LEGISLATIVE COUNCIL

Wednesday, 24 September 2014

The PRESIDENT (Hon. R.P. Wortley) took the chair at 14:15 and read prayers.

Parliamentary Committees

LEGISLATIVE REVIEW COMMITTEE

The Hon. G.A. KANDELAARS (14:18): I bring up the eighth report of the committee.

Report received.

The Hon. G.A. KANDELAARS: I bring up the ninth report of the committee.

Report received and read.

Question Time

TAFE SA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:20): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question regarding TAFE.

Leave granted.

The Hon. D.W. RIDGWAY: On 5 June 2014 the chief executive of TAFE wrote to a TAFE college regarding the commonwealth inquiry into TAFE SA's governance impacting on industrial relations. In his email he says that this would depend a lot on the outcome of the TAFE EB negotiations with the AEU, which were set to start in August. He s Billays that TAFE has 'an ambitious agenda for change to the conditions of service of teaching staff'. He states that at that time they could not compete with the private RTOs with a very low cost base. He says that much will depend on support from the state government in pushing for these reforms, and that the board has full support from that agenda. My question to the minister is: is the government supporting TAFE's ambitious agenda, and has she been briefed on the details of what that ambitious agenda may be?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:21): I thank the honourable member for his question. Our whole VET sector has been going through considerable reform and continues on that pathway; TAFE being our largest provider is key to that as well. We have seen changes in relation to TAFE, which was made up of many different separate institutions. It went from many to three and from three to one, and now is an independent statutory authority with its own board.

During that time we have seen, through the national partnership arrangements and other drivers, our VET system go from a system that was basically dominated by one provider to now a much more open marketplace where contestability has been introduced. I do not have the number of providers with me at the moment, but it went from a handful of private providers now to a couple of hundred providers. Those reforms have driven huge efficiencies, really significant efficiencies. South Australia's VET system went from being the most cost inefficient system in the nation to now, where it has been assessed as the most cost effective system in the nation. We continue on those reforms.

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: Well, the question was around reforms, and I am talking about the reform agenda. Those reform agendas are in place and we continue. We know that one of the key drivers to both past and future reforms has been the increased introduction of information technology and the decreased reliance on face-to-face classroom exchange, not that we are saying that we will ever do away with face-to-face classroom exchange, which is a very important part of learning.

However, those learning models have changed and continue to change and I know TAFE is doing a lot of work in that area to look at how it can harness and utilise information technology better to improve access to training. I know, for instance, they are doing quite a bit in that space.

In relation to TAFE's general costs, the cost for TAFE is considerably higher than that for the private sector. There are reasons for that, and TAFE is working very—

The Hon. D.W. Ridgway: What are the reasons?

The Hon. G.E. GAGO: I'm happy to talk about that. TAFE is working very hard as part of its reform agendas to bring down those costs so that they are more on par with the private sector. Some of the reasons for those costs are the enterprise bargaining arrangements for TAFE employees. Their conditions and payments are set at a higher rate than that of non-TAFE lecturers, for instance.

There is also the fact that TAFE is our major public provider and it provides the lion's share of training in regions. That training is unlikely to attract very many private sector providers because it is just not financially viable, so TAFE wears the lion's share of that, which means that it also contributes to its increased costs. I know that this government is very committed to continuing its training in regions, and those costs are reflected there and in a number of other key drivers.

Infrastructure creates significant burdens in that sector. We have built many TAFE facilities, and many of them are quite old and need lots of repair and what have you. That is also an issue, whereas the private sector tends to hire and lease space when and where it needs it and not have that same capital infrastructure burden—not that TAFE owns that infrastructure, but it does have cost implications, nevertheless.

In terms of the EB arrangements, like every part of the public sector, there is a process that we go through of enterprise bargaining where negotiations occur and, as it has in the past, that will occur this next round. As I said, there is a clear and open process in place for parties to come to the table and negotiate for the next round of payments and conditions, and I look forward to that next round.

TAFE SA

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:28): As part of those negotiations, are we likely to see changes to the face-to-face teaching time for lecturers, changes to term dates and holiday periods and lecturers teaching multiple subjects?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:28): Was the question 'as part of the enterprise bargaining'?

The Hon. D.W. Ridgway interjecting:

The Hon. G.E. GAGO: The member is confusing enterprise bargaining with the reform agenda and he is interchanging them. He does not really know what he is talking about, but in terms of the reform agenda, I talked about the introduction of technology and a whole range of things that are occurring. In relation to enterprise bargaining, they are around the specific payments and conditions of employment.

The Hon. D.W. Ridgway: You've got face-to-face time, holidays—they are the things that people can negotiate on.

The Hon. G.E. GAGO: I am not going to second-guess the outcome of this next round of enterprise bargaining or the rounds after that. There is no way. It is completely out of order and inappropriate for me to be trying to second-guess what the next round is. But in terms of the process—and the honourable member probably does not realise this—the unions are represented in this and the employer and employee representatives come together and sit around the table and negotiate. What the parties choose to put on the table is a matter for them, and what the outcome of those negotiations and the agreements—

The Hon. D.W. Ridgway: Who is negotiating on the part of the government? You, as minister?

The Hon. G.E. GAGO: No, the industrial relations minister. The honourable member doesn't have a clue; he just doesn't have a clue. He doesn't know how government works. Ah, that's because he has never been in government, and is probably unlikely to be either. As I said, I welcome those negotiations. Bring them on; the parties and their representatives will come to the table in good faith and they will negotiate in good faith, and what they agree to will be a matter of those parties.

WHALE SANCTUARIES

The Hon. J.M.A. LENSINK (14:30): I seek leave to make an explanation for directing to the minister representing the Minister for Sustainability, Environment and Conservation questions regarding whale sanctuaries.

Leave granted.

The Hon. G.E. Gago: Concerning what?

The Hon. J.M.A. LENSINK: Whale sanctuaries. You won't have an answer to this; don't worry about it. Every winter, South Australians witness the migration of the southern right whales to our South Australian waters as part of their breeding cycle, and the whales take up residence at the head of the bight for a five-month period, where they use the waters as a calving ground and nursery.

Late last week I was made aware of a disturbing event that occurred during the week beginning 8 September, which left many calves vulnerable to predation from great white sharks because they did not have the protection of their mothers. On this day, witnesses watched as SARDI launched two inflatable boats and chased down whales in order to tag them for movement monitoring and to obtain biological samples. I understand that nine whales were tagged and 15 had samples removed.

Prior to the disturbance, it was noted there were approximately 77 whales in the area; by the end of the chasing there were only 12. Whilst SARDI possessed the correct permits to enter the sanctuary and stated it was abiding by world's best practice, witnesses stared on in disbelief as the whales were chased until exhaustion. My questions for the minister are:

1. Is the government aware of this process and does it endorse this particular practice?

2. Does the government understand that this is world's best practice to leave calves vulnerable without the protection of their mothers for an extended period of time?

3. Can the minister assure this place that no whales were put at risk at any point during this process?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:32): I thank the honourable member for her most important questions and will refer them to the minister for environment. I am sure he will bring back a response. I have to say that I've had the great pleasure of visiting the head of the bight and being able to observe firsthand whales in that area during calving time. It is indeed a magnificent sight and the viewing amenities and platforms there are wonderful as well. I appreciated very much the opportunity to do that.

I certainly don't have information about current practices, but as a former minister for environment, I always held in high regard and awe the work that our officers from that agency did. They were people of enormous passion and commitment to the environment and worked extremely hard and always strove to utilise world's best practice in all their endeavours. I would be most surprised if those practices were not continuing today, but that is for the minister to answer, and I am sure he will at his earliest convenience.

TAFE SA

The Hon. S.G. WADE (14:34): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question in relation to TAFE.

Leave granted.

The Hon. S.G. WADE: I am advised that on 16 April 2014 retired TAFE chief executive, Mr Jeff Gunningham, emailed a TAFE college regarding the submission to the federal house of reps inquiry into the role of the technical and further education system and its operation. He reportedly said that he had contacted the minister's office seeking clarification regarding the process which had been agreed in writing. We presume that the agreement in writing is in relation to how the submission's preparation should be managed. The email states that the chief executive of DFEEST, Mr Garrand, had given directions over this matter and those directions differed from what had been agreed with the minister or her office. My questions to the minister are:

1. To what did the process agreed in writing in the email relate?

2. How did Mr Garrand's directions differ from that process?

3. As a result of contact between Mr Gunningham and your office, were any changes made to the process?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:35): It is obvious that the opposition is running out of questions, even after a five-week break. I have previously answered this question quite substantially. In fact, I think I have answered it on a number of occasions. I previously outlined the process that was put in place in relation to both the written submissions and the verbal or face-to-face sessions in relation to the House of Representatives inquiry into these matters.

I am not going to go through it all again, because I will be accused of taking up too much of question time. Heaven forbid! The opposition has already run out of questions but heaven forbid—I would not want to lessen their embarrassment by talking for longer than I need to. I will not go through all those details. I have already indicated that initially there was consideration of separate written submissions. Cabinet then decided that it would be a whole-of-government response, and information was exchanged. I have already indicated in detail what took place around both those matters.

CONSUMER RIGHTS

The Hon. G.A. KANDELAARS (14:36): I seek leave to make a brief explanation before asking the Minister for Consumer and Business Services a question about consumer rights.

Leave granted.

The Hon. G.A. KANDELAARS: Older South Australians can often find that they experience pressure tactics when being enticed to make purchases. They are often alone and do not always know where they can get help or information about what their rights are. Can the minister please update the chamber on what the government is doing to give our older people a hand to know about their consumer rights?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:37): I thank the honourable member for his most important question. No-one wants to think of their friends and family being taken advantage of. Unfortunately, as we get older, we become more and more susceptible and are often targeted by consumer scams.

Consumer and Business Services has recently refreshed its *Savvy Seniors* guide. The guide outlines consumers' rights and is aimed at giving seniors the knowledge and confidence to protect themselves and their loved ones against scams. It is a most unfortunate and sad reality that older people are often seen as easy targets for scams by those trying to hoodwink them out of their money or stealing identity information. These are also often people who can least afford the financial hit that being scammed can sometimes bring.

The *Savvy Seniors* guide includes advice on consumer rights under the Australian Consumer Law, specifically in relation to issues that impact on older people such as things like refund rights, door-to-door sales and cooling-off periods, telemarketing, how to identify dodgy tradespeople, what to look out for with new trends like prepaid funeral contracts, and things like smart spending. *Savvy*

Seniors helps consumers to understand acceptable conduct from salespeople and educates them to make informed choices when purchasing products and services.

The Commissioner for Consumer Affairs and I were fortunate enough to meet with a group of residents at the Lifestyle SA retirement village in Mount Barker, where we launched the new edition of the *Savvy Seniors* booklet. The residents I met there were an incredibly engaging and lively group. It was lovely to be able to be there and chat with them, and also to listen to their personal experiences with some of these shady characters.

They described to me what some of their experiences had been with salespeople contacting them after telemarketing hours and suchlike. There was also some information that a particular company had given them about refunds. Through our meeting, the commissioner and I were able to assist residents with knowledge that they needed to help them negotiate for their rights in the marketplace. That is something that is obviously quite integral to a person's ongoing independence.

In one instance the commissioner undertook to investigate a matter to ensure a trader who was referenced by one of the residents was aware of their Australian Consumer Law responsibilities. At the end of the visit, the residents at Lifestyle SA Mount Barker proudly took me on a tour of their fabulous facility. It was great to meet with such a wonderful group of people, who indicated to me that they thought the guide would be very useful for them, their families and their friends. We want South Australian seniors to be confident in all aspects of their life, including when they are buying goods and services.

We want to ensure they have adequate knowledge to protect themselves from current and common scams. For example, last year so-called 'romance scams' were identified as causing the most financial harm. Older South Australians who are feeling lonely are often particularly targeted and fall victim to these scams, and *Savvy Seniors* provides information on how to identify and avoid this kind of scam. With the increase in older people who are now active online, the guide also features tips on how to be tech savvy, including information on using mobile phones, the internet and online shopping. CBS is working with local seniors organisations to promote the Savvy Seniors message.

HOPGOOD THEATRE

The Hon. R.L. BROKENSHIRE (14:42): I seek leave to make a brief explanation before seeking some advice in an answer from the Minister for Employment, Higher Education and Skills.

Leave granted.

The Hon. R.L. BROKENSHIRE: The now named Don Hopgood Theatre at the Noarlunga Centre is a TAFE-owned facility still, as far as I understand. For some time, that facility has been run down, albeit that there are a lot of people in the southern community who want to access the arts and festivals, etc. My questions to the minister are:

1. Can the minister confirm whether or not she has sold the TAFE theatre at Noarlunga?

2. If not, has she or her department sought to sell the theatre to the City of Onkaparinga?

3. What are the plans for the Noarlunga theatre into the future?

4. If the government is going to keep the Noarlunga theatre (Don Hopgood Theatre), what is it going to do to modernise it so that it becomes a useful asset to the southern community?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:43): I thank the honourable member for his question. I am not aware of any proposed changes to that centre. I will have to take that on notice and bring back a response. I am just not aware of the details around that. I am not aware of any proposed changes, but I will double-check that and bring that information back.

SKILLS FOR ALL

The Hon. R.I. LUCAS (14:44): I seek leave to make a brief explanation before directing a question to the Leader of the Government on the subject of Skills for All.

Leave granted.

The Hon. R.I. LUCAS: The minister will be aware that the opposition has been provided with information on detailed parliamentary briefing notes provided to the minister from someone very close to the minister. One of the issues raised in the parliamentary briefing notes is a briefing note referring to Skills for All funded training undertaken by school-enrolled students.

I refer to the detail in that, which was prepared by principal policy officer, training support and development unit, Skills South Australia, Kym Clayton. The previous parliamentary briefing note—the minister will be familiar with parliamentary briefing notes; the ministers are updated as policies change and as decisions impact on the previous briefing notes—provided to the minister to answer questions in this particular area indicated that Skills for All funds for training significantly reduce the costs for students. Certificate II courses are fee free.

In email exchanges between various officers and the minister's office, a question is raised as to whether this will still be the case under the purchase limits policy which has been introduced by the government. The answer that was provided is: yes, it will still be fee free but 'just fewer numbers of students permitted to enrol'. So, the email exchanges indicated that, whilst the minister could still, in her current briefing notes, claim that certificate II courses are fee free, because purchase limits were being introduced, whilst that would still be technically correct, the minister needed to be a bit careful in relation to that—this is the confidential stuff that she is not allowed to read out into parliament—it would just be there were fewer numbers of students who would actually be allowed to enrol. My questions to the minister are:

1. What are the details of the purchase limits policy that had been introduced by the government in this particular area?

2. How many fewer students were permitted to enrol because the government introduced this purchase limit policy?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:46): I thank the honourable member for his questions. Indeed, there have been a number of changes in the arrangements for Skills for All since its inception back in 2012. Those changes have been made to ensure that we are able to maintain the training provisions within a budget, given that it is an extremely difficult area to manage. It is not a matter of simply passing over a dollar for a particular training outcome: often the training obligations that are put in place can go for, on average, three years.

You create a pipeline impact, if you like, so your ability to take on new enrolments very much depends on how many enrolments you have in the pipeline, and that varies, because not only do the different qualifications and skill sets have different course lengths but individuals also take various degrees of time for a range of their own personal reasons. Those things we have to manage on a year by year basis and we have done that through things like price banding, capping and those sorts of arrangements. Public funds for training must be directed in ways that complement private investment and best support, obviously, the priorities of business and the state and, ultimately, jobs.

To better target public investment in training the government has introduced price banding. This is offered at different levels of public subsidy for courses based on and assessed around their public value. Public value assessment takes into account issues such as critical industry skills shortages, the needs of disadvantaged learners and the need to have a balance between public and private investment in training.

The public value assessor's course is based on identified economic participation criteria, including the Training and Skills Commission projections of industry demand, employment trends, strategic priorities, etc. Obviously, courses with the highest public value are in the highest band and receive 100 per cent of pre-priced banding, and the public value framework operates in conjunction with other eligibility conditions to help ensure that government investment in training is best utilised.

In terms of the particular training numbers, and in terms of the impact that the various banding initiatives have had, I do not have those figures with me at present, but I am happy to take that on notice and bring that back as soon as I can.

YOUTH TRAINING AND EDUCATION

The Hon. K.J. MAHER (14:50): My question is to the Minister for Employment, Higher Education and Skills. Can the minister please advise the chamber what the government is doing to assist some of our disadvantaged youth into training or education?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:50): I thank the honourable member for his most important question. We on this side of the chamber know full well that undertaking training very much increases a person's chance of finding employment. We also understand how important a school education is to a person's future opportunities.

When those opposite were in power, almost one in three young people did not stay on to their final years in school. Under this Labor government, we now have one of the best school retention rates in the nation. More young people are now enrolled in year 12 than at any other time in the state's history. That is why we have invested in programs such as ICAN, the Innovative Community Action Network. ICAN is a joint initiative between the Department of State Development and the Department of Education and Child Development. The program is designed to identify highly disadvantaged school students, to support them to keep engaged with education and/or training. The program identifies students who are at risk or who have strayed from the pathway of completing SACE.

Students may disengage with their schooling for a variety of reasons, including social, economic and family reasons. For some, their own health, the health of other family members or caring responsibilities may make participation extremely difficult. The ICAN program provides intensive individual case-management support throughout the year, if necessary, to address the issues that are barriers to their participation in learning.

The training program supports may include funding for training qualifications in certificate III level and above. A recent analysis of training outcomes of the ICAN pathway program from July 2012 to June 2014 has shown that the qualification completion rate of 44 per cent at the aggregate level is above the national VET average of 37 per cent for all students and over twice the average completion rate for students identified as disadvantaged, which is less than 20 per cent.

What is also pleasing is that at the disaggregate level students show an increasing rate of qualification completion as time progresses. For example, students commencing in semester 2 of 2012 had a completion rate of 49 per cent in November 2013, rising to 65 per cent in July 2014 as continuing students completed their qualification. This data demonstrates that the program is successfully retaining highly disadvantaged students in the education and training system and supporting their completion of accredited training and qualifications.

The support for the students also includes funding of independent career development sessions, with some 570 students between July 2012 and July 2014 accessing this invaluable advice. These young people and the staff and services that support them are living proof of the great things that can be achieved when partnerships are formed and policies are developed that value equity participation. These are core Labor values.

VOICES OF WOMEN BOARD

The Hon. T.A. FRANKS (14:54): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question on the subject of the announced abolition of the Voices of Women Board.

Leave granted.

The Hon. T.A. FRANKS: One of the key initiatives of the DECD Women's Charter was the establishment of the DECD Voices of Women Board. Given the aim of this advisory board is to provide expert advice, recommendations and leadership on areas impacting on women employed

by DECD, and the board's work forms the basis of regular reporting to the chief executive to directly influence DECD policy and practice in a range of areas, has the Minister for the Status of Women (in that capacity) or her agency recommended alternative means by which these outcomes will now be achieved, given the proposed abolition of this board? What mechanisms will be available to broker the scholarships currently administered by this board? Additionally, does the abolition of this board create a cost saving to government or is it budget neutral, and what is the quantum of any expected savings?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:55): I thank the honourable member for her most important question. Obviously, this board is a board that doesn't report to me. It is a board that reports to Jennifer Rankine, so I am not familiar—

The Hon. T.A. Franks: It reports to the CE of DECD, and administers scholarships, and gives advice to—

The Hon. G.E. GAGO: Yes, but it is a board that is basically responsible to minister Rankine. So I don't know the details of that, and I'm not familiar with the terms of reference of that particular board as I have not had a great deal to do with it in the past.

However, there are a number of boards that because of the way they are operating their function is still highly valued, but it doesn't need to be structured as a formal government board or committee. I know a number of these boards propose to continue, and so those roles and functions are still likely to be completed in some way. Some of these boards are changing and slightly amending and updating their terms of references, things like that; changing what they do in certain ways to update their role and functions.

Having said that, I know there are a number of boards that still perform their important functions, but they are not functions that need to be set up in a governance structure that is a formal part of government. That might be one of those boards. I am not sure, but I think that information is going to be available online.

SCAM ACTIVITY

The Hon. J.S. LEE (14:57): I seek leave to make a brief explanation before asking the Minister for Business Services and Consumers about the 'Targeting scams' report.

Leave granted.

The Hon. J.S. LEE: On 16 June this year the Australian Competition and Consumer Commission (ACCC) released their 'Targeting scams' report, which recorded that telephone calls were the most common scam in Australia during 2013, increasing by 13 per cent to 39,921. In addition, the commission received nearly 37,000 reports about online scams involving internet and email, representing increases of almost 47 per cent and 14 per cent, respectively. The report confirmed that over 7,000 South Australian consumers had lost almost $5 million due to scams. The most prominent scams were the advanced fee/up-front payment scams which cost 1,960 South Australian consumers over $1.6 million.

In addition to the information presented earlier by the minister saying that the government has released a *Savvy Seniors* guide, I wonder what additional measures has the government put in place to address scamming issues across the board for South Australian consumers. Also, what assistance has the government provided to help those who have been affected by the scams, particularly those suffering financial hardship? Furthermore, I wonder whether the minister has consulted with CBS and SAPOL about introducing a new policing and investigation system to safeguard vulnerable South Australian consumers from being cheated by scammers.

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:59): I thank the honourable member for her most important question, and her ongoing interest in these policy areas. Our investigation and enforcement operations within CBS are incredibly diligent. They operate in a way to continue to try to make the

public more aware of their rights and responsibilities and educate both the consumers and service providers around their obligations.

I am advised that, in relation to the last financial year, 2013-14, enforcement activities relating to the ACL resulted in the issuing of 14 public warnings in relation to faulty products, itinerant traders and solar companies; 20 written warnings and two written assurances were received, and overall CBS issued 1,090 written warnings and 20 public warnings, 138 expiation notices and received 17 assurances.

There are a range of areas in which they have been very active, particularly around investigations into a solar company. Itinerant traders, particularly those which lay bitumen and such like: they have undertaken a range of activities in that space. Second-hand vehicle dealers is another area in which they have been very involved. They were involved with a joint operation with SAPOL into second-hand vehicle dealers failing to supply warranties to consumers, where SAPOL attended the location to help ensure that vehicles complied with the Road Traffic Act. There are a range of complaints that are at issue and that might result in prosecution.

A whole range of compliance operations have taken place. Product safety operations are also an area in which they have been very active. The area that has cost us the most in terms of scamming has been these online romance services, friendship chat lines, where relationships start. They particularly target older people who are looking for some companionship, the relationship flourishes and the person offers all sorts of things to the person and then, all of a sudden, is asking them for large amounts of money because a member of their family has become seriously ill or so that they can come out and meet and spend a holiday with the person. The scope is unlimited, but it usually results in asking the person for large amounts of money after cultivating a relationship with them.

A great deal of work has been done in this area as well. These sort of scams are notoriously difficult to prosecute or pursue because they are online and are often conducted from overseas. However, CBS works very hard in that space to make the public aware of those scams, and provides general information on how you might check out whether that person and site are really genuine. A great deal of work has been done in that space.

UNLICENSED CAR DEALERS

The Hon. J.M. GAZZOLA (15:03): I seek leave to make a brief explanation before asking the Minister for Business Services and Consumers a question about unlicensed backyard car dealing in South Australia.

Leave granted.

The Hon. J.M. GAZZOLA: Purchasing a car can be one of the most expensive decisions consumers have to make, and it can often be difficult to tell if you are getting a fair deal. Will the minister update the chamber on the Consumer and Business Services investigation recently announced by the commissioner?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:04): I thank the honourable member for his important question. I am advised that motor vehicles continue to be one of the top consumer inquiries to CBS, and I am pleased to advise members about the Commissioner for Consumer Affairs' recent announcement of a planned four-month major investigation into unlicensed car dealers operating in South Australia.

Across Australia, jurisdictions have licensing regimes in place for motor vehicle dealers to ensure a fair marketplace is maintained and that consumers are protected. In South Australia, Consumer and Business Services (CBS) provides a telephone advisory service for consumers, a detailed booklet titled *Autocheck* and online information and advice, and administers the Second-hand Vehicles Compensation Fund. However, when purchasing a used vehicle privately from someone who is not a dealer, you are obviously not covered by the statutory warranty.

The state's consumer watchdog, CBS, is undertaking a major operation into unlicensed backyard car dealers over the next four months. It is focusing on individuals identified as selling more than four cars in a 12-month period without being licensed as required by state legislation. I am further advised that CBS intelligence inquiries have already identified a number of persons who will be subject to further investigation. These matters are being progressed with the assistance of the South Australia Police.

We obviously do not want to see the action of dodgy dealers tarnish the reputation of the vehicle sales industry. Where most people do want to do the right thing, it is always that handful of dodgy dealers who do the damage. Vehicles are an expensive purchase for most of us, and we want to ensure that both consumers and licensed traders are protected. This investigation is another great example of the work CBS operatives undertake, and it follows an announcement earlier this year about the joint operation between CBS and the South Australia Police.

That investigation resulted in the arrest of five men and the seizure of 23 vehicles in connection with an investigation into the winding back of odometers in second-hand vehicles. It will include the consumer watchdog conducting unannounced inspections and face-to-face interviews with identified unlicensed backyard dealers. Operatives will continue to monitor the conduct of any backyard dealers detected throughout the targeted operation, and outcomes will be released at its conclusion.

SENIORS HOUSING GRANT

The Hon. J.A. DARLEY (15:07): I seek leave to make a brief explanation before asking the Leader of the Government, representing the Treasurer, questions regarding the Seniors Housing Grant.

Leave granted.

The Hon. J.A. DARLEY: I was recently contacted by a constituent, who is a senior, with regard to the Seniors Housing Grant. My constituent had seen an advertisement on the grant and sought clarification from the local member as to the eligibility requirements. Unfortunately, he was advised incorrectly and it was not until he was speaking to his real estate agent that he discovered that he would not be eligible to receive the grant. Whilst I understand that RevenueSA has information on the website that clearly outlines the eligibility criteria, many seniors either do not have access to a computer or would not think to go onto the website for further information.

Could the minister advise what consideration was given when formulating an advertising strategy for the Seniors Housing Grant to ensure that the message would be delivered effectively to the target audience of seniors? Can the minister provide details of how information on the Seniors Housing Grant has been disseminated so that their target audience—that is, seniors—can access information about the grant?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:08): I thank the honourable member for his questions. I will refer those questions to the Treasurer from another place and I am happy to bring back a response.

GOVERNMENT BOARDS AND COMMITTEES

The Hon. T.J. STEPHENS (15:08): I seek leave to make a brief explanation before asking the Leader of the Government questions about the abolition of government boards.

Leave granted.

The Hon. T.J. STEPHENS: The government recently announced the abolition of the South Australian Tourism Commission Board. The minister was previously a champion of the SATC when she was minister for tourism. My questions are:

1. Does the minister agree with the government's decision to abolish the South Australian Tourism Commission Board?

2. What has changed specifically between then and now for the SATC Board to be considered redundant?

3. Why didn't the minister abolish the commission during her time as minister for tourism if it has no value?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:09): I thank the honourable member for his important question. The honourable member will be well aware that the matter of the tourism board is a matter for minister Bignell, who is the minister in this space. Of course, the Premier has undertaken a process whereby all the government boards and committees in South Australia are reviewed. He felt it was time to—

Members interjecting:

The PRESIDENT: Order! The minister is on her feet speaking, if you don't mind. Minister.

The Hon. G.E. GAGO: —review and update those, which had grown considerably in number, and some of which had lost quite a bit of relevance. For instance, one of mine used to have responsibilities for the regulatory functions for our VET system, and that has all been shifted to the commonwealth.

Although that board has not been abolished, nevertheless I have used this as an opportunity to update and review its terms of reference, given that part of its previous role or function is now obsolete. That is a good example of a being a good opportunity to review this. In terms of the decisions, this decision went through cabinet and is a decision supported by all government members. My understanding is that this reform is going to be undertaken in relation to the tourism board and the role and function of that board, and that is a process that will be run through minister Bignell.

GOVERNMENT BOARDS AND COMMITTEES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:11): Can the minister confirm that now the chief executive of tourism will report to the minister rather than the board, if the board is abolished?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:12): As I have just said, my understanding is that a review of the whole structure will be put in place to replace the board. I don't know the details of that. I think minister Bignell would be undertaking a process to do that, so I am not going to try to second-guess the outcome of that.

HEALTH AND HOSPITAL CARE

The Hon. K.L. VINCENT (15:12): I seek leave to make a brief explanation before asking questions of the minister representing the Minister for Health regarding SA Health hospitals.

Leave granted.

The Hon. K.L. VINCENT: I have been contacted by a family member of a 79-year-old woman who has been knocked from pillar to post in the past week in our public health system. This constituent has been using a wheelchair since a major stroke eight years ago. She resides in a nursing home. Last Wednesday, after her physical and mental condition deteriorated, she was taken by ambulance from her nursing home to hospital. The hospital was The Queen Elizabeth Hospital (TQEH).

She needed a CAT scan to check whether she had had a minor stroke, but the scanner was not working at the TQEH. She was referred to the Royal Adelaide Hospital (RAH) for the CAT scan. The family member reports a very overcrowded ED that included multiple attendances by police teams, people in the corridors and no staff to even provide the family member with a drink of water. After arriving at the RAH soon after 6pm and being made a low priority for a CAT scan, the constituent eventually received the scan at 10.30pm.

Whilst the family members waited in the ED, they noted that four groups of police came through to follow up with various patients while people continued to fill the bays and corridors. There were also no staff available to provide so much as a cup of water to other waiting patients, so busy was the RAH ED.

Around 11pm, the family members at the hospital with their sick relative were told that she would be transferred to either the TQEH or back to the nursing home, despite the fact that they had not pinpointed the cause of her physical and mental deterioration. As there were no available beds in the TQEH and it was not feasible to transfer her back to the nursing home close to midnight, she was eventually admitted to a ward at the RAH.

On Thursday morning the CAT scan results confirmed that she had not had a stroke. They did discover from blood test results that she had low sodium levels. No drip was administered to rectify the situation. She continued to have low sodium levels over the coming days and had poor mental and physical health as a result, appearing confused and disoriented to her family.

On Sunday at 2pm whilst still at the RAH a drip was administered. Yesterday morning nursing staff at the RAH announced that this constituent would be transferred back to her nursing home despite still having low sodium levels. No underlying cause of the sodium levels had yet been discovered and she was still experiencing poor physical and mental health. The hospital ordered an ambulance from the RAH to transfer my constituent back to the nursing home despite protestation from her family members, and discharged her to the foyer of the RAH to wait for the ambulance with a family member.

Whilst waiting for the ambulance a doctor from the ward realised that they had not yet received blood test results that showed improved sodium levels. The doctor ordered the patient to return to the ward. The family member returned her wheelchair, belongings and other items he had already transferred to his car, back to the ward. The constituent's bed had already been stripped, so a family member with a nursing background made the bed so that my constituent could return to it.

The constituent had also had no lunch, after a two-hour wait in the foyer, and on top of her poor health was understandably distressed. Today the hospital has said that there was no sinister underlying cause for the low sodium levels, that she just needs to be on sodium or salt tablets and that she can now be returned to the nursing home. They have yet to give her a prescription or allocation of salt tablets. My questions to the minister are:

1. Does the minister believe this is an appropriate fashion for our public health system to manage the treatment of an elderly woman who is very unwell?

2. What is the minister doing to relieve the enormous pressure on staff in emergency departments in our metropolitan public hospitals?

3. What is the minister doing to open acute mental health beds to relieve the pressure on public hospital emergency departments?

4. Does the minister agree that hospital staff are making poor decisions about patient health due to all metropolitan hospitals being at bed capacity or exceeding bed capacity, causing unrealistic workloads for health professionals?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:17): I thank the honourable member for her most important questions and will refer them to the Minister for Health in another place, and I will bring back a response.

TAFE SA/UNIVERSITY COLLABORATION

The Hon. T.T. NGO (15:17): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question about collaboration between TAFE SA and universities.

Leave granted.

The Hon. T.T. NGO: As many members would be aware, there are enormous benefits for students when combining vocational training with university degrees. Not only do they achieve their degree faster but they also have practical vocational skills that give them a comparative edge in the workplace. My question is: can the minister tell the house about how TAFE SA and universities are working together collaboratively in providing benefits to students?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:18): I thank the honourable member for his most important question. TAFE SA and our three public universities have been working together to provide flexible study options for students, combining the specialist infrastructure and industry expertise within TAFE SA and the academic and professional experience of the universities.

TAFE SA and the universities work together in two main ways. The first is through dual offers. Dual offers allow students to secure a place at TAFE and university but study the TAFE qualification first and then, if they successfully complete that TAFE qualification, students are guaranteed an entry into university. The key benefit of the dual offer is that it lowers the overall cost of a university degree as TAFE fees are generally lower than university fees.

In the 2014 academic year I am advised that around 345 dual offers were made. Dual offers are of particular benefit to students who perhaps did not achieve a high enough ATAR score for the university course that they may have preferred. They can instead then study a related TAFE course and then transfer to university later into the course that they may have originally wanted to enter. These arrangements also benefit regional students. The ability to begin the dual offer at their own local regional TAFE campus helps lower the cost of living expenses from studying away from home.

The second way in which TAFE and universities often work together is through partnership degrees. These partnership degrees allow students to study both a TAFE qualification and a university degree at the same time. Recently I had the pleasure of launching three new partnership degree courses in dance, visual arts and fashion for 2015. The Bachelor of Creative Arts degree is the product of a brilliant new partnership between TAFE SA's Adelaide College of the Arts and Flinders. This is a very smart way of synthesising the experience and reputation of both institutions, combining Flinders University's academic strength with Adelaide College of the Arts' high quality studio-based practical teaching in Light Square.

Another very exciting new partnership that I launched last week is the entrepreneurship for food and wine program, which is a collaboration between TAFE SA and the University of Adelaide. Together they have developed an exclusive education product that helps blend artisan food industry specialisation electives with core business, strategy and marketing subjects, giving graduates the skills to create artisan food and wine products, and the business skills to take their products to local and overseas markets.

It was wonderful to see at the launch of this partnership the level of industry involvement and commitment right across the agribusiness sector. It was wonderful to see both the peak representative organisations as well as individual very successful artisan businesspeople—people like Kris Lloyd, for instance. It was great to see the industry come out in support of this program. The catering was done by the Regency TAFE students as well. Not only did they focus on utilising local food and wine products but they also made all the food themselves. They handed out the food with a high degree of professionalism and I congratulate them for the wonderful evening and the wonderful service that they provided.

Another area of collaboration between TAFE and the universities is where universities outsource short training courses and also practical workshops to TAFE to help underpin a university degree. For example, where students may not have the level of mathematics needed to study engineering, they may undertake a bridging course through TAFE SA, at no extra cost, as part of their university degree.

TAFE SA has been nominated by both the University of South Australia and the University of Adelaide as a streamlined visa processing business partner, enabling packaged TAFE SA and university programs to be offered to international students. This arrangement will make TAFE SA very much an appealing choice for international students and overseas recruitment agents, as

student applicants can have a guaranteed entry through TAFE SA into university through a vocational or English language package pathway.

Matters of Interest

ST JOHN'S YOUTH SERVICES

The Hon. G.A. KANDELAARS (15:24): Recently, I took the opportunity to visit the St John's Youth Services youth110 project, which is located in the UNO Apartment complex, Waymouth Street, Adelaide. Youth110 is a new and innovative service operated by St John's Youth Services that provides crisis response to the most vulnerable homeless young people in South Australia. I was shown around the youth110 service by Nicole Chaplin, operations manager for St John's Youth Services, who gave me a comprehensive briefing on the services provided at the facility. The youth110 service has 30 self-contained apartments leased from Housing SA. The site also has office space for St John's Youth Services to operate a 24-hour care and case management support service.

Youth110 is able to accommodate homeless people in crisis, aged between 16 and 21 years, including singles, couples, single parents, young families and siblings. In addition, youth110 is the first youth crisis accommodation service in Australia that can provide apartment style accommodation and support to single young fathers. The service does have some clear rules and does not accommodate clients who are affected by alcohol or other substance abuse. Rather, these clients are referred to other services with the facilities and support to assist.

Youth110 is a crisis response centre and while the duration of a young person's stay is generally short, the service is designed to respond to the complex needs of each young client. As a result, the length of stay at youth110 may be varied. Youth110 provides an empowering and therapeutic approach to supporting young people. Young people identify their needs and goals and support workers provide guidance for them to reach their goals while providing coaching to develop independent living skills.

Case management support focuses on life skills such as education, employment, health, finances, child care and relationships, whilst a focus is kept on what keeps young people strong emotionally and mentally. Youth110 maintains a strong relationship with organisations such as the police, particularly the Adelaide local service area, as well as DCSI and the Service to Youth Council, to name a few.

Another program conducted by St John's Youth Services is Next Step, an innovative program spring-boarding from the unique relationship St John's Youth Services has with young people who use the crisis accommodation emergency services. The program is based on a contract between young people and Next Step, where each is committed to participate. Next Step commits to ensuring access to housing, furniture packages and intensive support while the young person commits to participating in support programs that focus on living independently, attending education or training, seeking work opportunities and participation in the community.

The program aims to break the cycle of homelessness. It provides ongoing assistance during a young person's transition out of the services and aims to prevent the breakdown of their accommodation and return to crisis services through targeted support and training. It offers assistance in securing sustainable life opportunities. Next Step is funded primarily through non-government grants from benevolent sources and the community. This program won the 2009 Anglicare Australia Innovation Award and the 2009 Australasian Housing Institute Award for Leading Housing Solutions.

I should also briefly mention St John's Youth Services Ladder St Vincent Street program. This accommodation facility is located in the heart of Port Adelaide and provides independent housing for 23 young people, either homeless or at risk of being homeless, who wish to re-engage with education or seek training and employment opportunities. Ladder SVS is a joint venture between DCSI, Ladder and St John's Youth Services. It aims to provide young people with strong support and mentoring to develop independent living skills, maintain employment, training and/or education and to engage positively with the local community. I commend St John's Youth Services for providing such unique services to our disaffected youth.

The PRESIDENT: The honourable, the gallant and sometimes heroic Mr McLachlan.

LANGUAGES IN SCHOOLS

The Hon. A.L. McLACHLAN (15:30): Thank you, Mr President, for that compliment. Earlier this month my attention was drawn to an announcement by the federal Liberal government of a new $9.8 million program that will deliver foreign language learning applications to preschools. This initiative will allow preschool children to begin learning a second language through playing educational games on tablet devices. It is an encouraging initiative. I have for some time held the view that it is important to provide our youth with the opportunity to learn another language. Perhaps my view has also been shaped by being married to a primary school teacher who drew my attention to the article.

If we are to become the great trading state which both sides of the chamber aspire to, we need to have the next generation looking beyond our shores for opportunities. The learning of a second language in our schools and the culture of the community in which it resides becomes critical if the state is to pursue its goals. Our trading partners will draw comfort that we are a tolerant society that is willing to engage on equal terms.

There is also the additional benefit in that such study promotes cultural awareness and tolerance at home. Yet disturbingly my reading has suggested that whilst research has proven that learning a second language has many benefits in both cognitive and social development, sadly, the number of Australians continuing with language learning throughout secondary and university education is declining.

Approximately 80 per cent of European children speak more than one language. Increasingly, many of their schools are now moving towards teaching not one but two foreign languages as they recognise the benefits children gain from learning multiple languages during their school years. Language learning encourages children to become more flexible and analytical in their approach to learning, and children who are bilingual have shown to have faster rates of cognitive and literacy development than those who are not. As well as improving cognitive development, learning a second language has also shown to develop children's literacy in their mother tongue at a faster rate than monolingual children.

Whilst it was formerly believed that the process of learning a second language would interfere with the process of a child developing their mother tongue, recent research has shown that it actually assists in the development of literacy in the mother tongue at a much faster rate. It was also believed that a second language was stored in a separate part of the cognitive system; however, we now know that it is stored and is interactive with the mother tongue.

Whilst the words and grammar of different languages may differ, the concepts and strategies involved in making meaning from text exist across all written language and can be transferred between languages. This process assists to further broaden language skills and literacy.

The major benefit of learning a second language whilst still at school is simple. Children can and do learn second languages much easier and quicker than adults and, if continued throughout life, are far more likely to become fluent. In the last few decades research has proven that there is a fundamental difference between the way adults and children learn a second language. Whilst adults rely on knowledge and general cognition that they developed through learning their first language, children are more intuitive and rely on their innate language learning program. As well as providing benefits to children's development, learning a second language also expands to their social life and provides greater employment opportunities in adulthood.

In recent years English has been replaced by Spanish as the second most spoken language in the world, with Mandarin still far out in front. Competence in one or more languages besides the mother tongue will become necessary in order to remain competitive, not only as a nation but as individuals in this ever-globalised world.

Whilst there are proven benefits of learning a second language in school, I understand that simply introducing and teaching the language does not assure that all these benefits will be reached by every child. For example, I acknowledge that children with dyslexia may need to concentrate on only their mother tongue. A child's ability to reap all the benefits of language learning is determined by the quality of exposure to a language, the resources provided, the competence of the teacher, the

method of teaching and the continuity of language learning. I encourage the government to continue to build language initiatives in this state as an important part of securing the state's economic future as a trading nation.

NATURE PLAY WEEK

The Hon. J.M. GAZZOLA (15:34): I would like to draw the Council's attention to Nature Play Week, commencing this Saturday the 27th. Nature Play Week is an excellent initiative not only of the South Australian government, but of parents, educators, and researchers around the world. Recent statistics highlight a disturbing nature play deficit in our younger citizens, including 5 per cent of Australian children who never play outdoors. I find that statistic alarming and cannot imagine a childhood without long afternoons hunting for tadpoles, building treehouses or digging up handfuls of worms in one's parents' garden.

Less than 4 per cent of Australian children have unrestricted opportunities to play outside. A quarter of Australian children are overweight or obese, and outdoor recreation time has been cut from 73 per cent to just 13 per cent in one generation. How can this be when we have such a breathtaking array of countryside for our children to explore?

Over the past decade there has been a growing trend for developers to build larger houses on smaller blocks. Backyards have shrunk considerably, been landscaped to within an inch, or simply rejigged into mum and dad's alfresco for the outdoor kitchen and pizza oven while the kids sit inside, clocking up screen time. The quarter-acre block of old is now valued only for its redevelopment potential.

Apprehensive parents and a risk-averse culture have contributed significantly towards the downturn in unstructured outdoor play over the past 24 years, but researchers are now finding that this cottonwool approach is in fact detrimental to children's development and that some teenagers of this generation are turning to more reckless behaviour to feed their natural requirement for greater sensation and risk. What if this turns into a problem for even younger children as the sterility of the modern playground and lack of yard space leave them little opportunity to stretch their boundaries?

On any given weekend the huge adventure playground at Port Noarlunga is teeming with families of children racing through the wooden fort, climbing, balancing, negotiating game rules and narrowly avoiding collisions. Fantastic, sir! These life skills will come in handy when they get their licence and start negotiating peak-hour traffic. There will be a small assortment of 'helicopter parents' hovering, but even they will eventually leave their kids to be kids and go and grab a coffee.

Researcher, Ellen Sandseter, a professor of early-childhood education at Queen Maud University College in Trondheim, wrote her masters dissertation on young teens and their need for sensation and risk. In 2011 she published a paper called *Children's Risky Play From an Evolutionary Perspective: The Anti-Phobic Effects of Thrilling Experiences*. Sandseter concluded that children have a sensory need to taste danger and excitement. This does not mean that what they do has to be dangerous, only that they feel they are taking a great risk that scares them, a fear which they are then able to overcome. This paper identifies six types of risky play:

- exploring heights;
- handling dangerous tools;
- being near dangerous elements;
- rough and tumble play, wrestling, play fighting; and
- speed.

It is the last point that Sandseter feels is 'the most important for the children', namely, exploring on one's own. Of children she says, 'When they are left alone and can take full responsibility for their actions, the consequences of their decisions, it's a thrilling experience.' Sandseter turns to evolutionary psychology to measure the effect of missing out on those experiences in childhood.

Historically, children's instinctive need to take risks have been crucial to survival. They would have needed to flee from danger, defend themselves from harm and function independently. It is quite possible for these scenarios to take place in a modern setting to a much lesser degree in the

western world. That is how children process fears and practise decision-making. If children are not exposed to these types of challenges in order to work through their fear, this fear can turn into a phobia.

Unstructured outdoor play goes a long way towards safely meeting this instinctive need in children, and I have been extremely pleased to see how much exposure organisations like Nature Play SA have been getting in the local press. I have brought the attention of my staff to a list published by Nature Play SA: '51 things to do before you're 12', although I am pleased to say that Narrah and Tiffany's children have already ticked off many of the activities.

I am also greatly encouraged by the efforts of many of our local schools and kindergartens to provide beautiful outdoor areas for their charges. Places like Grove Kindergarten have led the way with nature play and recently added an impressive 'insect hotel' to their already impressive grounds. Brighton Primary School has strongly embraced outdoor education, Felixstowe Community School has a unique hand-made chicken run, Christies Beach High School has an indigenous medicine garden and, most recently, Sheidow Park School has a newly-built sensory nature trail.

South Australian children have many reasons to feel proud of their schools, kindergartens and child-care centres. So many are working to bring awareness to children that they can live as part of this beautiful land, take ownership of its care, and help them realise they are not, in fact, separate from it. I commend the Minister for the Environment for spearheading the nature play movement, and invite you to promote nature play principles at every opportunity.

LOCAL GOVERNMENT ELECTIONS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (15:39): I rise to speak on a matter of interest, not only as a member of state parliament but also as a concerned resident of the Mitcham community, a community which I love. As members would be aware, 7 November is local government election day, and it is approaching fast. As South Australians we all enjoy our democratic right to vote for our chosen representatives. One lesson that I took from the recent state election, though, is that some candidates will undermine our democratic environment.

I refer most notably to the experience in the seat of Elder. That reminder simply affirmed my role as a state representative and as an ordinary and decent citizen of Mitcham to (as best possible) make our voters aware of who are their respective representatives and the values that motivate them. I am particularly interested in our incumbent Mayor, Mr Michael Picton, who is running for this position again in Mitcham this November, and his success I believe will be to the detriment of the Mitcham community.

The Picton family is a Labor dynasty. Mr Michael Picton is a card-carrying member of the Labor Party, and in fact his disclosure, following the last mayoral election, showed that he received financial support from the Shop Distributive and Allied Employees Association. I guess you could say that he is a wholly-owned subsidiary of Mr Peter Malinauskas and the SDA. I was also interested to note that Mr Picton actually worked in this place for the Hon. Bernard Finnigan prior to becoming Mayor in 2010.

It is interesting also that his son, Mr Tim Picton, was at least at one stage president of the South Australian branch of Young Labor. Members may also recall that Tim's name was from the Twitter tirade with Andrew Southcott during the last federal election, for which the Premier, the Hon. Jay Weatherill, had to apologise. This was, of course, an attack on a highly reputed and respected member of our Mitcham community, Mr Andrew Southcott, MP.

Tim was working for Labor minister Jack Snelling at the time, and prior to that he held positions in Amanda Rishworth's office and Don Farrell's office. Of course, Michael Picton's other son, Chris, is now the Labor member for Kaurna, here in our very own parliament. Before that he was working in offices for his predecessor, the former minister, John Hill, and the now federal minister, Nicola Roxon. Mr President, I bring to your attention that I do not believe the o'clock was started.

Members interjecting:

The Hon. D.W. RIDGWAY: Mr President, I do the honourable thing and alert you to a small technical hitch, and I get abuse from the government benches. Suffice to say that the Labor blood is running thick and fast in the Picton family. Of course, it is not unusual for a local government candidate to have some political disposition or affiliation. However, I believe that most of the more effective local representatives are motivated by an agenda of issues of importance to their community, where I fear that Michael Picton is driven by a hard left Labor tax and spend ethos.

Some interesting facts from the time he has been mayor: in the 2012-13 financial year Mitcham council rates increased by over 8 per cent, the highest increase of any council. From 2010 to 2013 (and this is astounding), rates in the Mitcham council area increased by a whacking 22.5 per cent. It is also interesting to know that under his mayoralship the executive salaries in the Mitcham council for the 2012-13 year accounted for some 20 per cent of the total employee costs. That includes cars, superannuation and salaries over $100,000 and other benefits.

There was an article in last month's *Mitcham & Hills Messenger*, entitled 'Great rates chase begins'. I could not believe it. The Mitcham council's unpaid rates bill has blown out to 22 per cent, and the amount owed has ballooned from $1.06 million to $1.3 million from June 2012 to 2013. About 7 per cent of Mitcham's 26,500 ratepayers did not pay their rates on time. As a result the debt collectors are chasing some $336,000 owed by over 100 people, 19 of whom have been referred to the lawyers.

So this rate debt crisis, occurring under the lacklustre leadership of Michael Picton, has caused one of Adelaide's traditionally financially comfortable areas to become financially stressed. Looking around my community, I find it difficult to see the fruits of these rate and revenue hikes, although my chief concern for the community is the government that Michael Picton supports. I was particularly disturbed to see him use his position as mayor in an election brochure supporting Annabel Digance in what was described as one of the most dirty and underhand political campaigns this state has ever seen.

I was also disturbed to note that the Mayor of Marion and Australian Local Government Association President, Felicity-Ann Lewis, also appeared in that same election brochure, although not with any comments, and I wonder, as an indication of how dirty and underhand their campaign was that Michael Picton associated himself with, whether mayor Felicity Lewis ever gave her approval. It just proves that this mayor supports a government that was elected on the back of racial attacks and dodgy campaign tactics.

He supports a government that has burdened South Australian families with an additional $1,100 worth of annual expenses, taxes, fees and charges, and that was before we had the emergency services levy hike. By supporting Annabel Digance, Michael Picton as mayor clearly supports the Labor agenda of taxing South Australians. And he also supports a government that wants to tax people and people who use car parks in the city to the tune of $750 per annum for a car space. This is not a mayor who has an ambitious agenda for the improvement of the Mitcham community. It is only right and fair that the voters of Mitcham know that Michael Picton's legacy is simply to strengthen the Labor government which has and will continue to squeeze South Australia and the residents of Mitcham dry.

The PRESIDENT: I think on this occasion, because of a technicality that was our responsibility, you have had a bit more time than you actually would have done.

The Hon. D.W. RIDGWAY: I will take less time next time.

The PRESIDENT: That is good—4½ minutes next time. The Hon. Mr Parnell.

MARINE ENVIRONMENT

The Hon. M.C. PARNELL (15:46): I rise today to speak about two issues concerning the marine environment. Firstly, I want to refer to the issue of shark culling in Western Australia. There have now been three national rallies around the country in opposition to the decision by the Liberal government in Western Australia to cull sharks. Thousands of people have attended these rallies; hundreds have attended in Adelaide down at Glenelg. The message from these rallies was very clear: people do not accept that culling sharks is an acceptable response to the miniscule danger

faced by people in the marine environment. It is unscientific and it does not make the beaches any safer.

The PRESIDENT: The Hon. Mr Parnell, just pause for a second. The cameraman, can you please turn your light off up there. It is quite distracting. Also, be sure that you actually have your camera on someone who is on their feet. You cannot film people who are sitting in their seats. The Hon. Mr Parnell.

The Hon. M.C. PARNELL: The Western Australian shark cull caught 172 sharks but none of them were the target species—the threatened great white shark. The Western Australian EPA recently found that there was insufficient evidence to support the policy of drum lines and baiting sharks. The proposal attracted 6,751 submissions and two public submissions with around 25,000 signatures.

The campaign against shark culling brought together many groups including Sea Shepherd, recreational fishers, scientists, families, divers, surfers, boat users, tourism operators and conservation groups. The Western Australian government, I am pleased to say, has now responded to the EPA's recommendations by saying that it will not continue this program in the coming summer season. This is a win for science. It is a win for common sense, and I extend my congratulations to all those involved in the campaign.

The second marine issue I wish to raise is that of the Port Stanvac jetty. With the decommissioning of this jetty, there is now an area that is up for grabs. The intertidal zone and the immediate marine area surrounding the jetty have, in fact, benefited enormously from the restrictions that have been associated with the Port Stanvac exclusion zone. The result has been that the environment is in very good condition, unlike other areas of the metropolitan coast. Furthermore, over the decades a new temperate reef system has now formed around the jetty.

There have been calls to demolish the jetty but, before we can make an informed decision about whether that is in the best interests of the environment, we need to know what is there. We also need to know whether there are any economic or environmental opportunities that rely on maintaining the area as it is.

The jetty itself is expensive to maintain. As I understand it, an electric current has to be continuously run through the structure to prevent it from rusting. It is also currently too high for recreational fishing use. I am also told that the water current in the area is quite strong, which makes it suitable only for experienced or tethered divers.

Last year the government released a report for public comment which focused on possible future options for the wharf and the jetty. There are many complex issues to resolve, not the least of which are the possibility that remediation of the contaminated adjacent land could take the best part of a decade and that there will be ongoing access and liability issues.

Recently I have been contacted by the Friends of Gulf St Vincent, who are calling for comprehensive scientific surveys of the area. To my knowledge, some work has been done on fish stocks and biodiversity, but not much on the intertidal communities, invertebrate species or the ecosystem health as a whole. Friends of Gulf St Vincent suggest continuing the restricted access until such scientific work is carried out. This area has in effect been a de facto marine reserve for the last 50 years.

A similar situation occurred in Rapid Bay, where the government retained the old jetty because it was home to an artificial reef and a variety of rare and threatened species. There is an active online community of South Australia whose members wish the jetty to be preserved. They are waiting for a response from the government regarding the consultation process.

I note that the cost of demolishing the jetty would be huge and it would destroy much of the ecosystem that has now developed around that area. The Greens believe that it makes sense to keep the status quo until we have more information about what is at risk, as well as the opportunities for adaptation of the area for public use and enjoyment.

WELCOME TO AUSTRALIA

The Hon. K.J. MAHER (15:51): Today I wish to rise to speak about the good work that community organisation Welcome to Australia is undertaking to improve the experience of migrants settling in South Australia, and about the upcoming Walk Together events. Next month, Welcome to Australia will again be holding Walk Together. This event, on 25 October, is a celebration of Australia's diversity and the varied paths which many families took to build a new life in Australia.

Welcome to Australia is an important organisation that is focused on bringing Australians together. The organisation was formed in 2011 and started as a small group of individuals and not-for-profit community organisations committed to providing a positive, compassionate, welcoming voice on asylum seekers and migration policy. Since then, the group has grown in leaps and bounds and into a national organisation that has been successful in providing that compassionate voice in a sometimes difficult and unbalanced public debate.

Welcome to Australia is an open organisation, welcoming those from all cultures, faiths and age groups and from a wide variety of backgrounds and points of view. A key objective of the Walk Together event is to show that Australians of all backgrounds recognise that we are all equal, that we all have common goals in life and that all others deserve to be treated with proper respect and dignity. By spreading this message, Welcome to Australia is hoping to create a more harmonious and accepting country.

Last year's Walk Together event saw thousands of people marching through Adelaide streets in support of a multicultural Australia. It was attended by members of parliament from right across the political spectrum, including quite a number from this chamber. Importantly, both the Premier and the Leader of the Opposition proudly walked at the front of the march. I should note also that that march was attended by our new Governor, His Excellency Hieu Van Le. His recent appointment to the office of governor is a great example of the positive contribution many from different walks of life have made both to this state and to this country.

Creating personal connections between members of our community helps to foster a more positive environment. Having new Australians share their stories, why and how they came to Australia and where they want to go with their lives, is a powerful message. It creates a positive image that can withstand the harsh and occasionally disrespectful messages that come from a small section of the Australian community. By building these connections within our communities, Welcome to Australia seeks to create a more powerful community.

This year 20 events will be held throughout Australia for Walk Together, with events not only being held in capital cities but also in many regional centres, such as Whyalla, Wagga Wagga and Toowoomba. Last year, there were 10 locations and there are 20 this year, so it has doubled from last year to this year. If that keeps occurring, there will be many more around Australia. In particular, I would like to make mention of the Walk Together event taking place in Mount Gambier for the first time this year.

The Hon. R.L. Brokenshire: Are you going?

The Hon. K.J. MAHER: I certainly am; I will get there. This will be the first year that a Walk Together march has been held in Mount Gambier to celebrate the town's diverse population. Mount Gambier has a growing number of diverse communities within its area with Italian, Dutch, German, Thai and Filipino populations, as well as growing communities with new migrants from India, Poland, Sudan and the new emerging Congolese and Karenni communities.

At the last census over 1,000 residents in Mount Gambier spoke languages other than English at home. It is a great opportunity to bring communities together for an important walk through the city of Mount Gambier. The event in Mount Gambier will start at Van Sittart Park rotunda at 10am and will end outside the library. I found it very encouraging to take part in the event in Adelaide last year and I am looking forward to attending the event in Mount Gambier in October this year.

I would like to thank the hardworking group that has been roped in to establish Welcome to Australia and the Walk Together march in Mount Gambier. In particular I would like to acknowledge Captain Cameron Horsburgh from the Salvation Army, Fernanda Ikeda from the Limestone Coast Migrant Resource Centre and Pastor Brad Chillcot, the National Director of Welcome to Australia for

their passionate work in promoting a more welcoming community and a more welcoming Mount Gambier community.

I hope that, with all the planning that has gone into this event, it will go very smoothly in Mount Gambier this year. In closing, I would like to encourage anyone who can be there to attend an event in their capital city or in Mount Gambier on 25 October, or in Adelaide heading to Elder Park for the Walk Together to Rymill Park. If you are somewhere else in the state or around the country there will be walks nearby. I am sure we all wish to work towards a more inclusive and welcoming Australia.

FIRE SERVICES

The Hon. R.L. BROKENSHIRE (15:56): I rise on this MOI to initially place some concerns that I have about the government's proposed destruction of the cultures and the individuality of the emergency services, namely, the fire services and the CFS. For the life of me I cannot understand why you would risk damaging an already fragile volunteer situation with the CFS and the SES simply to appease the United Firefighters Union. I say that the model that the government are now adopting is a model that the Labor government has had as an ideology for some 30 years.

It is interesting to see that the United Firefighters Union is conspicuous by the fact that it has been so quiet on this issue. There is a simple reason for that, and that is that the United Firefighters Union is the only organisation that stands to gain out of this proposal. Whilst I do have respect for a lot of the work that minister Piccolo does, I think this is ill-conceived and that whoever has been advising him on this is not working in the best interests of the protection of life and property in this state or, indeed, that of the volunteers.

I also want to say how privileged we have been over a very long period of time in having excellent chief fire officers. Without naming them all I will talk about the present one, Mr Greg Nettleton. He was appointed by this government and has done his level best to look after the CFS. I believe he has not been consulted with respect to the model that was put up.

I believe that it is important. Even though on the ground sometimes volunteers do not see the benefit of having a chief fire officer, a deputy chief fire officer and a managerial structure, I can tell you, as someone who has been a volunteer but also a minister, that they are paramount to the wellbeing of the Country Fire Service.

I could make similar comments about the SES and also about the MFS. I had the privilege of appointing the current MFS Chief Fire Officer, Mr Grant Lupton, after a worldwide search, only a few months before losing office as a government. I have not had a lot to do with Mr Lupton since then, as you would appreciate, but I know that successive ministers of the Labor government have strongly appreciated his professionalism.

I also know from talking to MFS firefighters on the ground that they respect and admire the commitment and compassion that Mr Lupton shows for them. The United Firefighters Union (I would call them a dinosaur union) ought to look at the model that the Police Association has if it wants to modernise itself and be thoroughly supportive of the interests and welfare of its people, such as the Police Association has done for decades in South Australia.

What I worry about is this: when you look at the capability of someone like Chief Fire Officer Grant Lupton, he comes from an international background. He has been in senior positions in firefighting in New Zealand and Canada. He understands paid and volunteer firefighters. Of course, he is probably one of the longest serving chief fire officers and chief executive officers in the South Australian Metropolitan Fire Service, having taken up the position in March 2002.

I note with interest, as I look at documentation to do with emergency services around the world, that for the year 2013-14 Grant Lupton not only was chief fire officer and chief executive officer for the South Australian Metropolitan Fire Service but he also became the president and chairman of the Institution of Fire Engineers internationally. This is not only an honour for Mr Lupton but it is also an honour for South Australian firefighters that their chief would be able to take up such a strong position and show such leadership and capability.

I am extremely concerned that we are going to lose those sorts of capabilities because we will not have chief fire officers: we will have a commissioner. I am very concerned about the future protection of life and property in this state. I encourage my colleagues to look really closely at the model. I believe there is certainly an arrangement between the UFU and the government that is not in the interests of the long-term protection of life and property in this state.

I cannot understand how a commissioner can be operationally responsible in a disaster situation or major emergency situations, such as chief officers are. I am sure eventually we will have more to say about this, but I am concerned that the government is going to do this by sleight of hand and that the legislation will come very late to this chamber. I appeal to the government to come and brief all MPs as a matter of urgency.

Motions

PLANNING REGULATIONS

The Hon. M.C. PARNELL (16:02): I move:

That regulations under the Development Act 1993 concerning assessment of significant developments, made on 14 August 2014 and laid on the table of this council on 16 September 2014, be disallowed.

The state government's undermining of local councils' involvement in the SA planning system is gathering pace. First, it came for the Adelaide City Council, stripping it of responsibility for assessing developments worth over $10 million. There was some consternation, and certainly the Adelaide City Council was unhappy, but in the broader community not that many people complained because it did not affect them.

Next, it came for the inner rim councils, stripping them of responsibility for residential developments over four storeys in height. While it was at it, it took another swing at Adelaide City Council and removed its right to even be consulted over large developments. This time more people complained because there were six local councils and local communities that were affected.

I make the point, by way of interjecting on my own remarks, that in the lead-up to the state election the Greens promised to restore those responsibilities; so too did the Liberal Party but, as we know, the Liberal Party broke that promise and it voted with the government last week.

Anyway, back to this motion. Now, emboldened by its success, the government has taken the next step and passed regulations to potentially strip all councils of responsibilities for all developments over $3 million. I expect that once councils realise what is happening here they will be very unhappy, and they have every right to be.

The regulations that I now move to disallow were introduced without consultation and without the support from local councils or local communities. Indeed, the government yet again bypassed its own expert panel on planning reform. These regulations are not one of the panel's ideas; this is purely and simply the minister doing the bidding of the property development industry, which has this unsubstantiated and irrational hatred of local councils' involvement in planning.

I mention the government's expert panel on planning reform because that was the process that was established by the government to resolve issues exactly such as this. Questions such as who the decision-maker should be, the basis on which planning decisions should be made, the rights of the community, the rights of developers and third parties and councils, that is the work of the expert panel and yet the government has completely bypassed that process.

The expert panel has called for submissions on its latest report entitled, Ideas for Reform, and those submissions close on Friday. The final report is expected by 1 December. Yet, as with the last lot of regulations I sought to disallow, these new regulations have been introduced in haste because, clearly, the government cannot wait for that process to finish. The double standards at work here are quite appalling. For the rest of the community, we are supposed to have faith in the reform process, we attend the roundtable meetings, we lodge our submissions and all the while the government ignores that process and goes ahead with its own reform agenda. Clearly, the government does not trust its own expert panel or its processes, yet it expects the community to.

Members will recall that over the last two years every proposal for reform of the Development Act that I have put forward in the Legislative Council has been rejected by the government on the basis that it would be improper and it would be premature for parliament to be considering changes to the planning scheme whilst the expert panel's work is still underway. Clearly, what is good for the goose is not good enough for the gander. Effectively, what the government is saying is that the consultation process of the expert panel is for mugs, that we are to be distracted by going through that process, yet the real action is happening in back rooms with the government introducing regulations without consultation.

To the specifics of the motion disallowing these regulations, let us have a look at how they will work. There are always two ways to approach that question. As a lawyer, the first thing I do is I read the words and work out what they say. The next approach is to look at what the government says it intends to do with these regulations, and there is a vast gulf between those two approaches. In terms of the actual words of the regulations, it is quite simple: the only criteria for a development application to be taken away from a local council development assessment panel and given to the state level Development Assessment Commission is that, first of all, it has to be a development worth more than $3 million. That is the first criteria.

The second criteria is in two parts: a person called the State Coordinator-General, although I think the rest of us know him as Mr James Hallion, has to determine that a development is of economic significance to the state or he has to determine that a development is of a type the assessment of which would be best achieved under a scheme established by the department of the minister to facilitate the assessment of such developments.

Now, translating that into plain English: any development worth more than $3 million that a state public servant believes should be taken away from a local council can be taken away. It is that simple. In fact, it is slightly worse than that because it is not just Jim Hallion as the Coordinator-General, it is any number of public servants that the government inserts as assistant coordinators-general because the development regulations basically provide for an unlimited number of assistants and the Coordinator-General, Mr Hallion, can delegate to any of his assistants the ability to effectively call in any development worth more than $3 million and take it away from the local council. So, that is what the law says: pretty much unfettered discretion in the hands of public servants to decide who is the assessment authority. I should point out that there is no appeal or challenge or any way that that assessment can be called into question.

When you look at what the government says it is going to do, the first thing it does is it sort of admits that it is on a roll; it admits that it got the last two regulations through without too much grief and so it is having another go. To quote the government's information sheet that accompanies the regulations, it states:

> To support our economic reform agenda, the government has expanded the role of the State Coordinator-General and the successful case management approach that has been applied to planning and assessment for developments in the Adelaide City Council and inner metro council areas. This new approach is intended to streamline the process and unlock red tape and delays in dealing with land use assessment bodies. These reforms have the potential to unlock and significantly speed up the delivery of in excess of $2 billion worth of private sector investment in our state that will help with economic stimulation and job creation.

When you read that you think: how could anyone oppose any of that? But underlying those words is the falsest of false assumptions, and that assumption is that development is not going ahead and the reason it is not going ahead is that local council development assessment panels are knocking it back or making life miserable or not doing things in a timely manner. Yet the government has not provided one iota of evidence that any of those concerns or fears are justified. In fact, it is a mythology that has developed.

When you talk to planners, as I do, who work in this area, the delays tend to be delays with other government agencies not getting their referral reports in on time. I cannot believe that changing the primary decision maker all of a sudden makes these referral agencies snap to and do their job properly. If there are delays they are overwhelmingly at the state level, not at the local council level. Under the heading 'What projects are eligible?' the government refers to the $3 million figure. It says:

> Proponents will need to demonstrate to government that they have a viable business case to deliver the projects and associated jobs.

That is hardly a high hurdle for a developer to reach. Under the heading 'What powers does the Coordinator-General have?' it says:

> The Coordinator-General will also have the ability to call in projects for approval by the Development Assessment Commission should these private developments not be dealt with appropriately by local government in a timely manner, or the Coordinator-General considers the developments to be of economic significance to the state.

What that means in practice is that effectively any developer who has a big project—it could be a big house worth $3 million; chances are that it is more likely to be a commercial or an industrial development—will make an assessment about whether they would prefer to deal with their local council or with the state government. If they elect to deal with the state government it would be pretty hard to see the state government knocking them back. There is certainly nothing in the regulations that limit the discretion of these call-in powers.

That is why I say that potentially every development in this state worth more than $3 million has now been taken out of the hands of local councils. My concern is that not only has the government ignored its own process for planning law reform but it has now effectively put out a challenge to all local councils and put them on notice that their role in the planning system is now very uncertain.

Another issue that was raised with me just recently is that these call-in powers for developments of $3 million and over could well be used to undermine the environmental impact assessment process under the Development Act because, as all members would know, the only trigger for an EIS (an environmental impact statement) under South Australian law is for the minister to declare something a major project or a major development. What we might see is that whilst the use of that power has been fairly random—I think would be the kindest way of putting it—it may well be that many projects that do deserve to be put through the scrutiny of an EIS might now be just sent to the Coordinator-General and then passed on to DAC. So they may well be assessing large-scale developments with no environmental impact assessment.

The approach that I intend to take with these regulations is the same as I took with the previous regulations; that is, as soon as I discovered that the regulations were on the statute book I moved very quickly. I now need to consult local councils and find out what their views are. The informal chats I have had so far indicate that there will be a huge amount of opposition within local government, but I do need to consult with them formally and I wish to put their views on the record. To that end, I now seek leave to conclude my remarks.

Leave granted; debate adjourned.

Bills

PETROLEUM AND GEOTHERMAL ENERGY (HYDRAULIC FRACTURING) AMENDMENT BILL

Introduction and First Reading

The Hon. M.C. PARNELL (16:15): Obtained leave and introduced a bill for an act to amend the Petroleum and Geothermal Energy Act 2000. Read a first time.

Second Reading

The Hon. M.C. PARNELL (16:15): I move:

> That this bill be now read a second time.

Last Thursday a petition signed by 2,475 South Australians was presented to the Legislative Council. This petition noted that prime agricultural and cropping land comprises only 4.6 per cent of the land area of South Australia, and therefore we need to protect this land for food production in perpetuity. This also means protecting valuable groundwater and surface water supplies from contamination or depletion, including from mining and drilling activities.

Currently, landowners have very few rights to restrict mining or drilling activities on their land, and rural communities have no rights to prevent damaging activities that impact on their livelihoods and local environments. With those words of preamble the petitioners to the Legislative Council asked this house to amend the Mining Act 1971 and the Petroleum and Geothermal Energy Act 2000 to give landowners and rural communities the right to say 'no' to mining and drilling activities in order

to protect prime agricultural and cropping land, conservation land, and rural communities from the adverse impacts of those activities.

Clearly, there are many people in regional South Australia who do not believe that the government has the balance right between the protection of valuable farmland and the aspirations of the mining industry. They feel betrayed, powerless and ignored by their local members of parliament, and the parliament itself. In response to this call, I am introducing this bill and a further bill today into state parliament.

This bill, which amends the Petroleum and Geothermal Energy Act, is very similar to one I introduced last year. The bill calls for the permanent protection of farmland, conservation land, and residential land from fracking for gas. The bill also echoes the decision of the Victorian Liberal government to impose a statewide moratorium on hydraulic fracturing for gas for two years, pending a thorough scientific assessment of the environmental impacts.

I do not intend to put on the record all the things I said last time in relation to this bill, but for the record I would remind members that my second reading speech for the similar bill last year was on 19 June 2013, and also refer members to the 'Matters of Interest' speech I gave on 10 May 2013. This bill effectively rules off limits those important areas of South Australia that deserve to be protected: farmland, conservation land and residential land. When we protect those areas what we are doing is protecting in perpetuity the ability of those places to provide services that we rely on: food-growing services, biodiversity and conservation services, and providing a clean and healthy environment for us to live in.

Members would know that the debate over fracking for gas has reached a head in New South Wales and Queensland. The Lock the Gate Alliance is active. Thousands of people are out in the countryside at protests, and in fact at the Bentley blockade, about which I have spoken before, many thousands of people were mobilised to lock the gate against an unwanted gas fracking operation, and it was only through last minute intervention by the government, having realised that mobilising 800 police officers to try to disperse the demonstration was going to end badly for all concerned, that it eventually accepted the community's viewpoint that that particular gas company did not have a social licence to operate, and they withdrew their permission to frack for gas.

So, we are trying to avoid that level of hostility and angst in regional South Australia. But, as members know, in the South-East of this state, which will be the front line for the next swathe of gas activities, every single local council down there has supported calls for a moratorium, for inquiries or for an absolute ban on fracking in their area. This is not a minority interest issue but a mainstream issue amongst farmers and regional communities.

When I introduced the bill last year I supplemented it with a number of amendments. Those amendments have now been incorporated into the body of the bill. Just to make it very clear: this bill will not be retrospective but will only operate after the date of its assent. Also, the bill does not affect the activities of geothermal energy, a form of renewable energy, with very different impacts to that of exploring for and extracting hydrocarbons.

So, I look forward to the debate on this bill. I look forward to a parliamentary inquiry, which I hope will be established very soon. I certainly know that at least the Environment, Resources and Development Standing Committee is looking at whether this is an inquiry it can undertake of its own volition, but I fully expect that we will have one, if not more, inquiries into the gas industry, and fracking in particular, but in the meantime this bill provides appropriate protections to South Australian farmers and South Australian regional communities.

Debate adjourned on motion of Hon. T.T. Ngo.

MINING (PROTECTION OF EXEMPT LAND FROM MINING OPERATIONS) AMENDMENT BILL

Introduction and First Reading

The Hon. M.C. PARNELL (16:22): Obtained leave and introduced a bill for an act to amend the Mining Act 1971. Read a first time.

Second Reading

The Hon. M.C. PARNELL (16:23): I move:

That this bill be now read a second time.

Earlier today I referred to the petition signed by 2,475 South Australians, and the fact that this petition calls for the reform of two acts of parliament. This bill gives effect to the second of those reform acts, namely, in relation to the Mining Act.

The bill seeks to give effect to the call from residents, overwhelmingly in rural communities, to be able to restrict mining operations on their land or in their local areas. The bill is aimed squarely at situations such as those currently occurring on Yorke Peninsula and Eyre Peninsula, including the proposed Hillside mine, which was just recently been approved, although we do not yet know what form that mine will take.

The bill that I have brought forward deals with an issue that we have discussed in this place a number of times over the years but we still have not got it right, and that is the issue of exempt land. As members would know, under the Mining Act, land that has been used for farming, for the growing of crops, has been exempt from the Mining Act for many decades. Yet, that exemption does not mean what it says.

Land is only exempt from mining until a mining company seeks a waiver of the exemption and, if the landholder concerned is reluctant to provide that waiver, then the matter goes to the Environment, Resources and Development Court. There are a number of problems with this approach, not the least of which is that the stakeholders are limited to the owners of land on which mining operations are proposed to be conducted. The current Mining Act ignores the neighbours and it ignores the wider community.

This bill seeks to remedy that shortcoming and to give the broader community a say in mining projects that will affect them. First of all, the bill provides that mining companies cannot simply pick off individual property owners and get them to sign off on a mining project. Under this bill, the mining company and the landholder cannot sign a waiver agreement without first directly notifying all the neighbours. This is a missing link in the current regime. It is not only direct neighbours who have a stake in a mining project or who might be impacted by a mining project: it is also people in the broader community.

The bill also provides that the mining company has to advertise their intention to agree on a waiver with a landholder. They have to advertise that fact in a local newspaper and the mining department must also put it on its website. The bill provides that, once those two things have happened, there is a two-week objection period. The way the system would work under this bill is that, if anyone lodges an objection within that two-week period, whether they be the landholder concerned, a neighbour of the landholder or anyone else who believes they would be affected by the mining proposal, then those objectors become parties to the proceedings in the Environment, Resources and Development Court.

The forum has not changed. It is still the ERD Court, but what has changed is that it is no longer just a private matter between the individual landholder and the mining company. If people believe they will be, or are likely to be, affected by the mine, then they do have that forum to be able to have their say. They have the right to go along to court and say no. That does not guarantee that they will win, I should say. It just guarantees that they get to have their say. It recognises that in mining projects such as Hillside—which covers many thousands of hectares and would affect hundreds, if not thousands, of people in all its aspects, whether it is the pit, the overburden, the pipelines or the port facilities—the stakeholders clearly are bigger than just the individual landholders.

The way I have drafted this bill is that the provisions in relation to exempt land or the meaning of exempt land have not changed. They are pretty much the same provisions. I think there is a minor technical amendment because some of the ministers who are mentioned no longer exist, so there is some updating, but the thrust of it is identical. The bill provides for the notification period. It provides for the waiver of exemption, for the cooling-off period that exists in the current bill and for the applications to the environment court.

One important aspect of this bill, though, is that when these cases go to court—they used to go to the Mining Warden's Court; they now go to the Environment, Resources and Development Court—there has never been a great deal of guidance to the court on what it should be looking for,

what factors it should be taking into account in making its decision, so I have included in this bill a list of considerations that the court must have regard to.

They include, firstly, the expected duration of the proposed mining operations. That is important, because the decision that is being made over on Yorke Peninsula is whether 15 years' worth of copper should trump potentially thousands of years' worth of growing food. The life expectancy of the mine is an important consideration.

The second consideration is the likely effect of the proposed mining operations on uses of land, including future uses, adjacent to and in the vicinity of land on which the mining operations are to occur. That takes into account the impact of mining on the neighbours. That is precisely what the neighbours of the Hillside mine have said that they are concerned about. They are concerned about windblown dust. They are concerned about windblown radioactive dust. They are concerned about impacts on water flow and water quality, a range of what you might call neighbour impacts.

The third consideration is that the court has to have regard to the possible social, environmental and economic impact of the proposed mining operations. They will need to take into account employment: employment created and employment forgone. They will also need to take into account the social impacts, and I imagine that they would take into account issues such as whether there is to be a fly-in fly-out workforce and the impact on rents for people who require rental accommodation: a range of economic factors that accompany mining projects throughout Australia.

The fourth consideration that the court must take into account is the extent to which rehabilitation of the land is likely to be required on account of the impact of the proposed mining operations. A key question for farming communities in particular is, 'Will the land be rehabilitated to a state that we can farm here again?' In relation to Hillside, the answer is clearly no. There is going to be a massive hole in the ground and when 15 years has passed and the mine has finished operations, it will remain a massive hole in the ground. It will not be able to be farmed.

The final consideration that the court is to have regard to is the type of minerals sought to be recovered and the relative abundance or rarity of those minerals in other parts of the state. That means that the court should consider whether the minerals are abundant elsewhere, because that would go against sacrificing farmland. If, on the other hand, the minerals were not abundant, they were rare minerals and they were not to be found in other places, then that would speak in favour of allowing mining in that area to go ahead.

This bill does seek to give some guidance to the court as to what it should be taking into account. It would be pretty difficult to say that there are any relevant considerations that are not in there. It has economic, social, environmental and neighbour impacts, and it has the long-term vision as well. This bill effectively does give faith to the petition that was tabled in parliament last Thursday. It is the type of reform that country people have been looking for, and it is the type of reform that I believe this council should get behind. I commend the bill to the house.

Debate adjourned on motion of Hon. T.T. Ngo.

ELECTORAL (LEGISLATIVE COUNCIL VOTING THRESHOLDS) AMENDMENT BILL

Introduction and First Reading

The Hon. D.G.E. HOOD (16:34): Obtained leave and introduced a bill for an act to amend the Electoral Act 1985. Read a first time.

Second Reading

The Hon. D.G.E. HOOD (16:34): I move:

That this bill be now read a second time.

I rise to introduce a bill to amend the way in which members are elected to this place, specifically the Legislative Council. There can be no doubt that sophisticated preferencing strategies that we have seen used both at a state and federal level, employed by parties and candidates, and individuals in some cases, in both federal and state elections have, at times, left the voters dismayed and confused with the end result.

One might call it clever referencing but certainly very elaborate referencing arrangements have led to very small groups, either individuals or what we might call micro parties at the federal level in the most recent federal election to be elected at the expense of the larger and better-known groups. By way of an example—and I cast no aspersions on the senator—Senator Ricky Muir is of course perhaps the most famous case where the Australian Motoring Enthusiasts Party was elected to the Senate and received a primary vote of just 0.51 of 1 per cent. However, due to the cleverly negotiated preference deals by a group of people that he was associated with, he secured a seat in the Senate on that very low level of vote. The 'Federal Election 2013: issues, dynamics, outcomes' paper by Brenton Holmes stated:

> The controversial success in the Senate election of this Australian Motoring Enthusiasts Party and the Australian Sports Party—parties guided and advised by Druery—

the so-called preference whisperer—

> brought both praise and blame to Druery's door. ABC election analyst Antony Green said that the series of deals Druery advocated made a joke of Australia's democratic system, while Druery insisted that his actions did not distort the political process.

Similarly, there are examples of independent and minor party candidates in local and state elections due to cleverly crafted preference deals that I believe, at least to some extent, are against the spirit of what the law had originally intended.

To some extent the swing towards Independents from the better-known parties is not an uncommon trend the world over and we pass no aspersions on that. It has been reported that Australia is now only starting to mimic the established trend of other countries towards voting for Independents and one may suggest that it is due to dissatisfaction with the major parties that has brought about this change in voting practices.

Much has been said about our election process in this chamber, as well as in the media. It is clear that the Australian public and more recently the South Australian public have called into question the effectiveness of our electoral system and the potential for parties to be, dare I say it, undemocratically elected. In any event, discouraging small groups from running in an election is not what we are about. We encourage individuals, whether they be Independents or members of so-called micro parties, minor parties or even major parties to run.

However, we do not want to see a system which allows strategic preference deals taking place over primary votes in all cases. We believe that a group should have at least a reasonable level of support. From a Family First perspective that is simply not a good outcome; it is an outcome that people would not generally condone or accept.

There appears to be an attitude of reform when it comes to the election process. Certainly in the media at a federal level there has been a great deal of talk about this. Family First believes that creating a fair and democratic system is what is most necessary for voter confidence and the wellbeing of the electoral process.

Today I pose a very simple yet effective way of establishing and preserving voter confidence in our electoral system. The bill that I present to the chamber today creates a minimum threshold of 2.5 per cent. I might add, at this point, that I am not wedded to the 2.5 per cent figure; it is merely a figure that we seemed to gain some agreement on in this chamber prior to the last election. I would be perfectly comfortable if it was 2 per cent, 3 per cent or 4 per cent but 2.5 per cent seems to be a reasonable level. One of the reasons that we decided on that figure in the end was because Senator Xenophon was originally elected on 2.86 per cent, I think it was. That would not preclude somebody like that being elected at some future point. The figure I have chosen at this point is 2.5 per cent. I am certainly happy for that to be debated and moved up or down.

The bottom line is that if somebody achieves below that threshold of primary vote they simply cannot be elected. Preferences cannot be used to bolster numbers and push candidates over the threshold if they achieve less than that number of votes, or percentage of votes of 2.5 per cent. Only primary votes will count. If an individual achieves over 2.5 per cent of the primary vote then they qualify to be elected should the preferences allow that to occur. For the party, the group or individual that cannot meet this threshold, it is simple: they cannot be elected to this place.

Thresholds have been used for some time in other locations, stipulating that a party must receive a minimum percentage of votes, either at a national, state or district level, in order to gain a seat in parliament. Germany, by way of example, has a threshold of 5 per cent, as does New Zealand; Sweden has 4 per cent and Israel has a 2 per cent threshold, so what we are proposing here is nothing new and certainly not extreme. What we are proposing is at the mid range of the overseas comparisons and we think that that is a reasonable level. However, as I said, we are perfectly happy for it to be 2 per cent, 3 per cent or perhaps even 4 per cent.

It is certainly an achievable quota for a group that has a reasonable level of support, and we believe it therefore reflects the public's will. Family First believes this simple change will prevent the harvesting of preferences of the very, very small groups, parties or individuals in order to pervert the outcome of any election. This change is simple to understand for the public, and I think that is one of the real advantages of it; the public will understand it simply. They may not understand some other models that have been proposed as easily. This change is easy to effect and it is more reflective of the intentions of the voters on any given election.

Furthermore, I think it would have very strong widespread support throughout the electorate for such change. As I said, I think this is something that is very easy for people to understand. The actual number I think we can debate. As I said, I am not wedded to 2.5 per cent; it may be 2 per cent, 3 per cent, or something of that order. We would support something in that order, and I think this bill deserves consideration by this place.

Debate adjourned on motion of Hon. J.M. Gazzola.

Parliamentary Committees

SOCIAL DEVELOPMENT COMMITTEE: SALE AND CONSUMPTION OF ALCOHOL

Adjourned debate on motion of Hon. G.A. Kandelaars:

That the report of the committee, on its inquiry into the sale and consumption of alcohol, be noted.

(Continued from 6 August 2014.)

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): I understand that no further members wish to contribute, so I call the Hon. Mr Kandelaars to conclude the debate.

The Hon. G.A. KANDELAARS (16:42): Thank you, Mr Acting President. As you said, I understand no further members wish to contribute to this particular motion. I thank the Hon. Jing Lee for her contribution. The sale and consumption of alcohol is an ongoing issue of concern amongst the community. Most people consume alcohol in a moderate way and that causes no problems, but alcohol consumption and, in particular, the issue of violence related to it is an ongoing issue that the committee did look at. There has been some significant progress in a number of areas, such as the curfew with the City of Adelaide, and also at Coober Pedy and Ceduna. I commend the motion to the house.

Motion carried.

ABORIGINAL LANDS PARLIAMENTARY STANDING COMMITTEE: REPORT 2013-14

Adjourned debate on motion of Hon. T.T. Ngo:

That the 2013-14 report of the committee be noted.

(Continued from 17 September 2014.)

The Hon. T.J. STEPHENS (16:43): I rise to support the remarks of the Hon. Tung Ngo and thank him for his summation of the hard work of the Aboriginal Lands Standing Committee. I would say that the Aboriginal Lands Standing Committee is a tripartisan committee, not a bipartisan committee, because of course we have the Hon. Tammy Franks who participates with some vigour in that committee, as Aboriginal affairs is obviously quite a passionate endeavour of the Hon. Tammy Franks.

This is a committee that requires quite a deal of commitment from its committee members. I know I speak on behalf of all committee members when I say that to find time to travel large distances to meet with communities is quite taxing with regard to a member of parliament's time, taking into

account their other commitments. However, I know that all members, to the best of their ability, look forward to those meetings.

It is a committee that really does work well together. I welcome the new members of the committee and thank past members for their participation and dedication. I thank Jason Caire, our secretary, for the work that he does, under instruction from the committee. With those few words, I look forward to the passing of the motion.

The Hon. T.T. NGO (16:45): I would like to thank the Hon. Terry Stephens for his remarks. I would like to put the motion up for a vote.

Motion carried.

Bills

EVIDENCE (PROTECTIONS FOR JOURNALISTS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 2 July 2014.)

The Hon. T.A. FRANKS (16:46): I rise on behalf of the Greens to support the Evidence (Protections for Journalists) Amendment Bill 2014, brought to this place by the Hon. John Darley. I acknowledge the work of the Liberal opposition, in particular the Hon. Stephen Wade. I also note the work, at a federal level, of the federal member for Denison, Andrew Wilkie, and the improvements made to his original bill by Senator Scott Ludlam, which I note are somewhat reflected in the amendments being put forward by the Liberal opposition to this bill.

South Australia is now one of only three jurisdictions that have yet to pass journalist shield laws in Australia. In fact, many of us from popular media would be very familiar with the right to protect the source of journalists in popular culture, and that is because it is quite a strong tradition in America and the UK. It has been less of a strong tradition in Australia, although in the profession of journalism there has been, within the Media, Entertainment and Arts Alliance Code of Ethics, a commitment to protecting a source.

However, there have been quite well documented cases where a journalist who has sought to protect that source has found themselves before the courts and, when insisting on protecting that source who has come to them with that information and who has asked to have their identity kept undisclosed, that journalist ends up not only in court but indeed in some cases in gaol, such is the commitment of the fourth estate to that particular ethic.

We are here, as legislators, to move forward in South Australia with protections for sources to journalists, shield laws for journalists to protect their sources and put that and enshrine it in law. The Greens support that. We think it is a step forward. We think the defeat of the Surveillance Devices Bill earlier on this week, put here by the government, is another step forward and we look forward to further debates on expanding freedom of the press and, indeed, a strong, healthy and robust civil society that includes that very robust media.

As I said, many journalists have found themselves falling foul of the courts when they have sought to protect their sources. Some of the more recent cases have seen Gina Rinehart take on, with her great wealth behind her, particular journalists who have exposed matters that she did not want exposed and take that through the courts. We have also seen, most notably I think and certainly one that speaks to me, Chris Masters, the journalist who was responsible for the ABC *Four Corners* program, The Moonlight State, not only faced the court once but indeed faced what he has called 'death by a hundred courts.'

He was pursued mercilessly for his exposure of corruption in Queensland, in that police force in that state. I would say that he has changed the face of Queensland for the better. We should have seen him able to protect his sources on that series of reports. I am sure that he and the culture of Queensland would have benefited from shield laws such as the ones we are going to discuss today.

The reason these shield laws are so important is that they are not just for one particular individual journalist and one particular source to be protected: they are to create a culture where

people feel that they actually can trust that their confidentiality will be protected when they expose what is often corruption or criminal activity. In the Public Service we have whistleblower protections, and that is exactly as it should be. We should have these same standards in our media world.

One of the areas that state and federal jurisdictions differ on—and one that we will get to—is what exactly constitutes a journalist, and I look forward to that debate. I point to the fact that we live in a digital age. A journalist can take many forms in this day and age. You do not have to own a printing press or be a publisher of a major newspaper or, indeed, somebody wealthy enough to have finished the building of this building we are standing in today to have the power of that printing press. In fact, with the digital age, anyone can be a blogger or a journalist.

There are professional codes of ethics that I think should be upheld, and certainly the courts would be able to test this. The legislation we are looking at passing today would provide those protections for the public interest and for the very professionalism of journalism that we seek to advance. It does not matter whether you are paid or unpaid, it does not matter who you write for or how you present your story: it is the importance of that story to the public debate and to a healthy democracy. With those words, I commend the bill and look forward to the amendments being put forward and to further debate at the committee stage.

The Hon. S.G. WADE (16:52): This bill, as the Hon. Tammy Franks highlighted, is part of an ongoing conversation within this council. Regrettably, the government has not participated in it but, as the Hon. Tammy Franks recognised, the Hon. John Darley and the Liberal Party have both put down bills. As the Hon. Tammy Franks highlighted, there has also been activity in the federal parliament from Senator Xenophon and also from the Liberal Party.

In terms of the developments since this council last considered legislation in this area, the key development from the Liberal Party's point of view was the release of our shields law policy on 29 October 2013. That policy, which we obviously took to the last election, was part of a policy set that was endorsed by a majority of South Australians at the election. To quote my leader from a quote that he provided for that policy, 'People who alert media to important issues embody the core values of an open society.'

It is our view that a healthy, open society needs a free media. Journalists and media outlets hold interest groups, companies, governments and political parties to account. In that sense we are not so naive as to think that the Liberal Party will in a way be a victim of these laws. I am sure that there will be journalists who will gain information and use it to the discomfort of the Liberal Party in either opposition or government, but our commitment to an open society is such that we believe that we should, as an alternative government, promote laws that provide a framework within which South Australia can enjoy good government.

The Hon. Tammy Franks mentioned the whistleblowers legislation. This council will, of course, remember the work that we did in relation to the ICAC legislation, which actually forced the review of the whistleblower protection legislation in the context of the ICAC bill.

My understanding is that the Whistleblowers Protection Act review which was commissioned by the Attorney as required under the ICAC Act is not far away from the parliament, and we very much look forward to that. The whistleblower protection legislation and the shield laws legislation are two key examples of where this Legislative Council is providing leadership to the parliament to try and raise the bar in terms of good governance in South Australia. Again, I note the disinterest of the government in both areas.

Shield laws have been used internationally and around Australia to provide protection to people who engage journalists. As a matter of law shield laws provide that source-to-journalist communication is privileged and journalistic source identity is protected. Despite the growing popularity of shield laws across Australia, and our state and federal governments recognise the need to protect journalistic privileges, South Australia still has no such protections in place.

The Leader of the Government, in answering a question today, talked about the heritage of the Labor Party, and I note the reformist progressive governments that the Labor Party has provided from time to time such as the government of Don Dunstan. Even if one did not agree with everything that he did, at least he was reformist. South Australia was tending to lead the pack on reforms, not

trail, yet I would suggest that considering that South Australia has no shield law protections—and that is a unique position in Australian jurisdictions—it is indicative of the way the Labor Party has totally left its heritage. On so many areas of law we are tail-end Charlie, not that the most radical proposal is always the best, but the South Australian tradition of being a generator of ideas and innovation is not something for which the Labor Party in South Australia can any longer hold its head high.

From the Liberal Party's point of view we do believe that progressive, well-considered proposals can strengthen a healthy and open society, so we certainly already have on the *Notice Paper* our bill for shield laws. We also regard the bill of the Hon. John Darley as highly commendable, and in that context we will be putting a couple of amendments to the bill before us today to, in our view, improve them. I would humbly submit to the Hon. John Darley and other members that they are improvements, and I look forward to discussing them with members at the committee stage.

The Hon. K.L. VINCENT (16:57): I take the floor very briefly to put on the record Dignity for Disability's support of this bill. I would hope it goes without saying that we cannot expose a lot of corruption and indecency that happens in the world if we do not give people the ability to freely and openly shine a light on those issues. It is very important that we have the protection of those who seek to do so through their profession such as journalists to enable them to freely go about their work without fear of consequence.

To that end we also very strongly support the amendments put forward by the Hon. Mr Wade, particularly his amendment to broaden the definition of what constitutes a 'journalist' under the bill. In this modern age it makes common sense to me that we should also cover what we might sometimes refer to as 'citizen journalists' given that this is certainly a growing industry and more and more people are turning to informal journalism to get honest and open accounts of world affairs. With that very brief contribution, we very strongly support both the bill and the Hon. Mr Wade's amendments.

The Hon. J.A. DARLEY (16:59): First, I thank all honourable members for their contributions on this piece of legislation and also acknowledge the work done by members of parliament in both the state and federal parliaments in bringing this legislation to the house. In summary, the bill prevents journalists and their employers from being required to reveal their sources where the information or identity in question was provided by an informant, that is, on the understanding that the source would not be disclosed.

The bill also allows for an exception to this rule when, on application by a third party or on the court's own motion, the court finds that the disclosure is in the public interest, the disclosure of the identity of the informants is necessary in the interests of justice, and the benefit of disclosure outweighs any prejudicial effects such disclosure may have on an informant, journalist or any other person. The onus will be on a third party to establish that the disclosure is warranted in the circumstances. In closing, I indicate that I will be supporting all of the Hon. Stephen Wade's amendments.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. D.G.E. HOOD: Briefly, I would like to place Family First's position on the record. We all seem to be in furious agreement. We support the Hon. Mr Darley's bill and, although we only received them recently, at first blush the Hon. Mr Wade's amendments look acceptable to us: obviously he will explain them further as he presents them.

Clause passed.

Clause 2 passed.

Clause 3.

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

Amendment No. 1 [Wade-1]—

Page 2, line 14 [clause 3, inserted section 72, definition of informant]—Delete 'professional'.

The Hon. Mr Hood has put me in a difficult position because, having had assurances from a number of members that they will support my amendments, I thought that the best strategy was brevity, otherwise I would risk losing votes. However, the Hon. Mr Hood has invited me to explain my amendments, and perhaps if nothing else I owe the record and the people of South Australia an explanation as to the basis for them.

In so doing, then, I highlight that one significant difference between the Hon. John Darley's bill and the Liberal bill is the scope in terms of journalists. I apologise to members for the amendments not having been filed until earlier today, but I indicate that all they do is reflect the elements of the Liberal bill, which we believe should be picked up in the Darley bill. None of it is new, but I appreciate that members have not seen it in this form before, but I give you that assurance.

In terms of the Darley bill (if I can call it that), the definition of a journalist is more limited. The amendment to which I am speaking extends the definition to journalists more broadly, for example, those operating as contractors and freelancers. This approach is consistent with the scope of the commonwealth law in this area, and the Liberal opposition hopes that, by making this amendment to Mr Darley's bill, it will help future proof the laws to some degree in the sense that they can accommodate the changing nature of news media and news organisations.

In particular people working in parliament appreciate that the nature of media journalism and news dissemination are evolving at a rapid pace. News dissemination that I could not have imagined 10 years ago is with us and is having a significant impact on the way that journalism is promoted.

A journalist in either *The Advertiser* or a TV station here in Adelaide is very likely to be using tools such as Twitter and blogs in conjunction with their mainstream work. We particularly want to make sure that, if you like, this law provides journalists with protection across the range of their activities, but it also recognises the fact that media journalism and news will continue to evolve and that we may well have well-established journalists who do not use a news medium like a television or a newspaper as a base.

Under current New South Wales law, a professional journalist who blogs at home in a forum other than their workplace may not be covered. We do not want that risk to emerge for South Australian journalists. We do not want legislation to shape journalism. We want the journalistic profession and, if you like, the market for news to shape it. So the opposition submits that including a broader definition, similar to that used in the commonwealth legislation, would improve the bill of the Hon. John Darley, and I move the amendment accordingly.

The Hon. T.A. FRANKS: I rise on behalf of the Greens to support the amendment of the Hon. Stephen Wade and indicate that that is going to be reflected in our attitude towards his subsequent amendments. It will come as no surprise, given that it was Senator Scott Ludlam who broadened the definition of citizen journalists to include bloggers, independent media organisations, as well as news professionals and mainstream media.

In New South Wales, this has been a somewhat controversial definition and I note that Attorney-General Greg Smith controversially said that the federal law had the potential to cover people who 'can sometimes just be lunatics or people with very passionate agendas to push'. What I would say to that is that, in fact, people who can buy a newspaper or a TV station can also fulfil that particular description. It does not matter whether or not you are technically in the profession; you could actually fulfil that criterion, and certainly, while I would say some people who are called journalists and professional journalists would adequately fit that description and have agendas to push, what we are looking at is a new era where, as I say, you do not need to own a printing press or a TV station or be part of the mainstream media to in fact be part of the fourth estate or what is sometimes called the fifth estate.

I commend the cooperative work done at a federal level and I certainly look forward to a similar bipartisan or multipartisan approach here and a recognition of this new era. I also cannot help but note that we have an attorney-general in this state who, in the past days had commented that

our laws were not keeping up with new technologies. Certainly, here is an opportunity for the government to embrace those new technologies and understand new media and provide appropriate professional protections, not only for those operating within it, but those who disclose information to them.

Amendment carried.

The Hon. S.G. WADE: If the Chair pleases, I would submit that Amendments Nos 2 and 3 of [Wade-1] are consequential on the amendment that we just passed, and so I move them accordingly:

Amendment No 2 [Wade–1]—

Page 2, lines 16 and 17 [clause 3, inserted section 72, definition of *professional journalist*]—

Delete the definition and substitute:

journalist means a person who is engaged and active in the publication of news and who may be given information by an informant in the expectation that the information may be published in a news medium;

Amendment No 3 [Wade–1]—

Page 2, lines 18 to 20 [clause 3, inserted section 72, definition of *news medium*]—

Delete the definition and substitute:

news medium means any medium for the dissemination to the public or a section of the public of news and observations on news.

Amendments carried.

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

Amendment No 4 [Wade–1]—

Page 3, line 7 [clause 3, inserted section 72B(1)(a)]—Delete 'prescribed'

This amendment introduces the second element in our amendments. One of the differences between the Hon. John Darley's bill and the Liberal bill is that the Hon. John Darley's bill at this stage excludes the ICAC. The Hon. John Darley's bill—the bill before us—does provide protection from disclosure in royal commission proceedings and in other instances of compulsion. It only excludes ICAC hearings.

The Liberal position is that it would be better to have an across-the-board protection available to journalists, because that across-the-board protection is always qualified. As the Hon. John Darley mentioned in his second reading summing up, this bill before us does not give journalists a blank cheque or a carte blanche—whatever cliché one would care to choose—but rather, subject always to the public interest, the Supreme Court can determine that a journalist shall be compelled.

In a situation like an ICAC, when the community in South Australia has made very clear that we want the higher level of scrutiny of an ICAC, legislation reflects that the courts will give due regard to the duties and functions that have been given to the ICAC and they will make sure that the public interest is protected and if necessary that the public interest will require disclosure. No other Australian jurisdiction provides an explicit protection against disclosure in instances where the person is compelled to provide information. However, it is worth noting that our provisions allow this compulsion, as I said, in the context of the public interest.

Amendment carried.

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

Amendment No 5 [Wade–1]—

Page 3, line 12 [clause 3, inserted section 72B(2)]—Delete 'prescribed'

Amendment carried.

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

Amendment No 6 [Wade–1]—

Page 3, lines 14 to 23 [clause 3, inserted section 72B(2)(a) and (b)]—

Delete paragraphs (a) and (b) and substitute:

(a) he or she is—

(i) a journalist; or

(ii) a prescribed person in respect of a journalist; and

(b) —

(i) in the case of a journalist—he or she; or

(ii) in the case of a prescribed person—the journalist in respect of whom he or she is a prescribed person,

has been given information by an informant; and

(c) the informant gave the information to the journalist in the expectation that the information may be published in a news medium; and

(d) the informant reasonably expected that his or her identity would be kept confidential (whether because of an express undertaking given by the journalist or otherwise),

Amendment No 7 [Wade–1]—

Page 3 line 31 to page 4 line 7 [clause 3, inserted section 72B(3)]—Delete subsection (3) and substitute:

(3) However, the court or commission may, on the application of a party to the proceedings or on its own motion—

(a) order that subsection (2) does not apply to, or in relation to, a person; and

(b) make any ancillary order the court or commission thinks appropriate.

(3a) The court or commission may only make an order under subsection (3)(a) if it is satisfied that, having regard to the circumstances of the case, the public interest in disclosing the identity of the informant—

(a) outweighs any likely adverse effect of the disclosure on the informant or any other person; and

(b) outweighs the public interest relating to the communication of information by the news media generally; and

(c) outweighs the need of the news media to be able to access information held by potential informants.

Amendment No 8 [Wade–1]—

Page 4, lines 9 to 18 [clause 3, inserted section 72B(4), definition of *prescribed court*]—Delete the definition

Amendment No 9 [Wade–1]—

Page 4, line 19 [clause 3, inserted section 72B(4), definition of *prescribed person*]—Delete 'professional'

Amendment No 10 [Wade–1]—

Page 4, line 20 [clause 3, inserted section 72B(4), definition of *prescribed person*, (a)]—Delete 'professional'

Amendment No 11 [Wade–1]—

Page 4, line 21 [clause 3, inserted section 72B(4), definition of *prescribed person*, (b)]—Delete 'professional'

Amendment No 12 [Wade–1]—

Page 4, lines 30 and 31 [clause 3, inserted section 72C(1)]—Delete 'proceedings under the *Independent Commissioner Against Corruption Act 2012* or'

Amendment No 13 [Wade–1]—

Page 4, line 33 to 41 [clause 3, inserted section 72C(2)]—Delete subsection (2) and substitute:

(2) Subject to this section, but despite any other provision of this Act or any other Act or law, a prescribed person does not incur any criminal or civil liability if, in the course of proceedings to which this section applies, he or she fails or refuses to answer any question, or to produce any document or other material, that may directly or indirectly

disclose the identity of an informant who has given information to the prescribed person, or a journalist employed or engaged by the prescribed person, in circumstances where—

(a) the informant gave the information to the journalist in the expectation that the information may be published in a news medium; and

(b) the informant reasonably expected that his or her identity would be kept confidential (whether because of an express undertaking given by the journalist or otherwise).

Amendment No 14 [Wade–1]—

Page 5, line 4 to 15 [clause 3, inserted section 72C(4)]—Delete subsection (4) and substitute:

(4) The Supreme Court may only make an order under subsection (3) if it is satisfied that, having regard to the circumstances of the case, the public interest in disclosing the identity of the informant—

(a) outweighs any likely adverse effect of the disclosure on the informant or any other person; and

(b) outweighs the public interest relating to the communication of information by the news media generally; and

(c) outweighs the need of the news media to be able to access information held by potential informants.

Amendment No 15 [Wade–1]—

Page 5, line 26 [clause 3, inserted section 72C(7), definition of *prescribed person*, (a)]—Delete 'professional'

Amendment No 16 [Wade–1]—

Page 5, line 27 [clause 3, inserted section 72C(7), definition of *prescribed person*, (b)]—Delete 'professional'

Amendment No 17 [Wade–1]—

Page 5, line 28 [clause 3, inserted section 72C(7), definition of *prescribed person*, (c)]—Delete 'professional'

These amendments are all consequential, but differing from the previous two amendments.

The CHAIR: Yes, we accept that.

Amendments carried; clause as amended passed.

Title passed.

Bill reported with amendment.

Third Reading

The Hon. J.A. DARLEY (17:13): I move:

That this bill be now read a third time.

Bill read a third time and passed.

BUDGET MEASURES BILL 2014

Committee Stage

In committee.

(Continued from 23 September.)

Clause 1.

The Hon. R.I. LUCAS: I put a series of questions during the second reading debate to the government. The minister handling the bill has responded to questions from the Hon. Tammy Franks, which I understand. The Deputy Premier has corresponded with me with certain answers to questions on 10 September and, I think, 23 September. I am wondering if the minister is going to read onto the public record the government's responses to the questions that I raised during the second reading.

The Hon. G.E. GAGO: I had not intended to but if you need them to be, they can.

The Hon. R.I. LUCAS: I want them on the public record so either the minister can do it or I am happy to do it—one or the other. If the minister has them it is probably more sensible if they come from the minister.

The Hon. G.E. GAGO: Do you need to have both pieces of correspondence read onto the record?

The Hon. R.I. LUCAS: Yes, 10 and 23 September.

The Hon. G.E. GAGO: In relation to questions asked during the second reading contribution from the Hon. Rob Lucas, a series of questions was asked and the Attorney-General corresponded with the Hon. Rob Lucas. I will read that correspondence into the record. It states:

Budget Measures Bill 2014

I refer to your speech on the floor of the Legislative Council on 7 August 2014 regarding the Budget Measures Bill…and…your comments relating to amendments…

Further, please note that I have also addressed concerns raised by the Deputy Leader in the House of Assembly. A copy of this letter has also been sent to the Deputy Leader.

By way of background, the amendments to the Act confirm the long service leave entitlements that temporary teachers have received since 2003. That is, an allowable interruption in service of three months plus vacation. Prior to this, temporary teachers were given the benefit of a three month break in service.

The entitlements of full-time teachers are unaffected.

Who in the Department for Education and Child Development ('DECD') prepared the modelling and assessment of the State's Potential Liability?

The Office of Human Resources and Workforce Development in consultation with Finance in DECD prepared estimates of the potential liability based on a number of alternative assumptions. These estimates are broadly based for reasons including that the precise number of potential claimants is presently unknown. The Department of Treasury and Finance ('DTF') has noted the estimates prepared by DECD.

What is the Potential Liability?

Given the unknown number of potential claimants, and the fact that liability has potentially been accruing over 42 years since the commencement of the Act, the exact figure is unknown. It is clear, however, that given factors mentioned above, the potential liability is extremely large.

In calculating the potential liability DECD has assessed the entire spectrum of potential liability. It is not appropriate at this stage to publicly disclose potential liability figures given the state of the proceedings in the Supreme Court…which remain on foot.

Details of the Ex-Gratia Scheme

Cabinet has approved the establishment of an ex-gratia scheme…At this stage, the details of the Scheme have not been put to Cabinet, as this is dependent on the passage of the Bill.

While I cannot provide details of the Scheme prior to them being approved by Cabinet, I can tell you that:

- $15 million has been approved for the Scheme and will be available for discretionary payments to eligible teachers;
- the Scheme will not be used to pay any legal costs associated with the Proceedings;
- the fund will be controlled by DTF. It is expected that DECD will review applications and provide relevant information to me, as Attorney-General, to exercise discretion as to who will receive any payment out of the fund. Following approval, DTF would release the funds necessary to make payments;
- all eligible temporary teachers will be able to apply for payments out of the fund.

Where are the Employment Records of the Relevant Teachers Kept?

Most records are available in DECD central office. Other records are archived in boxes off-site.

For teachers who combined their service with lecturing in TAFE, some records are in the Department of Further Education, Employment, Science and Technology.

How Would the Government Make the Calculations in Order to Pay Out All Teachers?

Payments from the ex gratia fund will be entirely discretionary. Applicants will be able to submit information and documents in support of any application. I anticipate that DECD will also provide to me information about the service history of claimants. Calculations would be largely manual.

Are There any Previous Examples of Parliament Retrospectively Correcting an Anomaly?

In 1991, the Government amended the Act to reflect a practice and understanding as to payment when teachers were engaged for a part day. This was following a civil claim that resulted in a judgment that granted a full day's pay for any engagement of a part day. This prompted the Education (Part-time Remuneration) Amendment Act 1991 (SA), which inserted a new s 101A into the Act with retrospective application.

I trust that this information is of assistance.

Yours sincerely

John Rau

Deputy Premier

Attorney-General

Minister for Industrial Relations

In relation to correspondence dated 23 September:

Dear Rob Lucas

You have asked for more information about the ex gratia scheme proposed in the 2014-15 budget. I can advise the following:

An invitation to apply for the proposed ex gratia payment will be made by both public advertisement and notation on DECD employee pay slips. The invitation will state the closing date for application. An application form will be posted on the DECD website. Applicants will be asked to provide any documents or information in their possession in support of an application.

Any person believing they may have an entitlement may apply to the scheme. The proposed ex gratia scheme is not limited to claimants in the current court action, nor is it limited to members of the Australian Education Union. When the closing date is reached, DECD will advise me of the total number of applications. DECD will identify whether a teacher and/or is employed as a temporary teacher and will provide a summary of the service record of the applicant. I will consider this information and make a determination.

Yours sincerely

John Rau

Deputy Premier

Attorney-General

The Hon. R.I. LUCAS: I thank the minister for placing that on the record because the initial set of questions were placed on the record by me in the second reading contribution. For those who are obviously interested in this particular aspect of the Budget Measures Bill I think it is important to see the government's responses. The second letter the minister has placed on the record was in response to discussions I have had with the Deputy Premier seeking further information in relation to how this particular ex gratia scheme would operate. I will have some further comments on that when we come to the appropriate clauses in the bill that we have before us.

Clause passed,

Clauses 2 and 3 passed.

Clause 4.

The CHAIR: There are amendment Nos 1 to 5 of [Lucas-1]. They will be clerical amendments deemed necessary if Mr Lucas's substantial suggested amendments are successful. The Hon. Mr Lucas?

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

Amendment No 1 [Lucas–1]—

Page 4, line 1—Delete the heading

Amendment No 2 [Lucas–1]—

Page 4, line 7—Delete 'Schedule 3' and substitute 'Schedule 1'

Amendment No 3 [Lucas–1]—

Page 4, line 8—Delete 'Schedule 3' and substitute 'Schedule 1'

Amendment No 4 [Lucas–1]—

Page 4, line 10—Delete 'Schedule 3' and substitute 'Schedule 1'

Amendment No 5 [Lucas–1]—

Page 4, line 11—Delete subclause (5)

Mr Chairman, thank you for that explanation. I move the amendment standing in my name. Before speaking to it, I place on the record my understanding of what you have just outlined to the committee and what the Clerk has just outlined to me; that is, should this particular amendment, which is the substantive amendment on which we will have the substantive debate about the car park tax, be successful then amendment Nos 1, 2, 3, 4 and 5 will be handled by you and the staff clerically because they are consequential on this substantive debate that we are about to have on amendment No. 6, and there are also consequential amendments afterwards as per my schedule of amendments.

I intend to be mercifully brief in relation to this particular amendment. The issue of the car park tax has been discussed, debated and argued over for months now. The position of the Liberal Party has been well and truly put by the Liberal leader, the member for Dunstan, Mr Marshall, both in the public arena but also during debate in another place. I, on behalf of my upper house colleagues, have also put our position on it in the second reading debate.

Certainly, from my viewpoint, I do not propose to repeat all of the arguments that the Leader of the Opposition and myself have put in relation to the car park tax. Suffice to say that our broad position has been summarised by the arguments put, again, by the Leader of the Opposition today; that is, in our view South Australia is already a significantly over-taxed state. South Australian families are already struggling. South Australian businesses are already struggling.

The notion that in some way we can provide relief to struggling South Australian families and their budgets and the notion that in some way we can assist struggling South Australian businesses in a struggling South Australian economy by hammering them again with an additional tax, a new tax, is beyond comprehension to me and, we believe, to the majority of observers of this particular debate. It makes no sense, from that viewpoint, and we very strongly put the view to this particular committee that it is in the interests of South Australian businesses, and it is in the interests of struggling South Australian families and their budgets if we can prevent the imposition of a further additional tax, a further additional imposition on their budgets by opposing, successfully, the car park tax in this particular measure.

The Hon. G.E. GAGO: The government rises to oppose these amendments. We have put our case clearly on the record previously, so I also will be brief. South Australia has more car parks per capita than any other jurisdiction. Obviously this transport levy is a key part of our budget. Sydney, Melbourne and Perth have similar levies in place, and those levies have been found to have little or no impact on the retail sectors in those cities.

To remove a provision in relation to the levy from the government's budget clearly sets a very dangerous and undesirable precedent. If this measure does go ahead, as it has been well documented, it will create a hole in our budget by way of a $121.3 million revenue shortfall across the forward estimates. Therefore, I urge members not to support this particular amendment and allow it to go through as part of our budget measures.

The Hon. M.C. PARNELL: The Greens are opposing these amendments because we believe that there is merit in the car park levy and in the state transport fund. My concern at present is that if these amendments are successful I will not get to put and speak to amendments that I have to the tax and to the fund. I just want to outline briefly the conditions on which we would be supporting the government in this.

There were two additional exemptions that we believe were necessary in relation to the car park levy. The first was in relation to electric vehicle parking. Whilst there are not many spots that fall into that category, we think this will be a growing form of transport, so we seek to exempt those parking spots that are dedicated to electric vehicles and contain a charging point.

The second category of exemption we thought should be added is for car-sharing schemes; that is, different from hire cars (Avis, Budget, Europcar and the rest). Car-share schemes are where

people, effectively on a timeshare basis, access a car as an alternative to owning their own car. A number of these schemes are in operation already and we believe that, given they fulfil the primary objective of helping people to reduce their reliance on their own private cars, they too should be exempted from the tax.

The other amendment we would be seeking to make if we get to that point in the committee stage is that the purpose of the state transport fund, we believe, could be clarified to make it clear that the money is going to be used for helping people to reduce their reliance on private motor vehicles. That is exactly what the government says it intends; it wants to build park-and-rides by trains, by buses and things like that. My understanding was that the government was comfortable with the words that we proposed, but I just want to put on the record that this is something the Greens will be moving if we get to that point in the debate.

The final thing is that the Hon. Rob Lucas said that there has been some debate over this issue for some time. He is correct. No doubt he was referring to the book that I wrote back in 1994 called *Greening Adelaide with Public Transport* wherein I suggested a $1 per space per day levy on car parks, with the money being hypothecated to providing public transport services. So, 20 years on, that is exactly what the government has put forward. The amounts might have changed to reflect inflation over the years, but certainly this is an idea whose time has come. The Greens are supporting the car park levy and we are supporting the state transport fund being spent on infrastructure that helps people to reduce their reliance on private cars in urban areas.

The Hon. D.G.E. HOOD: I, too, will be mercifully short in placing on the record Family First's position on what has been a very controversial issue. Our position is well known in the public arena and in this place as well. We have expressed our views both here in some detail previously and also via the media in the public arena.

In summary, we will be supporting the amendments of the Liberal Party and the Hon. Mr Lucas, for three main reasons. The first reason is that this is simply another tax, and South Australia does not need another tax; we need fewer taxes in this state. The second reason, in particular, is that it is a tax on motorists. Motorists and property holders already bear the brunt of taxation across this country, and motorists pay at the petrol bowser: every time they fill up they pay, every time they register their car they pay—many, many times over. There is enough tax on motorists.

Finally, and perhaps most significantly, we made a commitment before the election—'we' being Family First—that we would oppose this tax, and we honour our commitment. I was recently speaking with my colleague, the Hon. Robert Brokenshire, who told me that in his 20 years in parliament he has never had to go back on a commitment he has made. I have been here for about 8½ years and in fulfilling this promise today I have yet to break a commitment I have made, and we do not intend to.

The Hon. J.A. DARLEY: I will be supporting all of the amendments of the opposition to get rid of this car park tax.

The Hon. T.T. NGO: I also rise to speak against removing this levy. As I outlined in my second reading speech, the government went to the election very clear on this policy, namely, that if the government was re-elected it would introduce this car park levy. It was clear election policy, and the money collected would be used for transport infrastructure projects, not general revenue. The government has already spent $21.1 million in good faith on additional park and ride facilities around South Australia which thousands of South Australians are currently enjoying.

The minister has said that other states like Melbourne and Sydney and Perth have already introduced these car park levies a long time ago, and I quote some figures. The Melbourne levy currently stands at $1,300 per year and was introduced in 2006. The levy is set at $21,000 per year in Sydney, and even Perth, with money rolling in from mining royalties, also introduced a levy in 1999.

The Liberal opposition campaigned strongly against this levy for at least 18 months leading up to the election and they made it clear to the public that a vote for Labor was a vote for a levy; a vote for the Labor Party would be for this levy. I stand to be corrected here but I remember Steven Marshall said that if the government was re-elected and he was still in opposition he would

vote for this levy which was very clever politics on the part of Mr Marshall because it put pressure on the public not to vote for Labor—that was very clever!

At the end of the day the government was re-elected and now the government has a mandate to introduce this levy because if this levy was voted down it will leave a hole of at least $100 million in the state budget—more than a $100 million shortfall. What does this mean? Future transport projects such as park and ride stations, and new buses and trams will now be on hold. Any major transport will now be re-profiled because of this shortfall.

This will also impact on other government services as well because the government will have to find savings somewhere or reduce services to find savings to fund some of these projects if the public so demands. I therefore urge honourable members to think carefully before they vote this levy out because at the end of the day the government was clear and transparent on this policy.

The Hon. R.L. BROKENSHIRE: Relevant to this amendment, I ask the minister two questions, particularly in light of the previous speaker's contribution. First, did the government have a mandate to increase the emergency services levy by $90 million a year recurrently? Secondly, if you are going to raise $30 million to $35 million a year with the car parking tax, a new tax that South Australians cannot afford and certainly retail and the economy cannot afford, why are you only going to spend $7.5 million per year of the $30million on park-and-ride?

The Hon. G.E. GAGO: As the Hon. Mr Ngo has indicated, this government went to the last election with a very clear mandate to introduce this levy. We were open and transparent about what we intended to do and were open and transparent about this levy. It made good policy sense, and we won that election and we will honour that election commitment.

In terms of the way the government chooses to distribute that revenue, whether it is to park-and-ride or other transport and road initiatives, is a matter for the government, but certainly the funding for park-and-ride initiatives were an integral part of revenue created by this levy.

The Hon. R.L. BROKENSHIRE: Could the minister answer the second part of my question, namely, does she and the government believe they have a mandate to hit the wallets and purses of South Australians through the ESL by an additional $90 million per annum?

The Hon. G.E. GAGO: It is outside the purview of this bill.

The Hon. K.J. Maher interjecting:

The CHAIR: The Hon. Mr Maher, we do not want a debate on this. The debate will be on the amendments and clauses. As this bill deals with taxation, these amendments will put as suggested amendments to the House of Assembly. I will put the first one of clause 4, which will be a test case for the remainder of the Hon. Mr Lucas's amendments. I put the question that it be a suggested amendment to the House of Assembly to leave out clause 4.

Suggested amendment to leave out clause 4 carried.

Clauses 5 to 23.

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

Amendment No 6 [Lucas–1]—

Clauses 5 to 23 (inclusive)—Delete these clauses

Suggested amendment to delete clauses 5 to 23 (inclusive) carried.

Schedule 1.

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

Amendment No 7 [Lucas–1]—

Schedule 1—Delete Schedule 1

Suggested amendment to delete schedule 1 carried.

Schedule 2.

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

Amendment No 8 [Lucas–1]—

Schedule 2—Delete Schedule 2

It is consequential.

Suggested amendment to delete schedule 2 carried.

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

Amendment No 9 [Lucas–1]—

Page 16, line 28—Delete the heading and substitute 'Schedule 1—Budget Measures'

It is consequential on the last vote.

The CHAIR: We will be treating that as a clerical amendment.

Schedule 3 passed.

Schedule 4.

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

Amendment No 10 [Lucas–1]—

Schedule 4—Delete Schedule 4

Suggested amendment to delete schedule 4 carried.

Title.

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

Amendment No 11 [Lucas–1]—

Long title—

Delete 'enact legislation in relation to the 2014 State Budget so as to impose a levy on parking spaces within the central business district of the City of Adelaide in order to raise revenue to be used to provide or support programs designed to improve transport services and transport safety within the State and to provide for related matters; and to'

Suggested amendment to long title carried.

The Hon. R.I. LUCAS: I understand the procedure that we have adopted, but where does this leave the Hon. Tammy Franks's amendments? The Hon. Tammy Franks has amendments, actually, to clause 2 and to schedule 3. I understand the process you have adopted in relation to the car park tax but, whilst I will not be agreeing with the amendments of the Hon. Tammy Franks, I will defend fiercely to the end her right to put the amendments and be defeated, I hope.

I would hope that with the procedures that you and the Clerk have adopted, it may well be that with the agreement of the minister, we could recommit the appropriate clause to allow the Hon. Tammy Franks to at least put her arguments and move her amendments etc. That may well be, I suspect, Mr Chair, the only way you can now achieve what you need to achieve.

Schedule 3—reconsidered.

The CHAIR: Hon. Ms Franks, your amendment on file to clause 2 will be dealt with as a clerical amendment if your amendment to schedule 3 gets up.

The Hon. T.A. FRANKS: I move:

Amendment No 2 [Franks–1]—

Schedule 3, Part 1, page 16, line 29 to page 20, line 6—Delete Part 1

I note that, while I do have two amendments standing in my name to this bill, both go to the same topic of the entitlement of temporary teachers to long-service leave. I will speak to that amendment as a test case for both. I rise briefly, noting the time of the evening, to make some contributions at

this stage. I would certainly like to put on record a few remarks with regard to the minister's answers to my questions on this topic that have been provided to me by the AEU.

With regard to the minister's response to my question, which asked 'Why does the government seek to subvert the High Court decision by retrospectively altering employees' longstanding entitlements to long-service leave?' the Australian Education Union has advised me that this government was well aware, through years of correspondence and legal proceedings, that the question of 'appointment basis' that went to the High Court was all about the long-service leave entitlements of those affected employees. It was not just about their appointment status.

The long-service leave provision under the Education Act is based entirely on the appointment status as either 'officers', who attract the two-year break, or 'other employees', who attract only the three-month break. For the government to say that it did not deal with long-service leave or other conditions of employment is mischievous. The very essence of an affected employee's appointment basis is their conditions of employment. There is no other reason why this question of law was heard by the High Court on appeal.

With regard to the minister's response to my question number two, 'Why does the government seek to differentiate between permanent and non-permanent teachers—they are both classified as "officers of the teaching service" under the Education Act 1972?' the AEU advises me that permanent teachers have the benefit of permanency, unlike temporary teachers, who do not have secure employment.

This affects their ability to buy a home, decisions about starting or adding to their family, and things such as further study, education or travel, while those in permanent work enjoy those workplace entitlements. This impacts upon women in particular, given their greater contribution to caring responsibilities in our culture. To not have a contract renewed is similar in effect to retrenchment. This is starkly evidenced by the department's appalling record of being unable to reach its own permanency targets due to lack of scrutiny of the permanent or temporary nature of the appointments.

With regard to the minister's response to my question number three, 'Why equate these members of the teaching force with "other public sector employees"', I bring to the minister's attention that under the act an 'officer in relation to the teaching service' means a teacher holding office in the teaching service.

In the Education Act, Part 3—The teaching service, section 15 allows for the appointment of teachers to be officers of the teaching service both as permanent and temporary employers (S15(2)) Part 3, at sections 19 to 24 of the act, also provides for long-service leave to officers of the teaching service, that is all teachers appointed under section 15 of the act.

Note that section 22—Interruption of service of the act allows for a break in service of up to two years to count as service if that service was continuous. Part 3 applies to all teachers, whether they are appointed as permanent or temporary teachers. Therefore, it is a nonsense to have teachers working side by side, one employed permanently and the other temporarily, who attract different conditions.

Teachers do not have the same employment conditions as other temporary public sector workers, such as year-round employment opportunities, penalty rates and flexibility in the timing of taking accrued recreation leave, so why align this single element of their employment conditions, a three-month break in service, with other public sector workers? It is nothing more than retrospectively denying these individual employees, who already suffer insecure working conditions, a benefit determined by the High Court of Australia.

Finally, with regard to the minister's response to my question No. 4: what of those current employees whose long service leave entitlement will be reduced and possibly removed by this retrospective legislation? The Australian Education Union's belief is that those affected employees will suffer a loss or reduction in their accrued entitlements as stated on their payslips or statements of service. The department has already denied affected individuals access to information regarding entitlements and withheld approval of any long service leave accrued as a result of applying the High Court decision.

This was a measure not long debated, not with a mandate from the election, not in the spirit of a Labor government and certainly one which has come as a surprise to these affected groups of teachers who have given long service to the teaching profession and who are very surprised to be treated in this way by a Labor government.

While I say there is not a long history of this there is, indeed, a history of this under the Foley/Rann budget of 2010. We have seen a Labor government previously retrospectively deny those in the public sector their workplace entitlements. Unfortunately, this is déjà vu all over again from the Weatherill Labor government.

I urge members to reject this measure, whether or not you believe in this particular case that these teachers are entitled to these long service provisions but in the spirit of a fair debate and a transparent debate. This was a measure snuck into a budget bill, not given due and adequate notice to those concerned and certainly not won by a mandate in the election.

The Hon. G.E. GAGO: The government rises to oppose this particular amendment. We have addressed the particular concerns in answers to questions that were put on record during the second reading summary debate. This amendment and the previous amendment filed by the Hon. Tammy Franks would remove from the bill provisions amending the Education Act.

Since the inception of the Education Act in December 1972, both Labor and Liberal governments have maintained the public sector standard of three months for break of service over some 40-odd years. In 2003 it was modified by agreement with the Australian Education Union to three months plus vacations and backdated to 1978. The vacation periods were added to the public sector standard in consideration of the school year and it has been the intention of successive governments that temporary teachers receive long service leave entitlements that are in line with other members of the Public Service.

The High Court decision on 29 February 2012 was about the appointment basis of teachers. It did not deal with long service leave or other conditions of employment. The High Court remitted the matter to the Industrial Relations Court for further consideration and there has been no subsequent hearing in the court. In practical terms the legislation confirms past practice. It is for the reasons that we have already discussed and the information that we have put on the record that the government opposes the amendments filed by the Hon. Tammy Franks.

The Hon. R.I. LUCAS: The Liberal Party's position was made clear in the second reading but there are a couple of additional comments based on the discussions we have had with interested stakeholders and with the Deputy Premier. At this point I want to place on the record (and as I indicated in the second reading) that the Liberal Party's position has generally been not to support retrospective application of decisions but there have been occasions when we have, and there have been occasions when this whole chamber and the parliament has, as well, when a case has been made out to do so.

I have been reminded by the discussions and correspondence with the ministers—and that is now on the public record—that back in 1991 there was an amendment to the Education Part-Time Remuneration Act Amendment Bill which came about as a result of a court decision which essentially said that a teacher who had worked for part of a day should be paid for the full day.

It had never been the practice, but the courts held that that was the law . Potentially, a whole range of people could have made application for payment on the basis that—and someone obviously fought the case at the time, I assume also supported potentially by the Institute of Teachers at the time—that is what the law said and, therefore, as silly as it might sound, you are entitled to be paid. Therefore, for many years, the department would have had to have gone back to work out who needed to be paid a full day's pay even though they might have only worked for half a day or a third of the day of that particular day.

At that particular time it was a Labor government and they introduced the amendment. I was then the shadow minister for education on behalf of the Liberal Party and we supported the retrospective application in those circumstances. We did move an amendment at that particular time in relation to those who had fought the case and that particular amendment bill passed.

More recently, we have also passed, in the time when certain members have been in this chamber, some retrospective application of amendments in relation to stamp duty provisions. I remind members of the case of MSP Nominees Pty Ltd v Commissioner of Stamps, where in about 2008 I think it was we were asked, on the basis of a court decision, to make changes which did have retrospective application in relation to, potentially, certain businesses. Again, it was one of the rare occasions where we—and I am not sure whether other parties can speak for themselves as to whether they opposed those particular provisions—were convinced on the basis of the arguments to support the provisions.

This is another example where, on the basis of the evidence provided to us, and for the reasons that I outlined in the second reading—again, I indicate as a former shadow minister and minister, all through the period that I had involvement or responsibility, I never understood, and certainly advice to me was that we never understood the situation that someone who had worked for a period of time and then had not worked for two years and then worked for a period of time as a teacher, and then had another two years' break and then worked for a period of time, that in some way that would allow for ongoing calculation of long service leave. The court has held otherwise and we are being asked to form a view in relation to these circumstances now and, for the reasons I have outlined, we will not support the amendments that have been moved by the Hon. Ms Franks.

The critical issue that we then further explored was the details of the ex gratia scheme because, to be frank, the details the government put on the record were too threadbare. There was not enough detail and, understandably, some stakeholders wanted to know exactly how the ex gratia scheme might operate. I thank the minister for putting on the record that it will not just be the 900 claimants who were parties to the particular claim who potentially might benefit from the $15 million ex gratia scheme.

As the minister on behalf of the government has outlined now, an invitation to apply for an ex gratia payment will be made by a public advertisement, so that will be publicly advertised, and there will be a notation on current DECD employee pay slips. The public advertisement is important, because there are some former employees of DECD who will not be receiving pay slips. As former employees of DECD or its preceding agencies, having looked at the website or the public advertisement, they will be entitled to make application. There will be a closing date for those applications. The form will be posted on the website. Applicants will be asked to provide documents or information, and the department will then have the onerous task of trying to work out eligibility and how the scheme might operate.

The minister has made it quite clear, as I said, that it will not be limited to the 900 or so claimants to the scheme, so there might be many thousands who make application. He has also made it quite clear that it will not be limited just to members of the Australian Education Union, which for some persons interested in this particular issue was an important issue for them as well. So, it will be open to anybody who makes application.

Necessarily, and I accept the minister's arguments in relation to this given the impossibility of knowing how many people will apply, it may well be that the total number of teachers who apply and the total calculation by the department of what the potential payout will be will be less than the $15 million. My understanding is that the current government's thinking, without binding the government in any way, will be: if that is the case then, in essence, those applicants will get 100¢ in the dollar because the total payment will be less than the $15 million.

If, however, there are literally thousands and thousands of applicants and after assessing eligibility (that is, the department) the total potential payout is more than $15 million then the department, and ultimately the minister, the Deputy Premier, under the government's current arrangements, will need to take advice on—this is my assessment not the minister's—if applicants will get 80¢ in the dollar or 70¢ in the dollar, or whatever it is.

I understand that there may well be, if we are in these sorts of circumstances, the possibility—and again this does not bind the government or the minister in any way—that if it is significantly over the $15 million there might be some minimum threshold; that is, whether it is $50 or $100, that is the cost of administering and working it out. It may well be that there will only be payouts

above a certain level. That would only be in the circumstance where the $15 million ex gratia payment was likely to be fully expended.

I hasten to say that the minister and the government have made it clear that no final decisions have been made in relation to how this might operate. I have just flagged, potentially, options that the department might consider in terms of putting advice to the minister and the government; that is, in terms of the final payments. There are clear commitments in terms of public advertisement and notation on payslips. Anyone can apply, you are not limited to be a member of the AEU. Then, the final details of the scheme will be based on advice from the department but, ultimately, it is a decision for the Deputy Premier as the responsible minister in terms of how it might be applied.

On behalf of my colleagues, I think that is certainly a lot more information in terms of how the ex gratia scheme might operate than was immediately evident in the early stages of the debate. I therefore thank the minister and the department for at least providing further detail on how the scheme might operate.

I accept that it is impossible to dot every i and cross every t at this stage because of the impossibility of knowing how many will apply and what the total potential outlay might have been. I accept that particular difficulty but I think the shape and structure of the proposed arrangements are not unreasonable and in those circumstances that is further reason why we will support the government's proposals in relation to this aspect of the Budget Measures Bill and we will not be supporting the proposed amendments.

The CHAIR: I will put the second amendment first. If that is successful then No. 1 will be a clerical amendment.

The committee divided on the suggested amendment:

Ayes 6
Noes..... 13
Majority..... 7

AYES

Brokenshire, R.L.	Darley, J.A.	Franks, T.A. (teller)
Hood, D.G.E.	Parnell, M.C.	Vincent, K.L.

NOES

Dawkins, J.S.L.	Finnigan, B.V.	Gago, G.E. (teller)
Gazzola, J.M.	Kandelaars, G.A.	Lee, J.S.
Lucas, R.I.	Maher, K.J.	McLachlan, A.L.
Ngo, T.T.	Ridgway, D.W.	Stephens, T.J.
Wade, S.G.		

Suggested amendment thus negatived.

Bill reported with suggested amendment.

Third Reading

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (18:14): I move:

That this bill be now read a third time.

Bill read a third time and passed.

RETURN TO WORK BILL

Introduction and First Reading

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

Second Reading

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (18:16): I move:

That this bill be now read a second time.

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

Leave granted.

Today I am introducing a Bill to enact a new scheme to support workers and employers where there is a work injury—the Return to Work Scheme—and repeal the existing scheme established by the *Workers Rehabilitation and Compensation Act 1986*.

As the House is aware, the current workers rehabilitation and compensation scheme does not best serve workers, employers or the State.

Workers experience worse return to work outcomes than in other jurisdictions and, for many, the services provided to them do not support early and effective recovery and return to work. However, it should be noted that currently there are approximately 15, 500 new claimants per year, of which about 70 per cent receive either no income maintenance or less than two weeks income maintenance. Published in August 2013, the 2012-13 National Return to Work Survey reported that South Australia's return to work result of 82 per cent is the highest it has been since 2008-09. Despite this relative improvement, South Australia's return to work rate remains well below that of all other States and has been consistently below the national average for many years.

Employers also pay much more than in other jurisdictions and are not sufficiently supported to provide their employees with opportunities to remain at work or return to work early. We have the highest average premium rate, at about double the rate of other jurisdictions, of 2.75 per cent for the 2014-15 financial year, compared to 1.47 per cent in New South Wales, 1.272 per cent in Victoria and 1.20 per cent in Queensland.

Self-insured employers are, generally, performing well. However, more can be done to enhance the legislative framework in which they are operating.

The Government is committed to improving workers compensation. As part of the first phase of these reforms a commercially focused Board was put in place for WorkCover in late 2013. This was supported by the Charter and Performance Statement, signed by the Premier in his then role of Treasurer and myself, in August 2013 which set out key priorities\, initiatives and requirements for WorkCover.

As a result, WorkCover's financial position improved by $96 million for the 6 months to 31 December 2013, following the independent mid-year scheme actuarial valuation. The unfunded liability dropped to $1.23 billion compared to $1.37 billion at June 2013. Despite these recent improvements fundamental change is required to achieve the focus, performance and level of improvements that are necessary for a sustainable scheme.

South Australia needs a fair, effective and efficient scheme that supports injured workers with early intervention, recovery and return to work. It needs to be a scheme with clear, unambiguous boundaries and less moving parts.

The new Return to Work Scheme will clearly identify each party's role and obligations, including those of workers, employers and the Corporation. People will be clear about the part they play in assisting and achieving a return to work outcome.

The new Scheme is designed, if everything is implemented, understood and decided as expected, to have a break even premium rate of less than 2%. This is a significant change which benefits employers.

Early intervention and improving injury management approaches will be at the heart of the new Return to Work Scheme to provide improved health and life outcomes for workers. The emphasis of the new Scheme is on capacity and not incapacity, and medical certificates will need to explain what injured workers can or will be able to do rather than what they cannot.

Seriously injured workers will be supported with income maintenance payments until retirement age and lifetime care and support. Non-seriously injured workers will receive income maintenance support for up to two years and medical expenses paid for a further year after their income support ceases.

People who are seriously injured will be able to pursue common law damages where their employer's negligence caused or contributed to the injury in addition to rights of action against third parties.

People with a physical injury, excluding hearing loss, which results in a whole person impairment of between 5 and 29% inclusive, will receive additional compensation by way of a lump sum payment for economic loss.

Significant improvements in dispute resolution are required. The Return to Work Scheme seeks to minimise the potential for disputes. Improved, evidence-based decision making and active case management will also minimise the potential for disputes. Where they do occur, a new South Australian Employment Tribunal will be responsible for

their resolution. These reviews will be heard quickly and dealt with fairly and effectively. Currently in South Australia about 6% of active claims are in dispute at any one time. This is much more than comparable jurisdictions such as New South Wales and Victoria.

The proposed scheme balances the interests of workers and employers. Modelling the future impact of the changes on workers, using historical data, indicates that about 94% of people with a work injury will receive either improved or the same income support benefits. With early intervention initiatives being fully implemented it is expected that an even higher percentage of people with a work injury will receive either improved or the same benefits.

There will be an increased emphasis on early intervention, improved service delivery and support for retraining and job seeking where appropriate. These services will be intensive and targeted at the needs of the individual. There will be strengthened obligations on employers to provide work and injured workers will be able to seek, if needed, an order from the Tribunal to obtain employment with their pre-injury employer.

Useful definitions and provisions that work well in the existing Act have been replicated to maintain consistency wherever possible. Examples include the provisions relating to average weekly earnings, reduction or discontinuance of weekly payments, employer registration and funding and self-insurance.

Workers and employers will receive better service with legislated obligations and service standards with which the Corporation and its agents must comply.

The Return to Work Scheme needs an insurer that is expected and required to meet high-quality service standards focussed on early intervention. Meaningful obligations will be placed upon the Corporation to achieve this.

South Australia needs a sustainable scheme that provides quality services and support to injured workers. A scheme that has both a strong regulator and a service focused insurer. The Return to Work Corporation will take on these roles under this new legislation.

If this legislation is passed this year, the new Return to Work Scheme will commence on 1 July 2015.

Key aspects of the new Return to Work Scheme

Objects of the Act

The Return to Work Scheme has a fundamental basis of:

- people who have suffered a work injury should be provided early and appropriate treatment and support to recover and return to work; and
- employers should bear the cost of that treatment and support by way of compulsory insurance.

The objects of the Bill clearly provide that early intervention to support recovery and return to work is the primary objective of the scheme.

What injuries are covered?

A physical injury must arise out of or in the course of employment and the employment must be a significant contributing cause of the injury for the claim to be accepted.

For a claim for psychiatric injury to be accepted, employment must be the significant contributing cause and it cannot arise from any one or more of the exclusionary factors listed in the legislation.

Legislative rights and obligations

Legislative obligations are placed on workers, employers and the Corporation.

Workers have a right to:

- early intervention;
- active case management;
- expect their employer to participate and co-operate in assisting in their return to work;
- reasonably request the Corporation to review services or investigate non-compliance of their employer regarding their retention, employment or re-employment;
- apply to the Tribunal for the employer to provide work.

Workers are obliged to:

- give notice of a work injury occurring;
- participate in all activities supporting recovery and return to work (exclusion for seriously injured workers);
- provide medical certificates;

- return to suitable employment (exclusion for seriously injured workers);
- take reasonable steps to mitigate any loss.

Employers have a right to support in claims management and the right to request a medical examination of the worker.

Employers are obliged to:

- support their workers' participation in recovery and return to work activities;
- mitigate loss;
- provide suitable employment;
- pay an appropriate wage for any alternative or modified duties or return to suitable employment;
- give 28 days' notice before termination of employment;
- register with the Corporation;
- pay a premium;
- provide information as requested, keep accounts, maintain confidentiality.

An employer must also appoint (and retain) a return to work co-ordinator to assist injured workers to remain at or return to work as soon as possible and to assist in the preparation and implementation of recovery/return to work plans.

The Corporation is obliged to:

- adopt a service-oriented approach focused on early intervention;
- act professionally and promptly;
- provide face-to-face service wherever possible;
- ensure injuries and claims are actively managed;
- improve recovery and return to work outcomes.

These provisions signal a new era for recovery and return to work. The new scheme clearly outlines the responsibilities of all key parties, and in particular the Corporation. For the first time, the new Corporation can be held to account for its performance and behaviour in both regulating the scheme and providing services.

Seriously injured workers

One of the key features of the new scheme is the distinction between seriously injured workers and non-seriously injured workers.

Workers assessed with a whole person impairment of 30% or more will be treated as seriously injured. The scheme will provide income support for such workers until retirement age and lifetime care, support and medical services.

Having a distinct boundary here is essential for the scheme to be able to support those workers who need it most.

Recovery and Return to Work Plans

Injured workers who are likely to be incapacitated for work for more than 4 weeks will have a recovery/return to work plan, which combines the objectives and functions of the rehabilitation programmes and rehabilitation and return to work plans under the existing Act.

There is now a clear focus on supporting the worker and the employer along the recovery and return to work pathway.

Medical services

Workers will be entitled to be compensated for costs of medical services that are reasonable, necessary and reasonably incurred.

This entitlement ceases 12 months after income support ends (except for seriously injured workers who will receive lifetime care and support). Medical certificates will certify workers' capacity and will be required to support any periods when income support is payable.

Income support

The Corporation must offer to make interim payments if it fails to determine a claim within 10 business days.

Injured workers will be able to access:

- 100% of notional weekly earnings (NWE) capped at twice the State average from 0—52 weeks from the date on which the incapacity for work first occurs;
- 80% of NWE from 53—104 weeks for non-seriously injured workers;
- 80% of NWE from 53 weeks—retirement age for seriously injured workers.

It should be noted that weeks relates to the passing of calendar weeks rather than the previous notion of entitlement weeks.

Based on historical experience, out of the approximately 15,500 claims made each year, about 1,020 will be affected by the two year time-banding of income support for non-seriously injured workers. This is expected to reduce with improved early intervention, training and support as well as a clear understanding of the time banding.

Again based on historical experience, out of the approximately 6,500 claims in an injury year that receive income maintenance in the first 12 months, about 2,900 people will receive additional income support due to the changes in the income support step-downs.

In addition, the amount of income support provided will, where necessary, be increased so that the combined amount (the amount otherwise payable plus any designated earnings) is no less than the Federal minimum wage.

Workers may receive supplementary income support payments for incapacity outside the two year time-banding that results from surgery before the medical services entitlement concludes and approved by the Corporation.

Dependency payments will no longer be affected by income earned from the investment of the lump sum payable upon a worker's death.

Redemptions

The scheme allows a liability to make weekly payments to be redeemed by a capital payment to injured workers, by agreement between the injured worker and the Corporation. The access restrictions to redemptions in the current Act have been removed.

Redemptions will be used in exceptional circumstances when recovery and return to work options have been exhausted. Careful control of redemptions is essential and is enshrined in the new scheme.

If a seriously injured worker elects to receive a redemption he or she cannot access common law.

Permanent impairment and death lump sums

Only one assessment of a worker's physical injuries arising from the same trauma may be made. A separate single assessment may be made in respect of impairment caused by pure mental harm arising from the same trauma. These assessments cannot be combined.

Again, this is an important element of the new scheme. Without this, the scheme will not be sustainable in the long term.

A lump sum payment for physical injuries is payable where the worker's whole person impairment is 5% or greater. Consistent with current arrangements, lump sum compensation is not payable for psychiatric injuries.

The maximum lump sum payment for death will be made to a worker's partner(s) and child(ren) regardless of their level of dependency.

Common law and lump sum payments for economic loss

The Government has previously talked about including access to common law damages in the new scheme. Following consultation with both employer and worker representatives, an alternative approach has been established that will largely maintain the no-fault basis of the scheme and give injured workers greater certainty about the entitlements available to them.

In addition to the lump sum payment for permanent impairment, an additional lump sum will be payable to physically injured workers (excluding hearing loss) with a whole person impairment assessed at 5% or more and less than 30%. This payment is to acknowledge the potential economic loss associated with a work injury and will be scaled to make greater payments to those furthest from retirement age.

As already mentioned, workers who are seriously injured will be entitled to income maintenance payments until retirement age. In addition, those seriously injured workers whose employer's negligence caused or contributed to the injury, will be able to pursue a common law claim against their employer. However, they will be unable to claim damages for future treatment, care and support as a consequence of the National Injury Insurance Scheme obligations and these services will continue to be provided by the scheme.

The provisions of the *Civil Liability Act 1936* apply.

Dispute resolution

The South Australian Employment Tribunal will be solely responsible for resolving disputes that arise under the new scheme.

A separate Bill is being brought to this Parliament to establish the South Australian Employment Tribunal, which will have similar powers, functions and operating arrangements to the South Australian Civil and Administrative Tribunal. The new Tribunal will be focused on resolving applications for review as quickly as possible, expediting matters where appropriate with an inquisitional rather than adversarial approach.

Only those decisions identified in the Act as reviewable can be the subject of proceedings before the Tribunal.

At the worker's request, income support may continue pending the outcome of the review proceedings, but not beyond the date where the weekly payments would have come to an end in any event e.g. reaching the end of the time banded scheme, the worker reaching retirement age, etc.

The Tribunal will be able to access Independent Medical Advisers, operating under the direction of the Tribunal, for inquiry and report on medical questions.

Advisory Committee

A Ministerial Advisory Committee will provide advice on matters requested by the Minister.

The Minister must consult with the Committee in establishing an accreditation scheme for permanent impairment assessors.

Recoveries

In third party recovery actions, the Corporation can enter into a deed of release with the worker who may retain the balance of the damages recovered from the third party after repayment of the workers compensation payments already paid from the settlement sum.

The deed of release will have the effect of discharging any outstanding workers compensation entitlements and extinguishing the employer's obligation to provide suitable employment.

A new provision allows the Corporation to recover as a debt any payment made to workers, employers and providers to which they are not entitled.

Self-insured employers

Self-insured employers have the same obligations as employers to support injured workers. Self-insured employers are liable for all payments of compensation for work injuries arising from employment with a self-insured employer.

An employer, or group, can apply for registration as a self-insured employer. A foreign holding company cannot be taken into account when determining whether an employer is part of a group.

The Crown and any agency or instrumentality of the Crown will be taken to be registered as self-insured employers.

Renewal of registration can be made for up to 5 years.

A self-insured employer must pay a fee to the Corporation.

Discontinuance fees have been removed from the scheme.

A self-insured employer can appeal various decisions to the Minister.

Whole Person Impairment Assessments

Whole Person Impairment Assessments form a critical part of the Return to Work Scheme. The thresholds for access to lump sum payments for permanent impairment and economic loss and being characterised as a seriously injured worker are all reliant on the whole person impairment assessment.

Whole person impairment arising from physical injuries will be assessed in accordance with the Act and by reference to the *Impairment Assessment Guidelines*. The guidelines will draw upon the *American Medical Association Guides for the Evaluation of Permanent Impairment*, fifth edition, known as AMA 5. AMA 5 is used consistently across Australian jurisdictions for the assessment of physical injuries.

Whole person impairment arising from psychiatric injuries will be assessed in accordance with the Act and by reference to the *Impairment Assessment Guidelines*.

New Corporation

The WorkCover Corporation will be renamed as the Return to Work Corporation. This is not a superficial name change. It will send a clear message that South Australia has a focused regulator and insurer equipped to ensure the new scheme is implemented and managed as intended.

The Corporation will be responsible for administering the new scheme. It will be expected and required to meet high-quality service standards focused on early intervention. Meaningful obligations will be placed on the new Corporation.

Standards are included in the legislation about how the Corporation interacts with injured workers and meets their reasonable expectations.

Scheme bonus period

A framework is included for the spreading of the benefits available from the scheme performing financially well between workers and employers. Subject to the scheme's funding level being of at least 100% and achieving a profit from its insurance operations in 2 consecutive years and actuarial confirmation a 'scheme bonus period' would be declared.

Based on an assessment by the Corporation of how much could be paid out without affecting the sustainability of the scheme, equal amounts would be allocated to reducing the average premium rate employers pay and to a funding pool to provide job seeking services and developing skills and capacity for workers whose entitlements have ceased and who have not returned to work.

If scheme funding is below 90% for 2 consecutive years, or if declaring a 'scheme bonus period' would result in the average premium rate falling below 1.25%, a full review of the scheme will be initiated by the Minister.

Review of the Return to Work Scheme

An independent review of the reforms is required to commence three years after the commencement of the new scheme. Specifically, the review will need to consider whether the reforms and the dispute resolution approach has achieved a significant reduction in the number and duration of disputes and the success of resolving medical related matters.

Other legislative changes

Consequential changes to other Acts

This Bill makes consequential amendments to other Acts, including the *Civil Liability Act 1934*, the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*, the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*, the *Supreme Court Act 1935*, the *WorkCover Corporation Act 1994* and the *Work Health and Safety Act 2012*.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Although the measure is to commence on a day to be fixed by proclamation, certain provisions of Schedule 9 (Repeal, amendments and transitional provisions) will come into operation at a time specified in the Schedule.

3—Objects of Act

This clause specifies the object of the Act, which is to establish a scheme for the support of workers who suffer injuries at work. The primary objective of the scheme is to be the provision of early intervention in respect of claims so as to ensure that action is taken to support workers in relation to health, recovery and return to work. Subclause (2) sets out other objectives that apply with respect to the Act, including objectives in relation to the services and support given to workers who suffer injuries at work, limitations on costs to employers, providing a reasonable balance between the interests of workers and the interests of employers and reducing disputation when workers are injured at work.

The clause requires the Corporation, the worker and the employer from whose employment a work injury arises to seek to achieve an injured worker's return to work (taking into account the objects and requirements of the Act).

4—Interpretation

This clause provides definitions of a number of terms used in the measure. For example:

Damages means damages for injury or loss sustained by a worker in circumstances creating, independently of the Act, a legal liability in the worker's employer (or a person who is vicariously liable for the acts of the worker's employer), or another person, to pay damages to or in relation to the worker or a dependant of a deceased worker. 'Damages' does not include the following:

- a sum required or authorised to be paid under an award or industrial agreement;

- a sum payable under a superannuation scheme or any life or other insurance policy;
- any amount paid in respect of costs incurred in connection with legal proceedings;
- damages of a class excluded from the ambit of this definition by the regulations.

A *dependant*, in relation to a deceased worker, is a relative of the worker who, at the time of the death, was wholly or partially dependent for the ordinary necessities of life on earnings of the worker (or would, but for the worker's injury, have been so dependent).

An *employer* is:

- a person by whom a worker is employed under a contract of service, or for whom work is done by a worker under a contract of service (but this is subject to certain exclusions);
- the Crown, where the Crown is, under Schedule 1, the presumptive employer of a person;
- in relation to persons of whom any other person is, by virtue of a provision of the Act, the presumptive employer—that other person.

The term 'employer' includes a former employer and the legal personal representative of a deceased employer.

Employment includes the following:

- work done under a contract of service;
- the work of a self-employed person to whom the Corporation has extended the protection of the Act;
- the work of persons of whom the Crown is, under Schedule 1, the presumptive employer;
- attendance by a worker at a place of pick-up.

Injury means a physical or mental injury and, where the context admits, the death of a worker. The term includes an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury.

The *Tribunal* is the South Australian Employment Tribunal.

A *worker* is—

- a person by whom work is done under a contract of service (whether or not as an employee);
- a person who is a worker by virtue of Schedule 1;
- a self-employed worker.

The term includes former workers and the legal personal representatives of deceased workers.

In addition to defining terms used in the measure, this clause deals with a number of other preliminary matters.

5—Average weekly earnings

This clause provides that the average weekly earnings of an injured worker is the average weekly amount that the worker earned in relevant employment during the period of 12 months preceding the date on which his or her injury occurred. Relevant employment is employment with the employer from whose employment the injury arose. If the worker was employed by two or more employers when the injury occurred, relevant employment is constituted by employment with each of those employers.

In addition, this clause sets out rules in relation to various matters connected to the determination of a worker's average weekly earnings. For example, the clause provides that employer superannuation contributions and prescribed allowances are to be disregarded for the purposes of determining a worker's average weekly earnings and specifies how and when an overtime component of a worker's earnings is to be taken into account.

6—Act to bind Crown

This clause provides that the Act binds the Crown in right of the State and in all of its other capacities.

Part 2—Key principles, concepts and requirements

Division 1—Connection with employment

7—Injury must arise from employment

Clause 7 provides that the Act applies to an injury if (and only if) the injury arises from employment. An injury arises from employment if the injury arises out of or in the course of employment and the employment was a significant contributing cause of the injury. However, in the case of a psychiatric injury, the injury arises out of employment if it

arises out of or in the course of employment and the employment was the significant contributing cause of the injury. Additionally, a psychiatric injury only arises from employment if it did not arise wholly or predominantly from—

- reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker or a decision of the employer not to renew or extend a contract of service; or
- a decision of the employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with the worker's employment; or
- reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment; or
- reasonable action taken in a reasonable manner under the Act affecting the worker.

If the worker's injury is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury, employment must be a significant contributing cause of the aggravation, acceleration, exacerbation, deterioration or recurrence. In the case if a psychiatric injury, the employment must be the significant contributing cause of the aggravation, acceleration, exacerbation, deterioration or recurrence and the aggravation, acceleration, exacerbation, deterioration or recurrence must not arise wholly or predominantly from any action or decision of a kind included in the list above.

This clause includes additional provisions detailing the circumstances in which the following may arise from employment for the purposes of the Act:

- an injury attributable to surgery or other treatment;
- an injury arising out of or in the course of a social or sporting activity;
- an injury arising out of or in the course of a journey.

8—Effect of misconduct etc

This clause provides that a worker is not entitled to receive services or benefits under the Act if he or she is guilty of misconduct or acts in contravention of instructions from his or her employer. Further, services and benefits are not available if it is established on the balance of probabilities that the injury is wholly or predominantly attributable to serious and wilful misconduct on the worker's part or the influence of alcohol or a drug that he or she voluntarily consumed. This does not include a drug lawfully obtained and consumed in a reasonable quantity.

9—Evidentiary provision

Clause 9 is an evidentiary provision. For an injury to be compensable under the Act, it must be established on the balance of probabilities that it arises from employment. This provision operates subject to certain qualifications and presumptions specified in the clause and in Schedule 2 and Schedule 3.

Division 2—Connection with State

10—Territorial application of Act

This clause deals with the territorial application of the Act and provides that the Act applies to a worker's employment if the employment is connected with South Australia. The clause sets out rules for determining the State with which a worker's employment is connected. A worker's employment is connected with the State in which he or she usually works in the relevant employment. If no State, or no single State, can be identified as the State in which the worker usually works, his or her employment is connected with the State in which he or she is usually based for the purposes of the employment or, if no such State can be identified, the State in which the employer's principal place of business is located.

The clause also deals with the application of the Act to workers working on ships where no single State can be identified as the State in which the worker usually works or is based.

11—Determination of State with which worker's employment is connected in proceedings under this Act

If the question of whether this State is connected with a worker's employment arises in proceedings before the Tribunal or a court, the Tribunal or court is required under this clause to determine the State with which a worker's employment is connected.

12—Recognition of previous determinations

If the Tribunal or a court of a kind specified under this clause makes a determination as required under clause 10, the State determined by the Tribunal or court as the State with which the worker's employment is connected is to be recognised as such for the purposes of the Act (but this does not mean that the determination cannot be the subject of an appeal).

Division 3—Fundamental principles, rights and obligations

13—The Corporation

This clause requires the Corporation to—

- adopt a service-orientated approach that is focused on early intervention and the interests of workers and employers; and
- seek to act professionally and promptly in everything that it does; and
- be responsible and accountable in its relationships with others; and
- take reasonable steps to comply with any request made by a worker for a review of the provision of any service to the worker under the Act or to investigate any circumstance where it appears that his or her employer is not complying with a requirement of the Act in relation to the retention, employment or re-employment of the worker.

Additionally, the clause sets out requirements of the Corporation in relation to maintaining plans and strategies designed to establish practices and procedures under which an injured worker's specific circumstances (and those of his or her employer) will be addressed and specifies the Corporation's objective in respect of this requirement:

- ensuring early and timely intervention occurs to improve recovery and return to work outcomes including after retraining (if required);
- achieving timely, evidence based decision making that is consistent with the requirements of the Act;
- wherever possible, providing a face to face service where there is a need for significant assistance, support or services;
- ensuring regular reviews are taken in relation to a worker's recovery and, where possible, return to work;
- ensuring the active management of all aspects of a worker's injury and any claim;
- encouraging an injured worker and his or her employer to participate actively in any recovery and return to work processes;
- minimising the risk of litigation.

It is made clear in the clause that the policies and procedures set out do not give rise to substantive rights or liabilities (compared to rights or liabilities established or prescribed under other relevant provisions of the Act).

14—Service standards

The Corporation is required under this clause to adopt and apply the service standards set out in Schedule 5.

15—Workers

This clause provides that a worker who has suffered a work injury is entitled to expect the following:

- early intervention by the Corporation in providing recovery and return to work services;
- the Corporation to actively manage the worker's injury and claim and to provide services in a manner consistent with the requirements of the Act;
- his or her employer to participate and co-operate in assisting the worker's recovery and return to work and to reasonably support the worker in receiving any benefit available under the Act.

The clause also requires a worker who has suffered a work injury to—

- participate in all activities designed to enable him or her to recover and return to work as soon as is reasonably practicable; and
- participate and co-operate in the establishment of a recovery/return to work plan; and
- comply with obligations imposed by or under a recovery/return to work plan; and
- ensure that the Corporation is provided with current medical certificates with respect to any incapacity for work for which weekly payments are being made so as to provide evidence to support the continuation of the payments; and
- return to suitable employment when reasonably able to do so; and
- take reasonable steps to mitigate any possible loss on account of the work injury.

Specified exceptions to the above apply for seriously injured workers.

16—Worker's duty to give notice of injury

This clause sets out the duty of a worker to give notice of a work injury to his or her employer (or, if the worker is not in employment or is self-employed, the Corporation).

17—Employers

This clause provides that an employer of a worker who has suffered a work injury is entitled to expect—

- early intervention by the Corporation in providing recovery and return to work services to the worker; and
- the Corporation to act fairly and reasonably in a manner consistent with the requirements of the Act; and
- support in managing claims and the provision of services available to the worker under the Act.

The clause requires the employer to, so far as is reasonably practicable—

- support the worker in the worker's participation in activities designed to enable the worker to recover and return to work; and
- participate and co-operate in the establishment of any recovery/return to work plan that is required for the worker; and
- comply with obligations imposed on the employer by or under a recovery/return to work plan for the worker; and
- take reasonable steps to mitigate any possible loss on account of the work injury.

18—Employer's duty to provide work

This clause requires the employer of a worker who has been incapacitated for work in consequence of a work injury to provide suitable employment for the worker. This obligation arises if the worker is able to return to work (whether full-time or part-time and whether or not to the previous employment). The employment must be employment for which the worker is fit and, to the extent practicable, the same as, or equivalent to, the employment in which the worker was working immediately before the incapacity. This obligation applies in relation to the employer from whose employment the injury arose (the *pre-injury employer)* and is subject to certain qualifications set out in subclause (2).

The clause also sets out a procedure for a worker incapacitated by a work injury to apply to the Tribunal for an order for the pre-injury employer to provide specified employment to the worker. The worker can make the application if—

- he or she has sought employment with the pre-injury employer (consistent with the requirements of subclause (1)); and
- in seeking the employment, he or she—
- by written notice to the employer, confirmed that he or she is ready, willing and able to return to work with the employer and provided information about the type of employment he or she considers that he or she is capable of performing; and
- complied with any other requirements prescribed by the regulations; and
- the employer failed, within a reasonable time, to provide suitable employment to the worker.

The clause also sets out rules in relation to the costs of applications under the section and explains what is meant by 'suitable employment' in the context of the clause.

19—Payment of wages for alternative or modified duties

The employer of a worker who has been incapacitated for work in consequence of a work injury and undertakes alternative or modified duties under employment or an arrangement that falls outside his or her contract of service for the employment from which the injury arose is required under this clause to pay an appropriate wage or salary in respect of the duties. This requirement operates subject to a determination of the Corporation.

20—Additional requirement with respect to termination of employment

This clause requires the employer of a worker who has suffered a work injury to give the Corporation and the worker at least 28 days notice if the employer proposes to terminate the worker's employment. This requirement does not apply if—

- the employment is properly terminated on the ground of serious and wilful misconduct; or
- the worker is neither participating in a recovery/return to work plan, nor receiving compensation, for the work injury; or
- the worker's rights to compensation for the injury have been exhausted or the time for making a claim for compensation has expired.

Division 4—Seriously injured workers

21—Seriously injured workers

A seriously injured worker for the purposes of the Act is a worker whose work injury has resulted in permanent impairment and the degree of whole person impairment has been assessed under Division 5 for the purposes of the Act to be 30% or more. As stated in the clause, the Act makes special provision in a number of places for seriously injured workers. The clause allows the Corporation to make an interim decision that a worker is to be taken to be a seriously injured worker. An interim decision can be made on the Corporation's own initiative or on application by the worker.

The clause provides that, in assessing whether the 30% threshold has been met (that is, whether the degree of whole person impairment resulting from a work injury is at least 30%)—

- impairment resulting from physical injury is to be assessed separately from impairment resulting from psychiatric injury; and
- in assessing impairment resulting from physical injury or psychiatric injury, no regard is to be had to impairment that results from consequential mental harm; and
- in assessing the degree of whole person impairment resulting from physical injury, no regard is to be had to impairment that results from a psychiatric injury or consequential mental harm; and
- the 30% threshold is not met unless the degree of whole person impairment resulting from physical injury is at least 30% or the degree of whole person impairment resulting from psychiatric injury is at least 30%.

Division 5—Assessment of permanent impairment

22—Assessment of permanent impairment

Clause 22 sets out a scheme for assessing the degree of impairment (that is, whole person impairment) that applies to a work injury that results in permanent impairment. An assessment under the clause is to be made in accordance with the Impairment Assessment Guidelines by a medical practitioner who holds a current accreditation under the clause.

The Impairment Assessment Guidelines are to be published by the Minister in the Gazette and must incorporate a methodology that arrives at an assessment of the degree of impairment of the whole person.

An assessment of the degree of impairment resulting from an injury—

- must not be made until there is evidence that the injury has stabilised; and
- must be based on the worker's current impairment as at the date of assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury; and
- must be made by an accredited medical practitioner selected in accordance with the Impairment Assessment Guidelines.

Subclause (8) lists principles that must be taken into account in relation to an assessment of the degree of impairment resulting from an injury.

The clause provides that only one assessment may be made in respect of the degree of permanent impairment of a worker from one or more physical injuries (including consequential injuries) arising from the same trauma and only one assessment may be made in respect of impairment caused by pure mental harm arising from the same trauma. These assessments cannot be combined. Any injury that may subsequently develop or manifest itself or develop after the assessment of impairment is made will not be assessed. However, this rule operates subject to an assessment made under Part 8 (Independent medical advice) and the exercise of any adjudicative functions by the Tribunal or a court. Further, an interim decision under clause 21 will be taken not to constitute an assessment for the purposes of the rule that only one assessment may be made. That rule does not apply in circumstances prescribed by the regulations.

The clause also requires the Minister to establish, after consultation with the Advisory Committee, an accreditation scheme for medical practitioners who will be undertaking assessments under this provision.

Part 3—Early intervention, recovery and return to work

23—Object

This clause sets out the object of Part 3, which is to establish a system that seeks to ensure that a worker who suffers a work injury achieves the best practicable levels of physical and mental recovery and is, if possible, restored to the workforce and the community in a timely, safe and durable way.

The clause emphasises the importance of early intervention in the provision of recovery/return to work services to injured workers and the aim of returning workers to work in their pre-injury duties or, if that is not reasonably practicable, other suitable duties or work with another employer.

24—Early intervention, recovery and return to work services

This clause provides that services provided under Part 3 (recovery/return to work services) may do one or more of the following:

- provide for the physical, mental or vocational assessment of a worker;
- provide advisory services to a worker, members of the family of a worker, an employer and others;
- assist a worker in retaining, seeking or obtaining employment;
- assist in the training or retraining of a worker;
- assist a worker to find or establish appropriate accommodation;
- provide equipment, facilities and services to assist a worker to cope with any injury at home or in the workplace;
- provide assistance to a person who may be in a position to help a worker to overcome or cope with an injury;
- provide necessary and reasonable costs (including costs of travel, accommodation and child care) incurred by a worker in order to receive or participate in any services;
- provide anything else that may assist in achieving the objects of Part 3.

Action must be taken as early as possible after a worker suffers a work injury to determine the most appropriate recovery/return to work services to be provided to the worker. The Corporation is required under the clause to take reasonable steps to ensure that a reasonable level of recovery/return to work services are provided to an injured worker. For the purposes of this Part, recovery/return to work services will be provided by persons who have been accredited, approved or appointed under schemes established by the Corporation.

25—Recovery/return to work plans

Clause 25 imposes an obligation on the Corporation to ensure that a recovery/return to work plan is prepared for a worker if it appears that the worker is (or is likely to be) incapacitated for work by a work injury for more than 4 weeks. A plan may be prepared even if the period of incapacity may be less then 4 weeks but need not be prepared for a worker if the Corporation considers that, due to the severity of his or her injuries, the focus should be on other forms of support and services. A recovery/return to work plan is to set out the actions and responsibilities of a worker, an employer and the Corporation in order to achieve the earliest possible safe return to work or, if relevant, to the community on a durable basis. The clause requires that, in preparing a recovery/return to work plan, consultation is to occur with the worker and, to the extent that it is necessary or appropriate, the employer. The clause imposes various other obligations in relation to the preparation of recovery/return to work programs, including a requirement that plans comply with standards and requirements prescribed by regulation.

26—Return to work co-ordinators

This clause requires an employer to appoint a return to work co-ordinator and specifies the functions of a co-ordinator.

27—Standards and facilities established by Corporation

This clause authorises the Corporation to undertake various activities in relation to the provision of recovery/return to work services. For example, the Corporation may enter into arrangements with a government agency or other body under which facilities and services, including medical services, will be provided to injured workers.

28—Rates for provision of services

Under this clause, the Minister may publish scales of charges that will apply to the provision of recovery/return to work services. The scales are to be published in the Gazette on the recommendation of the Corporation. The Corporation is required under the clause to undertake consultation before making a recommendation to the Minister about the publishing of a scale of costs.

29—Related initiatives

This clause authorises the Corporation to disseminate information that relates to work related injuries, to conduct, participate in or subsidise research promoting the objects of the Part and to encourage and support the work of organisations that provide assistance to workers who have suffered work related injuries.

Part 4—Financial benefits

Division 1—Claims

30—Claims

This clause prescribes various requirements in relation to the making of claims under Part 4, including a requirement that a claim be supported by a certificate by a recognised health practitioner (or another person of a prescribed class). The clause deals with various other matters relating to claims, including, for example, the period

within which a claim must be made, to whom a claim must be given and the obligation of an employer (other than a self-insured employer) to furnish the Corporation with information the Corporation requires in order to assess or determine a claim.

31—Determination of claim

This clause provides that the Corporation may, following receipt of a claim, undertake such investigations and inquiries as are necessary in order to achieve an evidence based decision with respect to the determination of the claim. The Corporation may require a worker to submit to an examination by a recognised health practitioner. A claim may be rejected by the Corporation if a claimant fails or refuses to furnish information reasonably required by the Corporation or to submit to a required examination.

The Corporation is required to determine claims for compensation as expeditiously as reasonably practicable. If a claim is for compensation by way of income support, the Corporation is to endeavour to determine the claim within 10 business days (if practicable). Notice of the rejection of any part of a claim is to include information required by the regulations as to the grounds of the rejection and a statement of the claimant's right to have the determination reviewed. The clause specifies circumstances in which the Corporation may redetermine a claim.

32—Payment of interim benefits

Clause 32 authorises the Corporation to make interim payments to a claimant pending the final determination of his or her claim. There is a requirement for the Corporation to offer to make interim payments if it fails to determine a claim within 10 business days after the date of receipt of the claim. An amount paid under this clause to which a claimant was not entitled on the final determination of the claim may be recovered by the Corporation as a debt.

Division 2—Medical expenses etc

33—Medical expenses

This clause provides that a worker is entitled to be compensated for the costs of the following services if they are reasonable and necessary and reasonably incurred by the worker:

- the cost of medical services;
- the cost of hospitalisation and all associated medical, surgical and nursing services;
- the cost of approved recovery/return to work services;
- the cost of travelling, or being transported, to and from any place for the purpose of receiving medical services, hospitalisation or approved recovery/return to work services (but not where the worker travels in a private vehicle);
- the cost of accommodation where it is necessary for the worker to be accommodated away from home for the purpose of receiving medical services or approved recovery/return to work services (but not exceeding limits prescribed by regulation);
- the cost of attendance by a registered or enrolled nurse, or by some other person approved by the Corporation or of a class approved by the Corporation, if the injury is such that the worker must have nursing or personal attendance;
- the cost of the provision, maintenance, replacement or repair of therapeutic appliances;
- the cost of medicines and other material purchased on the prescription or recommendation of a health practitioner;
- any other costs (or classes of costs) authorised by the Corporation.

The Corporation may reduce charges it considers excessive or disallow charges for services that it considers were unreasonable, unnecessary or unreasonably incurred but, if it does so, must give the provider of the service notice of the decision to reduce or disallow the charge.

The clause also provides for publication by the Minister, by notice in the Gazette, of scales of charges for the purposes of the clause. The amount of compensation for a service covered by a scale of charges must be in accordance with the scale. The notice must be made on the recommendation of the Corporation. The clause prescribes various requirements in relation to scales of charges, including a requirement for the Corporation to consult various bodies before making a recommendation to the Minister about the publishing of a scale.

This clause also provides an entitlement for workers to apply to the Corporation for approval to obtain the provision of prescribed classes of services, appliances, medicines or materials of a kind referred to in the list above.

A person's entitlement to compensation under this clause ceases if he or she has not had an entitlement to receive weekly payments in relation to the work injury for a continuous period of 12 months or has not had an entitlement to receive weekly payments and a period of 12 months has expired. However, this cessation does not apply in relation to a seriously injured worker or in other circumstances specified in subclause (21) (including in relation

to therapeutic appliances required to maintain a worker's capacity and surgery that has been requested before the entitlement ceased and approved by the Corporation) or prescribed by the regulations.

34—Transportation for initial treatment

This clause applies if a worker is injured at his or her place of employment during the course of employment and, as a consequence of the injury, requires immediate medical treatment. The employer is required to provide the worker with immediate transportation to a hospital or health practitioner for initial treatment. The transportation is to be provided at the employer's expense.

Division 3—Property damage

35—Property damage

This clause provides for compensation if a worker suffers a work injury and, in consequence of the trauma out of which the injury arose, damage occurs to therapeutic appliances, clothes, personal effects or tools of trade of the worker. The worker is entitled to compensation for the full amount of the damage (subject to prescribed limitations).

Division 4—Income support

Subdivision 1—Preliminary

36—Capacity to perform work

This clause provides that a worker's current work capacity for the purposes of the Act is constituted by a present inability arising from a work injury such that the worker is not able to return to his or her employment at the time of the injury but is able to return to work in suitable employment. It is further provided that a worker has no current work capacity if he or she has a present inability arising from a work injury such that he or she is not able to return to work in his or her employment at the time of the occurrence of the injury or in suitable employment.

37—Prescribed benefits

This clause lists *prescribed benefits* for the purposes of Division 4 as follows:

- any amount paid to the worker by the Corporation or a self-insured employer in respect of an employment program provided or arranged by the Corporation or self-insured employer for the purposes of the Act;
- any of the following received by the worker from an employer:
- any payment, allowance or benefit related to annual or other leave;
- any payment, allowance or benefit paid or conferred by the employer on the worker's retirement;
- any payment, allowance or benefit paid or conferred under a superannuation or pension scheme;
- any payment, allowance or benefit paid or conferred on the retrenchment, or in relation to the redundancy, of the worker;
- any other payment, allowance or benefit of a prescribed kind.

38—Prescribed allowances

In Division 4, a reference to weekly earnings or current weekly earnings means weekly earnings exclusive of prescribed allowances.

Subdivision 2—Entitlement to weekly payments

39—Weekly payments over designated periods for workers other than seriously injured workers

This clause sets out the principles according to which a worker (other than a seriously injured worker) who suffers a work injury that results in incapacity for work is entitled to weekly payments in respect of the incapacity.

If a period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity first occurs, the worker is entitled to weekly payments equal to his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

If a period of incapacity for work occurs within the period of 52 weeks beginning immediately after the end of the first 52 week period, the worker is entitled to weekly payments equal to 80% of his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to 80% of the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

The *designated weekly earnings* of a worker for the purposes of the clause are the current weekly earnings of the worker in employment or self-employment (if any) (excluding any prescribed benefit).

There is no entitlement to weekly payments under the clause following the end of the period of 104 weeks from the date on which the incapacity for work first occurs.

40—Supplementary income support for incapacity resulting from surgery

This clause provides for supplementary income support payments where an injured worker has been incapacitated for work, after the end of the period of 104 weeks from the date on which incapacity first occurs, as a result of surgery approved by the Corporation. Supplementary income support payments are not payable in respect of a period of incapacity that occurs more than 13 weeks after the surgery.

41—Weekly payments for seriously injured workers

This clause sets out the principles according to which a seriously injured worker who suffers a work injury that results in incapacity for work is entitled to weekly payments in respect of the incapacity.

If a period of incapacity for work occurs within the period of 52 weeks from the date on which the incapacity first occurs, the worker is entitled to weekly payments equal to his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

If a period of incapacity occurs after the end of the first 52 week period from the date on which incapacity first occurs, the worker is entitled to weekly payments equal to 80% of his or her notional weekly earnings for a period when he or she has no current work capacity and weekly payments equal to 80% of the difference between his or her notional weekly earnings and his or her designated weekly earnings for a period when he or she has a current work capacity.

If a worker who is paid weekly payments on the basis that he or she is a seriously injured worker is subsequently determined not to be a seriously injured worker, he or she is entitled to continue to receive payments as if he or she were a seriously injured worker until the expiration of 8 weeks following the date of the whole person assessment on account of which the determination was made. Any further entitlement to weekly payments will be determined on the basis that the worker is not a seriously injured worker.

42—Federal minimum wage safety net

This clause has the effect of ensuring that the amount that a worker who has suffered a work injury receives in any week (that is, from a combination of compensation and designated weekly earnings) is not less than the Federal minimum wage (as adjusted, if necessary, for part-time workers). If the combined amount would be less than the Federal minimum wage, the amount of compensation payable must be increased so that the combined amount is equal to that minimum (or, in the case of a part-time worker, to the minimum as adjusted).

43—Return to work obligations of worker

A worker who has a current work capacity is required under this clause to make reasonable efforts to return to work in suitable employment or pre-injury employment at his or her place of employment or at another place of employment.

44—Termination of weekly payments on retiring age

This clause provides that weekly payments are not payable in respect of a period of incapacity for work falling after the date on which a worker reaches his or her retiring age. Despite this, if a worker who is within 2 years of his or her retiring age or above his or her retiring age becomes incapacitated for work while still in employment, weekly payments are payable (subject to other provisions of the Act) for any period of incapacity falling within 104 weeks after the date on which the incapacity first occurred.

Subdivision 3—Adjustment of weekly payments

45—Adjustments due to change from original arrangements

This clause authorises the Corporation to review the calculation of the average weekly earnings of a worker for the purposes of making an adjustment. A review may be undertaken on the Corporation's own initiative or at the request of the worker. The Corporation may make an adjustment if it finds that there has been a change that warrants the adjustment. An adjustment may be made if there has been—

- a change in a component of the worker's remuneration used to determine average weekly earnings (including a component constituted by a non-cash benefit); or
- a change in the equipment or facilities provided or made available to the worker (if relevant to average weekly earnings).

An adjustment under the clause takes effect as an adjustment to the worker's notional weekly earnings. The adjustment may therefore have the effect of increasing or reducing weekly payments.

46—Review of weekly payments

This clause authorises the Corporation to review the amount of the weekly payments made to a worker who has suffered a work injury. A review under this clause may be undertaken on the Corporation's own initiative, but must be undertaken if a worker or employer requests the review. If the Corporation finds on the review that the worker's

entitlement to weekly payments has ceased, increased or decreased, it must adjust or discontinue the weekly payments accordingly.

47—Economic adjustments to weekly payments for seriously injured workers

The Corporation is required under this clause to review the weekly payments of a seriously injured worker who is incapacitated for work or appears likely to be incapacitated for work for more than 1 year. A review must be undertaken during the course of each year of incapacity. The purpose of the review is to make an adjustment to the amount of the worker's weekly payments to reflect changes in rates of remuneration.

Subdivision 4—Reduction or discontinuance of weekly payments

48—Reduction or discontinuance of weekly payments

This clause provides that weekly payments to a worker who has suffered a work injury may not be reduced or discontinued except specified circumstances.

If the Corporation decides to reduce or discontinue weekly payments under the clause, it must give notice in writing to the worker. The notice must contain the information required by the regulations as to the reasons for the decision, must inform the worker of his or her right to have the decision reviewed and must be given as required under subclause (6).

If a worker applies to the Tribunal for a review of a decision to reduce or discontinue weekly payments under this clause within one month of receipt of the decision, and the worker makes an election under subclause (9), the operation of the decision is suspended. Weekly payments must then continue or be reinstated until the matter first comes before a member of the Tribunal. The Tribunal may then further suspend the operation of the decision from time to time to allow a reasonable opportunity for resolution of the dispute by conciliation or determination if the suspension is reasonably necessary in order to avoid undue financial hardship being suffered by the worker. This power operates subject to the principle that the Tribunal should give extra weight to taking such action if it appears to the Tribunal that it is reasonably open to the worker to dispute the relevant decision. The Tribunal may vary or revoke a decision to suspend the operation of a decision and may also make an order for the payment of an amount to represent some or all of any of the weekly payments that have not been made to the worker during the period of the dispute. If a dispute is ultimately resolved in favour of the Corporation and the worker has been paid an amount in excess of his or her lawful entitlement to weekly payments, the Corporation may recover the amount of the excess (plus interest) from the worker as a debt or set off the amount recoverable against liabilities of the Corporation to make payments to the worker. This ability to recover or set off the excess payment operates subject to the regulations.

This clause also makes provision for review of a worker's circumstances with a view to reducing or discontinuing weekly payments at the request of an employer who believes that reasonable grounds exist for a reduction or discontinuance.

Subdivision 5—Related matters

49—Protection from excess payments

This clause provides that a worker is not entitled to receive, in respect of 2 or more injuries, weekly payments in excess of his or her notional weekly earnings.

50—Weekly payments and leave entitlements

This clause deals with the effect of leave entitlements on weekly payments. A liability to make weekly payments in respect of a period of incapacity is not affected by a payment, allowance or benefit for annual leave or long service leave to which a worker is entitled for that period. Various other matters relating to leave entitlements and weekly payments are dealt with under the clause.

51—Absence of worker from Australia

A worker who has suffered a work injury and is receiving weekly payments must give the Corporation details of any proposed absence from Australia that is to be for a period of more than 28 days. This clause authorises the Corporation to suspend or reduce weekly payments being made to a worker who is absent from Australia if certain circumstances specified in the clause apply.

52—Reports of return to work etc

This clause places an obligation on an employer to notify the Corporation of a worker's return to work. The Corporation must also be notified if there is a change in the weekly earnings of, or a change in the type of work performed by, a worker who is receiving weekly payments for partial incapacity. A worker who has been receiving weekly payments for total incapacity must notify the Corporation if he or she returns to work with an employer that is not the employer from whose employment the injury arose.

Division 5—Redemptions

53—Redemptions—liabilities associated with weekly payments

This clause allows for the redemption of a liability to make weekly payments by a capital payment to the worker. A redemption must be by agreement between the worker and the Corporation. An agreement for the redemption of weekly payments cannot be made unless the worker has received competent professional and financial advice, and unless the Corporation has consulted with the relevant employer, as required under the clause. There must also be certification from a recognised health practitioner that the extent of the worker's incapacity resulting from the work injury can be determined with a reasonable degree of confidence.

For a seriously injured worker, this clause applies subject to any election made by the worker under Part 5 Division 1.

54—Redemptions—liabilities associated with medical services

This clause allows for the redemption of a liability to make payments of a kind referred to in clause 33 (that is, payments in relation to certain medical and therapeutic services) by a capital payment to the worker. The liability may only be redeemed if the worker has received competent professional advice and advice from a recognised health practitioner about the future medical services he or she will or is likely to require on account of the work injury and any related surgery, treatment or condition. The clause does not apply in relation to seriously injured workers.

Division 6—Permanent impairment—economic loss

55—Preliminary

This clause sets out a number of terms and references (or factors) for the purpose of forming the basis of the calculation required to determine the lump sum payment for loss of future earning capacity to an injured worker.

56—Lump sum payments—economic loss

This clause establishes an entitlement to a lump sum for loss of future earning capacity for a worker (other than a seriously injured worker) who suffers a work injury resulting in permanent impairment. The lump sum is determined according to a formula set out in the clause. No entitlement arises under the clause if the degree of whole person impairment from physical injury is less than 5% or in relation to psychiatric injury, consequential mental harm or noise induced hearing loss. The maximum amount payable under this provision will be $350 000 (indexed), with the actual amount being determined according to the degree of whole person impairment, the age of the worker, and the status of the worker's employment as a full-time or part-time worker at the time of the injury. A worker's degree of impairment is to be assessed in accordance with Part 2 Division 5 (and the Impairment Assessment Guidelines). Only 1 claim may be made in respect of any impairment or impairments that result from 1 or more injuries (including consequential injuries) arising from the same trauma.

Division 7—Permanent impairment—non-economic loss

57—Prescribed sum

This clause provides that the prescribed sum for the purposes of Division 7 is $472 000 (indexed). However, if a greater amount is prescribed by regulation for the purposes of the definition, the prescribed sum is the greater amount.

58—Lump sum payments—non economic loss

This clause provides a worker who has suffered a work injury resulting in permanent impairment with an entitlement to compensation for non-economic loss by way of a lump sum. However, if a worker's degree of whole person impairment from physical injury is less than 5%, there is no entitlement to compensation under the clause. Further, there is no entitlement under the clause in relation to psychiatric injury or consequential mental harm.

The lump sum to which a worker is entitled will be an amount that represents a portion of the prescribed sum calculated in accordance with the regulations. The regulations made for those purposes must provide for compensation that at least satisfies the requirements of Schedule 8 taking into account the assessment of whole person impairment.

A worker's degree of impairment is to be assessed in accordance with Part 2 Division 5 (and the Impairment Assessment Guidelines).

Only 1 claim may be made in respect of any impairment or impairments that result from 1 or more injuries (including consequential injuries) arising from the same trauma.

Division 8—Payments on death

59—Weekly payments

This clause provides an entitlement to compensation in the form of weekly payments for spouses, domestic partners and dependent children of workers who die as a result of work injuries. There is also an entitlement for a dependent relative of a deceased worker who is not a spouse, domestic partner or child.

60—Review of weekly payments

This clause provides for review by the Corporation of weekly payments payable to a person under Division 8. A review may be undertaken on the Corporation's own initiative, but must be undertaken at the request of the employer or the person to whom the weekly payments are payable.

61—Lump sums

This clause provides for the payment of compensation in the form of a lump sum to spouses, domestic partners and dependent children of workers who die as a result of work injuries.

62—Funeral benefits

A funeral benefit is payable under this clause where a worker dies as a result of a work injury. The benefit is to be paid to the person who conducted the funeral or to a person who has paid, or is liable to pay, the funeral expenses of the deceased worker.

63—Counselling services

This clause provides an entitlement to compensation for the cost of approved counselling services for family members of workers who die as the result of work injuries.

Division 9—Rules as to liability

64—Incidence of liability

The Corporation is liable under this clause for the compensation that is payable under Part 4. However, if a work injury arises from employment by a self-insured employer, the self-insured employer is liable to make all payments of compensation to which any person becomes entitled because of the injury.

This clause also makes further provision in relation to the liability of the Corporation and employers with respect to compensation under the Act.

This clause requires the Corporation to pay compensation on behalf of an employer that fails to make the payment as required under the Act. The Corporation is then entitled to recover the amount of the payment plus an administration fee from the employer as a debt.

65—Augmentation of weekly payment in consequence of delay

This clause makes provision for the payment of interest if a weekly payment is not paid as and when required under the Act or there is a delay in the making of a weekly payment pending the resolution of a dispute.

Division 10—Related matters

66—Rights of action and recovery against third parties

This clause deals with certain matters relating to rights of action and recovery where a right of action exists (or would exist but for this clause) against a person other than the employer for damages in respect of a work injury.

Subclause (7) sets out rules and requirements that apply where compensation is paid or payable under the Act to a person who has received, or is entitled to, damages from another person, and the person by whom the compensation under the Act is paid or payable is entitled (under subclause (5) or (6)) to recover the amount of compensation.

67—Prohibition of double recovery

This clause provides that compensation is not payable under the Act in respect of an injury to the extent that compensation has been received in respect of the same injury under the laws of another place.

68—Injuries arising from employment on ships

This clause provides that the amount of compensation payable in relation to a work injury arising from employment on a ship is not subject to any limitation imposed by the *Merchant Shipping Act 1894* of the United Kingdom.

69—Sporting injuries

Under subclause (1) of this clause, if a worker is employed solely to participate as a contestant, or act as a referee or umpire, in a sporting or athletic activity or contest, and remuneration is not payable under the contract of employment except in respect of that employment, the worker is not entitled to compensation for an injury arising out of or in the course of that employment. This principle operates subject to exceptions specified in subclause (2).

Part 5—Common law

Division 1—Preliminary

70—Preliminary

This clause deals with some preliminary matters in respect of Part 5, as follows:

- a reference to a worker's employer includes a reference to a person who is vicariously liable for the acts of the employer and a person for whose acts the employer is vicariously liable;
- a reference to a percentage (or degree) of permanent impairment is a reference to a percentage (or degree) of whole person impairment;
- a reference to compensation payable under the Act includes a reference to compensation that would be payable under the Act if a claim for that compensation were duly made.

71—Application of Part in relation to damages and scope and limitation of liability

This clause provides, in subclause (1), that Part 5 of the Act applies to an award of damages in respect of a work injury to a worker, or the death of a worker resulting from a work injury, if the injury is caused by the negligence or other tort of the worker's employer and arises from employment.

That subclause operates subject to a further principle, specified in subclause (2), that an employer is not liable to an award of damages in respect of a psychiatric injury unless that injury is primarily caused by the negligence or other tort of the worker's employer. Further, an employer is not liable to an award of damages in respect of consequential mental harm.

Subclause (5) makes it clear that Part 5 applies to an award of damages in respect of an injury caused by the negligence or other tort of the worker's employer even though the damages are recovered in an action for breach of contract or in another action based on the same act or omission of the employer that would have founded an action for negligence or on account of another tort

The clause provides that a worker cannot commence proceedings in a court for damages within the scope of subclause (1) unless or until an assessment of the degree of permanent impairment of the worker has been undertaken under Part 2 Division 5.

An employer is not liable to an award of damages in respect of a work injury to a worker or the death of a worker resulting from a work injury unless the damages fall within the scope of subclause (1), (2) or (5) of the clause or the damages constitute motor vehicle damages. A liability under subclause (1), (2) or (5) does not arise unless a successful claim for compensation has been made under Part 4 of the measure.

Further, an employer is not liable to an award of damages in respect of a work injury to a worker or the death of a worker resulting from a work injury if the employer is a body corporate and the worker is a director who has a defined interest in the body corporate as well as being an employee of the employer.

72—No damages unless whole person impairment of at least 30%

Under clause 72, no damages may be awarded against an employer except in circumstances that are consistent with the operation of Part 5 and unless the injury results in a degree of permanent impairment of at least 30% or death.

73—Seriously injured workers—special provisions

This clause applies in relation to a seriously injured worker (if the seriously injured worker has a right of action against the employer) and provides that—

- the worker is not entitled in an action against an employer to damages in respect of any treatment, care or support services; and
- the worker is not entitled to both a redemption of a liability to make weekly payments under Part 4 Division 5 and damages for future economic loss due to the deprivation or impairment of earning capacity in an action against an employer; and
- the worker is not entitled in an action against an employer to damages for any loss other than economic loss; and
- the worker must elect to claim damages for future economic loss due to the deprivation or impairment of earning capacity or to enter into an agreement under Part 4 Division 5; and
- the worker cannot commence an action for damages for future economic loss or enter into an agreement under Part 4 Division 5 unless or until the election has been made (and cannot make such an election unless he or she has received legal advice about the consequences of the election).

74—General regulation of court awards

This clause provides that a court may not award damages to a person contrary to Part 5.

Division 2—General principles

75—Effect of recovery of damages on compensation

Clause 75 deals with the situation where a worker or other person recovers damages in respect of an injury from the employer and the relevant compensating authority (that is, the Corporation or self-insured employer) is liable to pay compensation under the Act in respect of the same injury.

In that situation, the person ceases to be entitled to any further compensation under the Act in respect of the injury. Further, the amount of compensation already paid is to be deducted from the damages and the person ceases to be entitled to receive recovery/return to work services under the Act. This does not include an entitlement of a seriously injured worker to receive services under Part 3 (Early intervention, recovery and return to work) or to receive compensation for medical and other expenses under Part 4 Division 2 or to receive compensation for non-economic loss under Part 4 Division 7. Similarly, if a person recovers damages as a dependant of a worker in respect of proceedings in respect of the death of the worker, the relevant compensating authority is not liable to pay compensation, or further compensation, in respect of the death and the amount of any compensation already paid to the dependant under Part 4 Division 8 in respect of the death of the worker is to be deducted from the damages.

Similar principles apply in respect of a person's entitlement to compensation under the Act (and the deduction of compensation already paid) if the person recovers motor accident damages, or other damages, in respect of an injury under the Act.

76—Retirement age

A court is required under this clause, when awarding damages for future economic loss due to deprivation or impairment of earning capacity or loss of expectation of financial support in a case where Part 5 applies, to disregard any earning capacity of the injured worker after pension age (as defined in the *Social Security Act 1991* of the Commonwealth for persons other than veterans).

77—Mitigation of damages

This clause requires a court that is assessing damages in a case where Part 5 applies to consider the steps that have been taken, and that could reasonably have been or be taken by an injured worker, to mitigate the damages.

78—Payment of interest—limited statutory entitlement

This clause specifies a plaintiff's right to interest on damages in a case where Part 5 applies. The clause provides that interest is not payable unless—

- information that would enable a proper assessment of the plaintiff's claim has been given to the defendant and the defendant has had a reasonable opportunity to make an offer of settlement (where it would be appropriate to do so) in respect of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Act but has not made such an offer; or
- the defendant has had a reasonable opportunity to make a revised offer of settlement (where it would be appropriate to do so) in the light of further information given by the plaintiff that would enable a proper assessment of the plaintiff's full entitlement to all damages of any kind relevant to the operation of this Act but has not made such an offer; or
- the defendant has made an offer of settlement, the amount of all damages of any kind awarded by the court (without the addition of any interest) is more than 20% higher than the highest amount offered by the defendant and the highest amount is unreasonable having regard to the information available to the defendant when the offer was made.

79—Contributory negligence

This clause provides that the common law and enacted law in relation to contributory negligence apply to an award of damages under Part 5.

80—Defence of voluntary assumption of risk

Although the defence of voluntary assumption of risk is not available in an action for the award of damages where Part 5 applies, if that defence would otherwise have been available, the amount of any damages is to be reduced to an extent that is just and equitable on the presumption that the injured or deceased person was negligent in failing to take sufficient care for his or her own safety.

81—Exemplary or punitive damages

Exemplary and punitive damages are not available in an award of damages to which Part 5 applies.

82—Court to apportion damages etc

This clause provides that if a judgment is obtained for payment of damages to which Part 5 applies as well as for other damages, the court is required, as part of the judgment, to declare what portion of the sum awarded by the judgment is damages to which Part 5 applies.

83—Abolition of doctrine of common employment

An employer who is sued in respect of personal injury caused by the negligence of a person employed by the employer cannot rely on the defence that the employed person was, at the time of the injury, in common employment with the injured person.

84—No damages for nervous shock injury to non-workers

This clause prohibits the awarding of damages for pure mental harm against an employer in respect of the death of or injury to a worker where Part 5 applies if the pure mental harm arises wholly or partly from mental or nervous shock in connection with the death or injury. This does not apply if the pure mental harm is in itself a work injury under the Act.

Division 3—Procedural matters and costs

85—Compulsory mediation

Where an action for damages to which Part 5 applies is brought before a court, a pre-trial mediation must be conducted before the matter proceeds to trial. The clause sets out certain requirements in relation to compulsory mediation.

86—Costs

This clause applies in relation to an action for damages brought under Part 5 if the proceedings are settled or judgment is given or the proceedings are otherwise brought to an end. A legal practitioner acting on behalf of a party is required to declare the legal costs that he or she has charged, or intends to charge, the party.

Division 4—Choice of law

87—The applicable substantive law for work injury claims

This clause provides that where there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker, the substantive law of that State is the substantive law that governs whether or not a claim for damages in respect of the injury can be made and, if so, the determination of the claim. However, if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State, Division 4 of Part 5 (dealing with choice of law) does not apply.

88—Claims to which Division applies

Division 4 of Part 5 applies to a claim for damages or recovery of contribution—

- brought against a worker's employer in respect of an injury caused by the negligence or other tort (including breach of statutory duty) of the employer or a breach of contract by the employer; or
- brought against a person other than a worker's employer in respect of an injury if—
- the worker's employment is connected with this State; and
- the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.

89—What constitutes injury and employment

This clause assists in the interpretation of the terms *injury*, *employer* and *worker*, and the determination of what constitutes employment, for the purposes of the Division.

90—Claim in respect of death included

This clause provides that, for the purposes of the Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

91—Meaning of substantive law

This clause provides definitions of *a State's legislation about damages for a work related injury* and *substantive law*.

92—Availability of action in another State not relevant

This clause provides that it does not matter for the purposes of the Division if, under the substantive law of another State—

- the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or
- the circumstances on which the claim is based do not give rise to a cause of action.

Division 5—Related matters

93—Ability of Corporation to conduct and settle proceedings

Under this clause , if a proceeding is brought for damages, and Part 5 applies, the proceeding must be against the employer and not against the Corporation. Despite this, the Corporation may (if the employer is not a self-insured employer) conduct the proceedings for the employer and settle any matter that is the subject of the proceedings.

94—Interaction with *Civil Liability Act 1936*

The Act will prevail to the extent of any inconsistency with the *Civil Liability Act 1936* but does not otherwise limit the operation of the *Civil Liability Act 1936* in respect of a cause of action for damages under Part 5.

Part 6—Dispute resolution

Division 1—Preliminary

95—Specific object

This clause makes it clear that the vesting of jurisdiction in the Tribunal under this Part is intended to achieve an outcome in any proceedings that is based on quick and efficient decision making that resolves disputes expeditiously and fairly.

96—Interpretation

This clause provides definitions of several terms used in the Part.

97—Reviewable decisions

This clause identifies the types of decisions that are reviewable.

Division 2—Conferral of jurisdiction

98—Conferral of jurisdiction

This clause confers jurisdiction on the proposed new South Australian Employment Tribunal to deal with a reviewable decision.

Division 3—Institution of proceedings

99—Application to Tribunal

This clause establishes that a person who has a direct interest in a reviewable decision may commence proceedings for a review of the reviewable decision by the Tribunal.

100—Time for making application

This clause sets a time limit of 1 month (subject to extension) within which an application may be made to the Tribunal after the applicant receives notice of the reviewable decision.

101—Notice to be given by Registrar

Provision is made for the Registrar of the Tribunal to send copies of the application to the other parties to the proceedings.

Division 4—Initial reconsideration

102—Initial reconsideration

This clause establishes a scheme for the reconsideration of the decision to which the application relates by the relevant compensating authority.

The relevant compensating authority must (on completion of the reconsideration) confirm or vary the decision to conform with the result of the reconsideration and give the Registrar written notice of the result of the reconsideration and whether the compensating authority has confirmed or varied the decision as a result of the reconsideration and, if the decision has been varied, how the decision has been varied.

The clause provides that the reconsideration is not to be regarded as a redetermination of a claim under the other provisions of this Act and that a decision on a claim by the Tribunal itself, made in the exercise of the Tribunal's special jurisdiction to expedite decisions on claims, is not liable to reconsideration under this section and if such a decision is the subject of an application under this Part, the matter will immediately proceed to be reviewed under Part 3 of the proposed *South Australian Employment Tribunal Act 2014*.

103—Proceedings on application

This clause provides that if the relevant compensating authority confirms a decision on reconsideration, or a party to the dispute expresses dissatisfaction (in accordance with the rules) with the variation of a decision on reconsideration, the matter will be dealt with under Part 3 of the proposed *South Australian Employment Tribunal Act 2014*. The reconsideration of a matter under this Division should not unduly delay proceedings before the Tribunal and the Tribunal must, so far as is reasonably practicable, undertake its processes pending the outcome of the reconsideration.

Division 5—Related matters—Tribunal proceedings

104—Conciliation conference

This clause provides that before the Tribunal proceeds with the hearing of a matter, a compulsory conciliation conference between the parties must be held under the proposed *South Australian Employment Tribunal Act 2014*. Although the Tribunal must not dispense with a conference under that Act, the member of the Tribunal presiding at the conference may close the conference at any time if it appears to him or her that the matter should immediately be referred to the Tribunal for hearing and determination. The clause includes provisions relating to the disclosure of, and access to, relevant evidentiary material.

105—Representation

This clause makes it clear that a party to proceedings before the Tribunal is entitled, without leave, to be represented by an officer or employee of an industrial association acting in the course of employment with that industrial association.

106—Costs

This clause sets out the nature and extent of the entitlement of a party (other than the relevant compensating authority) to costs, subject to the Act and the regulations.

The clause also gives the Tribunal power to decline to make an award of costs in favour of a party and make an award of costs against the party or reduce the amount of the award to which the party would otherwise have been entitled, if the Tribunal is of the opinion that the party acted unreasonably in various respects, or frivolously or vexatiously in bringing or in relation to the conduct of proceedings before the Tribunal.

The clause further provides that an award of legal costs cannot exceed 85% of the amount that would be allowable under the relevant Supreme Court scale if the proceedings were in the Supreme Court.

The clause also establishes that if the amount of permanent impairment compensation is disputed by a worker and the amount the Tribunal awards is less than, or the same as, or less than 10% above, an amount offered by the relevant compensating authority to settle the matter before the matter proceeds to a hearing before the Tribunal, the worker is not entitled to costs under the clause.

107—Costs liability of representatives

This clause gives the Tribunal power to make various orders for the payment or repayment of costs by a professional representative that has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or other misconduct or default.

108—Recovery of costs of representation

This clause makes it an offence for a representative of a party to proceedings before the Tribunal to charge or seek to recover for work involved in, or associated with, that representation an amount exceeding the amount allowable under a scale fixed by regulation.

109—Ministerial intervention

The power for the Minister to intervene in proceedings before the Tribunal or the Supreme Court under this Part, if satisfied that intervention is justified in the public interest, is established.

110—Power to amend or set aside decisions or orders

This clause enables the Tribunal to amend or set aside a decision or order of the Tribunal.

111—Regulations concerning medical evidence

This clause provides for the making of regulations in relation to the provision of reports and expert medical evidence before the Tribunal and the disclosure of medical reports.

112—Payment to child

This clause makes provision for the order of payments of money to a child.

Part 7—Special jurisdiction to expedite decisions

113—Special jurisdiction

A worker or employer who believes there has been undue delay in deciding a claim or other matter affecting the worker or employer (being a claim or matter that would, once determined or decided, constitute a reviewable decision) may apply to the Tribunal, in the manner and form prescribed by regulation, for expedited determination of the matter.

114—Timing of application

An application for expedited determination of a matter cannot be made until at least 10 business days after the day the matter was placed before the relevant decision-maker.

115—Powers of Tribunal on application

This clause sets out the powers of the Tribunal on an application for expedited determination of a matter.

116—Costs

This clause gives power for regulations to be made about the costs of proceedings under this Part.

Part 8—Independent medical advice

Division 1—Interpretation

117—Interpretation

This clause defines the term *medical question* for the purposes of the Part.

Division 2—Appointment of independent medical advisers

118—Appointment of independent medical advisers

This clause provides for the appointment of medical practitioners as independent medical advisers for the purposes of the Act.

119—Independent medical advisers

A medical practitioner appointed under section 118 will be called an *independent medical adviser* for the purposes of the Act.

120—Related appointment provisions

This clause provides that the terms and conditions for the appointment of an independent medical adviser is to be determined by the Minister. The clause specifies the circumstances in which the office of a person appointed to be an independent medical adviser becomes vacant.

Division 3—Referrals

121—Referral by Tribunal or court

This clause provides for the referral, by the Tribunal or a court, of any question or questions arising in proceedings to 1 or more independent medical advisers specified by the Tribunal or court for inquiry and report.

122—Powers and procedures on a referral

This clause sets out the procedures to be followed by an independent medical adviser to whom a medical question has been referred under this Division. It also gives the Tribunal or a court the power to make certain orders. Proposed subclause (6) also specifies a number of principles to be taken into account if a medical question relates to any matter that is relevant to the assessment of whole person impairment (including as to whether an impairment is permanent).

Division 4—Related matters

123—Provision of report

Proposed section 123 sets out that a report is to be prepared by an independent medical adviser at the conclusion of his or her consideration of a medical question and that the report is to be in a form specified by the rules of the Tribunal or court and is to set out a number of specified matters. The clause further provides for the admission of the report as evidence in proceedings.

124—Competency to give evidence

This clause provides that an independent medical adviser is competent to give evidence as to any matter in a report furnished by the independent medical adviser (and any other relevant matter, as appropriate).

125—Further referrals

This clause provides that the Tribunal or a court may, if it thinks fit, refer any matter (in the nature of a medical question or in connection with a medical question) back to an independent medical adviser who has furnished a report to the Tribunal or court for further report to the Tribunal or court (and then this Division will apply in relation to the reference as if it were a new reference of a medical question).

126—Staff and facilities

This clause requires the Minister to ensure that independent medical advisers are provided with necessary staff and facilities.

127—Recovery of costs

This clause ensures that the costs associated with independent medical advisers and any staff or facilities of independent medical advisers are payable out of the Compensation Fund.

Part 9—Registration and funding

Division 1—Registration of employers

128—Registration of employers

The scheme under the current Act for the registration of employers and the imposition and recovery of premiums is essentially re-enacted as Part 9 of this Act. This clause is the principal section with respect to the registration of the employers for the purposes of the Act.

129—Self-insured employers

The scheme under which an employer or group of employers may apply for registration as a self-insured employer or as a group of self-insured employers is to continue. A new aspect of this scheme will be that it will be a condition of registration as a self-insured employer that the employer must adopt and apply the service standards set out in Schedule 5. Another change is that the maximum period for a renewal of registration as a self-insured employer will be 5 years under the new Act (rather than the current period of 3 years). New provisions will exclude foreign companies that are holding companies from being a member of a group of self-insured employers. A specific provision allowing a self-insured employer to cease being such an employer under an agreement between the Corporation and the employer is also to be included under the new Act.

130—Crown and certain agencies to be self-insured employers

This clause continues the current scheme for the Crown and agencies and instrumentalities of the Crown to be self-insured employers.

131—Applications for registration

This clause continues the current scheme for registration.

132—Changes in details for registration

This clause continues the current scheme for employers to notify the Corporation if there is any change in any details or information relevant to a registration under the Act.

133—Ministerial appeal on decisions relating to self-insured employers

This clause continues the current scheme under the Act under which certain decisions of the Corporation with respect to the registration of an employer are reviewable by the Minister.

Division 2—Delegation to self-insured employers

134—Delegation to self-insured employers

This clause continues the current scheme under which the powers and discretions of the Corporation under specified provisions of the Act are delegated to a self-insured employer.

Division 3—Compensation Fund

135—Compensation Fund

The Compensation Fund will continue to be maintained by the Corporation. One change to the provision will be to allow a contribution to be made towards advocacy services for the benefit of injured workers (as determined by the Minister from time to time after consultation with the Corporation).

Division 4—Premiums

Subdivision 1—Preliminary

136—Interpretation

This clause is in the same terms as section 65 of the current Act.

137—Average premium rate

As a general rule, the Corporation will be required to seek to achieve an average premium rate that does not exceed 2%.

Subdivision 2—Premiums (terms and conditions)

138—Premiums (terms and conditions)

This clause continues the scheme under which the Corporation establishes a set of terms and conditions that apply to employers in relation to the calculation, imposition and payment of premiums under the Act. These provisions will now be called 'RTWSA premium provisions'. Different sets of provisions will continue to be able to be set in relation

to different categories of employers. These provisions underpin the arrangements for the purposes of the premiums that apply under the Act.

Subdivision 3—Premiums (general principles)

139—Liability to pay premiums

This clause sets out the requirement for employers to pay premiums under the Act. An employer who is a self-insured employer or exempt from the requirement to be registered is not required to pay a premium under this Division.

140—Employer categories

This clause continues the scheme for the division of workers into various categories for the purposes of this Part. The categories will be determined by the Corporation (rather than prescribed by the regulations).

141—Classes of industry

This clause continues the scheme that allows the Corporation to divide the industries carried on in the State into various classes. One change that has been made is to provide specifically that if an employer employs workers at a workplace for the purpose of supporting a predominant class of industry carried on at 1 or more other workplaces, that predominant class of industry will, if the Corporation so determines, apply in relation to those workers at that workplace.

142—Industry rates and base premiums

This clause continues the scheme for the fixing of industry premium rates. Section 70(3) and (5) of the current Act, relating to fixing a percentage rate not exceeding 7.5%, will not apply under the new provisions.

Subdivision 4—Premiums (calculation and application)

143—Premium orders

This clause continues the scheme for publishing premium orders.

144—Premium stages

This clause continues the scheme for the imposition and payment of premiums in stages.

145—Grouping provisions

This clause continues the scheme for the grouping of employers for the determination and payment of premiums under this Division.

Division 5—Self-insured employers—fees

146—Self-insured employers—fees

This clause continues the scheme for the payment of a fee by a self-insured employer.

Division 6—Remissions and supplementary payments

147—Remissions and supplementary payments

This clause continues the scheme for the remission of a premium or fee otherwise payable by an employer or the imposition of supplementary payments.

Division 7—Administration of premiums/fees scheme

148—Interpretation

149—Provision of information (initial calculations)

150—Provision of information (on-going requirements)

151—Revised estimates or determinations

152—Further adjustments

153—Deferred payment

154—Recovery on default

155—Penalty for late payment

156—Exercise of adjustment powers

157—Review

158—Payments to be made to Corporation

159—GST

160—Transfer of business

161—Reasonable mistake about application of Act

These clauses set out various ancillary or related provisions associated with the calculation and payment of premiums and other relevant amounts. They are based on the provisions of the current Act.

Division 8—Miscellaneous

162—Separate accounts

This clause is similar to section 73 of the current Act, except that 'secondary' injuries will no longer be separately listed in the account of an employer.

163—Liability to keep accounts

164—Person ceasing to be an employer

165—Certificate of registration

These are also ancillary provisions that replicate provisions from the current Act.

166—Insurance of registered employers against other liabilities

This clause is based on section 105 of the current Act so that an employer registered under the Act, or who is not required to be registered under the Act, is insured by the Corporation, subject to terms and conditions prescribed by the regulations, against any liability that may arise apart from this Act in respect of a work injury arising from employment (being employment to which the Act applies) by the employer. The basic insurance scheme does not extend to a self-insured employer and will not extend to a liability excluded by the regulations.

167—Corporation as insurer of last resort

This clause is based on section 50 of the current Act so that the Corporation may undertake the liabilities of a self-insured employer in certain circumstances (and will do so if the employer becomes insolvent or ceases to carry on business in the State and does not make adequate provision for relevant liabilities under the Act).

Part 10—Scheme adjustment mechanisms

168—Preliminary

This clause sets out the definitions and concepts that need to be included or explained for the purposes of this Part.

169—Scheme adjustment/review events

A scheme/adjustment review event will occur if, in respect of each of 2 consecutive financial years—

- the Corporation has achieved a funding level of at least 100% at a probability of sufficiency of 75 per cent; and
- the Corporation has achieved a profit from its insurance operations,
- and an actuary has confirmed the ongoing viability of the scheme during a declared scheme bonus period.

If such an event occurs, a payment will be made into a special account that is to be established to assist certain categories of injured workers and the Corporation will apply an equal amount so as to achieve a reduction in the premiums paid by employers under the Act. However, this is subject to the qualification that if such a course of action would result in the average premium rate falling below 1.25%, then the Minister must instead initiate a review of the scheme established by the Act.

170—Scheme funding/review events

This clause will require a review of the scheme established by the Act if, in respect of each of 2 consecutive financial years, the Corporation has been operating at a funding level below 90% at a probability of sufficiency of 75 per cent.

Part 11—The Minister's Advisory Committee

171—Advisory Committee

This clause establishes the *Minister's Advisory Committee* and provides for its membership.

172—Functions of Advisory Committee

This clause sets out the functions of the *Minister's Advisory Committee*, which include the investigation and provision of advice about any matter relating to early intervention, recovery, return to work or compensation with respect to injured workers.

173—Proceedings etc of Advisory Committee

This clause sets out the proceedings in relation to Advisory Committee meetings.

174—Related provisions

It will be an offence for members of the Advisory Committee to divulge information without the approval of the Committee that is commercially sensitive, private, or that the Committee has classified as confidential.

This clause also makes provision in relation to committee members' duties under the *Public Sector (Honesty and Accountability) Act 1995* by providing that they will not be taken to have an interest in a matter if they only have an interest that is shared in common with employers generally or employees generally, or a substantial section of employers or employees.

Part 12—Miscellaneous

175—Extension of the application of Act to self-employed persons

This clause enables the Corporation, on the application of a person who is self-employed, to extend to that person the protection of the Act (or of specified parts of this Act), subject to conditions and limitations determined by the Corporation.

176—Agreements with LSS Authority

The proposed section provides a scheme for the making of agreements between a prescribed authority and the LSS Authority for the provision of services to persons who have suffered work injuries and who, in the opinion of the prescribed authority, would benefit from participating in certain aspects of the Scheme under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* relating to treatment, care and support needs and in having other services (whether under that Act or this Act) provided by the LSS Authority.

177—Payment not to constitute an admission of liability

This clause makes it clear that a payment by the Corporation or an employer to a worker does not constitute an admission of liability or estop a subsequent denial of liability.

178—Employer may request progress report

This clause establishes that an employer may request (from the Corporation) the provision of a report on the medical progress being made by a worker and the worker's capacity for work.

179—Copies of medical reports

This clause provides that the Corporation must, within 7 days after receiving a request from a worker's employer, provide the employer with copies of reports in the Corporation's possession prepared by health practitioners and relevant to the worker's medical condition, the worker's progress in recovery, or the extent of the worker's capacity for work.

180—Worker's right of access to claims file

This clause sets out the nature and extent of the right of a worker to access copies of documentary material relevant to a claim by the worker and the right of a worker to inspect all non-documentary material in the possession of the Corporation or a delegate of the Corporation (subject to certain exceptions). The clause requires the worker to return the material if the Corporation or a delegate of the Corporation mistakenly provides material to a worker to which the worker is not entitled.

181—Medical examination at request of employer

This clause provides that the employer of a worker who has made a claim under the Act may require the Corporation to have the worker submit to an examination by a recognised health practitioner nominated by the Corporation.

182—Worker to be supplied with copy of medical report

A copy of a report obtained for the purposes of the Act by the Corporation or an employer concerning findings made, or the opinions formed, by a health practitioner on the examination of a worker, must be sent to the worker.

183—Powers of entry and inspection

This clause sets out various powers of entry, inspection and seizure of authorised officers for the purposes of the Act.

184—Inspection of place of employment by recovery or return to work adviser

The proposed section allows for the inspection of the place of employment of an injured person by a designated adviser provided the power to inspect is exercised so as to avoid any unnecessary disruption of, or interference with, the performance of work at a place of employment.

185—Confidentiality to be maintained

Subject to the disclosure of specified matters outlined in proposed subsection (3), this clause makes it an offence for a person to disclose information if the person obtained the information in the course of carrying out functions in, or related to, the administration, operation or enforcement of this Act and the information is about commercial or trading operations, the physical or mental condition, or the personal circumstances or affairs, of a worker or other person or information provided in a return or in response to a request for information under this Act.

186—Confidentiality—employers

Except as specified, a registered employer or a person employed by a registered employer must not disclose information about the physical or mental condition of a worker.

187—Employer information

This clause provides for the disclosure of certain specified matters in relation to a registered employer by the Corporation.

188—Injuries that develop gradually

This clause makes specific provision for injuries that develop gradually and for claims in respect of noise induced hearing loss. Furthermore, if it is established that a worker was, at the time of undertaking employment with the employer, suffering from a particular injury, the clause establishes a scheme by which a self-insured employer may recover a contribution towards an amount of compensation from another self-insured employer from whose employment the injury arose or if there is no such self-insured employer—the Corporation.

189—Certain payments not to affect benefits under this Act

This clause established that the payment of certain types of compensation under the Act must not be reduced or otherwise affected by an *ex gratia* payment, an accident insurance payment or a payment or benefit of a class prescribed by regulation for the purposes of this section.

190—No contribution from workers

The proposed section ensures that the liability of an employer under this Act must not be deducted from the wages of a worker and that an employer must not discriminate against a worker on the ground that the employer is liable to pay any sum under this Act to or in relation to the worker.

191—No contracting out

Proposed subsection (1) ensures that the Act applies despite any contract to the contrary (subject to the matters set out in proposed subsection (2)).

192—Non-assignability of benefits

This clause provides that compensation is not capable of being assigned, charged or attached and does not pass to any other person.

193—Payments if worker in prison

This clause provides for the suspension of weekly payments to a person who is convicted of an offence and committed to prison for the period of imprisonment subject to the Corporation determining that they should be paid to the dependents of the prisoner.

194—Service of documents

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

195—Service of documents on Corporation

This clause sets out the requirements for the effective service of documents on the Corporation.

196—Dishonesty

The proposed section makes it an offence to behave dishonestly in relation to a number of specified matters. The clause also ensures that where a court convicts a person of an offence against the proposed section or makes a finding of guilt, the court must, on application by the Corporation or a self-insured employer, order the person who committed the offence to make good any loss to the applicant as a result of the offence and reimburse costs incurred by the applicant in investigating and prosecuting the offence.

197—Evidence

This clause provides for certain evidentiary matters for the purpose of legal proceedings under the Act.

198—Offences

This clause creates an offence provision in respect of the requirement to comply with the Act.

199—Expiation fees

The proposed section provides for the fixing of expiation fees, by regulation, for alleged offences against the Act.

200—Right of intervention

The clause creates a right of intervention for the Corporation in respect of proceedings under the Act before the Tribunal or certain proceedings before a court.

201—Recovery of payments

This clause provides for the recovery (as a debt) from a worker, an employer or any other person any payment of compensation or other amount to which the worker, employer or other person is not entitled. The recovery extends to a situation where it is correcting an error, mistake or oversight, or revising an assessment, previously made by the Corporation under the Act.

202—Regulations

This clause provides a regulation making power.

203—Review of Act

The proposed section provides for the conduct of a review into the Act and its administration and operation on the expiry of 3 years from its commencement and for a report that forms the basis of the review to be laid before both Houses of Parliament.

The review must include an assessment of the extent to which the scheme established by this Act and the dispute resolution processes under this Act and the *South Australian Employment Tribunal Act 2014* have achieved a reduction in the number of disputed matters and a decrease in the time taken to resolve disputes and the extent to which there has been an improvement in the determination or resolution of medical questions arising under this Act (especially when compared to the scheme and processes applying under the repealed Act).

Schedule 1—Presumptive employment

1—Presumptive employment

This clause establishes the concept of the Crown as the presumptive employer for persons of a prescribed class who voluntarily perform work of a prescribed class that is of benefit to the State.

Schedule 2—Injuries presumed to arise from general employment

This Schedule contains a list of injuries presumed to arise from general employment.

Schedule 3—Injuries presumed to arise from employment as a firefighter

1—Substantive provisions

This Schedule contains a list of injuries presumed to arise from employment as a firefighter.

Schedule 4—Adjacent areas

1—Interpretation

2—Adjacent areas

This Schedule establishes the adjacent area for a State or Territory.

Schedule 5—Statement of service standards

Part 1—Introduction

1—Aim of these standards

2—Interpretation

3—Spirit of these standards

This Schedule sets out a statement of service standards to be met by the Corporation in its relationship with workers and employers

Part 2—The standards

4—The standards

This clause sets out the individual standards to be observed by the Corporation.

Part 3—Complaints about breaches of these standards

5—Overview

6—Procedures for the Corporation to deal with a complaint

This clause sets out the various procedures to be followed by the Corporation following its receipt of a complaint concerning the Corporation's compliance with the service standards.

7—Remedies

This clause sets out the remedies available following a finding that the Corporation has breached any of the standards.

Part 4—Wider issues

8—Wider issues

This clause provides that the Corporation will consider and address the wider implications associated with the operation and effectiveness of the standards and any complaints that arise under them.

Schedule 6—Age factor

This Schedule inserts a table of values that determine the age factor. The age factor forms part of the formula that determines the lump sum payment in clause 56 of the Act.

Schedule 7—Prescribed sum—economic loss

This Schedule inserts a table that determines the prescribed sum according to the degree of whole person impairment for the purposes of the formula used to determine the lump sum payment in clause 56 of the Act.

Schedule 8—Minimum amounts of compensation according to degree of impairment under regulations

This Schedule provides for the minimum amounts of compensation payable according to the degree of whole person impairment.

Schedule 9—Repeal, amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Repeal

2—Repeal

This clause repeals the *Workers Rehabilitation and Compensation Act 1986*.

Part 3—Amendment of *Civil Liability Act 1936*

3—Amendment of section 4—Application of Act

This clause makes changes to substitute a reference to the *Workers Rehabilitation and Compensation Act 1986* with a reference to Part 4 of the *Return to Work Act 2014*.

Part 4—Amendment of *Judicial Administration (Auxiliary Appointments and Powers) Act 1988*

4—Amendment of section 2—Interpretation

This clause deletes the reference to 'the office of Deputy President of the Workers Compensation Tribunal' from the definition of *judicial office* in section 2 of the *Judicial Administration (Auxiliary Appointments and Powers) Act 1988* and substitutes a reference to the office of Deputy President of the South Australian Employment Tribunal.

Part 5—Amendment of *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*

5—Amendment of section 24—Eligibility for participation in Scheme

This clause substitutes the reference to a compensable injury under the *Workers Rehabilitation and Compensation Act 1986* with a reference to a work injury under the *Return to Work Act 2014* (other than to such extent as applies under section 55) for the purposes of determining the coverage of the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013*.

6—Amendment of section 55—Agreements with prescribed authorities

This clause makes further consequential changes to the principal Act in line with the substitution of references to the *Workers Rehabilitation and Compensation Act 1986* with the *Return to Work Act 2014*.

Part 6—Amendment of *Supreme Court Act 1935*

7—Amendment of section 39—Vexatious proceedings

This clause deletes the reference to the Workers Compensation Tribunal in the definition of *prescribed court* for the purposes of section 39 of the *Supreme Court Act 1935*.

Part 7—Amendment of *WorkCover Corporation Act 1994*

8—Amendment of long title

9—Amendment of section 1—Short title

10—Amendment of section 3—Interpretation

11—Amendment of section 4—Continuation of Corporation

12—Amendment of section 7—Allowances and expenses

13—Amendment of section 12—Primary objects

14—Amendment of section 13—Functions

15—Amendment of section 14—Powers

16—Amendment of section 14A—Direction of Minister

17—Amendment of section 16—Committees

18—Amendment of section 17A—Corporation's charter

19—Amendment of section 20—Annual reports

20—Amendment of section 21—Chief Executive Officer

21—Amendment of section 26—Protection of special names

Consequential amendments are made to reflect the passage of the *Return to Work Act 2014* and the repeal of the *Workers Rehabilitation and Compensation Act 1986*.

The amendments, where necessary, substitute references to the WorkCover Corporation of South Australia with the Return to Work Corporation of South Australia (ReturnToWorkSA).

Amendments to the *Return to Work Corporation of South Australia Act 1994* are made, where appropriate, to support the emphasis on early intervention, recovery and return to work in the *Return to Work Act 2014*.

22—Insertion of section 27A

This clause inserts a section that applies provisions of the *Public Corporations Act 1993* to the Corporation with respect to tax equivalence payments, subject to specified modifications.

Part 8—Amendment of *Work Health and Safety Act 2012*

23—Amendment of section 4—Definitions

24—Amendment of Schedule 2—Local tripartite consultation arrangements

25—Amendment of Schedule 5—Provisions of local application

These clauses contain a number of consequential amendments and include changes that substitute references to the *Workers Rehabilitation and Compensation Act 1986* and the WorkCover Corporation of South Australia with references to the *Return to Work Act 2014* and the Return to Work Corporation of South Australia (ReturnToWorkSA) respectively. The contribution payment associated with the administration of the Act under clause 3 of this Schedule is to be combined with the amount payable under clause 2.

Part 9—Transitional provisions

Division 1—Interpretation

26—Interpretation

This clause provides definitions of a number of terms used in Part 9. The *designated day* is a day appointed by proclamation as the designated day for the purposes of the provision in which the term is used. This clause also provides that a reference in Part 9 to the Corporation in a prescribed clause will be taken to include a reference to a self-insured employer.

Division 2—CPI adjustment

27—CPI adjustment

This clause, which will come into operation on 1 January 2015, makes provision for the indexation of sums of money fixed by the Act at the time of enactment that are followed by the word '(indexed)'. The provisions of this

clause providing for indexation apply to a sum fixed by a provision that has not come into operation on 1 January 2015 so that the sum as adjusted will apply when the provision comes into operation.

Division 3—Application of Act

28—General provision

Clause 28, which is subject to the other provisions of Part 9, deals in general terms with the application of the Act and provides that the Act applies to—

- an injury that is attributable to a trauma that occurred before the designated day and that is a compensable injury under the repealed Act (an existing injury); and
- an injury that is attributable to a trauma that occurred on or after the designated day (a new injury).

If an injury is partially attributable to a trauma that occurred before the designated day and partially attributable to a trauma that occurred on or after the designated day, the injury will be taken to be a new injury.

29—Connection with employment

Under this clause, although sections 30 and 30A of the repealed Act will apply for the purposes of determining whether an existing injury is compensable, section 7(3) of the Act will extend to an injury that is, or results from, the aggravation, acceleration, exacerbation, deterioration or recurrence of a prior injury if the prior injury is wholly or partially attributable to a trauma that occurred before the designated day and the later injury is wholly or partially attributable to a trauma that occurred on or after that day.

30—Notice of injury

If a worker has given a notice of injury under section 51 of the repealed Act, the notice will be taken under this clause to be a notice under section 16 of the proposed Act.

31—Employer's duty to provide work

This clause makes it clear that section 18(3) of the Act applies to a worker who has been incapacitated for work before the designated day.

32—Recovery and return to work

This clause continues rehabilitation programs and rehabilitation and return to work plans in force under the repealed Act immediately before the designated day. The latter are to be taken to be recovery/return to work plans under the proposed Act. A person who held an appointment as a co-ordinator under the repealed Act immediately before the designated day will be taken to be an accredited return to work co-ordinator under the proposed Act.

33—Seriously injured workers

If a person's degree of whole person impairment has been assessed as 30% or more under the repealed Act, he or she will be taken to be a seriously injured worker under the proposed Act. The Corporation may also determine that a worker who has an existing injury will be taken to be a seriously injured worker for the purposes of the Act.

34—Medical expenses

Under this clause, the continuous period of 12 months referred to in subclause (20) of clause 33 (that is, the period, where there has been no entitlement to weekly payments, at the end of which an entitlement to compensation under clause 33 comes to an end (subject to subclause (21)) will, in respect of an existing injury, be a period of 12 months that runs from the designated day or that commences on or after the designated day.

35—Provisional liability for medical expenses

This clause provides that a right of set off under section 32A(8) of the repealed Act may be exercised in relation to a right to the payment of compensation under the proposed Act.

36—Weekly payments for workers

This clause sets out the principles according to which a worker who is incapacitated for work in respect of an existing injury during the period beginning on the designated day and ending 104 weeks after the designated day is entitled to weekly payments in respect of the incapacity. It is made clear in this clause that a worker has no entitlement to weekly payments under the proposed Act or the repealed Act in respect of an existing injury after the end of the second transitional period (that is, the period of 52 weeks beginning after the end of the period of 52 weeks from the designated day). This does not apply in relation to a seriously injured worker.

37—Federal minimum wage safety net

This clause extends the minimum wage safety net provided by clause 42 to the amount of compensation payable under Part 4 Division 4 Subdivision 2 of the Act on account of the operation of transitional provisions.

38—Management of transitional arrangements for income support

This clause authorises the Corporation to establish a scheme to provide for the transition from making weekly payments under the repealed Act to making weekly payments in accordance with the transitional provisions and more generally.

39—Retirement age

It is made clear by this clause that clause 44 of the Act (Termination of weekly payments on retiring age) extends to weekly payments being paid to a worker under the transitional provisions.

40—Discontinuance of weekly payments

The provision of the Act allowing for suspension of a decision to reduce or discontinue weekly payments on the application by the worker for review of the decision applies under this clause to a notice of a decision under section 36 of the repealed Act. This does not apply if the worker has lodged a notice of dispute in relation to the decision before the designated day. Subclauses (2) and (3) of this clause deal with the situation where the worker has lodged a notice of dispute under the repealed Act before the designated day.

41—Redemptions

Nothing in Part 9 affects the application of section 42 of the repealed Act with respect to negotiations, and any agreement for, a redemption if entered into in accordance with that section before the designated day. Apart from that, section 42 of the repealed Act does not apply to or in relation to a liability under that Act with respect to an existing injury.

42—Loss of future earning capacity

This clause puts it beyond doubt that Part 4 Division 6 of the Act does not apply to or in relation to an existing injury.

43—Permanent impairment assessment

Under this clause, if a person's entitlement to compensation for non-economic loss has been determined under the repealed Act in respect of an existing injury, the person is not entitled to an assessment under this Act in relation to the same injury (or any other injury arising from the same trauma).

44—Payments on death—lump sums

The Corporation is authorised under this clause to make *ex gratia* payments on the application of a person who was the spouse or domestic partner of a worker who died on or after 1 July 2008. A payment is to be made (in the absolute discretion of the Corporation) on the application of the person who was the spouse or domestic partner of the worker. The Corporation is to take into account the amount (or additional amount) that would have been payable under section 59 of the Act if that section had been in operation before the trauma.

Under this clause, the Corporation may deal with a claim in relation to the death of a worker under section 45A of the repealed Act that has not been determined before the designated day in all respects under clause 59 of the proposed Act. Clause 59 provides for the payment of compensation in the form of a lump sum to spouses, domestic partners and children of workers who die as a result of work injuries.

45—Incidence of liability

This clause extends clauses 64(3) and (4) of the proposed Act to outstanding payments of compensation under the repealed Act. Clause 64(3) provides that a self-insured employer is liable to make all outstanding payments of compensation to which a person is entitled in consequence of the occurrence of a work injury arising from employment by the employer that occurred before the employer became a self-insured employer. Clause 64(4) requires the Corporation to pay a self-insured employer an amount, to be determined in accordance with the code of conduct for self-insured employers, to offset the self-insured employer's liability under subclause (3).

46—Payments by employers

This clause makes provision for the recovery by an employer from the Corporation of amounts paid by the employer as compensation for income maintenance under the repealed Act where the employer would have a right of recovery from the Corporation under clause 64 of the proposed Act if that clause has been in operation at the time of the payment.

47—Provisional payments

This clause provides for the exercise of a right of set off under section 50H of the repealed Act in relation to a right to the payment of compensation under the Act.

Division 4—Common law

48—Common law

This clause provides that Part 5 of the Act does not apply to or in relation to an existing injury or the death of a worker resulting from an existing injury.

Division 5—Dispute resolution

49—Existing proceedings etc

This clause provides for the continuation and completion of applications or other proceedings commenced before the Workers Compensation Tribunal under the repealed Act before the designated day. An application or proceeding that is not commenced before the designated day will proceed before the South Australian Employment Tribunal (SAET) rather than WCT.

50—Adoption of WCT decisions

This clause authorises SAET to draw conclusions of fact from evidence before WCT, adopt findings, determinations decisions, directions or orders of WCT and set aside any decision, direction or order of WCT.

51—Dissolution of WCT

The clause provides for the dissolution of WCT by proclamation of the Governor when he or she thinks that it is appropriate to do so. When a proclamation is made, the following will occur:

- members of WCT holding office under the repealed Act will cease to hold that office;
- any contract, agreement or arrangement relating to the office will be terminated (and there will be no right of action against the Minister or the State on account of the termination);
- proceedings before WCT will be dealt with in accordance with provisions made by the regulations;
- a member of WCT who is a Judge of the Industrial Relations Court of South Australia will continue as a member of SAET under the provisions of the South Australian Employment Tribunal Act 2014.

Division 6—Registration and funding

52—Continuation of registration

This clause provides for the continuation of the registration of employers registered under the repealed Act immediately before the designated day.

53—Premiums and payments

Under this clause, RTWSA premium orders may take into account the claims experience of employers under the repealed Act. A hindsight premium under the repealed Act is payable as if the relevant period applied under the proposed Act and is to be paid by a date specified by the Corporation. This clause also provides for continuity of groups constituted under section 72A of the repealed Act.

54—Scheme reviews

A financial year relevant to the operation of Part 10 will be a financial year commencing on or after the designated day.

Division 7—Medical panels

55—Medical panels

There is a requirement under this clause for proceedings before Medical Panels under the repealed Act immediately before the designated day to be concluded as quickly as is reasonably practicable after that day. Such proceedings will, in any event, be brought to an end 60 days after that day.

Division 8—WorkCover Ombudsman

56—WorkCover Ombudsman

This clause provides that the person holding office as the WorkCover Ombudsman immediately before the designated day will cease to hold office on that day.

Division 9—1971/1986 Acts

57—Interpretation

For the purposes of the provisions of Division 9, the *appointed day* is the day on which the *Workers Compensation Act 1971* (the *1971 Act*) was repealed.

58—Application of 1971 Act

The 1971 Act will continue to apply in respect of injuries that are attributable to traumas that occurred before the appointed day. The new Act applies where an injury is partially attributable to a trauma that occurred before the appointed day and partially attributable to an injury that occurred on or after the appointed day, but this clause sets out various provisions that apply in respect of such injuries.

59—Mining and Quarrying Industries Fund

This clause provides for the continuation of the scheme established under Part 9 of the 1971 Act for the settlement of claims and other matters arising in relation to death or disablement from silicosis suffered before the appointed day. The Corporation will be liable to satisfy any claim made under the scheme

60—Statutory Reserve Fund

There is a requirement under this clause for the Statutory Reserve Fund to continue to be held as a separate part of the Compensation Fund.

61—Insurance Assistance Fund

This clause requires that the Insurance Assistance Fund continue to be held as a separate part of the Compensation Fund.

62—Management of funds

This clause authorises investment of the Statutory Reserve Fund and the Insurance Assistance Fund in common with the Compensation Fund as if they formed part of the Compensation Fund.

63—Entitlement to documents

The Corporation is entitled under this clause to possession of all documents and other materials in the possession or power of the Motor Accident Commission relevant to claims against the Statutory Reserve Fund or to liabilities under policies of insurance transferred to the Corporation in connection with the scheme continued under the Schedule.

64—Loss of earning capacity—capital loss assessments

This clause provides for the continued application of Part 4 Division 4B of the repealed Act (as in existence before the designated day) where the Corporation or a self-insured employer has made an assessment under section 42A of the repealed Act before that day.

Division 10—Work health and safety administration costs

65—Work health and safety administration costs

This clause requires that the prescribed percentage of the prescribed amount under Schedule 5 clause 2(7) and (8) of the *Work Health and Safety Act 2012* for the 2015/2016 financial year be at least equal to the total of the prescribed percentage of the prescribed amount under those provisions for the 2014/2015 financial year and the amount payable under Schedule 5, clause 3 of the WHS Act for the 2014/2015 financial year. This relates to the percentage of registration fees that are to be paid to the Department.

Division 11—Renewal of authorised contracts

66—Renewal of authorised contracts

This clause will allow a regulation under section 14(4)(d) of the *WorkCover Corporation Act 1994* which authorises a contract to be entered into under that section to come into operation on 1 July 2015 and without the need for its commencement to be delayed pending any possible motion of disallowance.

Division 12—Regulations

67—Additional transitional provisions—regulations

This clause provides that the Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the Act.

Debate adjourned on motion of Hon. R.I. Lucas.

At 18:17 the council adjourned until Thursday 25 September 2014 at 14:15.