, which was being prescribed therapeutically, and the effect of the Stilnox was what caused the injury, then a court could determine that the defence could apply. However, if the court equally determined that the impairment, which was a consequence of frequent self-induced intoxication, was the cause of the injury then the defence would not apply.

The Hon. T.A. FRANKS: So, if a person had acquired a brain injury through a car accident that was no fault of their own they would not be seen to be, in some way, responsible for their behaviour, taking the exact same drug at a later date, as someone who had consumed something that had given them that brain injury. Is that what you are saying?

So, you would go back to a previous incident in a person's life, perhaps many years prior, and work out how they came to have the particular condition they have—in this case, an acquired brain injury—to then take a therapeutic drug, to then commit an act that would happen regardless of how they came to have that acquired brain injury, and you would make a decision on something that happened many years ago in their life, about whether or not they would then be seen to be able to resort to having their mental impairment considered or not. You would have two classes of people, and a very complicated system. Is this the case?

The Hon. P. MALINAUSKAS: If the injury occurred as a consequence of the consumption of Stilnox, so the Stilnox for all intents and purposes resulted in the person inadvertently getting behind the wheel of a car and causing an accident and so forth, my advice is that they can rely on the defence. In terms of the question of what caused their impairment, then yes, there is a distinction between a person developing an acquired brain injury as a consequence of self-intoxication versus someone who did not acquire a brain injury in that way. So, there is a distinction there.

However, in the case of your example, it would be up to the court to take evidence and make a determination accordingly around what were the things that contributed to an accident taking place, and if indeed it was the Stilnox and the court determined on the basis of the evidence brought before it that it was the Stilnox that caused the injury, then this would be a defence they could rely upon,

provided, of course, they took the Stilnox in a way that was consistent with the requirements for it to be taken therapeutically.

The Hon. A.L. McLACHLAN: I just want to put another example to better tease out the causation issues in the bill. As I understand it, if a teenager, let's say someone under 18, was smoking marijuana which resulted in a mental impairment that was identified by medical practitioners and then at the age of 70 they sought to rely on that mental impairment, under these amendments they would not be able to rely on the mental impairment, even though they had suffered from it from the age of under 18 to the age of 70.

The Hon. P. MALINAUSKAS: Yes.

The Hon. K.L. VINCENT: I have a couple of questions, and I think a few have already been tackled by the Hon. Mr McLachlan and the Hon. Ms Franks. I think we are all quite concerned about these issues and we are trying to drill down to the end. I want to take a few steps back, to the definition of 'drug', and check with the minister whether a prescribed drug would also include medical cannabis, since that is something that this state is currently seeking to make available as a prescribed drug for medical purposes. Would it depend on factors such as how the medical cannabis was ingested? Also, would it depend on the THC levels present in the medical cannabis that that particular person was using?

The Hon. P. MALINAUSKAS: If medical cannabis was consumed in a way that was consistent with the law and consistent with what is the case with other therapeutic drugs—i.e. it was prescribed, it was consumed in the way it was advised to the patient, it was consistent with instructions from the prescribing doctor or other authorities—then yes, it would be covered as a therapeutic drug.

The Hon. M.C. PARNELL: A new player enters the fray. On a similar theme, I am desperately trying to understand, as a lawyer, what the minister said very early on in his contribution, which was around this issue of prescription drugs, or therapeutic drugs. The minister's response was that there are three definitions in clause 5 which have the effect of saying that if your mental impairment was caused by taking prescription drugs according to direction, you will be okay.

The minister said there are three definitions. There is the definition of intoxication, and that then refers to 'drug', and there is a definition of 'drug'. There is also a new definition to be put in, the definition of 'therapeutic'. But when we look at clause 6 of the bill and new section 269C(2), there is no reference in that new provision to therapeutic drugs, and I cannot find any reference anywhere in the other parts of the Criminal Law Consolidation Act that are not being amended by this that actually let people off the hook, as it were, if the reason for their mental impairment is that they have taken therapeutic drugs.

This new provision in clause 6 says that if they have taken drugs voluntarily then they cannot be dealt with under part 8A but they can be dealt with under part 8. Part 8 of the act is headed 'Intoxication', and 8A is headed 'Mental impairment'. What I am trying to understand—and I think it will be good to have a lunch break, perhaps, to get some legal advice on this—is that it does not seem to me that the minister's answer stacks up. If a person has taken prescribed quantities of therapeutic drugs, according to the label and according to the directions, that have affected their mental capacity, I think they are caught by this provision. If they took those prescription drugs voluntarily, I think they are in trouble.

If the minister can come back, perhaps after lunch, and point us to chapter and verse of the Criminal Law Consolidation Act to tell us that is not the case, then that will be interesting to hear, but I am not satisfied at present with the minister's answers that people who are doing nothing wrong as it were—they are perhaps taking powerful drugs in large quantities because that is what has been prescribed—they should not be adversely impacted by this bill in the unfortunate event that mental impairment resulting in a criminal offence is the outcome of their taking, voluntarily, those drugs.

The Hon. S.G. WADE: Unless the minister wants to respond to that now, I have more questions.

The Hon. P. MALINAUSKAS: I will have another crack at this, but maybe the Hon. Mr Parnell's suggestion of having a discussion over lunch is not a bad idea either. I will have

another crack at it on the off chance that I nail it. If you look at the definition of 'self-induced' and then you look at it in the context of recreational use, so 'self-induced' refers to the concept of recreational use, and then if you look at 'recreational use' as a definition under clause 5, what is deemed to be recreational use specifically excludes consumption of a drug if is deemed to be therapeutic. Under the definition of 'recreational use' you will see that if a drug is consumed in a way that is therapeutic then it is not recreational use, and if it is not recreational use then it is not self-induced.

The Hon. S.G. WADE: As I said, we will take time to consider the minister's responses. I would like to move to another form of alcohol-related impairment. As we all know, dementia is a growing wave of disablement in our community. One form of dementia is alcohol-related dementia. It is a form of dementia that relates not only to excessive drinking but it is also understood to relate to gastrointestinal disorders and other systemic diseases. Sometimes it is known as Wernicke-Korsakoff syndrome so I will refer to it as WKS.

I refer to an article from Alzheimer's Research and Therapy called 'Alcohol-related dementia: an update of the evidence'. Just to show this is not a particularly rare condition, this report states:

> Prevalence rates of WKS identified post-mortem are thought to be between 1% and 2% of the general population and around 10% of alcohol misusers in Western countries.

In the context of dementia, if a person is potentially going to be considered as having committed a criminal offence, will a person with dementia need to show that their dementia is not related to alcohol? Specifically, would a person with WKS need to show that their form of WKS was related to gastrointestinal disorders or other systemic diseases, to ensure that their mental impairment can be accepted as a cause of their lack of moral awareness or control, so that an offence has not been committed?

The Hon. P. MALINAUSKAS: In the case of the example the Hon. Mr Wade has just raised in relation to alcohol-induced dementia—I am not sure if that is the technical medical term—the same principles apply that would be the case in other instances. In order to be able to rely on the defence, the defendant has the burden to demonstrate that the defence applies to them. They would have to demonstrate, in your instance, that the defence should apply, rather than the other way round.

The Hon. S.G. WADE: In an evidence sense, that might be problematic with something like WKS, when the overwhelming predominance is alcohol related. Again, we will consider the minister's answers.

I am interested in the issue of causation. The government seems to be bending over backwards to avoid a causation link in section 269C, because it says that the offence has been caused either wholly or in part. The Attorney seems to be really keen to avoid putting a causation link in there, but then seems to be quite happy to put causation issues into whether or not the impairment was self-induced or whether the intoxication was self-induced.

I am much more comfortable with contemporary intoxication. The Hon. Andrew McLachlan gave a very interesting case study: a person below the age of 18 is not even able to have the moral authority to commit an offence in the way that an adult can, and yet, if you like, it is going to be attached at the end of their life, when it would not be attached at the beginning of their life. So, I am interested as to why the government is so comfortable to go into very complex issues of causation on the mental impairment, but seems to be resolutely avoiding causation when it comes to the actual event itself.

The PRESIDENT: The minister has taken that as a comment. Are there any further contributions? The Hon. Ms Vincent.

The Hon. K.L. VINCENT: I have a few questions. I appreciate that the minister seems to feel that he has nailed the definition of recreational versus therapeutic drugs, but I would like to give a few examples to make absolutely sure that we are clear on this. For example, if I take an amphetamine-based substance like Ritalin, it is likely to have quite a detrimental effect on my behaviour, whereas for someone who was diagnosed with ADHD it might have a positive impact on their behaviour—quite the opposite of what it might do to someone like me. In that instance, how do we define 'intoxicated', because we are both under the influence of the same substance but it is having very different impacts on the two of us?

The Hon. P. MALINAUSKAS: In all those instances, as in every other instance pertaining to the drug (for example, medical cannabis, Stilnox, Ritalin), as long as the drug is being consumed in the way it has been prescribed—that is, is consistent with the prescription and the appropriate dosage as recommended by the doctor or the manufacturer—it is therapeutic and the defence would apply.

The Hon. K.L. VINCENT: I have one further question on that. I have constituents at my office, who report to me—at least, anecdotally—that they feel more stoned (to use a colloquialism or their words) or more affected when they take strong schedule 8 narcotic drugs such as Endone, compared to when they use medical cannabis in a therapeutic context to relieve pain or treat the same symptoms. Who, in that context and for the purposes of this bill, is more intoxicated—someone on a substance like medical cannabis or someone on something such as Endone?

The Hon. P. MALINAUSKAS: What matters in the instance that you have just described is whether or not the relevant drugs were prescribed or taken in a way that is consistent with what is defined as a therapeutic drug. In the example of someone who has been prescribed Endone and is taking it in a way that is consistent with their prescription (the dosage instructions and so forth), Endone would be deemed to be a therapeutic drug and the defence would apply.

However, if that same person said, 'I don't like the feeling of Endone', and unilaterally decided to start taking medical cannabis without it having been prescribed and without following appropriate instructions and then an incident were to occur where it was demonstrated that the medical cannabis resulted in intoxication, then the defence would not apply in the case of the medical cannabis because it had not been prescribed and therefore had not been consumed in a way that is deemed therapeutic.

The Hon. K.L. VINCENT: If a person has a prescription for a drug like Endone (prescribed by a doctor) that they are taking it post injury or post surgery, for example, and they have one glass of wine along with the Endone—I do not particularly condone that, but I use it as an example—they might be intoxicated by it, despite only having had one glass and being well below the 0.5 blood alcohol content limit. For the purposes of this bill, is that deemed intoxication through a combination of therapeutic and recreational drugs?

The Hon. P. MALINAUSKAS: If a court found that the wine resulted in intoxication, then the defence would not apply because they would be intoxicated as a result of a recreational use of a drug that was not therapeutic, in this case the wine. So, it would be up to the court, on the basis of the evidence brought before it, to make a determination as to whether or not the consumption of alcohol, in this case the glass of wine, resulted in intoxication. If that were the case, then the defence would not be able to be used.

The Hon. K.L. VINCENT: The point that I am attempting to make here is that that is a bit of a grey area, is it not, because ordinarily a person would not be intoxicated from consuming one glass of wine, but they might be if they mix that with Endone, which, in this context, is a therapeutic drug? Can you see the argument that I am making that it is a grey area because ordinarily that person is very unlikely to be intoxicated to that extent from one glass of wine, but it is the fact that it is mixed with the therapeutic drug that is causing that result? So, it is a bit of a chicken or the egg question, I suppose.

The Hon. P. MALINAUSKAS: The object of the bill in this particular instance is that if someone becomes intoxicated as a consequence of any recreational consumption of a drug, then the defence cannot be applied. So, in your instance, you are talking about where someone is taking both a therapeutic drug and a recreational drug, or the fact that they are consuming a recreational drug that results in intoxication, which results in them committing an act that is criminal in nature for which they might have been charged, then the defence cannot be applied. The simple message for people in those instances is do not mix the drug, which is in most instances, and particularly in the one you just described, most likely to come with advice saying do not do that.

The Hon. K.L. VINCENT: Speaking of another grey area—and after this I promise to leave the minister alone for a while—

The Hon. M.C. Parnell: Never promise.

The Hon. K.L. VINCENT: I should not promise, you are right, I should not make promises I cannot keep. You might nail it though, you might nail it. Can the minister just put on the record for the purposes of this debate: is medical cannabis legally defined as a recreational or therapeutic drug in South Australia right now, given what has happened on the federal level?

The Hon. P. MALINAUSKAS: The question, although interesting, is not particularly relevant to what we are discussing here because, as I said before, if medical cannabis was consumed in a way that was deemed to be therapeutic, that is, it was prescribed and consumed legally, it was taken in a way that was consistent with the prescription instructions, the dosage recommendations and so forth, then it would be deemed to be therapeutic and therefore the defence would apply—irrespective of the answer to your question, but nevertheless I am sure we can take that away.

The Hon. S.G. WADE: In the definition of 'therapeutic', though, it is consumed for a purpose recommended by the manufacturer. I am presuming the manufacturer in that context is the producer of the medical cannabis?

Members interjecting:

The Hon. S.G. WADE: It does not relate to illicit, it just says the manufacturer's instructions. The case the Hon Kelly Vincent is referring to—

The Hon. P. Malinauskas: Have you got a question?

The Hon. S.G. WADE: Yes: how can the manufacturer's instructions exclude medicinal cannabis because the manufacturers of medicinal cannabis say that you can take it for various purposes? Medical cannabis comes within the definition of 'therapeutic'.

The Hon. P. MALINAUSKAS: The therapeutic definition is that the consumption of a drug is to be regarded as therapeutic if the drug is prescribed by and consumed in accordance with the directions of a medical practitioner, or the drug is a drug of a kind available without prescription from registered pharmacists and is consumed for the purpose recommended by the manufacturer in accordance with the manufacturer's instructions.

So, in the case of medicinal cannabis, if it was prescribed by a medical practitioner, tick, the defence can apply. If it is issued without prescription by a registered pharmacist and is consumed in a way that is recommended by the manufacturer and in accordance with any instructions then, again, tick, the defence can apply. It is pretty self-explanatory, really.

The Hon. S.G. WADE: I would ask the minister to stop referring to this as a defence. My understanding is that this relates to the constituent elements of the offence. We need to know, at criminal law, whether or not a particular behaviour has constituted an offence. To talk about this as a defence undermines the basic principle of the criminal law, that you need to have both the act and the mind to have the act.

The Hon. M.C. PARNELL: This is something the minister might take on notice. Without wanting to rain on his parade at having nailed it before, I think I have come to the nub of where I think the minister is. The minister's arguments seem to be that only recreational drugs can fall within the definition of 'self-induced'. The reason the minister says that is that he refers to the new section 269A(3)—this is about a third of the way down page 5—and it might be a matter of drafting. What it says is 'Intoxication resulting from the recreational use of a drug is to be regarded as self-induced.' However, it is not an exhaustive definition. It does not say, 'Only intoxication resulting from the recreational use of a drug is to be regarded as self-induced and nothing else.' It does not say that—that is a matter of drafting.

My question to the minister is—just to make it really clear and on the record—is the minister saying that any therapeutic use of drugs, within all the definitions that the minister referred to before, that it was taken in the manner prescribed or on the label and that you have not taken too much of it, cannot be regarded as self-induced? If it cannot be regarded as self-induced, then it cannot be the subject of the exemption in section 269C. Do I have that clear or not: that the new subsection (3) of section 269A is an exhaustive definition?

The Hon. P. MALINAUSKAS: Yes, that is right. I did not say I nailed it, I said I was hoping I would nail it.

The ACTING CHAIR (Hon. J.S.L. Dawkins): I suggest that if the minister is going to do a one-word answer and he then sits down and adds to it that he would be better off doing it on his feet. I call the Hon. Tammy Franks.

The Hon. T.A. FRANKS: On a new topic, members will be incredibly surprised to hear that I am not going to ask anything about medical cannabis in these few moments. I want to explore one of the answers given about intoxication of a prescribed drug being temporary. Does that include the known side effects of that drug in that temporary definition or will the known side effects continue beyond the taking of a drug?

The Hon. P. MALINAUSKAS: Could you say that again, sorry?

The Hon. T.A. FRANKS: I will paint a word picture. There is a drug called Keppra, an anti-epileptic drug. The known side effects are many. Some of the most concerning are that the person taking it by prescription as directed becomes aggressive, angry, can develop personality disorders, can have insomnia, depersonalisation, paranoia, has loss of memory and has changes in behaviour including suicide attempts and violence. If somebody is taking Keppra, will the taking of that drug be treated as a temporary intoxication or will those side effects, which are well known and well recorded, be taken into consideration?

The Hon. P. MALINAUSKAS: I thank the honourable member for her question. Clearly, the example she just provided illustrates again the benefit of the therapeutic definition, because where somebody takes the drug Keppra to treat a condition, the drug was prescribed, consumed in a way that was prescribed or taken in a way consistent with the manufacturer's instructions for a registered pharmacist, or the like (this is with the definition), it would be therapeutic and the exemption would apply. That example is entirely consistent with all the other examples we have gone through thus far, including, potentially, medicinal cannabis.

The Hon. T.A. FRANKS: They are the side effects of that drug. They continue beyond the person taking that drug into the future, and that person is informed of those side effects. What responsibility do they have, being informed that they are the possible side effects for their behaviour into the future?

The Hon. P. MALINAUSKAS: To be honest, I am failing to understand the particular concern from the Hon. Ms Franks. If her concern is that someone consumes a drug, in this case Keppra, and there are side effects of that drug, and then those side effects occur in perpetuity for that particular patient and those side effects some time later down the track, however long, then result in their allegedly committing a criminal act for which they have been charged, would the exemption apply in that instance; is that the question?

The Hon. T.A. FRANKS: Yes, that is the question, and having been informed those are the side effects.

The Hon. P. MALINAUSKAS: So, in that instance my advice is that they would get the benefit of the defence, provided, of course, that the drug that caused those side effects was consumed in a way consistent with the definition of 'therapeutic', amongst other requirements.

The Hon. T.A. FRANKS: So, if a person who took, by prescription, any drug that has a range of side effects at any stage in their past, they could then rely on those side effects to be taken into consideration in the future; is that the case?

The Hon. P. MALINAUSKAS: Provided that the individual was able—in this case, presumably, that would be the accused—to demonstrate that the side effects were an impairment that resulted in the committal, and that the side effects were indeed caused by the consumption of the drug that was then issued and consumed in a therapeutic way, yes.

The Hon. T.A. FRANKS: But, if they actually carry acquired brain injury and have a drink, they will not have that ability to refer to a mental impairment should they commit a crime; is that the case?

The Hon. P. MALINAUSKAS: Yes, because under proposed new section 269A(4) it states:

If a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same or another drug, the intoxication is to be regarded as self-induced, even though in part attributable to therapeutic consumption,

So, yes, if the person consumed alcohol in that instance, it would be deemed to be recreational use and the exemption would not be able to apply.

The Hon. T.A. FRANKS: And that includes wine at church, does it? How small would the consumption of an intoxicating substance need to be? Would it include wine at church?

The Hon. P. MALINAUSKAS: That would be a question that would have to be determined by the court on the basis of the medical opinion being provided to the court to make that assessment.

The Hon. S.G. WADE: On the communion wine example that the Hon. Tammy Franks has brought up, again I do not have access to the advisers that the minister does, but does not subsection (4), which is in subclause (9), say that if it is a combined effect, both therapeutic and non-therapeutic, it can still be regarded as self-induced?

The Hon. P. Malinauskas interjecting:

The ACTING CHAIR (Hon. J.S.L. Dawkins): The Hon. Mr Wade.

The Hon. S.G. WADE: I believe I do have a point. If a person becomes intoxicated as a result of the combined effect of the therapeutic consumption of a drug and the recreational use of the same drug, the intoxication is regarded as self-induced, even though in part it should be due to the therapeutic consumption. Your intoxicated use, if you like, contaminates your therapeutic use.

The Hon. P. MALINAUSKAS: Yes, that is right.

The Hon. S.G. WADE: I think that is a—

The ACTING CHAIR (Hon. J.S.L. Dawkins): I gather the minister does not wish to stand and respond. I call the Hon. Mr McLachlan.

The Hon. A.L. McLACHLAN: On a slightly related topic, back to the definitions of 'drug' and 'therapeutic' and the dance around the act as they all interplay, do all those definitions accommodate the situation where someone takes what comes under the definition of a drug consistently with the recommendation of the manufacturer at the time, but subsequently the manufacturer's recommendations change? Which does occur. Drugs are put out to the community on the shelf of the chemist and sometimes become prescribed later and there are changes in the prescription. Do the definitions take into account that change in causality at the time, when they are taking it in accordance with recommendations and they subsequently change? Do the definitions provide clarity?

The Hon. P. MALINAUSKAS: I do not think it would come as a great surprise to a learned individual like the Hon. Mr McLachlan that yes, if someone consumed a drug in a way that was deemed to be therapeutic at the point of their consumption, then of course it would be appropriate that the exemption apply. If subsequently down the track a manufacturer changed the rules, then so be it, but if at the point of consumption that person was taking it in a way that was consistent with their instructions and their prescription, then yes, they should be able to seek the exemption.

The Hon. A.L. McLACHLAN: I thank the minister for his answer. Is the minister's answer based on the construction of therapeutic in the amending bill before us, where at (b)(ii) 'is consumed for a purpose recommended'? I assume the construction is given that it is the moment in time of consumption.

The Hon. P. MALINAUSKAS: Yes, I think that would be a common-sense interpretation of the bill.

The Hon. A.L. McLACHLAN: Just to clarify, that is debate, that is the way the government is interpreting that provision? The minister said it was a common-sense construction. Is it the government's position that that definition of therapeutic and a situation, i.e. the example I gave, is accommodated by the words 'is consumed for a purpose recommended' is sufficient to accommodate a subsequent change in the manufacturer's instructions?

The Hon. P. MALINAUSKAS: Yes; my advice is that is right.

The Hon. S.G. WADE: I would suggest that, considering that I think more work needs to be done on clause 5, members might want to consider whether they want to make further contributions, because it would be my suggestion that we report progress.

Progress reported; committee to sit again.

RAIL SAFETY NATIONAL LAW (SOUTH AUSTRALIA) (MISCELLANEOUS NO 3) AMENDMENT BILL

Introduction and First Reading

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

INTERVENTION ORDERS (PREVENTION OF ABUSE) (RECOGNITION OF NATIONAL DOMESTIC VIOLENCE ORDERS) AMENDMENT BILL

Final Stages

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

Sitting suspended from 12:52 to 14:16.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the Minister for Employment (Hon. K.J. Maher)—

Variation of the Environmental Authorisation under the Whyalla Steel Works Act 1958

By the Minister for Aboriginal Affairs and Reconciliation (Hon. K.J. Maher)—

Aboriginal Lands Trust Good Order Audit Summary of Findings—October 2015

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

Reports, 2015-16—
- Carrick Hill Trust
- Country Arts SA
- History Trust of South Australia
- Libraries Board of South Australia
- South Australian Museum Board

Regulations under the following Acts—
- Native Vegetation Act 1991—General—

South Australian Forestry Corporation Charter

By the Minister for Police (Hon. P.B. Malinauskas)—

Regulations under the following Acts—
- Public Intoxication Act 1984—Revocation

Question Time

DEPARTMENTAL STAFF

Members interjecting:

The PRESIDENT: Order! Listen, will the honourable Leader of the Government please behave himself. Set an example for the rest to follow. The honourable Leader of the Opposition.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:18): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question in relation to departmental staffing changes.

Leave granted.

The Hon. D.W. RIDGWAY: I think it was on 17 February that the Chief Executive of DEWNR sent out a publication regarding the restructure of the department, which I know we are not meant to have props, but I do have a copy of it here. My question to the minister is, what is the additional wages bill payable by DEWNR as a result of the department doubling its number of executive directors from three to six?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:19): I thank the honourable member for his cutting-edge question. I am a little disturbed and upset that he would wait until Thursday to introduce a question directed to me. I feel slighted that, clearly, he needed to go off and do a bit of research and trawl back through the public releases of an internal departmental restructuring.

Unfortunately, I think, from my memory of discussing this with my chief executive, he has got the question completely wrong and he is conflating levels in the executive service into senior executive members and not distinguishing between the three deputy chiefs. I will take that question on notice for him. I will bring back a proper internal structure for him to examine so he can understand the different layers of management at the senior executive level in the Department of Environment, Water and Natural Resources.

I understand it is difficult for the Hon. Mr Ridgway, having never had much experience of government or, indeed, the Public Service, to understand how policy is made in government, how policy is carried out at the various levels of a relatively flat, I might say, hierarchy in such an organisation where most of the organisational work is done on the ground: people are out there talking to communities, working in communities, working on parks, working on land.

These are the experts that we rely on and particularly our scientific experts, people with well-established experience in park and landcare management and certainly with tertiary qualifications to back that up in many situations. One example, is the amount of investment the government has made in prescribed burning and burning on parks, and now burning off parks in a tenure-blind structure.

There was, of course, no prescribed burning whatsoever when we came into government. The Liberals, when they were last in government, had no plan for prescribed burning and protection of public lands or, indeed, of land adjacent to public lands. It was this government that has not only increased expenditure in our fire prevention strategy, we have also doubled the number of people involved in fire prevention. As I have explained in this chamber many times—

Members interjecting:

The PRESIDENT: Order! Minister, take your seat, please. The behaviour of certain members on both sides is just not acceptable—on both sides, not acceptable. The minister is up talking, giving a response to a question, and he is being drowned out by, not only people from opposition, but from his own side. Allow the minister to give the answer to the question without interjection. Minister.

The Hon. I.K. HUNTER: Thank you, Mr President, for your protection. The Liberal opposition is drowning out the answer because they are embarrassed by the question asked by their leader, who had to be held back from asking questions all week, but we understand he is reasserting his dominance in the party through factional deals, trying to overthrow—

The Hon. D.W. RIDGWAY: This is a waste of question time, the rubbish that is coming out of the minister's mouth. Mr President, please direct him to answer the question.

Members interjecting:

The PRESIDENT: Order! Did you ask for a point of order?

The Hon. D.W. RIDGWAY: No.

The PRESIDENT: No, you didn't. If you want to talk to me while the minister is on his feet, you make a point of order. You just don't jump up on your feet. The Hon. Mr Kyam Maher, I must say, out of all of us, out of everyone here today, you are the one whose behaviour is most disappointing. You are the Leader of the Government. You should set an example. Minister, please continue with your answer.

The Hon. I.K. HUNTER: Thank you for your protection. I must say, and I wouldn't normally jump to the defence of bad behaviour, but I would never, in my most ungracious manner in this place, actually say that the Hon. David Ridgway's question was a waste of time, but his colleagues here have been shouting that out across the chamber for the last five minutes.

I take the view that no question is a silly question, even if it may be ill-informed, because it gives me an opportunity to explain to the Hon. Mr Ridgway how he has misconstrued the information that he has seen. He hasn't quite understood the executive structure of my agency and how we have gone about, in fact, giving our very valuable public servants a larger say in the role that they have in their work and a larger say in talking to communities, asking communities what they want to see on parks.

I think one of our election promises was to spend just over $10 million on improving community access into our parks. From memory, I think we talked to about 11,000 people to get their views about how that money should be spent and what sorts of things they wanted to see in their parks. It was, of course, DEWNR employees who were at the forefront of engaging with their local communities to find out exactly what they wanted, and now we are delivering it.

So, I will go to the chief executive of my agency and I will ask her to explain, in a relatively easy to understand way for the Hon. Mr Ridgway, how the restructure has worked and how there has, in fact, been a misconception on his part in thinking that, relatively, DEWNR officers under her and the deputy—

The Hon. J.S.L. Dawkins: Junior officers?

The Hon. I.K. HUNTER: DEWNR.

The Hon. J.S.L. Dawkins: You said 'junior'.

The Hon. I.K. HUNTER: DEWNR officers, Mr President. The structure has been flattened, not increased. I am advised now that the increased number of executives reporting directly to the chief executive was achieved through flattening the existing structure. I am also advised that DEWNR's restructure was achieved without increasing overall spend on executive salaries. Nonetheless, that is the headline for the honourable member to take away today, but I will get a detailed response for him so that he can better understand how we are driving further efficiencies in the Public Service.

DEPARTMENTAL STAFF

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:25): Can the minister advise whether, when this flattening process took place and these new positions were created, those six positions were publicly advertised, allowing for a broad range of applicants across government, private and not-for-profit sectors to apply?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:26): Again, this is not something that I oversaw or had a particular role in. That's not the role of the minister, in terms of internal reorganisations.

The Hon. J.M.A. Lensink: Jobs for the boys.

The Hon. I.K. HUNTER: The Hon. Michelle Lensink says, 'Jobs for the boys.' There are existing members of the executive. I understand the existing structure was flattened to have a more direct reporting structure to the chief executive.

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: The Hon. Mr Ridgway seems to be implying that I should be running the employment practices for my agencies. That's what he's saying: that I should have a role in that. In fact, I take the view that that is not my role; that is the role of the chief executive. She reports to me and that is the way it should be.

I have said that I will go and seek information for him and show him how he has misconstrued the information that he has looked at and how we have actually managed to flatten the previous executive system to a much more responsive one for the chief executive. As I said, I have been advised that this was achieved without increasing overall spend on executive salaries.

DEPARTMENTAL STAFF

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): Further supplementary: could the minister bring back to the chamber, at his earliest convenience, a copy of the advertisements that were placed either online or in the newspapers advertising the six positions that he spoke about that were flattened in the structure?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:27): The honourable member is assuming that there were any advertisements. I don't know that. I do know that there are existing people in those positions. We are talking about a reorganisation. We are talking about a reorganisation internally.

The honourable member seems to be implying or inferring from something he's seen that some other situation applied in this instance. I think that is a leap too far. He is trying desperately to emulate the tactics in this place of the gentleman behind him, the Hon. Mr Lucas, by trying to twist words for his own purpose. I say to the Leader of the Opposition, 'Just chill out, mate. Relax, I will get back to you in good time.'

DEPARTMENTAL STAFF

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:28): Final supplementary: given it was an internal flattening, how does the minister explain the movement of a Mr Matt Johnson from the Department of State Development into DEWNR, given he said it was all done through an internal restructure?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:28): I have no idea whether that was part of the reorganisation and restructure or whether it was done for another policy purpose.

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: Again, the Hon. Mr Ridgway seems to be—

The PRESIDENT: The honourable minister will not engage in debate. Just answer the question.

The Hon. I.K. HUNTER: No, you are quite right, Mr President, I shouldn't, because it certainly doesn't educate anybody in this place to listen to the Hon. Mr Ridgway—his very odd behaviour in this place and, in particular, his very odd questions. However, as I say, I take all questions as valuable opportunities to educate the opposition because they certainly won't have much chance to experience how government works in this place for the best part of another two decades, the way they are going.

MURRAY-DARLING BASIN PLAN

The Hon. J.M.A. LENSINK (14:29): I seek leave to make a brief explanation before directing a question to the Minister for Water and the River Murray on the subject of the River Murray-Darling Basin Plan.

Leave granted.

The Hon. J.M.A. LENSINK: As reported in today's paper, the ANU Centre for Water Economics has published—

The Hon. I.K. Hunter: Which paper was that?

The Hon. J.M.A. LENSINK: *The Advertiser*, today, the only one—we are a one paper town. The ANU Centre for Water Economics released a report entitled, 'Water Reform and Planning in the Murray-Darling Basin', and has called for an urgent rethink of the plan as it is based on 'rhetoric and special interests' rather than specific evidence and that there is 'very little to show' for the $5 billion spent on it. My questions for the minister are: is he aware of this report, and what is his agency's response to its findings?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:30): I thank the honourable member for her most important questions and can I say, 'Come in spinner'. As I understand from the precis of this report that I have been given from the ANU—but, of course, we have heard from the ANU on these issues in the past, where they have made claims that the Murray Darling Basin Plan doesn't go far enough, that it is a compromise, that the scientific information has not been adhered to and more water needs to come out of the system to protect the environment.

We all know that. We all know that the basin plan was, in fact, a compromised position because it was fiercely fought by New South Wales and Victoria, who don't want to see any more water go out of productive use and go back into saving the environment of the River Murray. As far as they are concerned, any water that goes over the border is wasted water. You have to understand, of course, as many of us have heard, that they're often saying, 'We should just blow up the barrages and let salt water flood all the way up.' They have absolutely no concern for the Ramsar list of wetlands, sites of international significance. They have none at all.

Of course, these are scientists who have been putting together the best position and saying to us that you also need to take into consideration climate change and saying it doesn't go far enough, the Murray-Darling Basin plan. The agreed package that was, as I say, a compromise in 2012, made a commitment to that water recovery of 3,200 gigalitres, made up of two components (three components in a way), including the extra 450 gigalitres of so-called upwater that was negotiated by this state to give us the ability to say we are putting more water back into the river right up and down the system.

The best available science told us at the time that we needed a minimum of 3,200 gigalitres and that target was enshrined in the Murray-Darling Basin Agreement. That was the absolute minimum, and even at that minimum level we know that at certain times, over a period of a hundred years or so, that would be insufficient water, still, to protect some of our natural environmental assets. But, as I say, in the spirit of compromise we agreed with that extra 450 gigalitres being added into the plan, but noting as well that that can be written down by up to 650 litres in terms of what is called downwater, where there is an equivalence test in terms of environmental outcome.

The ANU work probably, I suspect, has erred on the side of wanting to be conservative in terms of their environmental outcomes for the river. I can understand that completely. When you are talking about analysing outcomes, looking at the climate change that we may be facing over coming years, you would want to err on the conservative side. However, Murray Basin politics, which has been practised in this country for the best part of a hundred years or so, requires us, given the way the constitution has appropriated powers to the states in terms of the River Murray, to work with other states and reach a compromise, which is exactly what we did.

The facts are that around 1,800 gigalitres of water is now available from the environment, which is an achievement in itself, which we would not have got without the Murray-Darling Basin Plan being put into place and worked on. All of this would have been available for irrigation diversions prior to the plan. Work is continuing towards the 3,200 gigalitre target under the oversight now of COAG, which is fortunate that this has been taken out of the hands of Barnaby Joyce, the Deputy Prime Minister, who has said to me and then confirmed in various media outlets and, indeed, in parliament that he has no intention on delivering the 450 gigalitres of water in terms of the upwater that South Australia requires for us to agree to 650 gigalitres of downwater.

Members interjecting:

The Hon. I.K. HUNTER: The honourable members opposite are trading barbs across the chamber about my standing up for South Australia; about me standing up for South Australia and the River Murray; for standing up for the irrigators' interests; and for standing up for the interests of South Australia. I make absolutely no apology for it. I will stand up for the River Murray and South Australia even if the Liberals in this state never do.

If South Australia does not stand up for our end of the River Murray we know what will happen: New South Wales and Victoria will continue to pump water out of the system and they will not put water back in for environmental purposes. They have to be made to, and that is exactly what we intend to do, and that is why it is welcome that this has been taken out of the hands and control of Deputy Prime Minister Barnaby Joyce—who has absolutely no interest in South Australia whatsoever—and put into the hands of first ministers and the Prime Minister at COAG. I welcome that outcome.

The additional environmental water that we require is now being actively used to improve outcomes for ecosystems right across the basin. Local communities and stakeholders are playing a great role in informing where this environmental water goes, and it has been very successful. I understand that the data used to conclude that the baseline diversion limits have been set too high is based on diversion data since around about 1997 when the BDLs were developed based on modelling of long-term average use over 114 years of record.

Again, it is not unexpected that these numbers would be different to the ones that are being used in the ANU report. I commend the ANU for its work. I commend them for standing up for the river as an entire system to be managed as an environmental system rather than small little fiefdoms to be pumped dry for the benefit of cotton farmers and rice growers in New South Wales—where they should not be. We understand Barnaby Joyce's desire to favour them over South Australian irrigators and our South Australian river and, of course, water that we all rely on for drinking purposes.

This state Labor government, led by our Premier and myself as minister, will be fighting for South Australia's rights. We will be fighting for our River Murray and our irrigators up and down the river system, and if New South Wales and Victoria want to rip up the Murray-Darling Basin Agreement we will not be slicing and dicing and going downwards, we will be looking at the ANU reports which say we need more water returned to the river, and we will see how they like that.

NATIONAL SCHOOL CHAPLAINCY PROGRAM

The Hon. S.G. WADE (14:37): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation, representing the Minister for Education a question in relation to the National School Chaplaincy service.

Leave granted.

The Hon. S.G. WADE: We are halfway through term 1 of the 2017 school year and the National School Chaplaincy service providers were assured payment would be received in February, but this week the department has advised providers that an unexpected hurdle has arisen. Neither an explanation as to the hurdle nor an estimated date for the funding to be made available has been provided.

The Schools Ministry Group is the largest chaplaincy service provider in South Australia, serving over 340 schools. SMG will need to withdraw services from next Monday if funding is not provided, in which case the jobs of 300 pastoral care workers will be affected and the thousands of children who benefit from the support will lose out. The Schools Ministry Group has provided services in schools so far this year, despite the delay in funding, in good faith and with an understanding that the funding would be received in February. The impact of the government withholding these funds is that vital support for students across the South Australian Department for Education and Child Development schools will be withdrawn. My questions are:

1. What factors are delaying payments under the National School Chaplaincy service program?

2. When will the funding be released to these service providers?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:38): I thank the honourable member for his most important question. I undertake to take that question to the minister in the other place and bring back a response on her behalf.

STOLEN GENERATIONS REPARATIONS SCHEME

The Hon. G.E. GAGO (14:38): My question is to the Minister for Aboriginal Affairs and Reconciliation. Can the minister update the chamber on the Stolen Generations Reparations Scheme?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:39): I thank the honourable member for her question and ongoing interest in this area. Last month marked the 9th anniversary of Prime Minister Kevin Rudd's apology speech, and I pay tribute to that speech and those who marked the occasion. Once again, Reconciliation SA organised a special breakfast to commemorate that important day and it was attended this year by over 1,000 people, including many from this parliament.

Like last year's apology breakfast, members of the stolen generations came through the standing audience and stood on stage, and it was a moment that I think made a deep impact on all who were there: the members of the stolen generation standing on stage in front of the assembled guests showed a quiet dignity and courage.

I also take this opportunity to thank Eva Johnson for sharing some of her powerful poetry and the members of the stolen generations from Cootamundra Girls and Kinchela Boys Homes for sharing their stories with everyone at the breakfast.

As I have informed the chamber before, last year $11 million was committed to the creation of the Stolen Generations Reparations Scheme. I can advise the chamber that, of the $6 million individual reparations component of the scheme, over 300 applications already have been received, with the applications to close later this month, after having been opened for 12 months.

Also, at this year's apology breakfast I was able to announce that the state government is accepting expressions of interest until later this month for the community fund portion of the Stolen Generations Reparations Scheme for projects of up to $100,000. The fund has been established to support projects and programs that promote healing for members of the stolen generations, their families and communities.

Ideas that have already been put forward for the community reparations part of the fund have included things such as: oral histories; Aboriginal family history; healing programs; arts and culture; community education and research; memorials; and, education awards and scholarships. I thank everyone who has provided feedback already on the community reparations scheme: it has been a great insight into what sort of projects may assist communities to heal, remember and learn.

Of course with these grants it will be up to different communities and organisations to determine what sort of applications they wish to put in. We will be open to further ideas and will remain ready to listen to the community. I look forward to updating the chamber on the community reparations component of the Stolen Generations Reparations Scheme over the next few months.

I also wish to speak briefly about a meeting I had last week with Rosalyn Sultan, a proud Eastern Aranda/Gurindji woman, and her family. She asked at that meeting that I talk about her story. Rosalyn was born in the Northern Territory, and for the first seven years of her life lived with her five siblings on country around Yuendumu near the Tanami Desert.

In 1960, Rosalyn's mother, Loretta, reached out to government, asking for assistance with her children, an incredibly brave move for an Aboriginal woman, but her utmost priority was making sure her children were taken care of. What followed was decades of forced separation between a mother and her children. Loretta agreed to move to Port Augusta to allow her children to be in the care of the government for a period of two years, and the very next day her children were shifted to Adelaide.

Upon learning of this news, Loretta sent a letter requesting her children be returned to her care. The response came back from the protector of Aborigines that her children would not be returned, and she was threatened with prosecution should she try to involve herself in their upbringing. Loretta wrote many, many letters to government, pleading to have her children back. All of these were ignored.

Rosalyn was told different things over the years: her mother didn't care, her mother was dead. Instead of a lifetime of memories with a mother and siblings, all Rosalyn has of her mother is a small black and white photo. It was with great strength and dignity that Rosalyn told me her story and the continuing effect it has had on her life and her family's life.

I was able personally to say sorry to Rosalyn: sorry that the policies and actions of the past have caused this sort of irreversible damage to her and to so many Aboriginal families; and, sorry that for her and so many other Aboriginal families governments of the past have wilfully, deliberately and unnecessarily separated children from their connection to culture.

I pay tribute to Rosalyn for her strength; despite all the trauma inflicted she has raised two fine sons who are proud Aboriginal men. This is the greatest example of her and her people's resilience. As I said, Rosalyn wanted me to share what we talked about. We need to remember that sometimes sharing the stories of the past, however painful, ensures we never forget.

Rosalyn spoke particularly of the hurt that is caused by members of the community who choose to deny the reality of the stolen generations. There are some who deny the basic fact that Aboriginal children were removed at all, and others who say it was always done in the best interests of those children. The reality is that in Australia's not so distant past there was policy that attempted to destroy the world's oldest living culture. For example, in 1933, Dr Cecil Evelyn Cook, the Chief Protector of Aborigines in the Northern Territory, wrote that:

> Generally by the fifth and invariably by the sixth generation, all native characteristics of the Australian Aborigine are eradicated. The problem of our half castes will be quickly eliminated by the complete disappearance of the black race and the swift submergence of their progeny in the white.

These sorts of comments, in the decades before and after, were not unique. Men whose title suggested that they ought to be protecting Aboriginal people said very similar things right around this country. The fact that there are people in our community who purport that the stolen generations, the forced removal of Aboriginal children, are exaggerated stories or myth, tells us we need to do more in our journey of reconciliation.

I again want to thank Rosalyn, her family and all members of the stolen generations, organisations who work with and support them, and the ALRM, who have taken the time to share their stories and experiences with me over the last couple of years.

WHYALLA PROPERTY VALUES

The Hon. J.A. DARLEY (14:45): I seek leave to make a brief explanation before asking the Minister for Employment, representing the Treasurer, questions regarding property values in Whyalla.

Leave granted.

The Hon. J.A. DARLEY: In *The Advertiser* today, it was reported that there are 800 houses for sale in Whyalla and that 700 small businesses have closed. Can the minister advise precisely what action is being taken by the Valuer-General to adjust the valuations of these homes and business premises in line with current market value so that they are not punished by excessive rates and taxes?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:46): I thank the honourable member for his question and his deep interest and knowledge in this area. I will pass those questions to the Treasurer in the other place and bring back a reply for him.

PRISON ADMINISTRATION

The Hon. A.L. McLACHLAN (14:46): My question is to the Minister for Correctional Services. Has the Department for Correctional Services taken over the prison cells of the Sturt Police Station for its prisoners?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:47): I would like to thank the honourable member for his important question. I can inform the council that on a not infrequent basis the Department for Correctional Services works closely with SAPOL regarding some of its police cell facilities. Often the police cells do constitute what is described within the Department for Correctional Services, or more generally, as surge beds.

We do this at a number of locations, I understand, and I am advised that police cells are currently utilised by the Department for Correctional Services at the Adelaide City Watch House and also in Holden Hill. I am more than happy to seek specific advice on the number of police cells that are actively being used at the Sturt Police Station, but again I am happy to disclose that the use of police cells by the Department for Correctional Services is not uncommon and is often used by way of surge bedding.

PRISON ADMINISTRATION

The Hon. A.L. McLACHLAN (14:48): Supplementary: is the use of the Sturt Police Station a new development?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:48): I am aware that negotiations were underway between the Department for Correctional Services and SAPOL regarding the use of police cells at the Sturt Police Station. I am happy to seek an update on where those are at, but again, using police cells for surge bedding is something that has been happening for some time and that has been well documented and well noted.

At the moment, of course, we are in the process of upgrading a number of police cells. That received some media attention more recently. This is something that is part of the regular upgrades to police accommodation, but again, the use of police cells for surge bedding accommodation by the Department for Correctional Services has been well known for some time.

PRISON ADMINISTRATION

The Hon. A.L. McLACHLAN (14:49): Supplementary: when the Department for Correctional Services seeks to use a SAPOL prison cell, is there a formal document or agreement that is entered into between the two departments?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (14:49): Yes, I can confirm that when the use of police cells is conducted by the Department for Correctional Services that is done by agreement between the parties.

NATIONAL PARKS

The PRESIDENT: The Hon. Mr Hanson.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.E. HANSON (14:50): I am glad that the opposition is actually paying attention to this vital question. My question goes to the Minister for Sustainability, Environment and Conservation.

The Hon. T.A. FRANKS: Point of order: the honourable member didn't seek leave before making commentary. He simply had to ask the question. He didn't seek leave to do anything but go straight to the question.

The PRESIDENT: If the Hon. Mr Hanson would follow standing orders that would be good.

The Hon. J.E. HANSON: My question is to the Minister for Sustainability, Environment and Conservation. Will the minister inform the chamber about how the government is protecting the state's national parks and protected areas with rangers and regional staff?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:50): What an outstanding, prescient question from the new member, who has taken his seat behind me. I think it is a fantastic question. Clearly, he has been following the debate in the media this week, when the Liberal flagship policy on the environment was somehow leaked to the media. One cannot imagine how that terrible leak happened, but I think it shows the honourable member's interest in the political subterfuge on the other side, the internal ructions, the leadership challenges.

I will come back to those points in a little while but first, not to test your patience, sir, I will address some of the substantive parts of the question asked by the Hon. Mr Hanson. As members know, our system of parks and protected areas provide protection to South Australia's unique landscapes, our flora and our fauna. Our parks help to create recreation and tourism opportunities for our state. In the lead-up to the 2014 state election the state government committed $10.4 million to help ensure our state's national parks are cared for and used by our community.

In South Australia we have a whole-of-landscape approach to environmental and park management, and it has changed quite significantly over the decades in terms of how we manage our park systems. We utilise the best science, we talk to other jurisdictions about innovations they are making, and we change our practices and behaviours, so it is no surprise that the way we manage our parks today is very different from how we did it even just 20 or 30 years ago.

I think it is important to recognise that many of the critical issues do not, of course, start or stop at park boundaries. Pest plants, pest animals, endangered species, fire management all require an approach much broader than just our parks. We need to talk to the communities that live around our parks and also the communities that enjoy our parks. Consequently, we now have a regional workforce, one that delivers a more efficient and effective range of services than was previously possible. They range across a number of parks; indeed, they range across a larger area of the state than what they would normally have done 20 years ago. This has resulted in a significant increase in the number of staff looking after our outstanding national parks and protected areas.

As part of our election commitment we asked local communities—and I think more than 11,000 people participated at some level in terms of this discussion—what they wanted to see for the $10.4 million investment in parks. Five new dedicated park rangers were employed on the back of that consultation, bringing the state's total number of rangers to about 93. Of course, we also have our graduate ranger program that has been in place since 2006, with four new graduate rangers recruited into the program in 2016. Another four will be recruited in 2017.

This contrasts completely with the plans that have been elucidated this week in terms of the Liberal Party's so-called flagship, leaked party policy. It just shows the Liberal Party's complete misunderstanding when it comes to the environment; in fact, you could probably sum up the Liberal Party's environmental policy with a big lump of coal dumped on your desk in federal parliament. That is their policy on the environment, that is it, that is all they've got: 'Let's go back to coalmining. That's our environmental policy. We won't talk about any of the difficulties involved with coal generation.' Of course, they cover that up with a fig leaf of rehashing the Hon. Michelle Lensink's policy from the last election of hiring more park rangers.

When you look at the leaked details, you come to the little disclosure that in fact they are not actually going to employ anybody new, they are just going to re-badge existing staff. That's all they are going to do. They are going to get rid of administrative staff and call them rangers. Goodness gracious me, what a con job that is!

The state Liberals, just like the federal Liberals, have revealed a total lack of any serious policy for the environment. The Liberals have abandoned any pretence of a commitment to the environment with their ideological support for coal, totally beholding, totally in the pockets of the coal industry in this country. They can't squirm out of it and so they are trying to make a virtue of it by saying, 'Coal is our environmental policy.' Fantastic, just fantastic. This policy further demonstrates—

The Hon. J.M.A. Lensink: You ran Alinta out of town. How's the closure of the Port Augusta power station going for South Australia? Thanks for that.

The Hon. I.K. HUNTER: Well, again the Hon. Michelle Lensink invites me to talk about their privatisation of ETSA and another wonderful policy of the Liberals visited on South Australia, and we have seen how well that has gone for them—higher prices, no control over power in our state, at the behest of officers in Melbourne and in New South Wales. That's where South Australia's interests are now considered, under the Liberal Party policy of privatisation. Well, let's go there if you like, Hon. Michelle Lensink; there's a long, long story we can tell there.

The Australian Labor Party is absolutely committed to the protection of our state's natural resources and environment. We are home to more than 356 national parks and reserves. At the last state election, we dedicated an additional $300,000 over two years to increase our system of parks and reserves.

Since coming into government in 2002, we have proclaimed 73 new parks and made 84 additions to our parks. It is worth remembering that when we came to government in 2002 there were just 70,000 hectares of South Australia that had wilderness protection status. Now, we have more than doubled that, with the protection of about 1.8 million hectares of land. I have the very firm suspicion that if we go back and examine the records about that 70,000 hectares of wilderness that was in place when we came into government, I would hazard a bet that not one hectare of it was added into wilderness protection under the Liberal government. I think they inherited that from a previous Labor government. That's their level of commitment to the environment.

We have now the largest percentage of land area in both public and private protected areas of any Australian mainland jurisdiction—a total area around the size of the state of Victoria, I am advised. Since coming into government, we have undertaken significant reform to improve the delivery of environment services across the state, including in our national parks.

Our shift to a fully integrated whole-of-landscape approach has resulted in a significant increase in the staff looking after our environment. We have increased the numbers of staff carrying out vital work for our national parks. This includes an additional:

- 148 authorised officers—these are staff who are involved in low-level investigation of wildlife offences and they often, I am advised, issue expiation notices when required;
- 14 dedicated compliance staff. This is a highly specialised compliance unit led by a very experienced, I think, former detective, which provides high level investigation and prosecution services across the state;
- 118 staff supporting iconic commercial sites such as Cleland and Seal Bay on Kangaroo Island;
- 30 assets services staff. These staff look after the infrastructure throughout our national parks and reserves, including roads, trails and visitor centres, I am advised;
- six marine parks coordinators. These staff lead community engagement and volunteering activities, assist with research and monitoring activities, support marine protection and marine mammal interaction activities and coordinate signage and compliance activities.

None of these incredibly important people doing incredibly important jobs are even contemplated in the Liberal Party's draft 'flagship policy'. All they want to do is try to convince people that there are a certain number of rangers—and that has been decreased over a number of years—and goodness gracious, they are going to increase those rangers by getting rid of administrative staff and making them rangers—

Members interjecting:

The Hon. I.K. HUNTER: I have just listed for you what some of these administrative staff do on country. You have no idea about the work that is involved—

The Hon. J.S.L. DAWKINS: Point of order, sir: yet again we have the minister giving an eight minute answer to a Dorothy Dixer and taking up the time of the council. I ask you to conclude his answer.

The PRESIDENT: Will the minister, after eight minutes, finally come to some sort of finality for that answer.

The Hon. I.K. HUNTER: Well, Mr President, had they asked me this question, I could have given them a much longer answer myself—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: —but, of course, Mr President, I abide by your counsel. We have the Hon. Terry Stephens saying, 'Administrative staff, sack them, sack them. Paper pushers.'

The Hon. K.J. Maher: That worked well last time, 30,000 of them.

The Hon. I.K. HUNTER: That's right. That was their last promise: 'Sack public servants.' Even though I have just—

The Hon. T.J. STEPHENS: Point of order, Mr President.

The PRESIDENT: Point of order.

Members interjecting:

The PRESIDENT: Order! The member is on his feet.

The Hon. T.J. STEPHENS: At no point did I mention the word 'sack'; I said 'Paper shufflers, transfer them into being rangers,' so don't lie.

Members interjecting:

The PRESIDENT: Order! Will the honourable Leader of the Government please desist. Allow the minister to continue.

The Hon. I.K. HUNTER: The Liberal's secret agenda to sack public servants exposed once again. Out of their very own mouths in this place, the Hon. Terry Stephens has belled the cat. Thank you, Terry.

The Hon. T.J. STEPHENS: Point of order.

The PRESIDENT: Point of order.

The Hon. T.J. STEPHENS: I ask the President to get the minister to withdraw. At no point did I say anything like that, and he can stop lying to the chamber.

Members interjecting:

The PRESIDENT: Order! Unfortunately, I didn't hear what was said—

The Hon. T.J. Stephens: Well, try *Hansard*.

Members interjecting:

The PRESIDENT: Now listen, I think it is important that you treat each other civilly, and I will look at *Hansard* tomorrow and see what they have printed and if it doesn't say what he said I will bring it to the attention of the chamber. Minister.

The Hon. I.K. HUNTER: Thank you, Mr President. And thank you, the Hon. Mr Terry Stephens, for belling the cat about your secret plans to sack public servants.

The Hon. T.J. Stephens interjecting:

The Hon. I.K. HUNTER: We have significantly increased our prescribed burning program. Hansard are not required to take down that interjection from the Hon. Mr Stephens—you can if you like. Before we came to government in 2002, there was no prescribed burning program at all, none, nothing, the Liberals had no commitment to that either. Not only has this government created the

program, we have also grown the program, more and more each and every year. Since 2003, we have more than quadrupled DEWNR's budget for conducting prescribed burning, more than doubled DEWNR's budget for training firefighters and more than doubled the number of DEWNR brigade members. The 2016-17—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: The 2016-17 operating budget employs 144 specialist fire management staff, including 72 seasonal project firefighters who are employed for nine months of the year over the fire danger season to assist with prescribed burning and bushfire response activities. More people that the Liberals want to rebadge or sack, more people.

The Hon. J.S.L. DAWKINS: Point of order, sir.

The PRESIDENT: Point of order.

The Hon. J.S.L. DAWKINS: I ask you to ask the minister to conclude his answer because he has now been 11½ minutes on this answer to a question that was obviously written in his own department because the member asking the question did not even have it when he started.

The PRESIDENT: How the minister concludes or finalises his answer really is one for him, but I do ask to the minister to remember that there are a number of crossbenchers who are down here for questions, if you could please come to a conclusion—

The Hon. D.W. Ridgway: This chamber's not your own private play thing.

The PRESIDENT: —without interjection. The honourable minister.

The Hon. I.K. HUNTER: We have hundreds of staff working in our national parks, our conservation parks, our recreation parks, our reserves and our marine parks. The Liberal Party's only plan for the environment is to employ 20 more rangers by sacking administrative staff, so called, regardless of what work those administrative staff do. Are they going to sack compliance officers? Are they going to sack the specialist firefighter administrative staff and rebadge them as rangers?

That is their plan because they are not going to actually appropriate any more, that is what it says in this leaked document. I am sure had the document not been leaked, they would have redacted that part because it exposes their plan completely. This is a very old way of thinking about parks. Parks should be managed in a fully integrated, whole-of-landscape approach. The state Liberals do not understand what is needed for good park management. They do not understand there are hundreds of staff in our regions. They do not understand we have hundreds of staff in our regions working in our parks.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.S.L. Dawkins: Sit him down.

The PRESIDENT: I will not sit him down. He will answer the question the way he sees fit. I have asked him to come to a conclusion. It is up to the minister now to come to a conclusion. Minister.

The Hon. I.K. HUNTER: Absolutely, Mr President. I will finish on this point. The leaking of Liberal Party flagship policy, which frankly doesn't achieve a single bit of environmental good or outcome for our state because it doesn't understand how modern park management works, is a symptom of this new stoush where they want to try to get rid of the Hon. Steven Marshall, member for Dunstan, the Leader of the Opposition—'Downer SA push fails to fire again':

With the next election scheduled for March 2018, sources have told *The Australian Financial Review*—

The PRESIDENT: Minister, really that has nothing to do with the answer.

The Hon. I.K. HUNTER: It has everything to do with it, Mr President, everything to do with it.

Members interjecting:

The PRESIDENT: It has nothing to do with it.

Members interjecting:

The PRESIDENT: Order, order! I think it is important you have conclusion.

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: Because this leaked policy document is a symptom of Liberal disarray, Mr President.

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: Liberal disarray. They are divided, they have no idea about leadership and they are trying to dump Steven Marshall eight, 12, 15 months out from an election campaign. It failed in November, 15 months out, and they are trying again.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Brokenshire.

Members interjecting:

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

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Brokenshire.

LOW-FLOW BYPASS SYSTEMS

The Hon. R.L. BROKENSHIRE (15:06): I seek leave to make a brief explanation before asking the Minister for Water, Climate Change and Sustainability a real question.

Members interjecting:

The PRESIDENT: Proceed with your question.

The Hon. R.L. BROKENSHIRE: Thank you, sir. Media reports indicate that, notwithstanding extensive criticism that the minister has had about the lack of commonwealth money coming across to South Australia for improvements to water flow in the Murray-Darling Basin system, and particularly with respect to the Lower Lakes, the minister, on behalf of taxpayers of South Australia, is receiving several million dollars for low-flow bypass infrastructure. In the report it says that this was due to lobbying by both the minister and the Nick Xenophon Team. My questions to the minister are:

1. Was it the Nick Xenophon Team that led the way or was it the minister who led the way in lobbying for this money for these low-flow bypass infrastructure projects?

2. Will these low-flow bypass infrastructure projects be compulsory or will they be voluntary?

3. How does the minister intend to get started with low-flow bypass projects now that, I am advised, he has money available?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:07): I thank the honourable member for fantastically excellent questions. I could not have written them better myself. So, I thank the Hon. Mr Brokenshire for the ability to stand up again and talk a little bit about some of the great work that we are doing with the commonwealth, with local communities, with the NRM board and with other political players, who want to learn more about low-flow bypasses. I have spoken in this chamber several times previously about this.

I had a visit, not that long ago, from the member for Mayo, Rebekha Sharkie, who wanted to talk to me about low-flow bypasses in the Adelaide Hills. Just to recap, to refresh people's memory, we are essentially talking about an ability to make sure there is continuous flow down creek systems

in hilly regions where there may be dams up and down that tributary or that system. Currently, as the situation sits, particularly with turkey nest dams and dams on creeks, for example, nobody, not the environment, not the farmer next door and not the farmer downstream, actually gets any benefit of the rainfall until the first dam at the top of the catchment fills up.

That is problematic for a whole lot of reasons. It is not good in terms of agricultural practice, it is not good for good neighbourly relationships and it is not good for the ecological sustainment of that creek system. Hence, discussion about low-flow bypasses, which are technical devices to allow some water to bypass that dam at the very top of the system for sustainment of the ecological health of the creek system, but also to allow water to trickle down into other farmers' dams further down so that they get to see some of the benefits of those early rains. It's about fairness, it's about better ecological outcomes and it's about a better way of being involved in farming practices on these steep slopes. So, that's to recap, that's a brief history.

You will recall that I advised the council, probably 18 months ago or maybe a bit longer, about an international competition that the Adelaide Mount and Mount Lofty Ranges NRM board launched in terms of designing low-flow bypasses. They went out to the world and got a great response. I don't have in my head the number of people who responded, but they responded internationally as well as locally and interstate. Some of them were incredibly technical, incredibly expensive highly engineered structures, while others were incredibly simple and amounted to a piece of poly pipe and some flow mechanism and were incredibly cheap to purchase and operate.

Arising from these fantastic technical solutions, we have now approached the federal government for some funding to go into a design phase and a trial phase. I understand that we are talking with landowners in Carrickalinga at the minute and establishing a cooperative relationship to test some of these products at Carrickalinga with the support of the local community and the local farmers.

That, as I understand it, is what the funding we have received from the federal government is about. It's to allow the director of the NRM board to test some of these devices to see whether you get the best, optimal outcome by having devices on every dam, or whether you only need to do it on a few key points in the stream system, or whether, in fact, they are key dams that need to be part of the process while others don't have to be.

Again, it's about better environmental outcomes for the water system, better agricultural and water outcomes for neighbouring farmers, and hopefully it will be something that will be embraced by the local community. Certainly, we are doing it with the cooperation of landholders in Carrickalinga, as I understand it. I offered the Hon. Rebekha Sharkie a briefing on this with officers at Carrickalinga. If the Hon. Robert Brokenshire wants to participate in this—I understand that's down your neck of the woods so perhaps I can let you know about the date.

The Hon. R.L. Brokenshire interjecting:

The Hon. I.K. HUNTER: Yes, indeed, I can let you know the date we are setting up for Rebekha Sharkie. You might want to bunk in with us and have a look at what we're doing at Carrickalinga.

LOW-FLOW BYPASS SYSTEMS

The Hon. R.L. BROKENSHIRE (15:11): Supplementary question relevant to the minister's answer and also relevant to the media report, where the report said that both the minister and the NX Team had been lobbying for these low-flow bypasses: can the minister confirm at this meeting with the member for Mayo whether the member for Mayo supported the concept of low-flow bypasses?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:12): Thank you for the supplementary question. I may, in fact, not answer that. I think discussions I have with MPs should remain between me and them. I am sure you would want me to apply the same rules when we discuss matters.

As I indicated, she was very interested in the issue and was very keen to receive a briefing on country down at Carrickalinga. As I said to the honourable member, he is very welcome to join us if we can get the dates to line up in all of our diaries. I think the low-flow bypass is an excellent example of how we can work together with the federal government, local landowners and local NRM boards to get a fantastic outcome for our state, our community, our farmers and our environment.

TASSONE, MR B.

The Hon. J.S. LEE (15:13): My question is directed the Minister for Correctional Services, without explanation. Minister, can you advise whether Mr Bruno Tassone had any property or assets at the time of his offending or conviction, and, if so, can the minister advise whether SAPOL applied the criminal assets confiscation legislation and facilitated the process for the restraint and/or forfeiture of those assets to ensure that Mr Tassone did not profit from any criminal offences he committed?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:14): I thank the honourable member for her question. As I stated earlier in the week, it is less than desirable to see the outcome of Mr Tassone's matter, with the allocation of approximately $49,000 going his way through a commercial settlement of his respective claim against the state. However, as I have previously stated, we are now working assiduously and diligently to ensure, as best as possible, that none of the funds that have been awarded to Mr Tassone end up in his hands and, indeed, rather end up in the hands of the substantial list of victims that potentially exist as a result of his acts in the past, many of which are rather heinous.

In respect to the question from the Hon Ms Lee regarding the level of assets that Mr Tassone had at his disposal at the point of his conviction, I am more than happy to take that question on notice and get the detail for her.

ABORIGINAL LANGUAGE INTERPRETERS AND TRANSLATORS

The Hon. T.A. FRANKS (15:15): I seek leave to make a brief explanation before directing a question to the Minister for Aboriginal Affairs and Reconciliation on the topic of Indigenous language interpreter shortages.

Leave granted.

The Hon. T.A. FRANKS: As members would no doubt be aware, and I'm sure the minister is, it has been reported recently in the media that some Aboriginal people are being kept in custody for longer than required because of a lack of interpreters in South Australia and that legal groups, including the ALRM, have stated that there has been a significant rise specifically of Anangu Pitjantjatjara men and women entering the prison system in recent years. Ms Axelby has stated that we are also seeing an increase of children being removed and parents not being supported with interpreters through the investigation and assessment phase.

As Tony Rossi of the Law Society has stated, you cannot have justice without the person understanding what is going on. That is why Indigenous interpreter services have been highlighted in recommendations by the Royal Commission into Aboriginal Deaths in Custody, the Mullighan Children on Anangu Pitjantjatjara Yankunytjatjara Lands Commission of Inquiry, the Justice Nyland Child Protection Systems Royal Commission and, indeed, repeated calls from the sector in general.

Noting that, in 2014, the governance of policy framework of the South Australian policy framework of Aboriginal languages interpreters and translators states that Aboriginal affairs and reconciliation will have oversight of the policy framework and that implementation issues and progress reporting will be tabled for discussion at the senior officers group on Aboriginal affairs, which in turn will escalate significant issues to the chief executive's group on Aboriginal affairs as necessary, can the minister indicate whether Aboriginal Affairs and Reconciliation, or any other government departmental bodies, have tabled any implementation issues for discussion at these levels in the past 12 months? If so, what action has been taken? Can the minister also inform us of any other action that has been taken?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:17): I thank the honourable

member for her question and her interest in these areas. I note that there have been recent reports. Some of the difficulties faced by people gaining interpreters are to do with the availability of interpreters, but there are also cultural reasons that do make it difficult and add complexity to finding interpreters. I'm not going to go into particular cases but there are complexities that don't only relate to the number of interpreters available, but that certainly is a legitimate concern to be raising.

In terms of what has been tabled at a senior officers group, I'm not sure but I will take that away and check what has been tabled. I do know that there are efforts underway, particularly with the state government working with the commonwealth and the Northern Territory government on interpreter services, particularly in the Pitjantjatjara Yankunytjatjara languages that span both the NT, SA and also some of WA. I know that there is work that is being done specifically with the Northern Territory government to train and attract more interpreters and also programs that are being delivered for public sector people facilitating training with staff that work in the sorts of areas that the honourable member has mentioned.

I know, also, that in various areas of government, whether they be corrections or justice or through the Courts Administration Authority, those areas use interpreters on, generally, a fee-for-service basis when it is needed, but attracting enough people who are able to provide those services is an ongoing challenge and it is one that, as I said, we are working with the commonwealth and the Northern Territory on. In terms of specific reports, I am happy to bring back an answer to that.

AUSTRALIA DAY HONOURS

The Hon. T.T. NGO (15:19): My question is to the Minister for Police and Emergency Services. Can the minister tell the council about the exceptional contributions of members of our police and emergency services sector who were recently awarded Australia Day honours?

Members interjecting:

The PRESIDENT: We don't want to interrupt their conversation, do we?

The Hon. D.W. Ridgway: Has he finished his question? This is a joke. It's like bloody kindergarten with you in control.

The PRESIDENT: You've got to be joking. I will just bring your attention to the fact that the Hon. Mr Dawkins crossed the floor while there was a question being asked, to talk to the honourable leader. You then interrupted and then—

The Hon. D.W. Ridgway: Because I couldn't hear anything.

The PRESIDENT: Well, that is fine.

Members interjecting:

The PRESIDENT: You stand up and ask for a point of order or something; don't just complain. The Hon. Mr Ngo, will you ask that question again.

An honourable member: Time is up.

The PRESIDENT: No, he was on his feet.

The Hon. T.T. NGO: My question is to the Minister for Police and Emergency Services. Can the minister tell the council about the exceptional contributions of members of our police and emergency services sector who were recently awarded Australia Day honours?

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (15:21): I thank the honourable member for his important question and having the opportunity to answer it. This is an outstanding example of the fine work that is being conducted within our police and emergency services sector. As members would no doubt be aware, Australia Day is a significant time of the year when it comes to reflecting on and recognising those within our communities who make extraordinary contributions to our great way of life.

As both the Minister for Police and Emergency Services, I am privileged to have been able to and continue to be able to work within my portfolio responsibilities with some of the hardest

working, most talented and dedicated individuals in our state. Whether it be the unsung stories of our police officers going above and beyond the call of duty, as well as their tireless and selfless dedication to keeping their community safe, or our emergency services volunteers and paid staff, I never cease to be amazed at the spirit and goodwill of our sector as a whole.

Through the awarding of the Australian Police Medal, the Australian Fire Service Medal and the Emergency Services Medal, Australia Day is a fitting opportunity to recognise exceptional service to the community above and beyond what might normally be required or reasonably expected. It gives me great pleasure to, firstly, speak about the Australian Police Medal winners for distinguished service. One such worthy winner was Senior Sergeant Trudy Andresen. Senior Sergeant Andresen has been a member of SAPOL for more than 36 years. She has demonstrated an unquestioned commitment to the South Australian community that has resulted in her receipt of this honour.

From roles in the development, facilitation and delivery of promotional programs for senior constable, sergeant and inspector courses, Senior Sergeant Andresen has demonstrated her skill as a trainer and as a role model to the course participants and supervisors. Senior Sergeant Andresen's commitment and leadership were evident in the work she undertook to deliver and implement the organisation-wide delivery of SAPOL's Shield Program. Senior Sergeant Andresen's Australian Police Medal reflects her commitment to ensuring that all front-line staff are trained to undertake their duties to keep South Australians safe.

Another worthy recipient was Senior Sergeant First Class Grant Garritty, marking his service and dedication to SAPOL for nearly 40 years. Remarkably, 33 of those years were spent in investigations, an achievement that very few can equal. Senior Sergeant First Class Garritty was a key driver of organisational reform regarding the responsible and ethical management of criminal informers. He authored and managed an operation applying a joint agency response to the importation of illicit drugs and precursors across Australian borders via post.

This initiative received national acclaim, resulting in it being adopted by other jurisdictions. Senior Sergeant First Class Garritty's innovative thinking, coupled with his drive and foresight, has been critical in the successful implementation and sustained success against serious and organised crime.

Last but not least, the third recipient of the Australian Police Medal is Senior Sergeant First Class Manfred Wojtasik. The senior sergeant first class gets this award for his dedicated service to SAPOL for the better part of 42 years. The career of the senior sergeant first class commenced in general patrols before entering police prosecutions in 1980.

His commitment and focus in the prosecutions unit is unparalleled, and his management with external stakeholders within the justice system, particularly in the juvenile justice arena, has been underpinned by professionalism. The senior sergeant first class is held in extremely high regard by colleagues and the broader legal fraternity, and resulted in his renowned reputation as a fierce courtroom adversary.

In the emergency services sector we had three recipients of the Emergency Services Medal, while four were recognised for their service as recipients of the Australian Fire Service Medal. Notably, for the first time two of the recipients of the Emergency Services Medal came from Surf Life Saving South Australia.

First, Mr John Baker, President of Surf Life Saving SA, received the Emergency Services Medal for his close to 40 years of service at all levels, including state president, board member and competitor and volunteer lifesaver with the Brighton Surf Life Saving Club and the Westpac Lifesaver Rescue Helicopter. Also from Surf Life Saving SA, Mr Shane Daw boasted 40 years of service, including thousands of volunteer hours, involvement with emergency service operations as a member of the Rescue Water Craft Group and Westpac Lifesaver Rescue Helicopter crew.

Emergency Services Medal recipient from the SES, Mr Michael Fix, demonstrated dedicated service to both the SES and CFS, including his role as unit manager of the Strathalbyn SES unit. Recipient of the Australian Fire Service Medal, Mr Corey Dunn, showed a strong commitment to encouraging the ongoing personal and professional development of others through his service to training and curriculum development within the CFS. He was also recognised for his role as principal air attack supervisor during the Wangary fire in 2005.

Mr Robert Davis was also awarded the Australian Fire Service Medal for the extraordinary commitment he has made to the CFS through more than 50 years of service, which was highlighted by having an instrumental role in the formation of the logistics brigade, as well as service as the zone supervisor for the Mount Gambier Fire Fighting Association, and service during the 1983 Ash Wednesday bushfires.

From the MFS, Mr Glenn Benham was awarded the Australian Fire Service Medal for his service to the MFS sustainable development program with the Kingdom of Tonga Fire and Emergency Service, which has seen the MFS deliver much needed appliances and protective equipment, as well as training for its members.

Finally, from the MFS, Mr Allan Voigt was awarded the Australian Fire Service Medal for his 38 years of service, his work in managing the Loxton retained fire station, his commitment to charitable actions through the Shake the Boot initiative and, in particular, his actions to rescue a person from a burning vehicle, which also saw him awarded the MFS special mention for bravery.

I congratulate all these very worthy Australian Police Medal, Emergency Services Medal and Australian Fire Service Medal winners and thank them for their continued effort and dedication to the South Australian community.

Bills

STATUTES AMENDMENT AND REPEAL (SIMPLIFY) BILL

Committee Stage

In committee.

Clause 1.

The Hon. A.L. McLACHLAN: Just to set out the Liberal Party position, I indicated in my second reading that the Liberal Party may have more amendments other than those filed by the Hon. David Ridgway. In regard to summing up the second reading and further consideration of the bill, those amendments filed by the Hon. David Ridgway at clause 57 will be the only amendments moved by the Liberal opposition.

The Hon. K.J. MAHER: I rise to indicate that the government supports these amendments. These amendments aim to ensure that the fishery licence or permit—that is, the authority—is only cancelled after the minister has made a reasonable attempt to give notice of any intention of cancellation to those who are registered and have an interest in that authority. I have been advised that before cancelling an authority, acting on behalf of the minister, Primary Industries and Regions SA staff make significant attempts to contact the authority holder to remedy the default.

Over the four or five months leading to suspension, the holder would have received two invoice reminders, two SMS alerts if they have registered for the free service, and two notices of default that contain suspension warnings. Normally, the licensing team also makes courtesy calls, and I understand that the current practice of locating absent authority holders includes contacting persons with an interest in the authority. We are happy to support these amendments that have been moved by the Hon. David Ridgway to achieve a positive outcome for the community. They will provide stronger protection for authority holders as well as third parties who have an interest in the authority, and I thank the Hon. David Ridgway for moving those amendments.

The CHAIR: No-one has moved anything at the moment. We are still on clause 1.

Clause passed.

Clauses 2 to 20 passed.

Clause 21.

The Hon. M.C. PARNELL: Clauses 21 through to 35 constitute part 6 of the bill, and that involves amendments to the Crown Land Management Act 2009. I would like to put on the record my thanks to the government officials who took the trouble to brief me, not once but twice. I also have some written material that I want to put on the record.

In relation to the Crown Land Management Act, my original concern was that despite the name of the bill, and the object of the bill being to simplify red tape, it struck me that it might be beyond a mere coincidence that the Crown Land Management Act was being amended at the same time that the commonwealth government was seeking to impose an intermediate and low-level nuclear waste dump on crown land in South Australia, and so I sought assurances from the department that there was nothing in this legislation that impacted on that decision.

Members might recall that I have twice asked minister Hunter, as the minister responsible for crown lands, what conversations he or his department have had with the federal government over the potential use of crown land for this facility. The answer has come back twice that, at the time I asked them, there had been no conversations and no discussions. I just want to very quickly put on the record a written response that I received from the department in response to my question about whether the changes in this bill had any impact on this question of a nuclear waste dump on crown land. The government's response was:

> We concur with Mr Parnell's observation of the practical implications of the Commonwealth National Radioactive Waste Management Act 2012 which allows a lessee of crown land to nominate the land for the purposes of a low-level medical radioactive waste management site. The difficulty in applying the Commonwealth Act comes about when a perpetual pastoral lease holder wishes to nominate crown land as a potential site; under the Crown Land Management Act 2009, a perpetual lease holder must seek the permission of the Minister for Sustainability, Environment and Conservation to excise any part of the land for such a purpose or to use any part of the land. The commonwealth legislation has only specified land granted by or on behalf of the Crown and does not acknowledge in law the obligations upon lessees for the use of crown land, current or future, nor does it discern between differing arrangements for land granted by or on behalf of the Crown. In this regard there is no mention in the commonwealth legislation of the role of the state and territory ministers responsible for crown land and appears to allow leaseholders to nominate directly to the commonwealth without any regard to the ministers of crown land in the appropriateness of the land as a radioactive waste storage site. As such there appears to be untested uncertainty about how the respective legislation, commonwealth or state, applies, when it applies and in what way.

So, I have added more mud to the water with that response. Basically, what the government is saying is that they do not really know what it means for the effective owner of the land, being the minister, not having been consulted about whether the land is going to potentially be used for a purpose that the act does not allow and for which permission has not been given.

I just want to put that answer on the record. I think that is important. I will not read the rest of it, but it went on to say that the bulk of the provisions in the Crown Land Management Act are in fact routine, they are red tape reduction. As a consequence, I will be supporting those provisions in the bill as they stand. I did want to put on the record the material I was provided.

The Hon. P. MALINAUSKAS: I thank the member for his contribution. I know the issues he has agitated here are important to him, but they do not impact on or relate to the amendments at hand.

Clause passed.

Clauses 22 to 56 passed.

Clause 57.

The Hon. D.W. RIDGWAY: I move:

Amendment No 1 [Ridgway–1]—

Page 23, line 4 [clause 57, inserted subsection (7a)]—Delete 'If' and substitute:

Subject to subsection (7b), if

Amendment No 2 [Ridgway–1]—

Page 23, after line 11—After inserted subsection (7a) insert:

(7b) The Minister must, before cancelling an authority under subsection (7a), make a reasonable attempt to give notice of the Minister's intention to cancel the authority to any person noted on the register of authorities as having an interest in the authority.

These amendments came from the consultation the opposition did when we received a copy of the simplify bill. I think all the various shadow ministers took responsibility to circulate the areas that related to them, and I sent it out quite broadly and got quite a deal of feedback.

This particular issue was raised by one of the banks around fishing licences and third-party interests in those licences. Before the minister cancels a fishing licence I think he or she is required to take all reasonable steps to find the owner of that licence or the licensee. The view was that if someone was a genuine, registered third-party interest in that—whether that be a bank or even another family member, or someone who has lent them money, a friend, or whoever that third-party interest might be—the minister should make every effort, take reasonable steps to find anyone who has a third-party interest in the licence.

The government dropped the bill in, and often the opposition, through the consultation process, does find things that have been overlooked or were not seen in the first place, so we are very happy that the government is prepared to support the amendments. I think the bill is better for it, and I commend the amendments to the chamber.

Amendments carried; clause as amended passed.

The PRESIDENT: The Hon. Mr McLachlan mentioned more amendments.

The Hon. A.L. McLACHLAN: Whilst I indicated in my second reading that there might be more amendments, there are not.

The Hon. M.C. PARNELL: Whilst other members might have contributions before mine, for example the pressing issue of the Mount Gambier Hospital Hydrotherapy Pool Fund Act, my next contribution is at clause 93.

Clauses 58 to 92 passed.

Clause 93.

The Hon. M.C. PARNELL: Clause 93 is an amendment to the National Parks and Wildlife Act. This amendment effectively does away with the 10-yearly reviews of regional reserves. Again, I thank the government for providing me with a briefing and also a written response to some questions that I asked. I want to put three very short paragraphs on the record, and I have a number of questions to ask as well. The reason the government has given for removing this 10-yearly review provision includes the following:

> The preparation of the 10 yearly report does not require any public consultation and there is no requirement to implement the recommendations of a report. On the other hand, park management plans required under section 38 of the Act are statutory documents that are developed in partnership with communities and include recommendations that direct and guide the management of parks, including resource use on regional reserves.
>
> The Department has advised that the preparation of a 10 yearly report has not been found to be an effective tool in evaluating and mitigating impacts associated with resource use in protected areas. The reports are not subject to public consultation and do not compel government agencies to act, and given their infrequency are not considered a responsive mechanism for dealing with any land use issues as they emerge.
>
> It is considered that removal of this section of the Act will simplify the planning and management of regional reserves by ensuring that government resources can be directed towards working with community in preparing management plans for the reserves, and also managing impacts through existing mechanisms.

There are a lot of words there, but effectively the government is saying that they did not like doing them, they did not like the resources that they took, and they did not find them to be very useful anyway because no-one was obliged to have regard to the responses.

My response to that sort of approach is to say that you have effectively chosen to devalue those reports. They could have been an important tool for the proper management of these parks, yet the department has chosen for them not to be. My first question is: what resources have been devoted to preparing these 10-yearly reviews?

The Hon. K.J. MAHER: I thank the honourable member for his question. This bill covers a very wide range of areas and a lot of acts that are being simplified. We do not have the exact answer to that question here. If the honourable member has a suite of questions, I can undertake to bring those answers back, if he is happy to do it that way.

The Hon. M.C. PARNELL: I appreciate the position the minister is in. There are 38 acts of parliament being amended in this bill, so I appreciate that it is a difficult position to be on top of all of them. I am happy to take the minister's assurance to come back with an answer. I guess the

frustration that I find with this is that so many of our National Parks and Wildlife Act reserves do not have management plans.

The act states that there shall be a management plan for all of these parks. I do not have the exact figure—and the minister might take this one on notice as well—but a large number of them actually do not have a management plan at all. That might not cause a lot of grief on the ground in terms of some remote parks that have very low levels of visitation and areas that might pretty much be left to their own devices and do not have a great deal of intervention, but there are other parks where it would have been incredibly useful to have had a management plan.

For example, Granite Island has been the subject of a number of controversial proposals about what is to be done there. They are going to reopen the cafe, I think. The Swim with the Tuna people got permission through the court to develop off the island. Those of us looking at what planning rules should have been around that proposal know that the National Parks and Wildlife Act management plans are incorporated by reference into the Development Act. So, it would have been a really useful guide to know what types of development were appropriate or inappropriate in that location.

I guess all I am really doing is calling out the government's claim that they think they are wasting time doing these 10-yearly reports. I do not think they have spent much time on them at all; that is my gut feeling. The government says they want to put those resources into providing proper management plans for the remainder of our national parks. I do not reckon they are doing that either because if you go online you can see that so many of our national parks do not have management plans.

I will give the minister these questions to take on notice. The first one I have just asked was: what resources have been put into these 10-yearly reviews? Secondly, what resources does the minister expect will be freed up to put into preparing management plans for other National Parks and Wildlife Act reserves? Thirdly, how many National Parks and Wildlife Act reserves still do not have management plans? Fourthly, which of those parks have management plans in progress or underway or anticipated? Finally, at what point does the government expect that all of our National Parks and Wildlife Act reserves will have management plans in place?

I am happy to wait for those answers at a later date—not too long, I hope—but I do not need it to prevent the passage of this bill. What I will say, though, is that having consulted with conservation groups, the Conservation Council, the Wilderness Society, the Environmental Defenders Office, they are not convinced that removing these 10-yearly reviews of regional reserves is a valid red tape reduction measure. They would like to see the ability for the government to, at least every 10 years, go back and review what is happening in these important parks. They have asked me if I can oppose this clause, which I will. I am not going to divide on it.

The other thing that I would say, and I was tempted during question time to ask a supplementary question when minister Hunter was explaining the importance of our national parks, but having gone 13 minutes already, I think it was, I did not want to incur the wrath of the honourable John Dawkins in prolonging the minister's explanation of parks. The question I would have asked, and the question I will ask the minister now, is that these regional reserves—they used to be called Clayton's parks, you know, the park you have when you are not having a park, because they are open to mining; they are mining and grazing parks, they are not just parks for conservation.

My question of the minister was going to be: is it still the case that 75 per cent of terrestrial National Parks and Wildlife Act reserves are open for mining? That was the case many years ago. Is that still the case? Three-quarters of our National Parks and Wildlife Act reserves are open for mining and, as a consequence, is it still the case that less than 5 per cent of the area of South Australia is off limits to mining? I will leave the minister with those final two questions.

The Hon. K.J. MAHER: I will put on the record that I appreciate the questions, and for the benefit of the record and all those who are here and in the department, I will seek those answers and bring them back as quickly as I possibly can for the honourable member.

Clause passed.

Remaining clauses (94 to 146) and title passed.

Bill reported with amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:49): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (ELECTRICITY AND GAS) BILL

Committee Stage

In committee.

Clauses 1 to 10 passed.

Clause 11.

The Hon. R.I. LUCAS: I move:

Amendment No 1 [Lucas–1]—

Page 7, lines 10 to 32—Delete the clause and substitute:

11—Amendment of section 48—Entry for purposes related to infrastructure

(1) Section 48—after subsection (2) insert:

(2a) Despite subsection (2), an electricity officer may exercise a power of entry referred to in that subsection without giving notice in accordance with subsection (2) in relation to electricity infrastructure situated on land that is in the area of a council and in the bushfire risk area if—

(a) the purpose of the entry is to conduct an inspection of the infrastructure; and

(b) at least 2 months before the inspection, the electricity entity published a prescribed notice—

(i) in a newspaper circulating throughout the State; and

(ii) in a newspaper circulating within the area of the council; and

(iii) on public radio broadcast services operated by at least 2 radio broadcast service providers who broadcast within the area of the council; and

(c) the inspection is conducted during the period specified in the prescribed notice.

(2) Section 48—after subsection (7) insert:

(8) In this section—

prescribed notice, in relation to an inspection of electricity infrastructure by an electricity entity in the area of a council, means a notice that specifies the period (of up to 2 weeks) during which the entity proposes to inspect its infrastructure in the area.

On behalf of the Liberal Party I move the amendment standing in my name. As I outlined briefly—it seems to be months ago now; I can't remember how long ago this was—the background to this is that the shadow minister, Mr Dan van Holst Pellekaan, spoke at length in the debate in the House of Assembly. To put it as simply as possible, this particular amendment that he has drafted on behalf of the Liberal Party relates to the entry to private land for purposes related to infrastructure.

The Electricity Act 1996 currently permits authorised officers to enter private land to inspect its electricity infrastructure, but must give reasonable written notice to the occupier stating the reasons, date and time of the proposed entry. Clause 11 of the government's bill proposes to allow authorised officers to enter private properties for the purpose of inspection of electricity infrastructure with no notice in areas prescribed as bushfire zones.

When this issue was debated in our party room, a large number of members, in particular those who represent rural and regional electorates in South Australia, expressed strong concern on behalf of their constituents at the government's intentions in relation to this particular provision. That is, that these authorised officers could just enter private properties without any notice at all in relation to the work they needed to undertake, and which everyone acknowledges needs to be undertaken.

The amendments the member for Stuart has drafted on behalf of the Liberal Party include the following provisions: that at least two months before the inspection, the electricity entity publish: one, in a newspaper circulating throughout the state; two, in a newspaper circulating within the area of the council; and three, on public radio broadcast services operated by at least two radio broadcast service providers who broadcast within the area of the council.

The member for Stuart is aware that SA Power Networks and others are opposed to these particular provisions. Speaking on behalf of, in particular, rural and regional members who represent rural and regional electorates in South Australia and rural and regional constituents in South Australia, they believe that it is not an unreasonable provision that there should be some notice given prior to authorised officers entering private land. That is the current arrangement.

The Liberal Party's position has been to try to seek some degree of compromise on this; that is, not to go back to the old position, but to at least seek some compromise by requiring some form of notification beforehand. However, as I understand it—and the government can speak for itself—the member for Stuart has advised me that the government and SA Power Networks do not support the compromised position that has been put.

In moving the amendment in my name, I would urge crossbench members of the Legislative Council to support this particular amendment to allow, at the very least anyway, further consideration and discussion with the government in relation to what rural and regional members of the House of Assembly and the Legislative Council believe is an important issue in this particular bill.

The Hon. R.L. BROKENSHIRE: I know I am jumping in before the honourable minister, and I generally would be very courteous and not do that, but on this occasion I am jumping in. I want to advise the council that Family First has spent quite a bit of time looking at this particular amendment and on this occasion we will be supporting the opposition with this particular amendment. The reason is that, as the Hon. Rob Lucas correctly pointed out, this mainly affects rural and regional property owners, more so than it does city folk, because there are, obviously, vast expanses of powerlines that run through rural and regional properties.

We strongly support, as I am sure everyone in this state would, the right for SA Power Networks or anybody else—ElectraNet or whoever it may be—to enter without notice when there is an emergency such as a bushfire or a powerline down or, as we have seen in recent times, a whole major power grid down. Clearly, that is an emergency and we must always give all services relevant to that emergency immediate access without notification warrants or anything like that.

It is interesting to look at SA Power Network's subcontractors, Activ. Activ has quite a lucrative contract, I think, smashing beautiful trees down to the point where those trees cannot grow anymore, on many occasions. One thing that Activ does, whilst they might go in there and their chainsaws are very vigorous, is to go in there after giving notice to the property owner. That is notwithstanding the fact that at law they go in there under the same provision as SA Power Networks or ElectraNet.

There are often easements, not always, registered on titles for the purpose of the construction, maintenance and carriage of those particular lines. If Activ can give primary producers and landholders notice before they go onto the property, then why should not SA Power Networks or ElectraNet do that? For a start, when they are just checking lines, a lot of the time they do it by helicopter these days, so they are actually up in the air with special binoculars, looking at the insulators.

On other occasions, when SA Power Networks go around, they can see a lot of the powerlines from the road with special binoculars, and I see them around our own farm, using those to pick up whether there is a fault in that insulator. However, at times they have to come onto the property, not just for inspection, but for maintenance and replacement. If it is maintenance and replacement and not urgent repair, they are going to spend some time preparing, believe you me.

Most of the time, in the rural and regional depots, they are only going to have limited replacement equipment and they have to order those transformers in, in any case.

A farmer may have stock in that paddock, it might be a fairly significantly-sized paddock, and if he or she does not know that SA Power Networks or ElectraNet are entering the property, then it may well be that that person leaves the gate open because they do not see the stock because they are over the hill, and then the next minute the farmer has got a problem because his stock are out.

Or it may well be that in that paddock, on the other side of the hill, the farmer is spraying and he may not want to have anyone actually accessing that back paddock while he is spraying. They are just two reasons; I can think of many others. It may be that it is in the middle of the highest part of the bushfire danger season and he does not actually want vehicles entering there at certain hours. If he or she is notified, they can then negotiate with SA Power Networks or ElectraNet to say when they come in and that they do not want them in there on a high fire danger risk day.

So, I actually think that this is a sensible and fair amendment, and it is one that also starts to address the situation many members of parliament have had many complaints about, which is the way the NRM go about their business, enter properties and do inspections and things without warrants, without notification and without identification at times, allegedly. It is time the parliament actually sent a message to these agencies, be them government or non-government, that we are not going to let them ride roughshod over our constituents simply because they, for expediency, do not want spend a little bit of time notifying.

Between houses, if the government wants to tweak the opposition's amendment as to how the notification occurs, or something like that, then we would be prepared to listen to that debate, but the essential intent of this amendment is one that I believe does have merit, and I advise the house that we will be supporting the amendment.

The Hon. K.J. MAHER: I rise to indicate that the government will be opposing this particular amendment. The government opposes the amendment after taking advice on the proposed requirements from South Australian Power Networks. SAPN has advised that a requirement to provide advanced notice of an inspection to a property owner in two months is unduly restrictive. I am advised that SAPN is of the view that inspections need to be undertaken in a more dynamic manner and primarily in response to recent weather patterns, particularly heavy falls of rain, which may result in an inability to enter a property due to flooding.

The proposed requirements could lead to a requirement to issue a new notice and a further wait during the requisite two months before seeking to enter the property again. These delays to the inspection raise a concern that the fire danger season could be in operation before SAPN has had a chance to adequately inspect the power lines to proactively assess any potential fire danger and maintain public safety.

I am advised that SAPN officers exercise a high degree of common sense and provide clear information to a homeowner prior to entering onto premises. I am also advised that it is most likely that SAPN officers would undertake this work during ordinary business hours. The government strongly supports the amendment to section 48 of the Electricity Act 1996, as set out in the bill, which allows entry onto private land in a bushfire risk area without notice to the landowner, or if the entry is pursuant to an easement or other right.

It is important to note that entry must be at a reasonable time of the day. If these conditions are not met, then SAPN must give reasonable notice to the owner or occupier providing the reasons and the date of the intended inspection. These safeguards are intended to strike the right balance between the maintenance of important property rights and the necessity to ensure that vegetation is well-maintained ahead of the summer bushfire season.

The Hon. J.A. DARLEY: In terms of section 48(2)(b), how does the government define 'giving reasonable written notice'?

The Hon. K.J. MAHER: I am advised it is not defined in the act, but it would be the ordinary meaning of reasonable, which would generally mean to allow someone to have enough time to respond to it. I am advised that is usually exercised as a reasonable time of about a week in most circumstances.

The Hon. M.C. PARNELL: I am in partial agreement with the opposition, that we need to make sure that common sense prevails and that people who are entering private property should give some notice. The question is whether that notice needs to be legislated along the lines of the opposition's amendment or whether there is a case for allowing to see whether common sense prevails. I accept that the provisions that are being removed were possibly unduly restrictive but it is hard to see that the proposed replacement provisions are workable either.

The main thing that strikes me is that the advance notice that has to be given in newspapers and on public radio is two months, and the window of opportunity that the electricity utility has is two weeks. As the minister was saying, if there is wet weather and trucks cannot access, if you miss the window of opportunity, you cannot go back and inspect that proportion of the infrastructure until you have given another two months' notice.

To my way of thinking, that makes no sense. I guess part of the purpose of inspection is to work out whether there is anything that requires attention. It might be possible to guess how long it is going to take to inspect all the infrastructure in a certain area, but I would imagine that it is not as easy as it might seem. You do not know what you are going to come across and, again, there is work that might need to be done as well.

The other aspect of the amendments that I struggle with a little bit is that whilst I accept that the bulk of this infrastructure is on private farming land, some of it will be subject to easements. Those easements, I am guessing, might have other legal obligations or rights associated with them. I am on hazy ground here. I have not seen them, but normally an easement is on a title and it basically says that on this strip of land there is an easement to a power company, and they have a right to access this easement. What I think we would be doing in legislation is potentially undermining a legal right that already exists.

So, my inclination is to not support the Liberal amendment. If it turns out that workers or contractors for power utilities are running amok, if they are rampant through the community, leaving gates open and not telling people they are in the district, and if they behave badly, we can come back and have a look at it. My guess is that that probably will not be the case, and so I am prepared to give the government the benefit of the doubt and hope that common sense prevails. The minister seems convinced that it will so we will not be supporting these amendments.

The Hon. J.A. DARLEY: In view of the fact that there could be some wriggle room between the houses, I am prepared to support the Liberal amendment.

The Hon. K.L. VINCENT: While the Dignity Party has a significant amount of sympathy for the intent of the amendment, I think, like other members in this chamber, we have some questions about how it would operate in practice, particularly because the South Australian climate can be quite severe and unpredictable at times, as we have certainly seen recently in fact.

For example, in the next two months, the weather might be really hot and wet on, let's say, the Yorke Peninsula which might result in a higher growth of undergrowth which increases fire risk, but under an amendment such as this, if I am understanding it correctly, unless SAPN had already placed ads on the radio and in the *Yorke Peninsula Country Times* now, they would not be able to enter to deal with the side effects of that weather until about May. I think it is just not feasible for us to foresee every eventuality that might occur. Our concern is that this may result in less ability for South Australia Power Networks to do its job in those circumstances.

I appreciate that other members want to see some wriggle room (I think was the term used) and see what compromise might be reached, and I am happy to see that, too, but at this point in time our intention is, as I said, while we understand the intent of the amendment, not to support its passage.

The Hon. R.I. LUCAS: I thank the Hon. Mr Brokenshire on behalf of Family First and the Hon. Mr Darley for their indication of willingness to support further consideration of this by supporting its passage through the Legislative Council today. I indicate, on behalf of the member for Stuart, that certainly when this bill goes back to the House of Assembly he will enter into discussions with the government to look to see whether we can find some sort of tweaking of the amendment that will make it more workable or more acceptable to the electricity providers and to the government to see whether or not a compromise can be entered into.

I thank those members for their willingness to at least allow the principle to be further considered by passage today and then for further discussion to occur between the houses.

The committee divided on the clause:

Ayes.....9
Noes 10
Majority 1

AYES

Franks, T.A.	Gago, G.E.	Hanson, J.E.
Hunter, I.K.	Maher, K.J. (teller)	Malinauskas, P.
Ngo, T.T.	Parnell, M.C.	Vincent, K.L.

NOES

Brokenshire, R.L.	Darley, J.A.	Dawkins, J.S.L.
Hood, D.G.E.	Lee, J.S.	Lensink, J.M.A.
Lucas, R.I. (teller)	McLachlan, A.L.	Ridgway, D.W.
Wade, S.G.		

PAIRS

Gazzola, J.M.	Stephens, T.J.

Clause thus deleted; new clause inserted.

Clauses 12 to 27 passed.

Clause 28.

The Hon. R.I. LUCAS: I move:

Amendment No 2 [Lucas–1]—

Page 18, lines 33 to 35—Delete the clause

I understand the government is supporting this. I will be very brief, for fear I lose them. I am advised that the Gas Act 1997 and the Electricity Act 1996 grant investigative powers to authorised officers to investigate incidents relating to electricity and gas infrastructure and installations. Both acts only allow authorised officers to enter a place when conducting an investigation or examining and testing infrastructure equipment.

This bill grants further powers to authorised officers to stop, inspect and enter vehicles to ensure compliance with the act, and examine and test electrical gas infrastructure and equipment to ensure its safety. This measure in the bill is proposed for both the Gas Act and the Electricity Act. During the committee, the minister advised that the purpose of allowing authorised officers to search vehicles was in response to claims of electricians removing evidence from a site and putting it in their vans after a fire or other incident to prevent prosecution.

There are already procedures in place where a police officer can search vehicles and there was a question as to why authorised officers under these acts should have this authority. If an authorised officer believes it is necessary to search a vehicle, then he or she can ask for a police officer to do so. Therefore, our amendments remove references in the bill that enable vehicles to be searched or inspected by authorised officers. I indicate that I am advised that should this amendment be successful, the remaining 13 amendments are consequential.

The Hon. K.J. MAHER: I can inform the chamber that the government will be accepting this amendment. It does pain me to agree with the Hon. Rob Lucas, but nonetheless we will be doing so. The amendment was inserted primarily to address a serious electrical accident which occurred some

years ago in 2009, which involved an electrical contractor knowingly removing faulty wiring from premises and throwing it in his van. This is what I am advised the allegation was.

It appears that the contractor was aware that the investigative powers of an authorised officer under the act did not extend to collecting evidence in relation to a suspected offence under the act from within the contractor's van or vehicle. The contractor refused entry to his vehicle. Subsequent to this refusal, a premises nearby the van caught fire and sustained significant damage, which was suspected arose from the faulty electrical equipment in the van.

Since the time of the above incident there has been no further incident of the same type, so whilst these powers would be useful in the circumstance I have described it is accepted that these situations are relatively rare. I can also advise that I accept that the following amendments are consequential to this amendment, so we will be supporting those.

Clause deleted.

Clause 29.

The Hon. R.I. LUCAS: I move:

Amendment No 3 [Lucas–1]—

Page 19, line 4 [clause 29, inserted section 69(1)]—Delete 'or vehicle'

Amendment No 4 [Lucas–1]—

Page 19, line 23 [clause 29, inserted section 69(1)(h)]—Delete 'or vehicle'

Amendment No 5 [Lucas–1]—

Page 19, line 24 [clause 29, inserted section 69(1)(h)]—Delete 'or vehicle'

Amendment No 6 [Lucas–1]—

Page 19, lines 25 and 26 [clause 29, inserted section 69(1)(i)]—Delete paragraph (i)

Amendment No 7 [Lucas–1]—

Page 20, lines 3 to 5 [clause 29, inserted section 69(3)(a)]—Delete 'or person apparently in charge of the vehicle (as the case requires)'

Amendment No 8 [Lucas–1]—

Page 20, line 29 [clause 29, inserted section 69(6)(c)]—Delete 'or vehicle'

Amendments carried; clause as amended passed.

Clauses 30 to 62 passed.

Clause 63.

The Hon. R.I. LUCAS: I move:

Amendment No 9 [Lucas–1]—

Page 37, lines 24 to 26—Delete the clause

Clause deleted.

Clause 64.

The Hon. R.I. LUCAS: I move:

Amendment No 10 [Lucas–1]—

Page 37, line 30 [clause 64, inserted section 67(1)]—Delete 'or vehicle'

Amendment No 11 [Lucas–1]—

Page 38, line 8 [clause 64, inserted section 67(1)(h)]—Delete 'or vehicle'

Amendment No 12 [Lucas–1]—

Page 38, line 9 [clause 64, inserted section 67(1)(h)]—Delete 'or vehicle'

Amendment No 13 [Lucas–1]—

Page 38, lines 10 and 11 [clause 64, inserted section 67(1)(i)]—Delete paragraph (i)

Amendment No 14 [Lucas–1]—

Page 38, lines 26 to 28 [clause 64, inserted section 67(3)(a)]—Delete 'or person apparently in charge of the vehicle (as the case requires)'

Amendment No 15 [Lucas–1]—

Page 39, line 9 [clause 64, inserted section 67(6)(c)]—Delete 'or vehicle'

Amendments carried; clause as amended passed.

Remaining clauses (65 to 78) and title passed.

Bill reported with amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:23): I move:

That this bill be now read a third time.

Bill read a third time and passed.

ELECTRONIC TRANSACTIONS (LEGAL PROCEEDINGS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 1 March 2017.)

The Hon. P. MALINAUSKAS (Minister for Police, Minister for Correctional Services, Minister for Emergency Services, Minister for Road Safety) (16:24): I thank the honourable members who have spoken on this bill. I will now answer questions that were raised during the second reading stage by the Hon. Mr McLachlan and also the Hon. Ms Vincent.

Regarding the issue of printing, concerns were raised from some interested parties during the consultation period on the draft bill that consideration should not only be given to whether a person has the capacity to receive documents electronically but also that they are able to print the relevant documents. To that end, a requirement was added into the criteria for determining whether consent can be implied for prescribed proceedings that access to printing be considered. This protects the disadvantaged or unrepresented person who may be able to access a document but would not be able to access printing facilities in situations where it would be required.

It may be the case that organisations such as the Legal Services Commission end up printing documents for their clients. At this stage, the government is not concerned that this will have a large impact on their resources. However, as the Attorney-General said in the other place, if it does begin to impact on their resources, the government will maintain an open dialogue with the Legal Services Commission on the impacts of this legislation when it comes into use.

Comments were made by the Law Society in relation to printing materials. In their view, a defendant, or their representative, should receive both a hard copy and an electronic copy of any documents. This kind of approach would defeat the entire purpose of the bill, which is to reduce the use of paper and increase efficient communication through encouraging the use of electronic communications in criminal and related proceedings. There is no point sending both hard copies and electronic copies; it would be a waste of time and paper.

During the debate in the other place, the opposition indicated that they would like some information on how the provisions will be used. It is important to understand that the intention of this legislation is to remove barriers to the use of electronic communications in the prescribed legal proceedings. The bill is intended to future-proof the legislation as the world moves on from paper and the use of digital and online systems in the justice sector becomes commonplace. This is enabling legislation.

The legislation does not mandate the use of electronic communications. There is no electronic system ready to go that will commence immediately on the passage of this legislation. The use of electronic communications is constantly being improved and expanded by the courts and other parts of the justice sector, and we are assisting by removing some of the barriers to its further integration and use.

As this is enabling legislation, it is not possible to envisage all the ways that it might be utilised. Increasing the use of electronic communications is an ongoing project undertaken by the courts, and it is up to them to determine the ways in which legislation will be used. It may take the form of an agreement between the courts and the DPP, for example, whereby an arrangement is set up so that consent is implied that all types of certain documents will be sent electronically.

For a lawyer or law firm, this process could be signing up as a registered user of the online electronic case management system, currently in development by the courts. Consent could then be assumed for receiving or filing documents electronically, as managed by the system.

For an individual, there would naturally have to be an inquiry or communication from the party sending the documents as to whether that person has access to the internet and what their email address is, but it may then be that for the rest of that specific matter it can be assumed that communications will be electronic once the initial conversation has been undertaken. This is no different from any other court proceedings; there does need to be communication between the parties to ensure that everyone, especially unrepresented litigants, understands the process.

Persons in custody are easily exempted from receiving electronic documents, as it is obvious that such a person has no internet access and therefore would not fall within the terms of the provisions. Disadvantaged persons are in much the same situation. Anyone without reliable internet access would continue to receive paper documents. So, when the initial contact was made with such a person, it would be apparent that they do not have the capacity to receive documents electronically so the status quo would remain and they would receive hard copy communication.

Furthermore, the courts can address any behaviour whereby a party was attempting to circumvent service rules by sending documents electronically to an unknowing recipient. This would be no different to a party trying to circumvent service rules with hard copy documents. Natural justice and procedural fairness would always operate to protect parties from those trying to circumvent procedures in order to gain an advantage in legal proceedings.

To summarise, the operation of the provisions will, in large part, be subject to court system changes and court rule changes if necessary. The legislation is not drafted with any specific new communication process or system in mind but is designed to allow for the increased use of electronic communications in the future, and to facilitate and encourage development of new electronic communication system development by the courts. The use of the provisions will necessarily commence in a controlled fashion as the courts move matters and transactions to online formats.

The opposition inquired as to the process of drafting and consulting on the regulation that will accompany the bill. Drafting will commence once the bill has passed, which is the standard procedure. The government is mindful not to waste any of the resources of the office of Parliamentary Counsel by commencing drafting before the final form of the bill is known, unless there is a need for urgent regulations or other special circumstances. Consultation will occur once draft regulations have been prepared. The government intends there to be extensive consultation on these regulations to ensure that the proceedings that are prescribed are appropriate and that the interested parties can prepare for the commencement of the provisions.

The Hon. Kelly Vincent asked a question regarding persons with disabilities or communications difficulties. Both the Equal Opportunity Commissioner and the Department for Communities and Social Inclusion were included in the consultation process but did not provide any feedback specifically relating to those with disabilities. The increasing use of electronic communications may make the documents more accessible to those with communications difficulties or disabilities. Electronic documents could allow for large text size or easier translation into languages other than English. The government is confident that the courts will take into account the various needs of members of the public when they are developing any new communication systems.

Bill read a second time.

ELECTORAL (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 6 December 2016.)

The Hon. J.E. HANSON (16:33): I rise to speak in support of the Electoral (Miscellaneous) Amendment Bill 2016. This bill has been introduced as a result of the recommendations made by the Electoral Commissioner and as a result of the government's desire to fix up various other technical issues with the Electoral Act. As members would be aware, the Electoral Act has been the subject of a number of amendments in recent years, most notably the government introduced an overhaul of the axed donations and disclosure scheme.

That overhaul has resulted in one of the most transparent electoral systems in the country, allowing the public greater insight into a political system that historically has been opaque. The government also introduced a public funding system that decreases reliance on donations as a path to electoral success and ensures that all parties are on a level playing field. Parliament most recently passed a number of further changes to the funding expenditure and disclosure component of the act to clarify various elements of the new scheme.

The bill before us today makes further changes that strengthen the integrity of the electoral system, make voting easier for the public, and tidy up some of the outdated provisions in the act. The most important of these changes relates to voting accessibility for people with a disability, or who otherwise require assistance. The bill will insert provisions which allow for electronically assisted voting to be used for sight-impaired electors and enable regulations to be made to that effect.

There are various methods of electronically assisted voting used interstate and elsewhere. These will be examined by the government in due course. Further, the government has expanded provisions that enable people to vote with assistance, including removing requirements that a person physically sign a declaration vote if they are unable to do so. I think it is important that we be as practical as we can with these processes to ensure that our democratic system is as accessible as possible.

Another important aspect of the bill is the changes that attempt to deal with pre-poll voting. The government takes no issue with pre-poll voting where it is necessary to do so. There are, indeed, many valid reasons for why someone would need to vote early. What these changes target is pre-poll voting for reasons of convenience. The act does not allow pre-poll voting for that purpose, and yet in recent years we have seen an almost exponential increase in the number of pre-poll votes lodged.

This is not ideal for a true democratic system. An election is supposed to reflect the will of the voting public at a particular moment in time, not over a lengthened period of time. To allow otherwise, makes the electoral system more susceptible to the 24-hour news cycle and does not allow political parties, especially new parties, to properly present their case for election. The clauses that have been drafted try to address this problem. The government has been mindful to not affect those who need to vote early for a valid reason.

Advertising at a pre-poll centre is being restricted so that people driving past a centre do not spontaneously and unnecessarily choose to vote early. Voting early would now only be an option in the week leading up to the election, rather than two weeks. The powers of the Electoral Commissioner have been redefined to ensure that the commission does not inadvertently encourage people to vote early; instead, encouraging citizens to vote on polling day. For the record, I also wish to note that these changes do not affect postal voting in any way.

Finally, a number of amendments are put forward that should simply make life easier for the commission to conduct its work. These include changing nomination deposit rules so that cash payments are no longer required, and changing various procedures with respect to declaration votes and the envelopes that contain them. The government is also removing the rather archaic term of 'inmate' to describe those places such as aged-care facilities, and instead the term 'resident' will, sensibly, be adopted.

I note that there are a number of amendments filed with respect to this bill. Some of these amendments deal with existing clauses of the bill, while others add new concepts to the bill. The majority of these amendments can be dealt with as isolated concepts, which should make the committee stage of the bill relatively straightforward.

The government is examining those amendments and is also aware that some further amendments may be forthcoming. This bill represents a good opportunity to tidy up any issues prior to the beginning of the rapidly approaching electoral season. The Attorney-General has indicated that he welcomes a constructive and collegial discussion with respect to those issues. I commend the bill to the council.

Debate adjourned on motion of Hon. A.L. McLachlan.

ELECTORAL (LEGISLATIVE COUNCIL VOTING) (VOTER CHOICE) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 February 2017.)

The Hon. G.E. GAGO (16:40): I rise to speak in support of the Electoral (Legislative Council Voting) (Voter Choice) Amendment Bill. This bill seeks to reform the system of voting in the Legislative Council. Several parties have put forward various ideas and concepts for reform to both the government and the council for their consideration. The government originally sought to introduce a system of voting known as the Sainte-Laguë method, but has introduced this subsequent bill after it became apparent that there was very little support for that original bill.

Both of these bills, as well as the various methods put forward by other parties, share a very common goal, and that is to abolish the incredibly undemocratic and at times incredibly murky practice of preference harvesting. While preferencing itself clearly has a really important part to play in our electoral system, preference harvesting is a process which actually hides from the public who they end up voting for. This, in turn, can result in the election of candidates who have very little or no real public support. We have seen many examples of that, in the current commonwealth Senate in particular.

The bill before us also has an advantage in that it retains the system that voters have become accustomed to. If this bill passes, voters would notice no visual changes in their voting papers. The changes lie in the mechanics of the voting system, rather than at the front end. It gives voters more control over how they vote. If they want to vote above the line, they can be absolutely assured that their vote will only go to the party or group that they have selected, and not to a party that they might have little or no support for whatsoever. If they want to vote below the line, then the system remains unchanged and they are free to preference in whatever order they may wish.

As members would be well aware, the voting system for the Senate was recently amended to provide for a system of voting that requires people to vote for at least six parties or groups above the line or at least 12 individuals below the line. The feedback from that, Mr President—and I am sure you received similar feedback—was that it was very confusing for voters. Although I acknowledge that the intent was noble—the changes were made for the right reason—the risk of incorporating that type of method into this place is that voters may be forced to vote for parties that they have no intention of ever preferencing.

In fact, they might have a particular view that they would never want to have any of their vote or support go to that particular person or party. This, in turn, raises the risk of high levels of informal voting, because people just get jack of it. They say they are not sure about where their vote is going to go and it does not make any difference anyway, so the next thing is we have increases in the rates of informal voting, and we certainly want to avoid that at all costs.

There are several amendments that have been lodged by the Hon. Mark Parnell and the Hon. John Dawkins. The Attorney-General is keen to continue discussions with respect to these amendments, although I note that these matters will need to be dealt with in the near future so that the Electoral Commissioner can adequately prepare for the 2018 election, which we know is looming very quickly. It is the desire of this government to resolve these matters as quickly as possible and

to put in place the best and fairest, whilst being simple, system of voting into this place. For those reasons, I commend the bill to the council.

Debate adjourned on motion of Hon. S.G. Wade.

SUMMARY PROCEDURE (INDICTABLE OFFENCES) AMENDMENT BILL

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:46): I move:

That this bill be now read a second time.

I seek leave to have the second reading speech and explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Introduction

The *Summary Procedure (Indictable Offences) Amendment Bill 2016* improves how major indictable matters are dealt with in the criminal justice system.

The changes are designed to enable courts, police, forensic services and prosecutors to focus their resources where they are most needed and ease the pressure on our courts system, by:

- introducing a tiered prosecution disclosure regime that will allow for earlier disclosure of the primary evidence to defendants;
- requiring major indictable matters to be the subject of a 'charge determination' by the Director of Public Prosecutions (the DPP) prior to the commencement of committal proceedings;
- giving the courts discretion to set realistic adjournment timeframes that reflect the needs of individual cases and reduce unnecessary court appearances for major indictable matters when they are in the Magistrates Court.
- requiring 'case statements' to be filed by prosecution and defence prior to a matter being arraigned in the District or Supreme Courts to identify the matters that are genuinely in dispute in contested matters, thus enabling court, police, forensic and prosecution resources to focus on those issues;
- changing the way subpoenas are issued in major indictable matters; and
- refining the discounts on sentence that already exist where guilty pleas are entered early, and introducing a discount representing an incentive for cooperative conduct of the defence case.

The Bill supports and builds upon recent changes made by the *Criminal Law (Sentencing) (Guilty Pleas) Amendment Act 2012* (the Guilty Pleas Act) and the *Statutes Amendment (Courts Efficiency Reforms) Act 2012* (the Courts Efficiency Act), which have already positively impacted on the timing of guilty pleas for major indictable matters. It also refines changes made by the *Statutes Amendment (Criminal Procedure) Act 2005* which introduced provisions relating to defence disclosure into the *Criminal Law Consolidation Act 1935* (CLCA).

The Bill includes an amendment to the *Summary Procedure Act 1921* (Summary Procedure Act) to implement recommendation 182 of the Child Protection Systems Royal Commission.

Background

The latest data from the Report on Government Services 2016 indicates that notwithstanding the South Australian District Court had the second highest rate of criminal finalisations, 22% of the outstanding matters had been pending for over 12 months.

The Annual Report of the Office of the Director of Public Prosecutions for the 2014-2015 period shows that the reasons for vacated criminal trials in Adelaide across the Supreme and District Courts includes 35% that were vacated due to late guilty pleas. In addition, 14% were discontinued by the DPP, while almost 20% were vacated because there was no judge or court available.

The latter category is an unfortunate by-product of the practice of over-listing by the criminal courts. In the interest of efficiency, the court will list more matters than it can hear, based on the expectation that a number of listed criminal trials will resolve due to late guilty pleas and late withdrawals. However, there are often occasions where the number of matters resolving late is less than expected. This in turn means more trials are listed than there are available court rooms or judges to hear them, and some trials will have to be relisted to be heard on another date. These relisted trials then contribute to the backlog. They also contribute to stress and frustration for witnesses, and victims and the

accused, and they represent wasted resources due to police, prosecutors, forensic services and defence practitioners preparing for a trial that is postponed.

It will not be possible to entirely eliminate the late resolution of matters in the criminal justice system. There will always be some defendants who delay the inevitable for as long as they possibly can, and only enter their plea on the doorstep of trial. There will always be some victims who decide at the last minute that they simply cannot face going to court.

However, the Government has committed to addressing backlogs within the Court system. Previous reforms have already begun, with success, to increase the number of guilty pleas being entered earlier in the process, rather than at the last minute.

The measures provided for in this Bill builds upon that success, and seeks to reduce the number of matters listed for trial only to resolve by late guilty plea or discontinuance by further encouraging the early resolution of major indictable matters and providing for the issues genuinely in dispute in a contested matter to be identified early. Early identification of the issues in dispute may shorten the overall length of a trial, and will provide greater certainty as to the expected length of a trial for listing purposes. As less matters are withdrawn or resolve late, it is anticipated that the need to 'over list' also reduces, thereby reducing the number of matters being vacated due to 'no judge available' and needing to be relisted in several months' time. It is anticipated that the backlog will reduce, and more trials will be heard the first time they are listed.

It is well known that if a matter is ultimately going to resolve by way of a guilty plea, it is better for victims, witnesses, the courts and all parties involved in the criminal justice system, for that plea to be entered as soon as possible. Late resolution creates stress and uncertainty for victims of crime and witnesses. This reform is intended to reduce that stress and uncertainty. It will also free up the resources of police, courts, the DPP and forensic services from attending court hearings and preparing for matters that do not ultimately proceed, so that they can focus on the matters that do.

Summary of the Bill

Changes to the Committal Process

The existing process of SAPOL arresting or reporting a suspect and appearing for the prosecution at the first court appearance will be retained. This will be known as 'pre-committal'.

The current system of scheduling court hearings in the lower court will be improved. Currently, it is commonplace for a hearing date to be scheduled and then for adjournments to be sought because more time is needed to gather evidence. This occurs even though it was known at the outset that certain types of evidence would not be ready by the scheduled hearing date.

The Bill introduces a system of tiered disclosure and charge determination by the DPP for matters commenced by SAPOL which are to be subsequently prosecuted by the State DPP. Both of these concepts were considered in detail, and recommended by the NSW Law Reform Commission in its report 'Encouraging appropriate early guilty pleas' tabled in the NSW Parliament in June 2015. The Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse suggested, in its Consultation Paper on Criminal Justice released in September 2016, that the approach recommended by the NSW Law Reform Commission is a model that governments might consider to encourage early and appropriate guilty pleas.

Under this system, SAPOL will inform the Magistrates Court at the first hearing of the time required to provide a preliminary brief taking into account the specific requirements of the case. The Magistrates Court will adjourn the matter for an appropriate amount of time to enable provision of the preliminary brief, plus four weeks to give time to the DPP to consider the preliminary brief and make a charge determination. This will reduce the need for multiple adjournments to enable evidence to be obtained in cases where it was known at the outset that material such as e-crime, forensic material, or telephone interception material simply could not be provided within the timeframes set.

The 'pre-committal' stage permits court oversight in relation to the 'holding' charge. This provides important protections to the defendant, such as ensuring reasonable timeframes for the collation of the preliminary brief, and as to the conditions of bail. As noted above, the defendant can still elect to plead guilty during this stage, thereby securing a higher discount (in the majority of cases), if they choose to do so.

The preliminary brief will contain the key evidence available to prove the elements of the offence alleged to have been committed. In some cases, this may include evidence that is not in a technically admissible form but which is available in a timely way, is reliable, and is sufficient for both the prosecution and defence to understand what evidence exists and is capable of being provided should the matter go to trial. The precise content of the brief is not prescribed under the Bill. This is intentional, as those requirements will vary between cases and types of cases. It is intended that the DPP will determine what evidence will be sufficient to make a charge determination. The DPP will provide training and guidance to SAPOL to ensure that the expectations are clear, and the two agencies will work together to ensure the efficiency of this process.

The DPP is required to consider the preliminary brief and make the charge determination before the committal proceedings can commence. The DPP will consider whether there is enough evidence to support the charge. Because this decision is not made until the preliminary brief has been provided, this ensures the charges better reflect the criminal culpability of the defendant. This should reduce the number of matters which are withdrawn later in the

process. It should also reduce the number of matters where the charge is amended by the prosecution due to the late receipt of evidence. This in turn ensures that the defendant knows the charge has been reviewed by the DPP, and reduces any incentive to delay pleading guilty based on a belief that the prosecution is likely to amend the charges as the matter proceeds.

Currently, some defendants complain that they cannot consider whether to plead guilty early in the proceedings because of a lack of disclosure of the evidence against them. Under the Bill, the prosecution is 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 currently provided as a matter of practice. The inclusion of this requirement in the Bill is in response to a request by the Law Society of South Australia and the South Australian Bar Association, to assist them in providing early advice to their clients.

In addition, under the Bill, the charges following charge determination are based on better, more complete information than is currently the case. The preliminary brief is provided to the defendant before the committal proceedings commence, as soon as practicable after it has been provided to the DPP. The only reason it is not provided at the same time is due to logistical impossibility, but the clear intention is that they will receive it as early as possible. This will give the defendant better understanding of the case against them by the time the charge determination is made. If they do not plead guilty at the committal appearance following the charge determination, the Magistrates Court will adjourn to enable provision of the committal brief, which will include further evidence that was not part of the preliminary brief, or which was provided but was not in a technically admissible form. Again, the Magistrates Court will consider the specific requirements of the case when setting timeframes to avoid unnecessarily adjourning matters later. After the committal brief has been provided, the defendant will be required to indicate whether they will plead guilty or not guilty.

If a defendant pleads not guilty, they will be committed to the District or Supreme Court for trial.

The Court will be able to vary these procedures as necessary to accommodate matters not commenced by SAPOL and prosecuted by the DPP, such as Commonwealth Prosecutions.

Case Statements

Before the first hearing in the District or Supreme Court (the Arraignment), both prosecution and defence will be required to prepare a 'case statement'. The prosecution has to provide their case statement first, at least 6 weeks before the Arraignment. It will set out a summary of the facts alleged against the defendant, a description of the evidence they rely on in relation to each 'element' of the offence, and other procedural matters such as which witnesses they intend to call at trial and other applications they will be making (this could include things like asking for a witness to give evidence via CCTV).

The defendant will be required to prepare a case statement in response, within four weeks of receiving the prosecution case statement. The defendant's case statement will set out any facts or elements they agree with based on the prosecution statement, indicate whether they consent to any of the prosecution applications, and set out whether they intend to raise various issues such as challenging the admissibility of a police search or a police interview, or whether they want the prosecution to prove 'routine' matters such as the chain of evidence on an exhibit. The defendant will also be required to set out any defences he or she intends to rely on.

If the defendant does not comply with the requirement to provide this information, they may not be permitted to lead evidence at trial inconsistent with their case statement. If they conduct their trial in a way that is contrary to the position taken in their case statement, the court or a party to the proceedings may be allowed to make comment about that to the jury.

The concept of prosecution and defence case statements is not a new one. Other Australian jurisdictions have also implemented reforms based on these concepts. By way of comparison, NSW introduced mandatory disclosure provisions in similar terms to those contained in the Bill in 2013. Victoria and Western Australia also have provisions for the provision of prosecution summaries or statements, and corresponding defence responses.

As far back as 1999, the Standing Committee of Attorney's-General (SCAG) working group chaired by Brian Martin QC (as he then was) on criminal trial procedure, recommended the introduction of a form of prosecution and defence case statements. These recommendations were repeated by the Duggan Committee, which reported 'we accept that the right to silence which is based on the rule against self-incrimination is not diminished by a requirement to indicate certain specific defences which might be raised, what challenges are to be made to the prosecution evidence or what expert evidence might be adduced in support of the defence case. We do not agree that requirements to disclose such information could in any sense affect the burden of proof. The presumption of innocence which provides the rationale for the burden of proof would be similarly unaffected'.

In 2005, the Government introduced the S*tatutes Amendment (Criminal Procedure) Act 2005* to enact reforms recommended by the SCAG, the Duggan Committee and the Kapunda Road Royal Commissioner. That Act contained provisions which required defence disclosure prior to trial in relation to expert evidence proposed to be led, and inserted existing section 285BB into the CLCA. That section is discretionary. It provides that the court may make orders requiring the disclosure of specific defences of its own motion or on the application of the DPP. The orders may only be made if the court is satisfied that the prosecution has provided the defence with an outline of the prosecution case, and there are no existing but unfulfilled obligations of prosecution disclosure. The provision also provides for

orders to be made for defence to advise whether it consents to the dispensing of calling of certain witnesses. The provision commenced on 1 March 2007 but is rarely, if ever, used. Clause 123 of the Bill replicates the effect of the existing s285BB. However, rather than requiring an application to be made before the provisions apply, it requires the provision of case statements as a matter of course, in a similar way to the provisions enacted in NSW.

Subpoenas

The Procedure Bill changes the way that parties can apply for a subpoena to obtain documentary evidence in major indictable matters. While a matter is in the Magistrates Court, if a party wants to issue a subpoena (other than a subpoena to call a witness to give evidence) they will only be able to do so if the prosecution and any party to whom the subpoena is directed agrees, or if a magistrate has considered the application. In the superior court, a subpoena may only be issued if the party seeking it has filed their case statement, and the parties (including the party to whom it is directed) agree, or a master or judge of the court is satisfied that the subpoena would be likely to provide material of relevance to matters that will be in issue at the trial. This will ensure that subpoenas are only issued in cases where there is a legitimate basis for doing so.

Sentencing Reductions

The Guilty Pleas Act commenced in March 2013. Its main objective was to improve the operation and effectiveness of the criminal justice system by reducing current delays and backlogs in cases coming to trial; by encouraging offenders who are minded to plead guilty to do so in a timely way.

In 2015 the Honourable Brian Martin AO QC reviewed the operation of the Guilty Pleas Act. His report was tabled in the House of Assembly on 17 November 2015. He found that the Guilty Pleas Act had had a significant impact on the number of guilty pleas entered in respect of major indictable matters at an early stage of proceedings, and that the increase in early pleas was improving the operation and effectiveness of the criminal justice system. The statistics reported to the Honourable Mr Martin by the Office of Crime Statistics and Research support that conclusion. In the three years prior to the commencement of the Guilty Pleas Act, the percentage of guilty pleas occurring prior to committal to the District Court ranged between 38% to 52%. This figure increased to 62% in the 12 months after the commencement of the Guilty Pleas Act. There was an increase in the percentage of matters finalised within the first 4 weeks of the first appearance from as low as 4% to 6% in the three years preceding the commencement of the Guilty Pleas Act to 8.5% in the 12 months post commencement. There was a corresponding decrease in the number of matters finalised by guilty plea in the superior courts. For example, the percentage of major indictable matters finalised by guilty plea more than 12 weeks post arraignment ranged from 25% to 32.5% in the three years prior to the commencement of the Guilty Pleas Act. This decreased to 16% in the 12 months post the introduction of the discount scheme. These figures demonstrate the success of the reform in bringing forward those matters where a guilty plea is appropriate—shifting the timing from the 'doorstep of trial' to much earlier in the process.

Notwithstanding the success of that reform, the Hon Mr Martin recommended several small improvements in his report. The Government has considered those recommendations and, where appropriate, implemented them or responded to them in the Bill.

The Bill amends the *Criminal Law (Sentencing) Act 1988* (the Sentencing Act), including:

- amending the timing and quantum of sentencing reductions applicable in consequence of the reform package;
- introducing a maximum 10% reduction as an incentive for complying with pre-trial disclosure and for cooperative conduct of the defence case;
- ensuring that the court has regard to the timing of negotiations where those negotiations result in a different charge being laid to replace an earlier charge in respect of the same conduct; and
- setting out the process for applying the available sentencing reductions.

One particular issue that the Hon Mr Martin raised for consideration was the interpretation of the current discount scheme provisions by the Court of Criminal Appeal (CCA) as demonstrated in *R v Muldoon* [2015] SASFC 69. The original intention of the Guilty Pleas Act was to limit the availability of the maximum 40% discount to an offender who pleads guilty to an offence within the first four weeks after their first appearance. However, where negotiations have taken place much later than 4 weeks after the first appearance, and result in a different offence being substituted for the original offence, the CCA has held that the time limits re-start upon the filing of the new offence.

It was never the intention of the scheme to permit a defendant who declines to negotiate until the doorstep of trial to merit a 40% reduction on sentence if those very late negotiations result in a different charge being laid. Those negotiations should be taking place much earlier. To address this, the Bill includes a new provision that requires the court to consider, when determining the appropriate percentage reduction to apply, whether the defendant was initially charged with a different offence in relation to the same conduct, and whether (and at what stage in the proceedings) negotiations occurred.

Where negotiations result in a guilty plea to a different charge within a few weeks after the first appearance, the defendant could, in the ordinary course, expect the court to apply a reduction towards the upper end of the 40% discount range. Where a defendant who does not attempt to negotiate until the week before trial and ultimately pleads guilty to a *different* charge following those negotiations, they will be *eligible* for the maximum 40%. However,

when the court considers the appropriate discount to apply, that defendant should expect to receive a discount significantly less than 40% in the ordinary course, to reflect the very late timing of their negotiations. Conversely, if a defendant offers to plead to an alternative charge early in the proceedings, but the prosecution does not accept that offer until the last moment, the court would be entitled to take that into account in the defendant's favour when determining the appropriate discount.

Provision has also been made to enable the court to take into account the situation where a defendant who has attempted to negotiate with the DPP has been unable to finalise those negotiations within the relevant time period for reasons outside of their control. This could include a situation where the prosecutor was unable to consult with a victim as required by the *Victims of Crime Act 2001* within the stipulated time period and was therefore unable to finalise negotiations.

Other changes to the timing of the relevant maximum discounts have been made to correlate to the process changes in the Bill. In addition, a maximum discount of 10% may apply where a defendant has not pleaded guilty, but is found guilty following trial, where the court is satisfied that the defendant complied with all the statutory or court ordered pre-trial disclosure and procedures, and has otherwise conducted their case in a cooperative and expeditious manner.

Creation of a 'Criminal Procedure' Act

The existing legislative provisions that govern criminal procedure are split between the Summary Procedure Act and the *CLCA*. The Bill shifts those parts of the CLCA that relate to purely procedural matters into the Summary Procedure Act. The Summary Procedure Act will be renamed the Criminal Procedure Act to reflect that it now governs criminal procedure generally. There have not been substantial amendments to those procedural provisions that do not relate specifically to this reform proposal; the 'shift' is purely to finally bring all of the criminal procedure provisions together. It is not intended that those provisions be reviewed at this time.

Recommendation of the Royal Commission

The Child Protection Systems Royal Commission recommended amendment of section 104 of the Summary Procedure Act to permit a transcript of a recorded interview with a child under the age of 14 years to be filed in committal proceedings where the transcript has been verified by a person in attendance other than an investigating officer.

This recommendation arose in the context of situations where there may be a forensic interview conducted during a Care Concern Investigation, where SAPOL may not yet be involved, but where a disclosure is ultimately made. It is intended that in those cases, the interview transcript should be able to be verified so that it is admissible at subsequent committal proceedings in a criminal matter. The report of the Royal Commission noted that it is not intended for the power to have someone other than a police officer verify the transcript to be used other than in special circumstances. Further, in some cases there may be a person in attendance who should not be permitted to verify the transcript, such as a support person or family member. The categories of person who may perform this role will be prescribed by regulation.

Conclusion

The government has been actively involved in improving the criminal justice system in recent years. Many of the problems currently faced by our criminal justice system are not unique to South Australia; indeed they are similar to problems faced in other Australian jurisdictions. In framing this reform, the government has considered reforms and proposed reforms in other jurisdictions, with a view to learning what is working, and indeed, what is not working elsewhere. While it often seems that everyone has a view on how to improve the criminal justice system, it is clear that no one has come up with the perfect solution. It is a complex area, with competing rights, expectations, protections and objectives to be balanced. It is time to look at the recent reforms and build upon the successes. It is also time to revise practices that no longer serve their purpose or achieve the results that society expects, and to improve them. That is what these Bills do.

It is anticipated that given the remaining time in the Parliamentary calendar this year, debate on the Bill will not be completed until the 2017 Parliamentary sittings. This provides additional opportunity for those with an interest in the Bill to make contribution for consideration as the Bill progresses.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Summary Procedure Act 1921*

4—Amendment of long title

This clause amends the long title of the Act to remove the reference to the Magistrates Court.

5—Amendment of section 1—Short title

This clause amends the Short title of the Act to reflect the broadened scope of the Act by substituting the reference to 'Summary' Procedure with a reference to 'Criminal' Procedure.

6—Amendment of section 4—Interpretation

This clause inserts definitions in the principal Act for the purposes of the measure.

7—Substitution of Part 5

This clause substitutes Part 5 of the principal Act as follows:

Part 5—Indictable offences

Division 1—Informations

100—Informations charging indictable offences

The inserted section sets out the matters that an information must contain. It incorporates much of section 277 of the *Criminal Law Consolidation Act 1935*.

101—Laying of information

The provision substantially re-enacts section 101 of the principal Act.

102—Joinder and separation of charges

The proposed section substantially re-enacts section 278 of the *Criminal Law Consolidation Act 1935* and sections 102(1) to (4) and 103(4) to (5) of the principal Act.

103—DPP may lay information in superior court

The provision substantially re-enacts section 275 of the *Criminal Law Consolidation Act 1935*.

Division 2—Pre-committal hearings etc

104—Securing attendance in Magistrates Court

The provision substantially re-enacts existing section 103(1) of the principal Act.

105—Pre-committal hearings and documents

The provision substantially re-enacts section 103(2) of the principal Act. It also sets out the requirement for the defendant to be given notice of other matters at the defendant's first appearance in the Magistrates Court in relation to the charge and contains a new provision on adjournment of the defendant's first court appearance.

106—Indictable matters commenced by SA Police

The inserted section sets out the provisions to be followed in circumstances where SA Police have been the investigating authority but the matter is to be subsequently prosecuted by the DPP. The section deals with the provision of the preliminary brief by SAPOL, the making of the charge determination by the DPP and other matters relating to the hand-over of proceedings from SAPOL to the DPP.

107—Pre-committal subpoenas

The inserted section sets out the circumstances in which (and authority by which) a subpoena may be issued before committal proceedings have been completed.

Division 3—Committal proceedings

108—Division not to apply to certain matters

The provision substantially re-enacts current section 103(3) and (3aa) of the principal Act.

109—Committal proceedings generally

This inserted provision sets out the committal proceedings for an indictable offence. It also substantially re-enacts sections 105(3), (4) and (5) of the principal Act.

110—Committal appearance

The inserted provision sets out the processes to be followed during the defendant's committal appearance in the Magistrates Court according to whether the defendant admits the charge.

111—Committal brief etc

The inserted provision substantially re-enacts current section 104 of the principal Act. The provision also facilitates the making of witness statements in the form of an audio visual record or audio record in the case of certain witnesses and implements recommendation 182 of the Child Protection Systems Royal Commission Report relating to witness statements in the form of a record of interview.

112—Notices relating to committal proceedings

The proposed section provides that a defendant charged with an indictable offence may give notice indicating that the defendant intends to assert that there is no case to answer. The defendant may give notice requesting the oral examination of a witness in committal proceedings. The provision sets out the requirement to file a notice under the section.

113—Conduct of answer charge hearing

Proposed subsections (1) and (2) substantially re-enact current section 105(1) and (2) of the principal Act. Proposed subsection (3) provides that the Court need not consider the evidence to determine whether it is sufficient to put the defendant on trial for an offence where a defendant who is represented by a legal practitioner concedes that there is a case to answer in relation to the offence.

114—Taking evidence at committal proceedings

The inserted section substantially re-enacts current section 106 of the principal Act with the addition of proposed subsection (1)(d) which is consequential on the ability of a defendant to file a notice in accordance with proposed section 112(1).

115—Evaluation of evidence at committal proceedings

The inserted provision substantially re-enacts current section 107(1) to (3) and (5) and (6) of the principal Act.

Division 4—Forum for trial or sentence

116—Forum for sentence

The inserted section substantially re-enacts current sections 108 and 114 of the principal Act. The provision also provides that the Magistrates Court may sentence a person for a minor or major indictable offence in the same way as for a summary offence and that, in relation to sentencing of indictable offences, the Magistrates Court is to observe procedural rules specifically applicable to indictable offences.

117—Forum for trial

Proposed subsection (1) provides that a trial of a minor indictable offence (where the defendant has not elected for trial in a superior court) is to be conducted in the same way as a trial of a summary offence. Proposed section 117(2) substantially re-enacts current section 107(4) of the principal Act. Proposed section 117(3) substantially re-enacts current section 114 of the principal Act. Proposed section 117(4) substantially re-enacts current section 109 of the principal Act.

118—Change of forum

Proposed section 118 substantially re-enacts current section 110 of the principal Act.

119—Change of plea following committal for sentence

Proposed section 119 provides for a more limited ability for a change of plea following committal than exists in current section 111 of the principal Act so that a person who has been committed to a superior court for sentence in relation to a particular charge of an offence may only enter a change of plea in the superior court with the permission of the court.

Division 5—Procedure following committal for trial or sentence

120—Fixing of arraignment date and remand of defendant

Proposed section 120 sets out the matters that the Magistrates Court must have regard to when fixing a date for a defendant's arraignment after having committed the defendant to a superior court for trial.

121—Material to be forwarded by Registrar

The provision substantially re-enacts section 113 of the principal Act.

122—Prosecution may decline to prosecute

The provision substantially re-enacts section 276 of the *Criminal Law Consolidation Act 1935*.

123—Case statements

The proposed section sets out the requirement for the prosecution to present an information and a prosecution case statement once the Magistrates Court commits a defendant charged with an indictable offence to a superior court for trial. The provision sets out that matters that must be included in a prosecution case statement.

The proposed section sets out the requirement for a defendant committed to a superior court for trial on a charge of an indictable offence to file and give to the prosecution a defence case statement. The provision sets out the matters that must be included in a defence case statement.

124—Expert evidence and evidence of alibi

The proposed section substantially re-enacts sections 285C(1), (2) and (4) and 285C(1) to (3) of the *Criminal Law Consolidation Act 1935* but requires notice to be given in conjunction with the defence case statement.

125—Failure to comply with disclosure requirements

The provision sets out the consequences that may flow from a failure to comply with disclosure requirements (being the requirements applying under proposed section 123 and 124).

126—Subpoenas

The proposed section provides for the issuing of subpoenas after a matter has been committed to a superior court.

127—Prescribed proceedings

The provision substantially re-enacts section 275(3) and (5) of the *Criminal Law Consolidation Act 1935*.

Division 6—Pleas and proceedings on trial in superior court

128—Objections to informations in superior court, amendments and postponement of trial

The provision substantially re-enacts section 281 of the *Criminal Law Consolidation Act 1935*.

129—Plea of not guilty and refusal to plead

The provision substantially re-enacts section 284 of the *Criminal Law Consolidation Act 1935*.

130—Form of plea of *autrefois convict* or *autrefois acquit*

The provision substantially re-enacts section 285 of the *Criminal Law Consolidation Act 1935*.

131—Certain questions of law may be determined before jury empanelled

The provision substantially re-enacts section 285A of the *Criminal Law Consolidation Act 1935*.

132—Determinations of court binding on trial judge

The provision substantially re-enacts section 285AB of the *Criminal Law Consolidation Act 1935*.

133—Conviction on plea of guilty of offence other than that charged

The provision substantially re-enacts section 285B of the *Criminal Law Consolidation Act 1935*.

134—Inspection and copies of depositions

The provision substantially re-enacts section 286 of the *Criminal Law Consolidation Act 1935*.

135—Defence to be invited to outline issues in dispute at conclusion of opening address for the prosecution

The provision substantially re-enacts section 288A of the *Criminal Law Consolidation Act 1935*.

136—Right to call or give evidence

The provision substantially re-enacts section 288AB of the *Criminal Law Consolidation Act 1935*.

137—Right of reply

The provision substantially re-enacts section 288B of the *Criminal Law Consolidation Act 1935*.

138—Postponement of trial

The provision substantially re-enacts section 289 of the *Criminal Law Consolidation Act 1935*.

139—Verdict for attempt where full offence charged

The provision substantially re-enacts section 290 of the *Criminal Law Consolidation Act 1935*.

Part 6—Limitations on rules relating to double jeopardy

Division 1—Preliminary

140—Interpretation

The provision substantially re-enacts section 331 of the *Criminal Law Consolidation Act 1935*.

141—Meaning of fresh and compelling evidence

The provision substantially re-enacts section 332 of the *Criminal Law Consolidation Act 1935*.

142—Meaning of tainted acquittal

The provision substantially re-enacts section 333 of the *Criminal Law Consolidation Act 1935*.

143—Application of Part

The provision substantially re-enacts section 334 of the *Criminal Law Consolidation Act 1935*.

Division 2—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

144—Circumstances in which police may investigate conduct relating to offence of which person previously acquitted

The provision substantially re-enacts section 335 of the *Criminal Law Consolidation Act 1935*.

Division 3—Circumstances in which trial or retrial of offence will not offend against rules of double jeopardy

145—Retrial of relevant offence of which person previously acquitted where acquittal tainted

The provision substantially re-enacts section 336 of the *Criminal Law Consolidation Act 1935*.

146—Retrial of Category A offence of which person previously acquitted where there is fresh and compelling evidence

The provision substantially re-enacts section 337 of the *Criminal Law Consolidation Act 1935*.

147—Circumstances in which person may be charged with administration of justice offence relating to previous acquittal

The provision substantially re-enacts section 338 of the *Criminal Law Consolidation Act 1935*.

Division 4—Prohibition on making certain references in retrial

148—Prohibition on making certain references in retrial

The provision substantially re-enacts section 339 of the *Criminal Law Consolidation Act 1935*.

Part 6A—Appeals

Division 1—Appeal against sentence

149—Appeal against sentence

The provision substantially re-enacts section 340 of the *Criminal Law Consolidation Act 1935*.

Division 2—Other appeals

150—Interpretation

The provision substantially re-enacts section 348 of the *Criminal Law Consolidation Act 1935*.

151—Court to decide according to opinion of majority

The provision substantially re-enacts section 349 of the *Criminal Law Consolidation Act 1935*.

152—Reservation of relevant questions

The provision substantially re-enacts section 350 of the *Criminal Law Consolidation Act 1935*.

153—Case to be stated by trial judge

The provision substantially re-enacts section 351 of the *Criminal Law Consolidation Act 1935*.

154—Powers of Full Court on reservation of question

The provision substantially re-enacts section 351A of the *Criminal Law Consolidation Act 1935*.

155—Costs

The provision substantially re-enacts section 351B of the *Criminal Law Consolidation Act 1935*.

156—Right of appeal in criminal cases

The provision substantially re-enacts section 352 of the *Criminal Law Consolidation Act 1935*.

157—Determination of appeals in ordinary cases

The provision substantially re-enacts section 353 of the *Criminal Law Consolidation Act 1935*.

158—Second or subsequent appeals

The provision substantially re-enacts section 353A of the *Criminal Law Consolidation Act 1935*.

159—Powers of Court in special cases

The provision substantially re-enacts section 354 of the *Criminal Law Consolidation Act 1935*.

160—Right of appeal against ancillary orders

The provision substantially re-enacts section 354A of the *Criminal Law Consolidation Act 1935*.

161—Revesting and restitution of property on conviction

The provision substantially re-enacts section 355 of the *Criminal Law Consolidation Act 1935*.

162—Jurisdiction of Full Court

The provision substantially re-enacts section 356 of the *Criminal Law Consolidation Act 1935*.

163—Enforcement of orders

The provision substantially re-enacts section 356A of the *Criminal Law Consolidation Act 1935*.

164—Appeal to Full Court

The provision substantially re-enacts section 357 of the *Criminal Law Consolidation Act 1935*.

165—Supplemental powers of Court

The provision substantially re-enacts section 359 of the *Criminal Law Consolidation Act 1935*.

166—Presence of appellant or respondent on hearing of appeal

The provision substantially re-enacts section 361 of the *Criminal Law Consolidation Act 1935*.

167—Director of Public Prosecutions to be represented

The provision substantially re-enacts section 362 of the *Criminal Law Consolidation Act 1935*.

168—Costs of appeal

The provision substantially re-enacts section 363 of the *Criminal Law Consolidation Act 1935*.

169—Admission of appellant to bail and custody when attending Court

The provision substantially re-enacts section 364 of the *Criminal Law Consolidation Act 1935*.

170—Duties of registrar with respect to notices of appeal etc

The provision substantially re-enacts section 365 of the *Criminal Law Consolidation Act 1935*.

171—Notes of evidence on trial

The provision substantially re-enacts section 366 of the *Criminal Law Consolidation Act 1935*.

Division 3—References on petitions for mercy

172—References by Attorney-General

The provision substantially re-enacts section 369 of the *Criminal Law Consolidation Act 1935*.

8—Insertion of sections 175 to 180

This clause inserts section 175 to 180.

175—Proceedings other than State criminal proceedings

This clause allows for the making of rules of court modifying procedures in relation to proceedings for offences other than State criminal offences (which are defined as summary offences where SAPOL is

both the investigation authority and prosecution authority and indictable offences where SAPOL is the investigating authority and the DPP is or may be the prosecution).

176—Overlapping offences

The provision substantially re-enacts section 330 of the *Criminal Law Consolidation Act 1935*.

177—Proceedings against corporations

The provision substantially re-enacts section 291 of the *Criminal Law Consolidation Act 1935*.

178—Defects cured by verdict

The provision substantially re-enacts section 294 of the *Criminal Law Consolidation Act 1935*.

179—Forfeiture abolished

The provision substantially re-enacts section 295 of the *Criminal Law Consolidation Act 1935*.

180—Orders as to firearms and offensive weapons

The provision substantially re-enacts section 299A of the *Criminal Law Consolidation Act 1935*.

9—Amendment of section 189B—Costs in committal proceedings

The clause amends section 189B to provide that costs will not be awarded against a party to committal proceedings for an indictable offence unless the Magistrates Court is satisfied that the party has unreasonably obstructed the proceedings.

10—Insertion of section 191A

This clause inserts a review provision in the principal Act (relating to new Part 5 Divisions 2, 3, 4 and 5).

Schedule 1—Statute Law Revision Amendments to *Summary Procedure Act 1921*

Schedule 1 makes amendments throughout the principal Act to the various references to 'Court' or 'court'. In doing so, it substitutes the various references so that they become references specifically to the Magistrates Court.

Schedule 2—Related amendments and transitional provisions

Part 1—Related amendment to *Bail Act 1985*

1—Amendment of section 3A—Serious and organised crime suspects

The amendment updates a statutory reference as a result of the amendments in Part 2 of this Act.

2—Amendment of section 6—Nature of bail agreement

This changes a reference to a 'preliminary examination' to a reference to 'committal proceedings'.

Part 2—Related amendment to *Correctional Services Act 1982*

3—Amendment of section 28—Removal of prisoner for criminal investigation, attendance in court etc

This changes a reference to a 'preliminary examination' to a reference to 'committal proceedings'.

Part 3—Related amendment to *Criminal Investigation (Covert Operations) Act 2009*

4—Amendment of section 30—Interpretation

This changes a reference to a 'preliminary examination' to a reference to 'committal proceedings'.

Part 4—Related amendments to *Criminal Law Consolidation Act 1935*

5—Amendment of section 5—Interpretation

This clause removes a definition that is now unnecessary due to the shifting of provisions from this Act to the *Summary Procedure Act 1921*.

6—Amendment of section 269E—Reservation of question of mental competence

7—Amendment of section 269J—Order for investigation of mental fitness to stand trial

8—Amendment of section 269X—Power of court to deal with defendant before proceedings completed

These 3 clauses change references to a 'preliminary examination' to references to 'committal proceedings'.

9—Repeal of Part 9 Divisions 6 to 12

10—Repeal of Part 9 Division 15

11—Repeal of Parts 10 to 11

12—Repeal of Schedules 1 to 3 and 10

The provisions repealed by these 4 clauses are largely reproduced in many of the provisions inserted by clauses 7 and 8 of this Act.

Part 5—Related amendments to *Criminal Law (Sentencing) Act 1988*

13—Insertion of section 7D

This clause inserts a new provision (mirroring content currently in section 285BC of the *Criminal Law Consolidation Act 1935*) on notice of expert evidence in sentencing proceedings.

14—Insertion of section 10AB

This clause inserts a new section 10AB providing for a reduction of sentence of up to 10% where a defendant has not pleaded guilty to an indictable offence but the sentencing court is satisfied that the defendant complied with all statutory or court ordered requirements relating to pre-trial disclosure and procedures and has otherwise conducted their case in a cooperative and expeditious manner.

15—Amendment of section 10B—Reduction of sentences for guilty plea in Magistrates Court etc

This clause reduces the scope of this section (so that indictable offences dealt with by an early plea in the Magistrates Court will now be dealt with under proposed section 10C), makes subsection (3) consistent with proposed new section 10C(4) and makes minor changes to the wording.

16—Substitution of section 10C

This clause inserts new section 10C dealing with sentencing for offences other than those to which section 10B applies. The clause provides for a range of sentencing reductions (up to a maximum of 40%) to apply to guilty pleas entered at different stages of a matter's progress through the courts. These stages link to stages set out in the new provisions to be included in the *Summary Procedure Act 1921*. Also inserted in new section 10D which explains how the sentencing reductions are to be applied.

Part 6—Related amendment to *District Court Act 1991*

17—Amendment of section 45—Non-application to criminal proceedings

The amendment updates a statutory reference as a result of the amendments in Part 2 of this Act.

18—Amendment of section 54—Accessibility to Court records

This changes a reference to a 'preliminary examination' to a reference to 'committal proceedings'.

Part 7—Related amendment to *Evidence Act 1929*

19—Amendment of section 21—Competence and compellability of witnesses

The amendment updates a statutory reference as a result of the amendments in Part 2 of this Act.

20—Amendment of section 34J—Special provision for taking evidence where witness is seriously ill

21—Amendment of section 34K—Admissibility of depositions at trial

22—Amendment of section 59IQ—Appearance etc by audio visual link or audio link

23—Amendment of section 67D—Interpretation

24—Amendment of section 67G—Interpretation and application

25—Amendment of section 69AB—Review of suppression orders

26—Amendment of section 71A—Restriction on reporting on sexual offences

These 7 clauses change references to a 'preliminary examination' to references to 'committal proceedings' (or an answer charge hearing).

Part 8—Related amendment to *Juries Act 1927*

27—Amendment of section 7—Trial without jury

The amendment updates a statutory reference as a result of the amendments in Part 2 of this Act.

Part 9—Related amendments to *Magistrates Court Act 1991*

28—Amendment of section 9—Criminal jurisdiction

29—Amendment of section 42—Appeals

30—Amendment of section 43—Reservation of question of law

31—Amendment of section 51—Accessibility to Court records

These 4 clauses change references to a 'preliminary examination' to references to 'committal proceedings'.

Part 10—Related amendment to *Supreme Court Act 1935*

32—Amendment of section 5—Interpretation

The amendment updates a statutory reference as a result of the amendments in Part 2 of this Act.

33—Amendment of section 131—Accessibility to court records

This changes a reference to a 'preliminary examination' to a reference to 'committal proceedings'.

Part 11—Related amendment to *Work Health and Safety Act 2012*

34—Amendment of section 230—Prosecutions

This changes a reference to a 'preliminary examination' to a reference to 'committal proceedings'.

Part 12—Related amendments to *Young Offenders Act 1993*

35—Amendment of section 17—Proceedings on charge laid before Youth Court

36—Amendment of section 17A—Proceedings on charge laid before Magistrates Court

37—Amendment of heading to Part 4 Division 2

38—Amendment of section 19—Committal for trial

These 4 clauses change references to a 'preliminary examination' to references to 'committal proceedings'.

Part 13—Related amendments to *Youth Court Act 1993*

39—Amendment of section 22—Appeals

40—Amendment of section 23—Reservation of question of law

These 2 clauses change references to a 'preliminary examination' to references to 'committal proceedings'.

Part 14—Transitional provision

41—Transitional provision

This clause provides that the amendments will only apply to proceedings commenced after the commencement of the measure.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

SENTENCING BILL

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:46): I move:

That this bill be now read a second time.

I seek leave to have the second reading speech and explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Background

When the *Criminal Law (Sentencing) Act 1988* was passed in 1988, the legal environment governing sentencing was very different to what it is now—and what it will be. At the time, sentencing was very much the poor cousin on the criminal law, so far as Parliamentary attention and high judicial pronouncement was concerned. The High Court had heard, in all the history of its existence, almost no sentencing cases at all. It had just decided Veen v R (No 2) (1988) HCA 14; (1988) 164 CLR 465 (29 March 1988), perhaps one of the most difficult cases it has ever had to decide on sentencing, and marking the beginning of the current attitude of the High Court to sentencing appeals. By contrast, these days sentencing appeals and pronouncements are a prolific part of the business of the High Court.

The attention of the South Australian Parliament to sentencing matters was haphazard and sporadic. That was not unusual at the time for State and Territory Parliaments. The provisions dealing with sentencing before 1987

were scattered about the statute book. A major objective of the *Criminal Law (Sentencing) Act 1998* was, then, the consolidation of sentencing provisions for the convenient reference of practitioners, judges and the public.

Despite a great many amendments in the years since, the Act is obviously still a creature of the 1980s, and the environment of that time in the development of public policy, and sentencing doctrine and practice. Things have changed greatly in the decades since. Sentencing theory has developed, in general and in detail, under the guidance of many High Court pronouncements. The South Australian Court of Criminal Appeal has been even more active, in decisions too many to repeat here.

Not only has all of that happened, but the Parliament has been active, more so in recent times. There has been continual amendment, and proposed amendment, of the *Criminal Law (Sentencing) Act* annually—sometimes many times annually.

The changes since 1988 in every area of law—judicial, authority, legislation, the public and Parliamentary action—have been great and were not capable of being predicted then. The time has come to reassess; and start again.

The scope of this major reform means that the opportunity has been taken to review the entire Act and many have contributed to a re-assessment of many provisions. This reform will be a reform of the way in which the courts sentence offenders and the results of that process. To take a major example, in requiring that 'The primary consideration of a court in sentencing a defendant for an offence must be the protection of the safety of the community (whether as individuals or in general)', the legislation will require the court to de-emphasise the predominance of proportionality in fixing sentence (although it is still very relevant). To take another example, in introducing the sentencing option of intensive correction orders, the legislation de-emphasises immediate custodial orders in favour of community based correction for non-violent and non-dangerous offenders. The provision of a wider variety of sentencing options promotes alternatives to expensive and sometimes criminalising imprisonment.

Of course, the opportunity has been taken to tidy up the existing legislation by re-numbering clauses and placing them in a logical order and by updating the sometimes dated drafting. But the Bill proposes significant changes also.

The Reform of General Principles

The current Act contains a list of sentencing considerations. It is in s 10. There is about 2 pages of it. It is just a huge list of everything that might be taken into account if possibly relevant (or not). It was an advance for its time. But it is not helpful, either to the courts or to the public. It is just a huge obscure shopping list. It is proposed that it be repealed.

The redevelopment of sentencing legislation has been the subject of many comprehensive reviews since 1988. The most recent, authoritative and comprehensive review was completed by the NSW Law Reform Commission in 2013 (Report 139). That authoritative review comprehensively discussed what are relevant sentencing considerations, what are not, what should be given emphasis and what should not.

The review of the general principles in the current Act therefore began with the detailed considerations of the NSW Law Reform Commission. But there are differences in the outcome. The most important of these can be found in clause 4 of the Bill. That says that 'The primary purpose for sentencing a defendant for an offence must be the protection of the safety of the community (whether as individuals or in general)'. Every sentencing purpose and principle in the Act and, therefore, in the sentencing process that it controls, must be subject to that overriding consideration. The provisions of the Bill emphasise the primacy of this purpose at every turn. Clause 10 provides the most obvious example.

The purposes secondary to this overriding purpose (but still relevant and operating as facts dictate) recommended are:

- punishment and making the offender accountable;
- denunciation;
- recognition of harm done to victim and community;
- deterrence, particularly by promoting the early and certain apprehension of offenders; and
- promoting rehabilitation.

In addition, the Bill lists the technical general principles of sentencing:

- proportionality;
- parity;
- totality;
- the De Simoni principle (an offender may not be sentenced on the basis of having committed an offence with which he was not charged);

- imprisonment as a last resort.

The next layer of the sentencing process is the relevant individual sentencing factors:

- the nature, circumstances and seriousness of the offence;
- the personal circumstances and vulnerability of the victim;
- the extent of any injury, harm, loss or damage resulting from the offence or any significant risk or danger created by the offence, including risk to national security;
- the defendant's offending history, age and physical and mental condition;
- the likelihood of the defendant re-offending;
- the extent of remorse for the offence having regard to evidence of acceptance of responsibility and acknowledgment of injury and damage caused and any reparation made; and
- the prospects of the defendant's rehabilitation.

In none of these lists is the order in which the factor or principle appears in the list significant. The first is as important as the last in general terms. Individual significance in any given case will depend upon the singular facts of that case.

Guilty Plea Discount Reforms

The *Criminal Law (Sentencing) (Guilty Pleas) Amendment Act 2012* commenced in March 2013. Its main objective was to improve the operation and effectiveness of the criminal justice system by reducing current delays and backlogs in cases coming to trial; by encouraging offenders who are minded to plead guilty to do so in a timely way.

In 2015 the Honourable Brian Martin AO QC reviewed the operation of the Guilty Pleas Act. His report was tabled in the House of Assembly on 17 November 2015. He found that the Guilty Pleas Act had had a significant impact on the number of guilty pleas entered in respect of major indictable matters at an early stage of proceedings, and that the increase in early pleas was improving the operation and effectiveness of the criminal justice system. The statistics reported to the Honourable Mr Martin by the Office of Crime Statistics and Research support that conclusion. In the three years prior to the commencement of the Guilty Pleas Act, the percentage of guilty pleas occurring prior to committal to the District Court ranged between 38 per cent to 52 per cent. This figure increased to 62 per cent in the 12 months after the commencement of the Guilty Pleas Act. There was an increase in the percentage of matters finalised within the first 4 weeks of the first appearance from as low as 4 per cent to 6 per cent in the three years preceding the commencement of the Guilty Pleas Act to 8.5 per cent in the 12 months post commencement. There was a corresponding decrease in the number of matters finalised by guilty plea in the superior courts. For example, the percentage of major indictable matters finalised by guilty plea more than 12 weeks post arraignment ranged from 25 per cent to 32.5 per cent in the three years prior to the commencement of the Guilty Pleas Act. This decreased to 16 per cent in the 12 months post the introduction of the discount scheme. These figures demonstrate the success of the reform in bringing forward those matters where a guilty plea is appropriate—shifting the timing from the 'doorstep of trial' to much earlier in the process.

Notwithstanding the success of that reform, the Hon Mr Martin recommended several small improvements in his report. The Government has considered those recommendations and, where appropriate, implemented them or responded to them in the Bill.

This Bill contains some reforms to the guilty plea sentence reductions regime, including:

- amending the timing and quantum of sentencing reductions applicable in consequence of the reform package;
- introducing a maximum 10 per cent reduction as an incentive for complying with pre-trial disclosure and for cooperative conduct of the defence case;
- ensuring that the court has regard to the timing of negotiations where those negotiations result in a different charge being laid to replace an earlier charge in respect of the same conduct; and
- setting out the process for applying the available sentencing reductions.

One particular issue that the Hon Mr Martin raised for consideration was the interpretation of the current discount scheme provisions by the Court of Criminal Appeal (CCA) as demonstrated in R v Muldoon (2015) SASFC 69. The original intention of the Guilty Pleas Act was to limit the availability of the maximum 40 per cent discount to an offender who pleads guilty to an offence within the first four weeks after their first appearance. However, where negotiations have taken place much later than 4 weeks after the first appearance, and result in a different offence being substituted for the original offence, the CCA has held that the time limits re-start upon the filing of the new offence.

It was never the intention of the scheme to permit a defendant who declines to negotiate until the doorstep of trial to merit a 40 per cent reduction on sentence if those very late negotiations result in a different charge being laid. Those negotiations should be taking place much earlier. To address this, the Bill includes a new provision that

requires the court to consider, when determining the appropriate percentage reduction to apply, whether the defendant was initially charged with a different offence in relation to the same conduct, and whether (and at what stage in the proceedings) negotiations occurred.

Where negotiations result in a guilty plea to a different charge within a few weeks after the first appearance, the defendant could, in the ordinary course, expect the court to apply a reduction towards the upper end of the 40 per cent discount range. Where a defendant who does not attempt to negotiate until the week before trial and ultimately pleads guilty to a different charge following those negotiations, they will be eligible for the maximum 40 per cent. However, when the court considers the appropriate discount to apply, that defendant should expect to receive a discount significantly less than 40 per cent in the ordinary course, to reflect the very late timing of their negotiations. Conversely, if a defendant offers to plead to an alternative charge early in the proceedings, but the prosecution does not accept that offer until the last moment, the court would be entitled to take that into account in the defendant's favour when determining the appropriate discount.

Other changes to the timing of the relevant maximum discounts have been made to correlate to the process changes proposed in the *Summary Procedure (Indictable Offences) Amendment Bill 2016*. In addition, a maximum discount of 10 per cent may apply where a defendant has not pleaded guilty, but is found guilty following trial, where the court is satisfied that the defendant complied with all the statutory or court ordered pre-trial disclosure and procedures, and has otherwise conducted their case in a cooperative and expeditious manner.

The provisions of this Bill in relation to sentencing discount reductions are identical to those which have been introduced in the *Criminal Law (Sentencing) (Sentencing Reductions) Amendment Bill 2016*. This has been done because there are likely to be differing implementation time-frames, principally because this Bill may not come into force before the Fine Enforcement provisions are replaced and a consequential amendments Bill is introduced and passed. Parliamentary time is best used if the sentence reduction amendments are debated in the context of the *Criminal Law (Sentencing) (Sentencing Reductions) Amendment Bill 2016* and not this Bill. Officers and Parliamentary Counsel will ensure that the results match according to debate and amendments (if any).

New Sentencing Options

The Bill mostly repeats the core provisions of the recently passed *Statutes Amendment (Home Detention) Act 2015,* but proposes some changes that were suggested during the consultation process, in part arising from experience gained in the short time since the Act was proclaimed and came into operation. The changes proposed when the Bill was introduced were :

- A sentence of home detention is to be treated as a custodial sentence;
- A home detention sentence is not in the form of an otherwise suspended sentence;
- A home detention order may not be made if it would lead to a lack of public confidence in the administration of justice;
- Home detention is not an available sentencing option in any case where a suspended sentence would not be available. In short, if the offender could not get a suspended sentence, that offender cannot be ordered to serve the sentence by way of home detention;
- The conditions of a home detention order mandated by the Act have been changed so that liberty to attend remunerated employment, and attendance at a course of education, training or instruction are conditional on approval by a home detention officer;
- The court must be satisfied that the site of the home detention is suitable and that adequate resources exist for the proper monitoring of the defendant; and
- The Bill explicitly provides that if a person breaches a home detention order, time spent in compliance with the order must be taken into account in the term of any consequent custodial sentence.

When the Bill was in another place, the Government moved amendments that imposed additional conditions. They were made to alleviate doubt and include:

- preventing making a home detention order in cases of treason, murder and terrorism offences; and
- preventing making a home detention order in cases of serious sexual offences except in very unusual cases in which a sentence of imprisonment would further no serious correctional purpose;

In addition, the Bill includes new provisions providing for two new sentencing options; a community based order and an intensive correction order.

- an intensive correction order will be available, at the discretion of the sentencing judge, in cases where a person is considering imposing a short custodial sentence, and would instead result in the offender serving their sentence of imprisonment in the community subject to certain strict conditions. The emphasis is explicitly on rehabilitative purposes and outcomes. Again, reference is made to the primacy of the safety of the community.

- a community based order will be available, at the discretion of the sentencing judge, in cases where a person is not sentenced to imprisonment, but is ordered to be released into the community subject to strict conditions (not including home detention).

The intensive correction order has a maximum duration of two years but the term actually imposed should reflect the proposed term of imprisonment.

The intensive correction order cannot be made if the court decides to suspend the sentence of imprisonment. The court is directed to assess the likelihood of the offender re-offending balanced against the prospects for rehabilitation in and out of a custodial environment.

The intensive correction order has the following mandatory conditions:

- the offender must be subject to a good behaviour condition;
- the offender must report to community corrections within 2 days of the order being made;
- the offender is under the supervision of a community corrections officer;
- the offender must not possess a firearm, parts of a firearm or ammunition, and must, on direction, submit to testing for gunshot residue;
- the offender must tell his or her assigned community corrections officer of any change of address or employment within 2 days after the change;
- the offender must not leave the State except with the permission of a community corrections officer;
- the offender must comply with:
- regulations made for the purpose of this provision; and
- all lawful directions of the CE and a community corrections officer;
- if a court has not ordered the offender to reside at a specified place or wear a monitoring device, the CE may, by written notice given to the offender, require the offender to reside at a specified place or wear a monitoring device for a period (but only for a period not exceeding 28 days);
- the offender must undergo assessment and treatment for misuse of alcohol or drugs or submit to medical, psychological or psychiatric assessment and treatment;
- the offender must undertake treatment programs as directed;
- if the offender is unemployed, then the offender must undertake specified hours of community work.

The Bill contains a list of optional conditions which include:

- that the offender to reside at a specified place or wear a monitoring device;
- that the offender undertake an intervention programme;
- that the offender submit to drug or alcohol testing;
- that the offender not consume or purchase alcohol;
- that the offender not consume or purchase a drug other than for therapeutic purposes.

The consumption of a drug is to be regarded as therapeutic if:

- the drug is prescribed by, and consumed in accordance with the directions of, a medical practitioner or dentist; or
- the drug:
- is a drug of a kind available, without prescription, from registered pharmacists; and
- is consumed for a purpose recommended by the manufacturer and in accordance with the manufacturer's instructions.

The consequence for breaching an intensive correction order is that a court may confirm or vary (including extend) the order for minor or trivial breaches, but, in the case of the offender committing further offences, revoke the order and order the offender to serve a term of imprisonment. The offender will be under the supervision of DCS and therefore breaches are to be reported to the police, to be then dealt with by the court.

The new community based order has very similar mandatory conditions as the intensive correction order. It is designed to give courts the maximum flexibility to tailor orders suiting the needs and circumstances of these comparatively minor offenders.

Other changes

In summary, the major changes contained within the Bill are as follows.

1. The statement of general sentencing factors, principles and considerations previously the subject of extensive consultation has been included, as modified by the results of extensive public consultation (outlined in more detail above).

2. The existing provisions on sentencing guidelines have not been retained (they have never been used).

3. The provisions dealing with victim impact statements have been amended to ensure that consideration may be given to the statement without the need for it to be read out in court.

4. The special provision dealing with the sentencing of Aboriginal and Torres Strait Islanders now contains a sub-clause stating that the court is given discretion to order a sentencing conference.

5. The set of provisions dealing with life prisoners thought to be 'dangerous offenders' has been deleted. They have never been used.

6. Provisions dealing with the enforcement of orders for the payment of pecuniary sums have been omitted as irrelevant to sentence. They will find a new home somewhere else. This will be a separate exercise.

7. Similarly, the provision dealing with the limits to the jurisdiction of the Magistrates Court will be relocated in the *Magistrates Court Act 1991*;

8. Provisions dealing with the addition or substitution of certain penalties have been modernised.

9. New sentencing options for intensive correction orders and community based orders have been added (outlined in more detail above).

10. Reform to the guilty plea discount provisions was dealt with in a separate exercise and has been included here. The details of this are discussed above.

11. A new (optional) system for the taking into account of other offences at sentence has been added. It is the current NSW 'Form 1' provisions with the addition that the schedule of offences to be taken into account should be provided by the prosecution.

12. The recently enacted home detention provisions have been inserted with some minor non-substantive changes to fit into the style of the new Bill and some major substantive changes suggested during consultation, particularly in light of experience in implementing the new option. These are outlined in more detail above.

13. Numerous other, more minor changes have been made, including:

(a) the serious repeat offenders provisions now contain a reference to repeat terrorism offences;

(b) the serious repeat offenders provisions have been amended so that on conviction of the triggering offence, the offender will be taken to be a serious repeat offender (without any need for a declaration process) and should be sentenced as such, unless the offender can satisfy the court, by evidence given on oath, that there is good reason not to impose a particularly severe sentence in order to protect the community.

(c) References to the ERD court will be moved to the ERD legislation in a separate exercise.

(d) The existing discharge without penalty provision has been changed in accordance with a request from the Magistrates Court to remove an anomaly.

(e) The provisions dealing with serious firearm offenders have been amended at the urging of a recent Supreme Court judgment to remove an anomaly (Coulthard (2016) SASCFC 47).

(f) The definition of serious repeat offender contains a transitional provision.

(g) The provisions dealing with the presence of an offender at sentence have been modified to include current practice of presence by audio-visual link.

(h) The provisions dealing with treatment of mentally ill offenders have been modified to ensure reference is made to suitable treatment.

(i) A number of consequential and editing changes to the current Act have been made including changes to references to gender in accordance with a recent request by the Premier.

Legislative Policy

There is a tension in this area of law, perhaps more than most, between general principles of legislation and unfettered judicial discretion to decide the particular case. Principles of legislation can be stated by saying the criminal law and its close relative, sentencing, should be easy to find, easy to understand, cheap to buy and democratically made and amended.

Being easy to find means that the basic rules can be published in a book. The public can buy the book and read it. A good and simple commentary will soon become possible. But more than just that is involved. Society expects all of its citizens to know the law. How can we expect the citizen (and the multitude of commentators in the media) to know the law, let alone try to understand it, debate it and contribute to its change or defence if it is scattered all over the statute book and hidden in hundreds of volumes of law reports?

The criminal law should be accessible so that it is written in language that is capable of being understood by citizens of reasonable literacy. That means that it must address not only an audience of lawyers, but also an audience of average citizens.

Although in the short term there will be a litigation about what the new system might mean and the principles that underlie its interpretation, simply because it is new (and for no other reason), in the medium to long term, common law judicial epics will be minimised, although experience teaches that they are impossible to eliminate.

No-one seriously argues that judges should be able to invent common law crimes as used to be the case. Why should sentencing be any different? The system of criminal law and sentencing is arguably the most direct expression of the relationship between the State and its citizens. It is right as a matter of constitutional principle that the relationship should be clearly stated in terms of which have been deliberated upon by a democratically elected legislature.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

Division 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

Division 2—Sentencing purposes

3—Primary sentencing purpose

The primary purpose for sentencing a defendant for an offence is to protect the safety of the community (whether as individuals or in general).

4—Secondary sentencing purposes

The secondary purposes for sentencing a defendant for an offence are:

- to ensure that the defendant—
  - is punished for the offending behaviour; and
  - is held accountable to the community for the offending behaviour;
- to publicly denounce the offending behaviour;
- to publicly recognise the harm done to the community and to any victim of the offending behaviour;
- to deter the defendant and others in the community from committing offences;
- to promote the rehabilitation of the defendant.

Nothing about the order in which the secondary purposes are listed implies that any 1 of those secondary purposes is to be given greater weight than any other secondary purpose.

Division 3—Interpretation and application of Act

5—Interpretation

This clause defines words and expressions used in, and for the purposes of, this measure. Many of the defined terms contained in this clause are taken from the *Criminal Law (Sentencing) Act 1988* (the *repealed Act*) which is to be repealed by this measure (see Schedule 1).

6—Application of Act to youths

This clause makes provision in relation to the application of this measure to the sentencing of youths and the enforcement of a sentence against a youth in substantially the same terms as section 3A of the repealed Act.

7—Powers conferred by this Act are additional

This clause combines sections 4 and 5 of the repealed Act. The clause provides that, subject to this measure, the powers conferred on a court by this measure are in addition to, and do not derogate from, the powers conferred by another Act or law to impose a penalty on, or make an order or give a direction in relation to, a person found guilty of an offence and that nothing in this measure affects the powers of a court to punish a person for contempt of that court.

8—Court may not impose bond except under this Act

This clause provides that a defendant may not enter into a bond except under this measure and is substantially in the same terms as section 36 of the repealed Act.

Part 2—Sentencing purposes, principles and factors

Division 1—Purposes, principles and factors

9—Primary purpose to be considered

This clause reiterates the principle that the primary purpose for sentencing a defendant for an offence must be the paramount consideration of a court when determining and imposing the sentence.

10—General principles of sentencing

This clause provides that, subject to this measure or any other Act—

- in determining a sentence for an offence, a court must apply (although not to the exclusion of any other relevant principle) the common law concepts reflected in the following principles:
  - proportionality;
  - parity;
  - totality;
  - the rule that a defendant may not be sentenced on the basis of having committed an offence in respect of which the defendant was not convicted; and
- a court must not impose a sentence of imprisonment on a defendant unless the court decides that—
  - the seriousness of the offence is such that the only penalty that can be justified is imprisonment; or
  - it is required for the purpose of protecting the safety of the community (whether as individuals or in general).

11—Individual sentencing factors

This clause provides that a court must take into account, when determining the sentence for an offence, such of the listed or other factors as are known to the court relating to various matters as may be relevant. This clause may be compared with section 10 of the repealed Act.

Division 2—General sentencing provisions

Subdivision 1—Procedural provisions

12—Determination of sentence

This clause provides that, for the purposes of determining sentence, a court—

- is not bound by the rules of evidence; and
- may inform itself on matters relevant to the determination as it thinks fit; and
- must act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal forms.

This clause is substantially the same as section 6 of the repealed Act.

13—Prosecutor to provide particulars of victim's injury etc

14—Victim impact statements

15—Community impact statements

16—Statements to be provided in accordance with rules

17—Pre-sentence reports

Clauses 13 to 17 substantially restate sections 7 to 8 of the repealed Act.

18—Expert evidence

This is a new idea and provides for a scheme that governs how expert evidence must be dealt with if a defendant is to be sentenced for an indictable offence and expert evidence is to be presented to the court by the defence.

19—Court to inform defendant of reasons etc for sentence

20—Rectification of sentencing errors

Clauses 19 and 20 substantially re-state what is provided for in sections 9 and 9A of the repealed Act.

21—Presence of defendant during sentencing proceedings

While substantially restating section 9B of the repealed Act, this clause also makes provision for the presence of a defendant during sentencing proceedings by an audio visual link or audio link.

22—Sentencing of Aboriginal and Torres Strait Islander defendants

This clause sets out the procedure for convening a sentencing conference in relation to the sentencing of an Aboriginal or Torres Strait Islander defendant that is substantially the same as in section 9C of the repealed Act but with the addition of a subclause giving the sentencing court discretion about whether or not to convene such a conference.

Subdivision 2—General sentencing powers

23—Discharge without penalty

This clause provides that if a court finds a person guilty of an offence but finds the offence so trifling that it is inappropriate to impose a penalty, the court may—

- dismiss the charge without recording a conviction; or
- on recording a conviction, discharge the defendant without penalty.

If a court finds a person guilty of an offence in respect of which the only penalty prescribed is a fine and the defendant has already spent time in custody in respect of the offence, the court may, if satisfied that there is good reason not to impose any further penalty—

- dismiss the charge without recording a conviction; or
- on recording a conviction, discharge the defendant without further penalty.

A court may exercise the powers conferred by this clause despite any minimum penalty fixed by an Act or statutory instrument.

24—Imposition of penalty without conviction

This clause provides that, if a court finds a person guilty of an offence for which it proposes to impose a fine, a sentence of community service, or both and the court is of the opinion—

- that the defendant is unlikely to commit such an offence again; and
- that, having regard to various matters, good reason exists for not recording a conviction,

the court may impose the penalty without recording a conviction. This clause is substantially the same as section 16 of the repealed Act.

25—Court may reduce, add or substitute certain penalties

This clause combines sections 17 and 18 of the repealed Act while updating the language and penalties to reflect the language of and penalties included in this measure.

26—Sentencing for multiple offences

This clause makes provision for the sentencing of a defendant for multiple offences and is substantially the same as section 18A of the repealed Act.

27—Non-association or place restriction orders may be issued on sentence

28—Intervention orders may be issued on finding of guilt or sentencing

29—Deferral of sentence for rehabilitation and other purposes

30—Mental impairment

Clauses 27, 28, 29 and 30 substantially re-state what is provided for in sections 19AA, 19A, 19B and 19C of the repealed Act.

Subdivision 3—Taking further offences into account

31—Definitions

This clause sets out the definitions necessary for the purposes of this Subdivision which provides for a new, optional system for the sentencing court to take into account other offences when sentencing a defendant.

32—Prosecutor may file list of additional charges

This clause provides for a formal scheme whereby the prosecutor may file in court a document that lists additional charges with which the defendant has been charged but not convicted, being offences that the defendant has indicated should be taken into account when sentencing the defendant for the principal offence before the court.

33—Outstanding charges may be taken into account

If the court considers it appropriate to do so and the defendant wants the court to take outstanding charges into account in dealing with the defendant for the principal offence, the court may take into account such further offences. The clause sets out some limitations on the court's power in respect of certain offences or as a consequence of jurisdictional restrictions.

34—Ancillary orders relating to offences taken into account

The court may make such ancillary orders as could have been made had it convicted the offender of the offence when it took the offence into account, but may not impose a separate penalty for the offence.

35—Consequences of taking offences into account

This clause sets out the consequences of taking any further offence into account under this Subdivision. If a further offence is taken into account under this Subdivision—

- the court is to certify, on the list of additional charges, that the further offence has been taken into account, and
- no proceedings may be taken or continued in respect of the further offence unless the conviction for the principal offence is quashed or set aside.

This clause would not prevent a court that has taken a further offence into account when dealing with a defendant for a principal offence from taking the further offence into account if it subsequently imposes a penalty when sentencing or re-sentencing the defendant for the principal offence.

An admission of guilt made for the purposes of this Subdivision is not admissible in evidence in any proceedings relating to—

- the further offence in respect of which the admission was made; or
- any other offence specified in the list of additional charges.

An offence taken into account under this Subdivision is not, merely because of its being taken into account, to be regarded for any purpose as an offence of which a defendant has been convicted.

In or in relation to any criminal proceedings, reference may lawfully be made to, or evidence may lawfully be given of, the fact that a further offence has been taken into account under this Subdivision in imposing a penalty for a principal offence of which a defendant has been found guilty if, in or in relation to those proceedings—

- reference may lawfully be made to, or evidence may lawfully be given of, the fact that the defendant was found guilty or convicted of the principal offence; and
- had the defendant been found guilty or convicted of the further offence so taken into account, reference could lawfully have been made to, or evidence could lawfully have been given of, the fact that the defendant had been found guilty or convicted of that further offence.

The fact that a further offence has been taken into account under this Subdivision may be proved in the same manner as the conviction for the principal offence.

Subdivision 4—Sentencing reductions

36—Application of Subdivision

This clause makes it clear that, except where the contrary intention expressly appears, this Subdivision is in addition to, and does not derogate from, a provision of this measure or any other Act—

- that expressly prohibits the reduction, mitigation or substitution of penalties or sentences; or

- 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.

37—Reduction of sentences for cooperation etc with law enforcement agency

38—Reduction of sentences for cooperation with procedural requirements etc

39—Reduction of sentences for guilty plea in Magistrates Court etc

40—Reduction of sentences for guilty pleas in other cases

41—Application of sentencing reductions

42—Re-sentencing for failure to cooperate in accordance with undertaking under section 37

43—Re-sentencing for subsequent cooperation with law enforcement agency

These clauses reproduce in this measure the amendments made to the repealed Act by the *Summary Procedure (Indictable Offences) Amendment Act 2016*.

Part 3—Custodial sentences

Division 1—Imprisonment

44—Commencement of sentences and non-parole periods

45—Cumulative sentences

Clause 44 and this clause are substantially the same as current sections 30 and 31 of the repealed Act.

Division 2—Non-parole periods

46—Application of Division to youths

47—Duty of court to fix or extend non-parole periods

48—Mandatory minimum non-parole periods and proportionality

This Division (comprising clauses 46 to 48) is substantially the same as Part 3 Division 2 (comprising sections 31A, 32 and 32A) of the repealed Act, but with a consequential amendment to clause 47 relating to intensive correction orders.

Division 3—Serious firearm offenders

49—Interpretation

50—Serious firearm offenders

51—Sentence of imprisonment not to be suspended

This Division (comprising clauses 49, 50 and 51) is substantially the same as Part 2 Division 2AA (comprising sections 20AA, 20AAB and 20AAC) of the repealed Act.

Division 4—Serious repeat adult offenders and recidivist young offenders

52—Interpretation and application

53—Serious repeat offenders

54—Sentencing of serious repeat offenders

55—Declaration that youth is recidivist young offender

This Division (comprising clauses 52, 53, 54 and 55) is substantially the same as Part 2 Division 2A (comprising sections 20A, 20B, 20BA and 20C) of the repealed Act.

Division 5—Offenders incapable of controlling, or unwilling to control, sexual instincts

56—Application of this Division

57—Offenders incapable of controlling, or unwilling to control, sexual instincts

58—Discharge of detention order under section 57

59—Release on licence

60—Appropriate board may direct person to surrender firearm etc

61—Court may obtain reports

62—Inquiries by medical practitioners

63—Parties

64—Service on guardian

65—Appeals

66—Proclamations

67—Regulations

This Division (comprising clauses 56 to 67) is substantially the same as Part 2 Division 3 (comprising sections 21 to 29) of the repealed Act.

Division 6—Sentencing standards for offences involving paedophilia

68—Sentencing standards for offences involving paedophilia

This Division is substantially the same as Part 2 Division 5 (comprising section 29D) of the repealed Act.

Division 7—Community based custodial sentences

Subdivision 1—Home detention

69—Purpose of home detention

This clause sets out the purpose of a home detention order, which is to allow a court to impose a custodial sentence but direct that the sentence be served on home detention. The paramount consideration of the court when determining whether to make a home detention order must be to protect the safety of the community (whether as individuals or in general).

70—Home detention not available for certain offences

This clause makes it clear that the powers vested in a court by this Division—

- are exercisable despite the fact that an Act prescribes a minimum penalty; but
- 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.

71—Home detention orders

This clause provides that, subject to this clause, if—

- a court has imposed a sentence of imprisonment on a defendant; and
- the court considers that the sentence should not be suspended under Part 4 Division 2; and
- the court considers that the defendant is a suitable person to serve the sentence on home detention,

the court may order that the defendant serve the sentence on home detention (a *home detention order*).

The following provisions apply to a home detention order:

- a home detention order must not be made if the court considers that the making of such an order would, or may, affect public confidence in the administration of justice;
- a home detention order must not be made if the defendant is being sentenced—
  - as an adult to a period of imprisonment with a non-parole period of 2 years or more for a prescribed designated offence; or
  - 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
  - as an adult for a serious and organised crime offence or specified offence against police; or
  - as an adult for a designated offence and, during the 5 year period immediately preceding the date on which the relevant offence was committed, a court has sentenced the defendant to imprisonment (other than where the sentence is suspended) or home detention for a designated offence; or
- a home detention order must not be made unless the court is satisfied that the residence the court proposes to specify in its order is suitable and available for the detention of the defendant and that the defendant will be properly maintained and cared for while detained in that place;

- a home detention order must not be made if the home detention is to be served concurrently with a term of imprisonment then being served, or about to be served, by the defendant;
- a home detention order should not be made unless the court is satisfied that adequate resources exist for the proper monitoring of the defendant while on home detention by a home detention officer.

The court must take the following matters into consideration when determining whether to make a home detention order:

- the impact that the home detention order is likely to have on—
  - any victim of the offence for which the defendant is being sentenced; and
  - any spouse or domestic partner of the defendant; and
  - any person residing at the residence at which the prisoner would, if released, be required to reside;
- the pre-sentence report (if any) ordered by the court;
- any other matter the court thinks relevant.

In deciding whether special reasons exist for the purposes of this section, the court must have regard to both of the following matters and only those matters:

- 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);
- 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.

The clause also defines terms used in the clause.

72—Conditions of home detention order

This clause provides that each home detention order is subject to the following conditions:

- a condition requiring the person subject to the order to remain at the residence specified by the court throughout the period of the home detention order and not to leave that residence at any time during that period except for the following purposes:
  - attendance at such remunerated employment 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;
  - urgent medical or dental treatment for the defendant;
  - attendance at a course of education, training or instruction or any other activity as approved or directed by the home detention officer to whom the defendant is assigned;
  - any other purposes as approved or directed by the home detention officer to whom the defendant is assigned;
- a condition requiring the person to be of good behaviour;
- a condition requiring the person to be under the supervision of a home detention officer;
- a condition requiring the person to obey the lawful directions of the home detention officer to whom the person is assigned;
- a condition prohibiting the person from possessing a firearm or ammunition or any part of a firearm;
- a condition relating to the use of drugs by the person other than for therapeutic purposes; and
- a condition requiring the person to submit to such tests (including testing without notice)—
  - for gunshot residue; or
  - relating to drug use,
  - as a home detention officer may reasonably require;
- a condition that the defendant be monitored by use of an electronic device approved under section 4 of the *Correctional Services Act 1982*; and
- such other conditions as the court thinks appropriate and specifies in the order.

73—Orders that court may make on breach of condition of home detention order etc

This clause is similar to section 33BD of the repealed Act. However, if a court revokes a home detention order and orders that the balance of the sentence be served in custody, the court—

- must take the following periods into account:
  - the period of compliance by the person with the conditions of the home detention order;
  - the period spent by the person on home detention or otherwise in custody pending determination of the proceedings under this section; and
- may, if it considers that there are special circumstances justifying it in so doing, reduce the term of the sentence of imprisonment; and
- may direct that the sentence be cumulative on any other sentence, or sentences, of imprisonment then being served, or to be served, by the person.

74—Court to provide CE with copy of home detention order

This clause provides that if a home detention order is made in respect of a person, or the order or conditions of the order are varied or revoked, or a further order is made in respect of the person, the court must notify the chief executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of the *Correctional Services Act 1982* (the *CE*) of the terms of the order, variation, revocation or further order, as the case may require.

75—CE must assign home detention officer

The CE must, on receiving a copy of a home detention order (and may after then from time to time) assign the person to whom the order relates to a home detention officer and ensure that the person is so notified. It is the duty of a home detention officer to endeavour to ensure that any person assigned to the officer complies with the conditions of the order.

76—Powers of home detention officers

This clause provides that a home detention officer may, at any time, for the purpose of ascertaining whether or not a person to whom the officer has been assigned is complying with the home detention order and conditions—

- enter or telephone the person's residence; or
- telephone the person's place of employment or any other place at which the person is permitted or required to attend; or
- question any person who is at that residence or place as to the whereabouts of the person.

77—Apprehension and detention of person subject to home detention order without warrant

This clause is substantially the same as section 33BE of the repealed Act.

78—Offence to contravene or fail to comply with condition of home detention order

This clause is substantially the same as section 33BF of the repealed Act.

Subdivision 2—Intensive correction

79—Purpose of intensive correction order

This clause provides that the purpose of an intensive correction order is to provide a court with an alternative sentencing option for a defendant where the court—

- is considering imposing a short custodial sentence of 12 months or less; and
- considers there is a genuine risk that the defendant will re-offend if not provided with a suitable intervention program for rehabilitation purposes.

The court should not impose an intensive correction order on a defendant unless the court considers that, given the short custodial sentence that the court would otherwise have imposed, rehabilitation of the defendant is more likely to be achieved by allowing the defendant to serve the sentence in the community while subject to strict conditions of intensive correction.

Despite the preceding subsections, the paramount consideration of the court when determining whether to make an intensive correction order must be to protect the safety of the community (whether as individuals or in general).

80—Intensive correction not available for certain offences

This clause provides that the powers vested in a court by this Division—

- are exercisable despite the fact that an Act (or statutory instrument) prescribes a minimum penalty; but
- are not exercisable in relation to any offence in respect of which an Act (or statutory instrument) expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

81—Intensive correction orders

This clause provides that, subject to this clause, if—

- a court has imposed a sentence of imprisonment on a defendant of a term that is 2 years or less; and
- the court considers that the sentence should not be suspended under Part 4Division 2; and
- the court determines that there is good reason for the defendant to serve the sentence in the community while subject to intensive correction,

the court may order that the defendant serve the sentence in the community while subject to intensive correction (an *intensive correction order*).

The court may determine that, even though a custodial sentence is warranted and there is a moderate to high risk of the defendant re-offending, any rehabilitation achieved during the period that would be spent in prison is likely to be limited compared to the likely rehabilitative effect if the defendant were to spend that period in the community instead while subject to intensive correction.

The clause sets out the provisions that apply to an intensive correction order and the matters that a court must take into consideration when determining whether to make an intensive correction order.

82—Conditions of intensive correction order

This clause provides that each intensive correction order is subject to the following conditions:

- a condition requiring the person to be of good behaviour;
- a condition requiring the person to be under the supervision of a community corrections officer;
- a condition requiring the person to obey the lawful directions of the community corrections officer to whom the person is assigned;
- a condition requiring the person to report to a specified place not later than 2 working days after the date of the order unless, within that period, the defendant receives a notice from the CE to the contrary;
- a condition prohibiting the person from possessing a firearm or ammunition or any part of a firearm;
- a condition requiring the person to submit to such tests (including testing without notice) for gunshot residue as a community corrections officer may reasonably require;
- a condition that the person undergo assessment or treatment (or both) relating to the person's mental or physical condition;
- a condition requiring the person to report to the community corrections officer to whom the person is assigned any change of address or employment, not later than 2 working days after the date of the change;
- a condition that the person must not leave the State for any reason except in accordance with the written permission of the CE;
- if the defendant is unemployed—a condition requiring the person to perform a specified number of hours of community work;
- a condition requiring the person to comply with the following:
  - (i) regulations made for the purposes of this clause;
  - (ii) the lawful directions of the CE;
- such other conditions as the court thinks appropriate and specifies in the order.

An intensive correction order may also be subject to any number of other conditions that the sentencing court thinks fit. A person subject to an intensive correction order will, unless the order is earlier revoked, remain subject to intensive correction in the community until the order expires.

83—Orders that court may make on breach of condition of intensive correction order etc

This clause makes provision in similar terms as those in clause 73 in relation to home detention orders, with necessary modifications relating to intensive correction orders.

84—Court to provide CE with copy of intensive correction order

This clause (which mirrors clause 74) provides that if an intensive correction order is made in respect of a person, or the order or conditions of the order are varied or revoked, or a further order is made in respect of the person, the court must notify the CE of the terms of the order, variation, revocation or further order, as the case may require.

85—CE must assign community corrections officer

This clause mirrors clause 75 and provides that the CE must, on receiving a copy of an intensive correction order (and may after then from time to time) assign the person to whom the order relates to a community corrections officer and ensure that the person is so notified. It is the duty of a community corrections officer to endeavour to ensure that any person assigned to the officer complies with the conditions of the order.

86—Provisions relating to community service

The following provisions apply to an intensive correction order that includes a condition requiring the performance of community service:

- the court must specify the number of hours of community service to be performed by the person to whom the sentence relates, being not less than 15 or more than 300;
- the court must not specify a number of hours of community service to be performed by a person who is already performing, or is liable to perform, community service, where the aggregate of that number and the number of hours previously specified would exceed 300;
- the court must specify a period, not exceeding 18 months, within which the community service is to be performed;
- the person is required to report to a specified place not later than 2 working days after the date of the order unless, within that period, the person receives a notice from the CE to the contrary;
- the person is required to perform community service for not less than 4 hours each week and on such day, or days, as the community corrections officer to whom the person is assigned may direct;
- the person may not, except in circumstances approved by the Minister for Correctional Services, be required to perform community service for a continuous period exceeding 7.5 hours;
- if on any day a period of community service is to exceed 4 continuous hours, the next hour must be a meal break;
- the person may not be required to perform community service at a time that would interfere with the person's remunerated employment or with a course of training or instruction relating to, or likely to assist the person to obtain, remunerated employment, or that would cause unreasonable disruption of the person's commitments in caring for the person's dependants;
- the person may not be required to perform community service at a time that would cause the person to offend against a rule of a religion that the person practises;
- the attendance of the person at any educational or recreational course of instruction approved by the Minister for Correctional Services will be taken to be performance of community service;
- the person will not be remunerated for the performance of community service under the order;
- the person must obey the lawful directions of the community corrections officer to whom the person is assigned.

This clause does not apply in relation to the performance of community service by a youth (which is governed by the *Young Offenders Act 1993*) and is substantially the same as section 47 of the repealed Act.

87—Court to be notified if suitable community service placement not available

This clause (which has a similar effect as section 45 of the repealed Act) provides that if the CE, on being notified that a court has included in an intensive correction order a condition requiring the performance of community service, is of the opinion that suitable community service work cannot be found for the defendant because of the defendant's physical or mental disability, the CE must give the court written notice of that fact, on receipt of which the court may revoke the condition or discharge the intensive correction order (as the case may be) and require the defendant to appear before the court for further order.

88—Community corrections officer to give reasonable directions

This clause is substantially the same as section 50 of the repealed Act in respect of persons required to perform community service.

89—Power of Minister in relation to default in performance of community service

If the Minister for Correctional Services is satisfied that a person who is required to perform community service has failed to obey a direction given by the community corrections officer to whom the person is assigned, the Minister, instead of commencing proceedings for breach of order, may, by notice in writing served personally, increase the number of hours of community service that the person is required to perform. If the Minister does so increase the hours of community service to be performed, the intensive correction order will be taken to have been amended accordingly. The number of hours of community service may not be increased by the Minister by more than 24 in aggregate, but such an increase may be made despite the fact that its effect is to increase the total number of hours to be performed beyond the normal limit.

If the Minister for Correctional Services is satisfied that a person has failed to comply with a condition of an intensive correction order requiring performance of community service, the Minister may, by notice in writing served personally or by post, suspend the operation of the order until proceedings for breach of the intensive correction order have been determined.

90—Apprehension and detention of person subject to intensive correction order without warrant

This clause mirrors clause 77 and provides that if the CE suspects on reasonable grounds that a person subject to an intensive correction order has breached a condition of the order, the person may be apprehended, without warrant, by a police officer or community corrections officer and detained in custody for the purposes of proceedings relating to the suspected breach under clause 83 before the court that imposed the order.

91—Offence to contravene or fail to comply with condition of intensive correction order

This clause mirrors clause 78 and provides that it is an offence for a person subject to an intensive correction order to contravene or fail to comply with a condition of the order, punishable by a fine of $2,500 or imprisonment for 6 months.

Subdivision 3—General

92—Court may direct person to surrender firearm etc

A court may, when imposing a sentence on a person to whom this section applies, direct the person to immediately surrender at a police station specified by the court any firearm, ammunition or part of a firearm owned or possessed by the person. This provision applies to the following persons:

- a person subject to a home detention order under Part 3Division 7Subdivision 1;
- a person subject to an intensive correction order under Part 3Division 7Subdivision 2.

Division 8—Effect of imprisonment for contempt

93—Effect of imprisonment for contempt

This clause is substantially the same as section 33C of the repealed Act.

Part 4—Other community based sentences

Division 1—Purpose, interpretation and application

94—Purpose of Part

The purpose of this Part is to provide a court with an option to impose a non-custodial community based sentence on a defendant.

95—Interpretation and application of Part

This clause defines a reference to a *bond under this Act* (that is a bond under section 96 or 97, as the case requires. The powers vested in a court by this Part—

- are exercisable despite the fact that an Act (or statutory instrument under an Act) prescribes a minimum penalty; but
- are not exercisable in relation to—
    - murder or treason; or
    - any other offence in respect of which an Act (or statutory instrument under an Act) expressly prohibits the reduction, mitigation or substitution of penalties or sentences.

Division 2—Bonds, community service and supervision in community

96—Suspension of imprisonment on defendant entering into bond

This clause is substantially the same as section 38 of the repealed Act, with the addition of the statement set out in section 42(a1) of the repealed Act which directly relates to bonds under this clause.

97—Discharge of other defendants on entering into good behaviour bond

This clause mirrors section 39 of the repealed Act.

98—Conditions of bonds under this Act

This clause is similar to section 42 of the repealed Act, however, with the exception of subsection (a1) which has been relocated appropriately into clause 96, and the addition of 2 other conditions.

99—Term of bond

This clause provides that, subject to this measure, a bond under this Act is effective for the term that is specified in the bond.

100—Guarantors etc

This clause mirrors section 41 of the repealed Act.

101—Court may direct person to surrender firearm etc

This clause is substantially the same as section 42A of the repealed Act.

102—Court to provide CE with copy of court order

103—Variation or discharge of bond

Clause 102 and this clause are substantially the same as sections 43 and 44 of the repealed Act.

104—Court to be notified if suitable community service placement not available

105—Provisions relating to community service

106—Provisions relating to supervision in the community

107—CE must assign community corrections officer

108—Community corrections officer to give reasonable directions

109—Powers of community corrections officer relating to probationers on home detention

110—Variation of community service order

111—Power of Minister to cancel unperformed hours of community service

112—Power of Minister in relation to default in performance of community service

Clauses 104 to 112 have the same substantive effect as Part 6 of the repealed Act.

Division 3—Enforcement of bonds, community service orders and other orders of a non-pecuniary nature

Subdivision 1—Bonds

113—Non-compliance with bond

114—Orders that court may make on breach of bond

Clause 113 and this clause mirror sections 57 and 58 of the repealed Act.

Subdivision 2—Community service orders and other orders of a non-pecuniary nature

115—Community service orders may be enforced by imprisonment

116—Other non-pecuniary orders may be enforced by imprisonment

117—Registrar may exercise jurisdiction under this Division

118—Detention in prison

Clauses 115 to 118 mirror sections 71 to 71B of the repealed Act.

Part 5—Financial penalties

119—Maximum fine if no other maximum provided

This clause substantially reflects section 34 of the repealed Act.

120—Order for payment of pecuniary sum not to be made in certain circumstances

121—Preference must be given to compensation for victims

122—Court not to fix time for payment of pecuniary sums

Clauses 120, 121 and 122 reflect sections 13, 14 and 14A respectively of the repealed Act.

Part 6—Restitution and compensation

Division 1—Restitution and compensation generally

123—Restitution of property

This clause provides that if the offence of which the defendant has been found guilty, or any other offence that is to be taken into account by the court in determining sentence, involves the misappropriation of property, the court may order the defendant, or any other person in possession of the property, to restore the property to any person who appears to be entitled to possession of the property. Any such order does not prejudice any person's title to the property.

124—Compensation

This clause provides that, subject to this clause, a court may make an order requiring a defendant to pay compensation for injury, loss or damage resulting from the offence of which the defendant has been found guilty or for any offence taken into account by the court in determining sentence for that offence—

- either on application by the prosecutor or on the court's own initiative; and
- instead of, or in addition to, dealing with the defendant in any other way.

If a court finds a defendant guilty of an offence, or takes an offence into account in determining sentence, and the circumstances of the offence are such as to suggest that a right to compensation has arisen, or may have arisen, under this clause, the court must, if it does not make an order for compensation, give its reasons for not doing so.

Compensation under this section will be of such amount as the court considers appropriate having regard to any evidence before the court and to any representations made by or on behalf of the prosecutor or the defendant.

If any property of which a person was dispossessed as a result of the offence is recovered, any damage to the property while it was out of the person's possession is to be treated for the purposes of this clause as having resulted from the offence.

The power of a court to award compensation under this clause is subject to the following qualifications:

- no compensation may be awarded for injury, loss or damage caused by, or arising out of the use of, a motor vehicle except damage to property;
- no compensation may be awarded against an employer in favour of an employee or former employee if—
  - the offence arises from breach of a statutory duty related to employment; and
  - the injury, loss or damage is compensable under the *Return to Work Act 2014*;
- the Magistrates Court may not award more than $20,000 (or if a greater amount is prescribed—the prescribed amount) by way of compensation.

Compensation may be ordered under this clause in relation to an offence despite the fact that compensation may be ordered under some other statutory provision that relates more specifically to the offence or proceedings in respect of the offence. Any amount paid to a person pursuant to an order under this clause for compensation for injury, loss or damage must be taken into consideration by a court or any other body in awarding compensation for that injury, loss or damage under any other Act or law.

125—Certificate for victims of identity theft

This clause provides that a court that finds a person guilty of an offence involving the assumption of another person's identity, or the use of another person's personal identification information, may, on application by a victim of the offence, issue a certificate that gives details of—

- the offence; and
- the name of the victim; and
- any other matters considered by the court to be relevant.

Division 2—Enforcement of restitution orders

126—Non-compliance with order for restitution of property

This clause provides an authorised officer with the necessary powers to take action under this clause where an order requiring property to be restored to a person has been made but not complied with.

Part 7—Miscellaneous

127—Power of delegation—intervention program manager

This clause provides the intervention program manager with a power of delegation in accordance with the provisions of the clause.

128—Regulations

This clause provides the Governor with the power to make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this measure.

Schedule 1—Repeal and transitional provisions

Part 1—Repeal of *Criminal Law (Sentencing) Act 1988*

This clause repeals the *Criminal Law (Sentencing) Act 1988*.

Part 2—Transitional provisions

This clause makes provision for transitional arrangements consequential on the enactment of this measure.

Debate adjourned on motion of Hon. J.S.L. Dawkins.

At 16:47 the council adjourned until Tuesday 28 March 2017 at 14:15.