LEGISLATIVE COUNCIL

Tuesday, 13 October 2015

The PRESIDENT (Hon. R.P. Wortley) took the chair at 14:16 and read prayers.

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

Bills

STATUTES AMENDMENT (GAMBLING MEASURES) BILL

Assent

His Excellency the Governor assented to the bill.

APPROPRIATION BILL 2015

Assent

His Excellency the Governor assented to the bill.

PARLIAMENTARY REMUNERATION (DETERMINATION OF REMUNERATION) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

LOBBYISTS BILL

Assent

His Excellency the Governor assented to the bill.

Parliamentary Procedure

ANSWERS TABLED

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

PAPERS

The following papers were laid on the table:

By the President—

Legislative Council—Report, 2014-15
Auditor-General and Treasurer's Financial Statements, Parts A, B and Appendix to Annual Report, Volumes 1-5—Report 2014-15
Auditor-General—Supplementary Report on State Finances and Related Matters, 2014-15
Independent Commissioner Against Corruption and the Office for Public Integrity—Report 2014-15

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

Reports, 2014-15—
Department of State Development
Education Adelaide
ReturnToWorkSA
Declaration of a Special Declared Area pursuant to Section 9A of the Mining Act 1971 over the Central Middleback Ranges Area, east of Iron Baron—Report

Regulations under the following Acts—
Correctional Services Act 1982—General
Petroleum and Geothermal Energy Act 2000—Fees No. 2
Rules of Court—
District Court—District Court Act 1991—
Supplementary—Amendment No. 2
Supreme Court —Supreme Court Act 1935—
Supplementary—Amendment No. 3

By the Minister for Business Services and Consumers (Hon. G.E. Gago)—

Regulations under the following Act -
Fair Trading Act 1987—Franchising Industry Dispute Resolution Code

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

Reports, 2014-15—
Environment Protection Authority
South Australian Heritage Council
Regulations under the following Acts—
Animal Welfare Act 1985—Miscellaneous
Boxing and Martial Arts Act 2000—General
Public Sector (Honesty and Accountability) Act 1995—Exemptions
Primary Produce (Food Safety Schemes) Act 2004—Meat Food Safety Advisory Committee

By the Minister for Manufacturing and Innovation (Hon. K.J. Maher)—

Regulations under the following Acts—
Motor Vehicles Act 1959—Demerit Points
Road Traffic Act 1961—
Miscellaneous
Road Rules—Ancillary and Miscellaneous Provisions
Corporation By-Laws—
Playford—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Local Government Land
No. 4—Dogs
No. 5—Cats
No. 6—Bird Scaring Devices
No. 7—Roads
Prospect—
No. 6—Waste Management
District Council By-Laws—
Light—
No. 1—Permits and Penalties
No. 2—Moveable Signs
No. 3—Roads
No. 4—Local Government Land
No. 5—Dogs
No. 6—Cats
No. 7—Nuisances caused by Building Sites

Ministerial Statement

INDEPENDENT COMMISSIONER AGAINST CORRUPTION ANNUAL REPORT 2014-15

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) (14:23): I lay upon the table a ministerial statement by the Deputy Premier, John Rau, on the 2014-15 Annual Report of the Independent Commissioner Against Corruption and review report.

MARINE PARK SANCTUARY ZONES

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:23): I seek leave to make a ministerial statement on the topic: release of regional impact assessment statements of marine park sanctuary zones show no region-wide impact.

Leave granted.

The Hon. I.K. HUNTER: The state government committed to carrying out a regional impact assessment statement process during the first year of marine park sanctuary zones for the regions of Port Wakefield, Ceduna and Kangaroo Island. The RIAS report was released on Thursday 1 October 2015 and shows that there have been no region-wide impacts of marine park sanctuary zones in those three regions.

These findings address concerns amongst fishers about anticipated negative impacts arising from fishing restrictions. The report demonstrates that some fishing communities, particularly the rock lobster fishers off Kangaroo Island, were shown to have experienced an increased fishing catch during the first three months of the first season of the sanctuary zones.

The RIAS process was undertaken to provide an early indication of any unexpected regional impacts. The government committed to taking immediate action to address adverse regional impacts if any were identified through the process. To ensure the process was independent and transparent, the Goyder Institute for Water Research was appointed to prepare the RIAS report.

The South Australian Centre for Economic Studies (SACES) is a joint research unit between the University of Adelaide and Flinders University and, as a partner of the Goyder Institute, SACES was engaged by the Goyder Institute as independent experts to undertake this work. The South Australian Research and Development Institute provided commercial fisheries data and technical advice.

The report's findings validate the work undertaken over the last 10 years in engaging the South Australian community throughout the development of marine parks and the creation of marine park management plans and zoning. This work ensured that any impact of marine park zones on economic and social activities was to be minimised.

The completion of the RIAS is the beginning of long-term work to understand the effects of marine parks. The report will be used to inform the marine parks monitoring, evaluation and reporting program and the review of marine park management plans, as required by the Marine Park Act 2007. Although the act requires reviews of marine park zoning every 10 years, the government has committed to commencing the first review within the term of this government, and this work has already begun.

Despite the RIAS report not finding region-wide impacts, individuals who believe that their statutory authorisation has been affected by the creation of a marine park zone can apply for compensation at any time. More information about making an application for compensation can be found at http://www.environment.sa.gov.au/haveyoursay/draft-marine-parks-statutory-authorisation-compensation-regulations-2015.

The Director of SACES, Associate Profession Michael O'Neil, has commented that further monitoring will reveal the positive impacts of marine park sanctuary zones on marine ecology and biodiversity. In light of the expected benefits from marine parks, Dr Mike Bossley has established the non-government organisation Experiencing Marine Sanctuaries (EMS) to raise awareness amongst

children about our marine environment. The RIAS report and the government's response are available at http://www.environment.sa.gov.au/marineparks.

LEIGH CREEK

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (14:26): I table a copy of a ministerial statement about opening of a request for information process inviting people, businesses and industries to put forward their ideas for new business ventures in the Leigh Creek region made in another place by the Premier.

Question Time

SKILLS FOR ALL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:33): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question relating to Skills for All.

Leave granted.

The Hon. D.W. RIDGWAY: The opposition have obtained copies of emails between senior staff of TAFE under FOI, and I quote from a couple of those emails:

> Attached is the document that we originally prepared for the House of Representatives Inquiry into TAFE (the one that says edited 06052014). Following discussion with the Minister and the Board, the text highlighted in yellow was considered 'too sensitive' and removed from the final copy that went to DFEEST. DFEEST then prepared the 'whole of South Australian Government' response, which I'm waiting for a final version of and will forward as soon as I get it. The latter, DFEEST-prepared response, is the Minister-endorsed version of the response to the Inquiry and therefore represents the 'TAFE message'. Feel free to give me a call if you have any questions.

Another email that we have a copy of between the chief executive of DFEEST, Mr Ray Garrand, and I think the former chief executive, Mr Jeff Gunningham, states:

> Thanks for letting us know, what a fiasco, I am sure you agree. I assume from this that no-one from TAFE South Australia will be fronting the hearing? I will leave it to you to advise the Minister as I know she had a keen interest. DFEEST will not be making a presentation.

My question to the minister is: can the minister advise the chamber what role she and her office played in the preparation of the TAFE SA submission to the House of Assembly inquiry into TAFE, and when did her office become involved in any way with the submission to that inquiry?

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): I thank the honourable member for his question. This was a submission to the House of Representatives. This is old news. It is unbelievable.

Members interjecting:

The Hon. G.E. GAGO: I'm happy to give an answer. All of this is on the record already, and it is old and out of date. Obviously the opposition, because they are so lazy, instead of going out and generating new and fresh questions about stuff happening every day politically, what do they do? They are so tired they go back and dust off old questions as fresh questions.

Members interjecting:

The Hon. G.E. GAGO: I have answered this question before and I'm on record.

The Hon. J.M.A. Lensink: You have not.

The Hon. G.E. GAGO: I'm clearly on the record before and I think it was an issue that came up in estimates or somewhere as well, and I'm on the record there. This is just a nonsense. I have made it very clear in the past, and this is on the record, but the opposition is just too lazy to even go and check thoroughly. The government made a decision to make a whole-of-government submission to that commonwealth inquiry. It was our right to do that. We believed that it was better to have a coordinated across-government approach to that inquiry.

TAFE made a submission and most of that was incorporated in one way or another into the final submission. However, it was never our intention to simply insert the TAFE contribution. We had never intended just to insert that into a whole-of-government submission. The final copy was an edited version of a range of inputs from across government to that inquiry. We have always been very clear about that: very clear, very open and very transparent.

In terms of ability, TAFE made its own decision as to whether it wanted to make a verbal submission to that inquiry. In no way (and this is on the record as well) did I direct them or seek to influence them in making their decision about whether they would attend to give a verbal submission or not. TAFE informed me that it was not going to make a submission. They never engaged me in any conversation about my view about whether they should or they shouldn't, to the best of my knowledge; they simply informed me of the board's decision not to proceed.

It's reasonable to interpret that because they were happy and satisfied with the whole-of-government response reflecting their concerns they made a decision that they did not need to give a verbal presentation and submission to the inquiry. However, they were completely at liberty to be able to do that and, as I have put on the record before, in no way did I direct them or seek that they not attend. They made their own decision—and so they did. Ask Peter Vaughan, the chairperson of the board; simply ask Peter Vaughan. He will tell you in a full and frank way what went down.

I know there are a number of mischief-makers out there and I know there are a number of people who hold grudges—and that is life. However, I have stood by those comments that I made many months ago now. I've stood by those comments and I continue to stand by those comments. It's an old story. It's old information. Those questions have already been asked. I have already given a clear and concise answer on these things and I continue to stand by my answers.

SKILLS FOR ALL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:39): Can the minister explain then, and I quote again from the passage from the email that I used earlier:

> Following discussion with the Minister and the Board, the text highlighted in yellow was considered 'too sensitive' and removed from the final copy that went to DFEEST.

Can the minister tell us what was it that was too sensitive and had to be removed from the final copy, given it was discussed with the minister and the board?

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) (14:40): Mr President, I've got no idea what he's referring to. I've got no idea of which part of any text—they just come in here and make things up, they simply come in here and make things up. I'm not aware—read my lips: I'm not aware—of any component of TAFE's submission that was too sensitive. I'm not aware, and the honourable member has not provided me with any information to indicate otherwise, but I'm not aware of any component that my office or I saw or considered that was to be too sensitive, so to speak.

SKILLS FOR ALL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:41): Why then would Mr Ray Garrand, the chief executive of the department of further education, employment, science and technology, say in this email to Mr Jeff Gunningham:

> Thanks for letting us know, what a fiasco, I am sure you agree!

What was the fiasco that he was talking to?

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) (14:41): Why don't you ask the author, for goodness sake. You're so lazy.

The Hon. D.W. Ridgway: It's in relation to what you've been doing.

The Hon. G.E. GAGO: It's in relation to nothing that I have said or done. I've got no idea, Mr President. This is in relation to nothing that has come from me or my office, to the best of my

knowledge. Mind you, I haven't got the details of this, but to the best of my knowledge—go ask the author. I've got no idea what he meant by whatever has been read out here.

SKILLS FOR ALL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:41): Further in that particular email it says:

> I assume…that no one from TAFE SA will be fronting the hearing?

Then he says:

> I will leave it to you to advise the Minister as I know she had a keen interest.

So, were you advised by Mr Jeff Gunningham about the fiasco and that the final report had been amended?

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) (14:42): I've just answered that question. I've made it very clear that, to the best of my knowledge, I have no idea of the information that the honourable member is referring to. I've already answered this quite categorically. To the best of my knowledge, there was no information that came to me that I considered to be too sensitive to go into any said report. So, the honourable member would need to ask the author in terms of what they meant in relation to any particular matter that he is referring to.

SKILLS FOR ALL

The Hon. J.M.A. LENSINK (14:42): I seek leave to make a brief explanation before directing a question to the Minister for Employment, Higher Education and Skills relating to Skills for All and the lack of appearance before the federal inquiry last year.

Leave granted.

The Hon. J.M.A. LENSINK: As honourable members would be aware by now, the opposition has received a number of emails via FOI between senior staff of TAFE, and I will quote this one dated 30 May 2015 between the former CEO of TAFE and the board chair, Mr Peter Vaughan. It says:

> Peter,
>
> I assume by now that Jo has brought you up to date with the debacle that took place re our submission to the House of Representative's inquiry into TAFE.

Further on it says:

> …we need to decide what line to take at the Public Hearing. Do I follow the script outlined in the DFEEST written submission (lots of spin) or do I answer the questions truthfully as outlined in our original Board approved submission?
>
> Needless to say, I would not wish to embarrass the Board or the Minister by publicly criticising the State Government on its policy positions but it's going to be very challenging for me to say anything positive about DFEEST and how they have managed Skills for All.
>
> I guess one option is to simply withdraw from appearing but that might attract more attention.

Then further on, in an email between Mr Ray Garrand, the CEO of DFEEST, and the former CEO of TAFE, dated 3 June 2014:

> Ray,
>
> Just to let you know that I will not be making a presentation to the HoR's public hearing at Regency on 12 June.
>
> I have withdrawn after discussing the matter with Peter Vaughan this evening.

Etc., and so on, 'Regards, Jeff'. My question to the minister is: can she confirm that the reason why TAFE decided not to appear before the federal inquiry was that they thought it would be far too embarrassing for the state government?

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) (14:44): I thank the member for her question. I have already answered this question. As I said, it is old news. It is a lazy opposition that cannot find more contemporary information. It is just lazy. This is all old news. As I said, I have been on the record before and I stand by all of those responses. I have answered the question again here today with the first question but, if the opposition want to waste their second question on old news, then go right ahead. I have made it very clear that I did not request or direct TAFE in the matter of—

Members interjecting:

The PRESIDENT: Order! The minister has the floor.

The Hon. G.E. GAGO: —whether to appear or not to appear at that hearing. I have made that very clear already. The honourable member simply needs to ask the chair, Mr Peter Vaughan, but as I said many months ago and continue to say, I in no way directed or even sought to influence the board's decision as to whether or not it appeared before that inquiry. It was their decision. TAFE informed me of their decision and I had no discussion, to the best of my knowledge, with TAFE. They gave no reason as to why or why not; they simply informed me that they had made the decision not to attend. As I said, my assumption was that they were satisfied that the final whole-of-government response to the inquiry satisfied the issue that they wished to present to the committee.

SKILLS FOR ALL

The Hon. J.M.A. LENSINK (14:46): Supplementary question. Minister, did you actually ask TAFE why they decided not to make a submission?

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): As I said, listen to my answer. I have answered quite categorically that TAFE gave me no reason as to why they did or did not and I had no discussion with them about why they did or did not. They simply gave me information. A reasonable person would assume that, given that a comprehensive whole-of-government response was made to the inquiry, TAFE was satisfied with that. That is a reasonable conclusion for an intelligent person to come to.

SKILLS FOR ALL

The Hon. J.M.A. LENSINK (14:47): Further supplementary: is the minister aware of whether the TAFE submission had any adverse commentary about the state government and/or the Skills for All program?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:47): To the best of my knowledge, I am only aware of the final whole-of-government response and drafts associated with that.

SKILLS FOR ALL

The Hon. S.G. WADE (14:47): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question relating to Skills for All.

Leave granted.

The Hon. S.G. WADE: By way of background, I draw the minister's attention to two emails. The first email is between the board secretary of TAFE and the director of human resources at TAFE, dated 16 April. It reads in part:

> Thanks Alex.
>
> I am of the firm view that we need to submit a separate submission as TAFE. It is important that the federal government hears the TAFE experience from TAFE SA as a statutory authority.

The second email is from the chief executive of TAFE to Ms Denley dated 16 April, which again in part reads:

Thanks Jo.

Yes, there is a bit of funny business going on re our submission to the TAFE inquiry. I've sent the Minister's Chief of Staff an email asking her to clarify matters as to what Ray is saying is quite different to the process agreed (in writing) with the Minister's office…If they do change their minds, I would recommend you having a conversation direct with the Minister as this does undermine the authority of the board which is an important principle to get straight with a new minister.

Did the minister have a conversation with the TAFE board as foreshadowed in the email? Secondly, in relation to a written submission, not any possible oral appearance, did the minister or her office have any discussions with TAFE SA?

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) (14:49): What was that?

The Hon. S.G. WADE: That they couldn't make a written submission.

The Hon. G.E. GAGO: Sorry?

The Hon. S.G. WADE: That they couldn't make a written submission.

The Hon. G.E. GAGO: Like I said, this is just a waste of our time in this place. I have already answered these questions. It is just like a tautology, one opposition member after the other asks the same question in a different way, and I have already answered them. I am happy to continue to work the clock down.

An honourable member interjecting:

The Hon. G.E. GAGO: It is a free world. People are free to communicate. We do not cover up and hide things. There are people who have different views that do not necessarily always concur with ours, and so be it. But there is nothing in this that is new, absolutely nothing that the opposition have put forward that adds anything new to this whatsoever. I think the first question was: did I discuss something with the TAFE board?

The Hon. S.G. Wade: No, did you have a conversation? They said they wanted to speak to you the next day, 17 April.

The Hon. G.E. GAGO: The TAFE board?

The Hon. S.G. Wade: Yes.

The Hon. G.E. GAGO: About? About a TAFE submission?

The Hon. S.G. WADE: About the fact that Ray Garrand, who is presumably the departmental secretary, was telling them to do something that was contrary to what had been agreed in writing with your office.

The Hon. G.E. GAGO: To the best of my recollection, absolutely not. As I said, I have made it very clear that I categorically did not direct or request that the board either not make a written submission or not attend the hearing. What I did indicate quite clearly, and I don't recall how I did this, whether it was through my monthly meetings with the chair and the chief executive of TAFE or how, but what I did indicate quite clearly to them was that this government had made a decision that it was going to make a whole-of-government response to this inquiry and that TAFE could submit matters for consideration to be included in that but the government had made a decision there would be one whole-of-government submission. So, that information was certainly passed on but how it was passed on, I can't recall. The former question I have already answered several times today and in the past.

SKILLS FOR ALL

The Hon. S.G. WADE (14:52): Further to the minister's comments that she made it clear to TAFE what the government was going to do in relation to written submissions, can the minister advise whether that direction was in writing and is consistent with the Public Corporations Act section 6 which—

The Hon. I.K. Hunter interjecting:

The Hon. S.G. WADE: No, she wasn't.

The PRESIDENT: Order! Just ask the question and then the minister will answer.

The Hon. S.G. WADE: You gave an oral direction to TAFE which is contrary to the Public Corporations Act, you are the minister, they are an independent statutory authority, and you claim not to interfere with operational matters.

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:53): I have already answered the question. We have wasted enough time.

Members interjecting:

The PRESIDENT: Order!

SKILLS FOR ALL

The Hon. T.A. FRANKS (14:53): Did the whole-of-government submission preclude TAFE SA from also making a standalone individual submission?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (14:53): Sorry? Did the—

The Hon. T.A. FRANKS: —whole-of-government submission preclude TAFE SA from making an individual stand-alone submission?

The Hon. G.E. GAGO: The government made a decision that it would make a whole-of-government submission. I can't recall that we were prescriptive in what TAFE's position would be. I did make it very clear that there would be a whole-of-government response, not separate responses to the commission and they would be incorporated in one submission. Now, I have said that a thousand ways. TAFE participated in that willingly. As I said, they provided us with information that we considered and incorporated components into the submission, just as I said we derived information from a range of different parts of government where we did the same thing and incorporated one overall response.

SKILLS FOR ALL

The Hon. S.G. WADE (14:54): A supplementary. Given that the minister says she gave oral advice to the board which included that she anticipated there would not be separate submissions, how did it come to be that TAFE had a process agreed in writing with the minister's office, to quote Mr Gunningham's email of 16 April, and yet the Ray Garrand comment contradicts that? What changed? What led the government to change its mind that TAFE could not longer provide a separate submission?

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) (14:54): I was not aware of any process that our office agreed to, other than a whole-of-government response.

SKILLS FOR ALL

The Hon. S.G. WADE (14:55): A supplementary. Could I ask the minister to check with her ministerial office records whether, in fact, there was a process agreed in writing with the minister's office in relation to the written submission to the House of Representatives' report, and advise the council if there is such a communication?

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): You are saying a separate report for TAFE; you are saying there was a process agreed to to provide a separate report from TAFE to the inquiry?

The Hon. S.G. WADE: The email suggests that Jeff Gunningham has sent the minister's chief of staff an email 'asking her to clarify matters, as what Ray is saying is quite different to the process agreed (in writing) with the minister's office'. So I am asking if the minister could check whether there was such an agreement in writing with the minister's office, and advise the council.

The Hon. G.E. GAGO: I have answered the question and said that to the best of my knowledge there was no process agreed to. I will check, and if the answer is different to that I will bring back a response.

MEDICAL RESEARCH

The Hon. J.M. GAZZOLA (14:56): My question is to the Minister for Science and Information Economy regarding early-career researchers. Will the minister inform the chamber of the importance of supporting early-career researchers in South Australia?

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) (14:56): I thank the honourable member for his most important question; it is nice to get a more contemporary flavoured question on something that is not just shaken off from the archives.

Members interjecting:

The PRESIDENT: Order!

The Hon. G.E. GAGO: Our future prosperity as a state and as a nation will increasingly be built on the innovations that stem from fundamental research. Our researchers are central to this, and helping early and mid-career researchers address their unique challenges helps them maintain and engage in a vibrant research sector. In the area of health and medical research, the Australian Society for Medical Research is the peak professional body that represents its researchers through advocacy.

On 29 September I was delighted to meet the three South Australian finalists in this year's Leading Light Award. The Leading Light Award recognises outstanding research efforts of mid-career researchers and aims to recognise excellence in the biomedical sector. The award also performs an inspirational role for early-career researchers by introducing the career journey of nominees to early-career researchers and highlighting the potential for success.

This year's finalists include Dr Luke Selth from the University of Adelaide. Dr Selth heads a group within the Dame Roma Mitchell Cancer Research Laboratories here in Adelaide. His research focuses on prostate cancer development and progression, and utilises contemporary genomic techniques to better understand prostate cancer at the molecular level. The aim of Dr Selth's research is to improve the ability to differentiate between aggressive and slow-growing prostate cancers to assist in treatment.

Another finalist was Dr Quenten Schwarz from the University of South Australia. Dr Schwarz is the head of the Neurovascular Research Laboratory in the Centre for Cancer Biology. Understanding the development of the neuronal and vascular systems at the molecular level presents a major challenge to developmental biologists. Over the past 10 years Dr Schwarz has forged an internationally recognised research program to identify the origins of craniofacial birth defects and neurodevelopmental disorders, and to identify the vital role blood vessels play in human jaw and facial development. He has also looked at things like schizophrenia and the neuronal development around that, and believes there is a possibility that we might be able to identify that in very early stages, so it has enormous potential to assist right across the board.

The last finalist is Dr Dan Worthley from SAHMRI. Dr Worthley and the Gastrointestinal Cancer Biology Group at SAHMRI are working to therapeutically modify connective tissues in the setting of cancer and tissue injury. The focus of Dr Worthley's work over the past five years has been to discover a new connective tissue stem cell in the bone, as well as new intestinal reticular stem cells within the connective tissues of the bowel. Discovering these two new connective tissue stem cells has improved the understanding of normal tissue physiology and has provided a new cellular target for treating skeletal and intestinal disorders.

It was wonderful to hear from these young men, who spoke with great passion about their field of study and I am sure were very deserving of the award, all of them. Obviously only one could be a winner, and the winner was Dr Quenten Schwarz from the University of South Australia. The award was first presented in South Australia in 2012 to Professor Damien Keating, and in 2013 the winner was Professor Mark Hutchinson, who has gone on to become the director of the Centre for Nanoscale BioPhotonics at the University of Adelaide.

The high calibre of finalists for these awards goes to show that with the support and nurturing of organisations such as the Australian Society for Medical Research there is much that can be achieved for the successful scientific research career. In talking to those three men early in the evening, I said to them, 'What do you win from this?' They all looked at each other and said, 'Oh, we don't know; we have no idea what we win.' So they certainly were not in it for any prize; they were in it because they were incredibly passionate and committed scientists. I congratulate all three of them.

CONCORDIA DEVELOPMENT

The Hon. M.C. PARNELL (15:01): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills, representing the Minister for Planning, a question about urban growth at Concordia.

Leave granted.

The Hon. M.C. PARNELL: Under the government's 30-year plan, urban fringe development at Concordia near Gawler has been identified as a long-term urban growth area with development possible during the second half of the plan period, or in other words sometime after 2023 but prior to the year 2038. This land was historically outside the urban growth boundary for Adelaide, but was added during the 2007 expansion.

Despite the long-term horizons, residents of the Gawler area are now concerned at local rumours that development at Concordia is being fast tracked by the Department for Planning, Transport and Infrastructure. There is also evidence of developers buying up land in the region ahead of an imminent rezoning. Residents point out that Gawler already has two large developments underway that will double the size of the town. Other areas to the north of Adelaide have also been designated for large-scale residential growth, including at Angle Vale, Virginia, Two Wells and Buckland Park.

One residents' group, the Gawler Region Community Forum, is concerned that the process behind future urban expansion is secretive and that the community is generally unaware of what is going on. They claim that the residents of Gawler are not being consulted and they are being kept in the dark. This is causing considerable concern, because the government has recently committed to overhauling community engagement in planning as part of the review of state planning laws. My questions of the minister are:

1. Is his department fast tracking urban development at Concordia? If so, at whose request is this being done? Is it the local councils or the property developers?

2. Will the government investigate the desirability of removing Concordia from proposed urban expansion as part of its commitment to urban infill ahead of urban sprawl?

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) (15:03): I thank the member for his questions and will refer them to the Minister for Planning in another place and will bring back a response.

SKILL SHORTAGES

The Hon. J.S. LEE (15:03): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question about skill shortages.

Leave granted.

The Hon. J.S. LEE: SA Power Networks undertook a skills shortages project to identify the occupations where it experiences shortages and recruitment difficulties. A report collated around July 2015 stated that SA Power Networks experienced shortages and difficulties in recruiting in a

number of professions, which included specialised engineers, technical officers, diesel mechanics and trade skilled workers.

The report confirmed that South Australia has a limited resource pool for many of those occupations and skills, making recruitment for such positions a considerable challenge. The report also identified that South Australia has a small population, low population growth and a net deficit in state migration, and they confirmed that 'skilled workers are far more likely to leave South Australia to work in other mainland states than they are to come to South Australia from those states'. My questions to the minister are:

1. How will the minister address the skills shortages such as specialised engineers and those specified and identified in the SA Power Network report?

2. What measures has the government put in place to stop the drift of skilled people moving into other states?

3. What overall impact will the migration drift to interstate have on the population strategy by the government for South Australia?

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) (15:05): I thank the honourable member for her most important question. She has asked similar questions around these sorts of matters in the past, so I am already on the record outlining the way we go about managing this. It is mainly through our TASC committee, our Training and Skills Commission, who have a number of responsibilities, but one of which is to assist in helping the government understand labour force needs and helping us to be able to forecast ahead to ensure that we are putting our training efforts into those areas that are going to be in need to ensure that we have a well trained skilled labour force able to meet contemporary industry needs. We know industry needs change over time. So TASC do that; they have a 5-year plan and they basically update that almost every year.

The DSD also provides industry surveying. That has not resulted in particularly high quality data but, nevertheless, it is still data that we are able to use. It is basically a survey that goes out to businesses and asks them to outline the sorts of labour force that they currently have, what their current skill needs are and what their anticipated needs may be.

With the last survey that we did, we did a pilot, and we tried something a bit different to try to generate better quality results than what we had been achieving in the past. So we did a pilot in a particular region and, unfortunately, the response rate to that was still fairly low, but it was better than it was previously. I think the reason is that businesses see another survey and it takes some time to fill out and it requires businesses to think about where they are going in the future and what their needs might be.

As we know, the bulk of South Australia's, and for that matter Australia's, businesses are small to medium-sized businesses and many of them simply survive month-by-month in trading in whatever their particular business is. They often do not have a lot of infrastructure within their organisation to enable them to have the staff to be able to sit around and do business forecasting and such like, strategic planning and such like, so they often just do not have the wherewithal, resources and time to do that. I do understand why it is difficult for businesses to share their data with us, but basically we can only plan on labour force needs based on the quality of the information that we have, and so the poorer the quality, the poorer the indices we have in predicting where our needs are going to be.

That being said, nevertheless, I think we still do a reasonable job given the data that we do have. We continue to look at ways to try to improve that and we continue discussion with the federal government as well in terms of how they might be able to assist in understanding nationally business needs.

Finally, there is a subsidised component under WorkReady called Jobs First employment programs. That means that, even if a business had not been particularly successful in being able to compete for training off the subsidised training list, if they were able to demonstrate that there were

specific jobs that successful trainees could go into and they partnered with an RTO, they could apply for that Jobs First employment program funding.

They are able to design whatever training they like, whether it be accredited or non-accredited or a combination of both. The main criterion is that a commitment is given to those people who successfully complete that training that they will go into a job. With respect to some of the specific examples the Hon. Jing Lee gave, I would say they would lend themselves very well to a Jobs First employment program approach.

TOURISM

The Hon. G.A. KANDELAARS (15:11): My question is to the Minister for Sustainability, Environment and Conservation. Can the minister inform the chamber about the government's efforts to boost nature-based tourism and to create jobs in South Australia?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:11): I sincerely thank the honourable member for his high-quality and very important question. We know that people come to South Australia because of our abundant nature-based tourism opportunities. We enjoy a magnificent network of wild places, national parks and marine parks, complemented by the state's diverse wildlife, flora and marine life, geology and landscapes, rivers and coastlines, and countless scenic routes and adventure trails.

Nature-based trips, I am told, account for $1.1 billion in expenditure in South Australia every year, and nature is the number one driver of international visitors to Australia, according to surveys. About 40 per cent of all international visitors to Australia travelled to a national park in 2013-14. We also know that the government can and will do more in an attempt to attract and assist tourism businesses and operators to develop nature-based opportunities and offerings in our state.

The Department of Environment, Water and Natural Resources and the South Australian Tourism Commission have worked together to produce a draft nature-based tourism action plan. By 2020, we hope to have generated over $1 billion in expenditure in nature-based tourism and hopefully will have helped create at least 1,000 new jobs in this growing area of tourism. To do this, we need a coordinated and strategic approach to developing nature-based tourism opportunities in an economically sustainable way.

The draft nature-based tourism action plan is now open for final public consultation. This is the result of several months of consultation carried out by DEWNR and SATC, which consulted traditional owners, tourism industry stakeholders and environmental and community groups who have an interest in this area and local government. Other groups and individuals are asked to provide feedback on how the government can best assist potential tourism operators via the yourSAy website.

Nowhere else do we see the possibilities of nature-based tourism more clearly than we do in Kangaroo Island, an island renowned for its nature-based offerings. With around 120,000 overnight visitors per year staying an average of almost 480,000 nights on the island and spending roughly $113 million, it is clearly a popular destination for tourists. Tourism, of course, is a vital industry for the island's economy and population. In 2013-14 tourism contributed $134 million, or 60.8 per cent of the gross regional product, directly employing approximately 500 people, I am advised.

In a fantastic boost for our state, Kangaroo Island was recently named one of *National Geographic*'s top 11 destinations on its list of best trips for the upcoming season. The editors of the publication's travel section have described the island as one of Australia's most authentic and untouched places. This reinforces Kangaroo Island's standing as a destination for people seeking a nature-based tourism experience.

More people experienced the beauty of Kangaroo Island on Sunday 6 September, when nearly 80 people participated in the island's inaugural international marathon. The Kangaroo Island Adventure Marathon was hosted by the Flinders Chase National Park. Runners and onlookers were given the unique opportunity to connect with nature and to celebrate the seclusion and peace of being on an island, disconnected from everyday normal life. This event serves as a reminder of why

it's so important that, in everything we do to improve services and facilities on the island, we must also enhance the island's natural beauty.

I am very pleased to report on the status of the Kangaroo Island Wilderness Trail, a new internationally competitive multi-day walk along the south-west coast of the island. This exciting project continues to progress on schedule with over 70 per cent of the total trail now completed. The trail is expected to be opened by June 2016, and is certain to enhance the attraction of visitors to Kangaroo Island.

The state government has invested a total of $5 million towards the completion of this trail. The trail is a uniquely South Australian tourism product that will lift the international profile of Kangaroo Island and South Australia as a nature and adventure based destination. It will also bring economic benefits to the state and opportunities for the private sector to invest in accommodation or new tourism products on Kangaroo Island.

There is now the opportunity for the private sector to invest in the development of high quality accommodation facilities associated with the trail. These accommodation facilities will elevate the profile of the trail comparable to the Great Walks of Australia. A request for information has been released for the design and construction of luxury accommodation facilities along the trail, and I look forward to seeing how local businesses take up this opportunity and invest in the state's plan for nature-based tourism.

WATER METERS

The Hon. J.A. DARLEY (15:16): I seek leave to make a brief explanation before asking the Minister for Water questions with regard to meter readings.

Leave granted.

The Hon. J.A. DARLEY: I understand that meter readings, or estimated meter readings, are printed on SA Water accounts. This enables owners and tenants to check the reading on the meter against the amount they have been charged for. However, I recently noticed that units which have a shared meter, but individual accounts for each unit, do not have meter readings on the account.

My office has been contacted by several constituents in the past who have discovered that there was an error in reading their meter, and was able to contact SA Water to have the mistake rectified. However, those without a meter reading on their account are unable to do so. My questions are:

1. Can the minister advise why meter readings are not provided in such circumstances?

2. Will the minister ask SA Water to include meter readings on the accounts for these properties?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:17): The honourable member brings up a couple of points. Estimated meter readings, of course, are usually made, as far as I know, when the meter readers can't actually access the meter on a property for whatever reason; it may well be that the gate is locked, or there might be a dog present on the property, for example, or there hasn't been some sort of alternative arrangement entered into with SA Water or its meter readers, so estimated meter readings are made.

Cards are normally left for the customer and, has I have done in the past, then it is the customer's job, if they wish, to go and check the meter themselves, fill in the little card with the meter reading they have taken, and submit that to SA Water to have an account sent out that has been corrected. Alternatively, of course, you can accept the estimate and the cost, pay the bill, and have it corrected at the next or subsequent meter reading. These are usually easy to arrange by ringing the SA Water customer service line. In terms of shared meters, of course—

The Hon. J.S.L. Dawkins: In comes the text message.

The Hon. I.K. HUNTER: Yes, it is, from the lower house for some reason—we've had success. There is a difficulty when it comes to shared meters, and normally what happens in that

situation is there is some sort of ability to share the cost across the meter. It may be, as I have also experienced when I used to reside in a flat in a strata group, a proportion of the water cost would be apportioned across the different flats in the group. Upstairs flats, typically, had a smaller cost because they had no small garden associated with them, and lower flats, certainly in my circumstance, anyway, paid a little bit extra to take that into consideration.

Some shared meters, however, have the ability to have a metering device installed at the owner's expense, and normally a licensed plumber is required to do that. That gives an indication of how much water has been sent through to an individual unit, but it is not my understanding that that's the responsibility of SA Water. That is normally the responsibility of the unit owner, be it a tenanted unit or an owner occupied unit.

In that regard, SA Water's responsibility is to the meter and, whoever is the owner of that property, be it, as I said, a strata unit or an individual owner/occupier or if it is a shared meter, it is the responsibility of the owners to determine how that cost is to be shared across that meterage.

WATER METERS

The Hon. J.A. DARLEY (15:19): I have a supplementary question. Basically my question was: why can't the actual meter reading be printed on the account albeit the amount payable is shared by the people owning the properties?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:20): My understanding is that SA Water accounts do have a record of how much water has been utilised, and that's the basis of the billing. My understanding is that is what is provided in terms of the information—the amount of water that has been used. I imagine that's directly corresponding to the meter reading minus the previous meter reading.

MICRO FINANCE FUND

The Hon. A.L. McLACHLAN (15:20): My question is to the Minister for Manufacturing and Innovation: on how many occasions did the panel assessing the inaugural 46 applications for grants from the Micro Finance Fund call upon the pool of independent experts?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:20): I thank the honourable member for his question. The sooner his talents are properly recognised and he becomes a shadow minister the better, quite frankly. He will have less time to pick on me and—

An honourable member interjecting:

The Hon. K.J. MAHER: Many people suspect that as soon as he is a shadow minister he will be elevated almost immediately to Leader of the Opposition in this place. In terms of how many times outside experts were called upon, I don't have an answer to that; I don't have all the details of every time all our panels have met for the great array of grants and assistance programs. However, it is a very good question and I am happy to find out the answer and bring back a response as soon as possible.

NORTHERN CONNECTOR

The Hon. T.T. NGO (15:21): My question is to the Minister for Manufacturing and Innovation. Can the minister tell the house how the state government is ensuring that the $1 billion Northern Connector road project is supporting local jobs?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:21): It's a very good question and quite frankly I hope the honourable member's talents aren't recognised as quickly as the Hon. Andrew McLachlan's—not quite yet.

I have some information on this exceptionally important project. The Weatherill government is increasing the weighting it places on local jobs when determining tenders from 5 per cent or 10 per cent to 15 per cent. This will ensure that throughout South Australia when projects are being delivered workers will be benefitting in a more significant way. This means that companies that use

more local workers will be more likely to receive contracts. These new rules will apply to all contracts worth $220,000 or more.

In a boost to northern Adelaide, projects in Adelaide's north will now have a local jobs weighting content at 20 per cent in tender considerations. This will mean that projects such as the $985 million Northern Connector will create even more local jobs.

The Northern Connector, a jointly-funded state and federal project, will provide a new nonstop motorway connecting the Northern Expressway and the South Road Superway. This will allow a 43-kilometre nonstop journey from Gawler to Regency Park, making the Hon. John Dawkins's trips to Regency Park nonstop and much quicker, which I am sure he will greatly appreciate.

The government's investment in the North-South Corridor, including Torrens to Torrens, Darlington and the Northern Connector will together support something in the order of 1,330 jobs each year during construction. In addition to providing hundreds of jobs during construction and improving travel times for northern Adelaide residents, the Northern Connector will provide improved freight access between Adelaide's north and Port Adelaide.

This will have many benefits, providing more efficient transport for industry and consequently allowing businesses to look at employing more workers and providing safer roads for all users. The government is also building a new $55 million Gawler East collector link road to support residential development, not only creating local jobs building the road but supporting construction jobs as well.

The Hon. J.S.L. Dawkins interjecting:

The Hon. K.J. MAHER: It is a testament, obviously, to the advocacy of the Hon. John Dawkins that there is so much infrastructure happening in Adelaide's north; everybody listens to the Hon. John Dawkins. We are also supporting northern jobs for a number of important budget measures, including the allocation of $2 million to develop a food park, a move that will boost our food manufacturing sector, a sector that has grown every year for the last 17 years. I note the Hon. John Dawkins is continuing to interject. It is completely out of order, Mr President. He has been here long enough to know better.

We will be spending, as a government, $10 million on improving local schools and children's centres across northern Adelaide, not only to improve the quality of our education but to create local jobs in construction. Likewise, rolling out public housing renewal in the northern suburbs to the tune of $25 million will provide better quality housing stock and local jobs. We are focused on creating jobs and at the same time improving lives. Tenders for all of these investments in the north will be subject to these improved local jobs weightings. We are committed to creating jobs in northern Adelaide and this investment in local jobs is an important part of the government's strategy to address the decline in the automotive manufacturing industry.

MURRAY-DARLING BASIN

The Hon. R.L. BROKENSHIRE (15:25): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation, Water and the River Murray and Climate Change a question regarding the Murray-Darling Basin.

Leave granted.

The Hon. R.L. BROKENSHIRE: I am sure the minister is aware, as indeed all my colleagues would be, that the federal Senate is currently conducting a very detailed Senate inquiry into the issues regarding environmental flows, buy-back, high security water, water allocations, impact on townships along the Murray-Darling Basin system and a whole gambit of other issues regarding previous agreements between the state and federal governments and parliaments. My question to the minister is: has the South Australian government put a written submission to the Senate inquiry?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:26): I thank the honourable member for his most important question. It really serves to highlight again the strong action this state government has taken under this Premier to fight for South Australians and the whole community, which is so dependent on the River Murray. It is only because of the Premier's outspoken

support for a whole state approach or a whole river approach, I should say, to dealing with the problems of the Murray that we've actually got the plan as it currently exists.

Premier Weatherill will always be remembered, I think, as being the champion of the River Murray, certainly from this state's perspective, in taking up the issue at a federal level. At the time, not being supported by a federal Labor government, it was because of his actions in standing up for this state that we got the plan delivered. I am very pleased indeed that the federal government and the new Prime Minister is also saying that he is strongly of the view that the plan shall be delivered on time. So, we are very pleased to be working with the federal government on these matters.

The successful implementation of the plan is hoped to deliver better outcomes for the whole state, for our industries, our communities and, of course, the environment, all of which depend on a healthy and resilient river system. The basin plan is being fully integrated into South Australia's ongoing water management arrangements and significant progress has been made, and I can give the council a couple of highlights in that regard. As at 31 August 2015, 142.3 gigalitres has been recovered or is under contract against the state target, which leaves a gap of 41.5 gigalitres. This gap is likely to be addressed by South Australia's share of expected adjustments to the sustainable diversion limits, which will be determined in June 2016.

Community and stakeholder input into the draft long-term environmental watering plan for the South Australian River Murray water resource plan area has been sought. The plan is expected to be complete by November 2015. We are also seeing progress on the ground. For example, in 2014-15, I am advised that over 770 gigalitres of water was delivered to South Australia, among other things, to water 2,300 hectares of the Chowilla floodplain and maintain connectivity at the Lower Lakes, the Coorong and the Murray Mouth. Irrigators are concerned that the basin plan focuses solely on water management without considering social and economic outcomes.

The state government is very keen to ensure that local industry is not disadvantaged by water recovery; this is why we pushed for SARMS 3IP. Under this $240 million program for irrigation industry improvement, over 168 funding offers have been made with potential to return 34 gigalitres to the environment. Every dollar of investment is expected to stimulate around four times this value in economic activity, I am advised.

The state government continues to work with the Murray-Darling Basin Authority and other basin governments to implement the basin plan. Water recovery and a 1,500 gigalitre limit on water purchase has been a topical point of interest in recent months. Over 1,956 gigalitres has been secured, just over 71 per cent of the basin plan benchmark of 2,750 gigalitres. The prospect of reaching the target is good, given that only half of the funds committed for the infrastructure and water recovery program have so far been spent.

In addition to water recovery projects, the basin plan also includes a mechanism to adjust sustainable diversion limits through either increasing or reducing the amount of water recovery required. A recent review of the sustainable diversion limit adjustment supply measure found that an environmental water recovery offset of about 500 gigalitres was plausible, with the potential to increase this volume through further refinement. This means that basin plan environmental outcomes can be achieved with less water recovery. Based on that review, it is likely that further water purchase by the commonwealth government to achieve the basin plan water recovery target of 2,750 gigalitres will be limited.

On that basis, as I have said previously in this place, I removed my opposition to the commonwealth government's proposal to amend the Water Act to cap water purchase for the environment to 1,500 gigalitres. The amendment to the Water Act also provides more opportunities, through off-farm efficiency measures, to recover an additional 450 gigalitres of water to achieve enhanced environmental outcomes without additional socioeconomic impacts.

It is very important though—and I keep mentioning this when I am talking to my interstate colleagues, either on a one-to-one basis or at ministerial councils—that we also concern ourselves with issues of addressing constraints. Constraints limit the volume and the timing of environmental water delivery through the river system. They include existing river management rules that limit flows, structures such as roads and bridges, and privately owned land close to the river that becomes inundated during environmental flows. These are all significant problems that need to be overcome,

but the state government will not be endorsing a package of SDL adjustment mechanisms, so-called down water, without a corresponding program of works to address the constraints measures, which is the so-called up water.

Business cases that detail how to address constraints in the River Murray, including broad estimates of implementation costs, are currently being developed and an independent review of 27 August 2015 found that this work is on track. Basin ministers, I am told, are planning to agree on which constraints should progress to detailed investigation through to June of next year, with final implementation by 2024. At the last ministerial council meeting I asked my colleagues in the commonwealth to make sure that we are given an early view of the constraint projects that will be addressed before the end of this year at the next ministerial council meeting.

The basin-wide environmental watering strategy was published by the Murray-Darling Basin Authority in November 2014. The strategy guides environmental water holders and basin governments in planning the management of environmental watering over the longer term to meet environmental objectives. Importantly, the strategy provides for environmental outcomes for the Coorong, the Lower Lakes and the Murray Mouth.

Another important issue regarding the river is salinity, from South Australia's perspective. There has been significant investment in salinity management and infrastructure across the basin in the past 25 years—

The Hon. R.L. BROKENSHIRE: Point of order, Mr President.

The PRESIDENT: Point of order.

The Hon. R.L. BROKENSHIRE: This is all very interesting but it is filibustering. It is a simple question. Has the government put a submission in to the committee of the Senate, yes or no? He is filling out time because they haven't done it. We want an answer.

The PRESIDENT: Minister, do you want to complete your answer?

The Hon. I.K. HUNTER: Mr President, I was in the process of finishing my answer, and perhaps I would have, had the honourable member not jumped to his feet. But he has given me the opportunity to address the errors—

The Hon. J.M. Gazzola: Start again, Ian.

The Hon. I.K. HUNTER: Well, I could indeed start again, as the honourable member behind me suggests. Let me just finish talking about salinity. It may not be an important issue for the honourable member who asked the question but it is a very important issue for irrigators in this state and it is a very important issue for the government. There has been significant investment in salinity management and infrastructure across the basin in the past 25 years by state and commonwealth governments. Despite this, salinity remains an ongoing risk to the productivity and environmental condition of the Murray-Darling Basin.

A new strategy is under development to ensure that collective effort to manage salinity continues as the basin plan is implemented. The strategy builds on the strengths of the existing accountability framework to address contemporary salinity issues in a cost-effective and risk-based adaptive way and is expected to be completed in late 2015.

These are important considerations from South Australia's perspective on the delivery of the plan. The honourable member mentioned that inquiry conducted in the Senate of the Australian parliament, I think chaired by Senator Leyonhjelm, and ably assisted by Senator Bob Day, I think, the Family First representative from South Australia. I have very real concerns that their attempts to unwind the South Australian support for our plan are behind this Senate inquiry, but of course to assist those members in their position to assist the Senate in their consideration of the valuable input that South Australia has made into the development of the Murray-Darling Basin Plan, the government has made a submission to the inquiry.

If the honourable member had asked Senator Day, for example, whether the South Australian government had achieved permission from the inquiry to put in a slightly delayed submission, he would probably have been informed by his colleague that in fact we have had that

permission granted, and I believe the government has a submission ready to go sitting on my desk waiting for my signature today.

Bills

WHYALLA STEEL WORKS (ENVIRONMENTAL AUTHORISATION) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 23 September 2015.)

The Hon. M.C. PARNELL (15:36): I rise to oppose this bill. This is a bad bill, it is an unnecessary bill, but that does not mean that that criticism reflects on the Whyalla steelworks because the Whyalla steelworks is an integral part of the economy and the community of Whyalla. I wish the steelworks every success and I hope they continue to employ South Australians long into the future. I want them to succeed. I want to maintain a local manufacturing base, because that is so important to a diverse advanced economy.

However, this bill has nothing whatsoever to do with the ongoing future of the steelworks or the community of Whyalla. It does nothing to guarantee the future of the steelworks, it does nothing to create jobs, and it does nothing to even protect the existing jobs that are already there. This bill is nothing more than pandering to the irrational whims of company officials and nervous nellies in the state government who pander to them, but in the process this bill sends a very dangerous message to the South Australian community that public health and the environment will be sacrificed at the request of industry without a single shred of evidence being presented.

This bill extends for a further 10 years special exemptions that were granted by this parliament to the operators of the Whyalla steelworks back in 2005. Back then it was seen as a vote of no confidence in the EPA. Extending the bill for another 10 years is a further vote of no confidence in the EPA. The purpose of the 2005 legislation was to nobble the EPA and to kill off the environmental legal challenge that was brought by residents of Whyalla who were sick and tired of dangerous pollution levels that were harming their health and their property.

Thankfully the bad old days of massive and dangerous red dust pollution in Whyalla are mostly behind us, so there is now no reason for the steelworks not to be subjected to the same environmental standards as other Australian industries. The effect of this legislation back in 2005, and now to be continued for another 10 years, is to say that the EPA cannot change pollution licence conditions that have already been negotiated between the government and the company. In other words, the so-called independent EPA has lost its independence.

Secondly, any new national pollution standards will not apply to the steelworks; standards that will apply to every other company and every other operation in the country will not apply to the Whyalla steelworks under this bill. In addition, key parts of the Environment Protection Act will not apply to the steelworks. As I say, exempting the steelworks from environmental standards for another 10 years will not guarantee a single job. The problem with the steel industry is the demand for steel and the price of iron ore; it is not environmental standards.

Let me go through some of the history of this legislation and the problems that have beset the steelworks, and why I say that this government's bill does nothing to redress those problems. Before I do that I should just point out that the environmental media has picked up on this story and they agree with my analysis. In fact, I refer to the trade journal—which I know many members are fond of reading—that used to be called *Carbon and Environment Daily* and is now known as *Footprint*. The headline from *Footprint* on 24 September this year was 'Arrium on track for 20 years of EPA-lite.' That media report stated:

> Steelmaker Arrium is poised to win a 10-year extension of decade-old legislation that curtails the SA EPA's powers to intervene in its operations.

It goes on:

> Passage of the bill, introduced after representations from Arrium, will mean that for another decade the EPA can't tighten environmental controls on the site, as changes can only be made by the Minister for Mineral Resources and Energy.

The history of pollution in Whyalla over the last many decades is well known to many; it is certainly well known to the Hon. Terry Stephens. I am not quite sure how far it goes back, but certainly there has been legislation put in place to facilitate steelmaking and mining operations both at Whyalla and in the Middleback Ranges for many, many decades. There were major indenture acts in 1937 and another one in 1958, but it was not until the year 2000 when BHP Billiton (I think it was just called BHP back then) split off various components and the steelmaking became OneSteel.

It was only in 2000 that this operation was, for the first time, held to be bound by South Australia's pollution laws. Prior to 2000 they had a special exemption—a Playford-era or maybe even earlier exemption—that effectively said they could pollute as much as they wanted to and no-one could do anything about it. However, since 2000 they were brought within the purview of the EPA.

The dust problem, right through the 1960s, 1970s, 1980s and 1990s, was just getting worse and worse. Any visitor to Whyalla would have known it as the red dust capital; in fact, I was even told that the local hardware stores sold a special tint of paint that was red dust coloured so that you could keep your buildings painted and, hopefully, they would not show the red dust because they were painted the same colour.

Certainly, residents had been active over many decades in agitating for BHP to clean up its act and for the state's pollution regulator—and after 1993 that was the EPA—to intervene on their behalf. In fact, back issues of the *Whyalla News* shows many, many articles, letters and cartoons referring to the serious pollution problem that existed in Whyalla. This problem was not just a matter of local amenity. Sure, it was an inconvenience for members of the public to have to continually clean their homes, and it was inconvenient to have to wipe down your washing line before you attempted to hang out shirts or sheets because otherwise they would become dirty from the dust that had collected on the washing line.

That is all inconvenient. Having discoloured concrete might have affected the houseproud, but the real impact that I was certainly nervous about, and residents became very worried about, was the impact on human health. I would at this point like to acknowledge the work of Dr April Muirden, who was a volunteer scientific research officer at the Environmental Defenders Office for many years. She later went on to work for the Victorian EPA. Dr Muirden's work showed that particulate pollution, which most of us think of as dust, was harmful to health everywhere that it had been studied. In other words, all of the industrial pollution, traffic pollution and even natural dust pollution that had been studied anywhere in the world was shown to have an adverse impact on human health.

There were even some before and after studies of steelworks in the United States, where the health of society was measured at a period when the steelworks were operating and then again during a period of closure and there were noticeable differences—meaning improvements—in health during the period that the steelworks were not operating. The community was agitated and they urged the EPA and they urged the company to do better. At the end of the day, at the end of their tether, the residents came to the Environmental Defenders Office and said that they needed help.

So, on behalf of the local community, I incorporated the Whyalla Red Dust Action Group. I did that for a number of reasons. First and foremost was the fact that the group needed to have some credibility, and they needed the credibility that came from being a legally incorporated organisation. It is probably also fair to say that they were nervous dealing with the Big Australian, dealing with one of the biggest companies in the world—even though OneSteel might not have been, certainly BHP was—and they were nervous about their personal legal liability if they were to take on a major multinational company. And so they were incorporated.

I note at this point the contribution of the member for Giles in another place, Mr Eddie Hughes, who of course represents the area around Whyalla. In his contribution to this debate, he talks about some of the previous executives who were at the OneSteel, as it was then was, works. He talks about the late Jim White and Mark Parry. He goes on to say:

> There was that shift away from the old BHP culture of denying the problem and denying any liability to a far more open approach and an approach that put a real value on engaging with the community about environmental and other issues, so it ended up being an incredible positive.
>
> The activist group, as a result of what happened through Project Magnet—

which I will come to shortly—

disbanded itself. There has been a little bit of negative criticism of this amendment in the media of late and I will just share some words from the person who chaired the activist group, Ted Kittel, who fought a very long battle with Rob Hannon to see the dust issue in Whyalla addressed. In response to some of these low-level negative criticisms that have appeared in the media of late, Ted said:

'It is true that the 2005 indenture caused the [Whyalla Red Dust Action Group] litigation to be null and void because the indenture changed the law.

However, on behalf of the [Whyalla Red Dust Action Group], I continued to negotiate with OneSteel with the express desire to find a middle ground.

The negotiations over a period of time resulted in a win, win position for both Parties and launched the beginning of the new partnership between the [Whyalla Red Dust Action Group] and OneSteel/Arrium.

The partnership has flourished and is now strong and progressive.

I have observed throughout the 2005-2015 Indenture period that OneSteel/Arrium has conducted its operations in Whyalla in a most environmentally responsible way.

OneSteel/Arrium has shown good faith by engaging with community representatives…on all issues which relate to environmental impacts, and I have no doubt [that] this will continue for the duration of the 2015-25 Indenture.'

There you have probably public enemy number one in Whyalla for a considerable period of time, Mr Ted Kittel, explaining how relations have improved and how the pollution has improved. I have to say there is nothing that makes me happier on both counts.

But there is often a tendency in these matters to rewrite or to reimagine history, and I cast my mind back to the early 2000s and the frustration that Ted Kittel had in dealing with the company, and ultimately the decision to go to litigation was absolutely a last resort. I have to say that it sticks in the throat a little when you hear company executives after 2005 saying to Mr Kittel and other residents of Whyalla, 'Mate, if only you'd talked to us beforehand. We didn't need to involve the lawyers.' That is absolute rubbish. If it were not for the involvement of lawyers, then the change of heart that the company found and the relationship that developed would never have happened. The residents would have continued to be ignored as they had successfully for decades.

The legal proceedings that I commenced on behalf of the Whyalla Red Dust Action Group were under section 104 of the Environment Protection Act, and that is the provision that is commonly known as the civil enforcement provision. It was the first time in South Australia that a group had used this provision for a serious industrial pollution case. It was not the first time the law had been tried. There was a minor suburban case where a householder, I believe, tried to sue a kindergarten for the noise made by toddlers riding their tricycles into the Colorbond fence between the two properties.

That was hardly the stuff of legend and it certainly was not a major industrial pollution incident, so my case for all intents and purposes was the first case. I lost count, but I think I had over 20 court appearances on behalf of the Whyalla Red Dust Action Group. The usual game plan was that we would go to the Environment, Resources and Development Court and we would win. The court would say, 'I've looked at the evidence. This company has a serious case to answer in relation to the pollution that they are depositing on the homes and in the lungs of the people of Whyalla.' The company would then, being slightly more cashed up than the residents were, go straight to the Supreme Court and argue some esoteric point of law and on a technicality it would be sent back to the environment court where the process would be repeated, and that went on for a number of years.

The court case ultimately died when this parliament in 2005 passed the legislation that we are now being asked to extend for another 10 years. As a result of the community's agitation, the EPA finally realised that doing nothing was not an option. They ultimately issued a number of orders against OneSteel and they imposed a new pollution licence. This was the most reasonable of licences. It did not order the company to immediately clean up their act. It did not order them to shut down. It basically gave them a considerable number of years in which to put in place mechanisms to reduce the pollution. It was a very generous licence and, whilst the residents would have preferred immediate action, in the end they accepted that the company would be given a period of, I think it was four years, to clean up their act.

But the company wasn't prepared to accept that. They went screaming to the Premier and they said to the Premier, 'You need to get the EPA off our back,' and Premier Rann at the time said,

'Don't worry, leave it to us,' and this legislation was a result. As I said before, at the time it was a kick in the teeth for the EPA, but it was clear message to industry in this state that, 'If you are unhappy with the environmental regulator, come to the government and they will fix it for you.' Of course, that is what a number of industries have done since then. Just in recent memory, members would recall that we have discussed the situation at Port Pirie where the company basically hinged their investment with a commitment that they would never be obliged to comply with tougher pollution standards, which they knew were coming down the line.

This has now become the way business works in South Australia: you have a public statute and a set of laws that apply to most companies, but if you are big enough and dirty enough, you go to the government and you get your special exemption.

I probably also need to say that back in 2005 I was not here; I was on the side lines, watching the proceedings in this place. I have to say that it was a fairly significant moment in my personal professional development. I am sure that members often go back to read my inaugural speech, made on 3 May 2006; it is a classic of its genre! If members were to go back to my inaugural speech, basically they would find the following line, where I refer to the 2005 Whyalla Steel Works Act. I said:

> It is this type of behaviour that has encouraged me to seek a voice where the laws are made rather than just where the laws are applied.

What, of course, I meant was that, having spent a fair chunk of my professional life trying to apply environmental laws to make the environment and lives better for people, clearly that did not work when the government overrode them with special legislation or special regulation. So, I sought a place in this chamber, and I have never looked back!

The 2005 act, as I said, killed the legal proceedings. The Supreme Court found that the residents had no standing to pursue the case and that the company therefore had no case to answer. The court referred specifically to the legislation that was passed in this parliament as a reason for barring the action. The people of East Whyalla, despite my efforts and despite 20 appearances in court, never even had the chance to have their claims tested in open court before the government had stepped in to protect the company from the consequences of its actions.

It was not long into my term that I discovered that there are certain questions in question time that you save up for special occasions, and the question that commences, 'Did the minister mislead the parliament?' is one of those. I think that it might have been either my first or my second question of minister Holloway. He had said in parliament that the Whyalla Steel Works Act had nothing to do with the dismissal of the Whyalla Red Dust Action Group's court case when, in fact, according to the court itself, it was instrumental. Having said that in parliament, I then asked minister Holloway whether he had misled parliament in making that statement. He denied it. I clearly maintained that it was the fact and that he did mislead the parliament.

The act in 2005 was shortly followed by the implementation of Project Magnet. 'Magnet' is short for magnetite. Magnetite is a different type of iron ore from hematite. The problem in Whyalla was largely around the mining of hematite and the transferring of that ore to Whyalla, where it was crushed and pelletised in a part of the steelworks known as the pelletising plant. That was where the bulk of the dust pollution problem came from. It came from the transport of ore in uncovered wagons, and it came from the pelletising process, which is the part of the plant closest to the residents of East Whyalla.

Project Magnet involved mining a different type of ore, conducting most of the processing at the mine site and then transferring that ore in a wet slurry pipeline to Whyalla, where it was further processed, but in a wet form it did not produce dust. With the transfer of the process under Project Magnet, the red dust problem was largely eliminated, and that is a good thing. In fact, the test of whether or not the project was successful is measured by the levels of particulate pollution found at various monitoring stations in Whyalla.

The monitoring station of most importance was the one known as the Wall Street station, and that was across the road from the town primary school. As members would know, under the national environment protection measure for ambient air pollution, the maximum number of dusty days, if I can use that term, that is allowed in order to ensure a good healthy community is five days per year.

The measuring station across the road from the Whyalla Town Primary School would measure five days in a row above the maximum pollution standard. I am grateful to the Department of State Development who provided me with the latest chart, and what we see is that in the last several years there has been one, two or maybe three days per year where the pollution level has been exceeded. Clearly, Project Magnet has worked. That also must have us asking if the dust pollution is largely fixed, why does the company need the benefit of special exemptions from the normal pollution regulation regime? I maintain that they do not.

This bill was correctly categorised in another place as a hybrid bill. I do not pretend to fully understand the history of private bills and hybrid bills but, to cut to the chase, it is an act of parliament that effectively benefits just one entity, and that is the operators of the Whyalla steelworks. As a consequence the parliamentary rules provide that the bill must go to a select committee. In this case, it went to a select committee of the lower house of parliament, and those proceedings of the committee and the evidence they took is available to members if they have the wherewithal to seek it out.

I just make the point at this stage that in relation to parliamentary process I find it absolutely astounding that a bill that we are called on to debate and to vote upon can be subject to a select committee without us being told. There is no mechanism for a message from the House of Assembly to come to the Legislative Council to say, 'Hey guys, we're debating in a select committee a bill that you're going to eventually be asked to vote upon.' There was no record at all, there was no message, there was nothing that was sent to this chamber. Members might say, 'Well, that's your fault, you should follow their *Hansard* more closely,' or, 'You should have seen the ad that they put in the newspaper calling for submissions to the select committee.'

I have to say if I had seen an ad, I would have put in a submission to the select committee. Well, why didn't I see it, why wasn't I vigilant enough? I will tell you why: it was in the Saturday *Advertiser* on page 81. On page 81 of *The Advertiser* there was a public notice, 'Select Committee on the Whyalla Steel Works (Environmental Authorisation) Amendment Bill 2015', and this advertisement gave people six days to put in a submission to the secretary of that select committee.

Just to put this in context, what else is on page 81 of *The Advertiser*? Well, the Port Pirie Kennel Club was having an AGM, there's a notice about that. There is a cockatiel that was lost—'cinnamon with orange cheeks'—I thought all cockatiels were cinnamon with orange cheeks. Apparently this cockatiel talks and whistles and was lost in the Salisbury area. Also on page 81 there are some companionship ads: 'Athletic lady 65 slim & terrific.' There is a 'Cute nurse 28 petite outgoing.' There is an executive guy who is 39 and tall. There is a fun-loving lady who is 43.

What I am saying is that the House of Assembly, whilst clearly wanting to engage as many South Australians as possible in the important legislative program of this state, puts an ad with a six-day time limit on page 81 of the Adelaide *Advertiser*.

In fact, there was only one submission that was received to that select committee, and the person who made that submission was the only person they did not want to talk to. For the one public submission they declined to bring that person in and ask them any questions. That person, who is known to me, and probably known to many members, is Mr Warren Godson. He is a retired pollution expert and regular correspondent with many members of parliament. He wrote a submission, but they did not want to hear from him.

The select committee was nothing more than a cheer squad for this legislation and, with all due respect, some of the members on the committee did ask some questions that I think perhaps could have been probed a little bit further, but they accepted answers that were, effectively, meaningless.

So the committee hearing went ahead. It heard from the company, it heard from government officials and it heard from the EPA and, ultimately, the conclusion that they came to was that:

> Having heard the evidence and receiving only one submission, the Committee considered that there was broad agreement and acceptance for the provisions of the Bill and unanimously recommends that the Whyalla Steel Works (Environmental Authorisation) Bill be returned to the House of Assembly for passage through its remaining stages without amendment.

And that happened and ultimately we have this bill before us now. But it is worth having a bit of a look at some of the evidence that was presented to the select committee, because it goes to the heart of the absence of any evidence as to why this legislation was necessary.

I have to say that when it comes to, say, the Port Pirie special exemptions, I understand it, I get it. They could see the Americans were about to change their lead levels. They have done more health studies and they know lead is more dangerous than we thought. They could see over the horizon lead standards changing, so I get it; I understand why the Port Pirie smelter wanted to lock in old pollution standards—they did not want to be subject to new pollution standards.

However, in the case of the Whyalla steelworks, having largely fixed the environmental problem that everyone was concerned about, the question would be: well, what is on the horizon? Is there some wicked new standard that was going to put them out of business? There was not one skerrick of evidence that there was any environmental pressure on this company of any type at any time that meant that they needed a special exemption. In fact, the best that the company can do, when we look at, say, the evidence of Mr Steve Hamer, the chief executive in the steel division at Arrium Ltd, he says:

> The indenture environmental authorisation has brought regulatory certainty to Arrium's operations and investment, and this stability is even more important now in the very challenging current business conditions.

Yes, the price of steel is a problem and the cost of processing might be a problem and a whole range of other things, but not once in all of this evidence did any of the company executives or anyone else say, 'And we're really worried that environmental standards are costing us jobs.' There is not one skerrick of evidence that that is the case. In fact, all they can talk about is this word 'certainty'. They want certainty. They do not want the prospect of anything changing, even though they had no real or rational fear that anything was about to change.

They also go on to sing the praises of the EPA. They think that this is the best EPA in the country. They say how much easier it is to deal with this EPA compared to the EPA in Victoria or New South Wales. Well, of course it is easier to deal with this EPA, because they have been muzzled; they have had their teeth extracted; they cannot do anything of their own volition. Of course they are the best EPA in the country to deal with—what else would you expect them to say? I will go to the evidence of the EPA itself and Mr Andrew Wood, Executive Director of Operations with the EPA. Basically his evidence to the committee was:

> We would have preferred to have gone on to a licence under the Environment Protection Act.

That was their preference. Mr Dan van Holst Pellekaan, in another place, put it to the EPA and said:

> Essentially the information we received was that while, yes, perhaps the EPA would prefer to have the direct connection that it usually does so it can go about its work in the way that it normally does, it actually doesn't have any objection to this indenture being rolled over and, in fact, sees no negative environmental problems or any increased risks by this happening. Is that a fair summary of the EPA's views?

And the EPA answered, 'Yes, that's a very fair summary; that's exactly how we feel about it.' But it does beg the question that at a practical level the EPA is saying, 'Well, this isn't really going to affect everything because they've fixed their pollution problem.' That then begs the question: why on earth, if the pollution problem is fixed, can't this company be required to comply with the same standards that the rest of South Australian industry has to comply with?

It is just remarkable that not once, in all of the interrogation, was there anything identified, other than for those who have seen *The Castle* (which I think is all of us), 'the vibe'—it is all about 'the vibe'. There was no practical reason why this legislation was necessary.

I think I have made my views fairly well known by now so I will conclude. I will say that the EPA should be allowed to do its job, protecting the community from pollution, without political interference. This bill in 2005 was political interference. Extending the bill for another 10 years is yet more political interference. The act that this bill seeks to extend is to expire in just a month or so and the position of the Greens is that the 2005 laws should be able to expire disgracefully and not be extended for another decade.

Debate adjourned on motion of Hon. D.W. Ridgway.

BIRTHS, DEATHS AND MARRIAGES REGISTRATION (CHANGE OF NAME) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 23 September 2015.)

The Hon. D.G.E. HOOD (16:11): I rise to speak in support of the Births, Deaths and Marriages Registration (Change of Name) Amendment Bill. This bill presents a straightforward and logical approach to the current issue surrounding the ability of certain offenders to change their name all too easily and potentially without appropriate oversight. Currently, an adult who is domiciled in South Australia or whose birth was registered in South Australia can apply to the Registrar of Births, Deaths and Marriages to change their name. The person needs to provide evidence of their identity and the registrar has the discretion to refuse the application if the name change would be for a fraudulent or improper purpose or would otherwise be a prohibited name. As has been noted, the registrar is making these determinations without knowledge of a person's criminal history, which arguably limits the ability of the registrar to ascertain whether the name change is sought for an improper or fraudulent purpose.

Turning to the specific bill itself, we strongly support the requirement that certain categories of offenders (namely, prisoners, parolees, those released on licence or under an extended supervision order or person declared by regulation) need to obtain the permission of their supervising authority (in most cases the CE of the Department for Correctional Services) prior to applying for a change of name. Currently, the only category of offender that requires permission to change their name are those listed on the child sex register. Under these circumstances, Family First considers the proposed changes in this bill to be appropriate; indeed, most appropriate.

The bill provides that the supervising authority cannot approve the request unless they are satisfied that the change of name is necessary or reasonable, whether that be for safety, religious or other reasons that satisfy the chief executive. Similarly, the bill provides factors for which the supervising authority must consider, such as the safety of the offender and other people, the care and treatment of the offender or whether the name change is being sought for an unlawful purpose.

Requiring the supervising authority to approve this change of name provides an element of certainty which currently does not exist, in that the supervising authority is the most likely to be able to accurately determine the suitability of the name change, given the offender's history and behaviour. The bill creates penalty provisions, with a maximum penalty of $10,000 or two years imprisonment, should an application be made to change a name without approval from the supervising authority.

A new provision is also created that allows the exchange of information between the registrar and the supervising authority. Whilst not all information sharing presented to the parliament is necessary or even desirable, the ability for information sharing in this instance would be highly beneficial in providing an added layer of protection for the community and hopefully preventing serious offenders from being able to change their name without good reason to do so.

For similar reasons, providing an alert list of serious offenders to Births, Deaths and Marriages is something that Family First supports. Where the registrar receives an application from someone on this alert list, they will place the application on hold until receipt of confirmation that the applicant has the requisite approval to change their name. Having this mechanism would certainly enable easier identification of offenders who have applied for a change of name and who have not notified the supervising authority.

This bill requires someone to have a connection to the jurisdiction in terms of either being born in South Australia or having been born overseas and residing in South Australia for the past 12 months, prior to changing their name. We believe that the rationale will go some way to ensuring that the appropriate checks and balances are in place and to provide important community protection. That being said, Family First is supportive of the intention of this bill and we look forward to further debate. We support the 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) (16:15): I thank honourable members for their contribution. This is an important bill. There is generally support for this without any amendment, and I look forward to it being dealt with expeditiously through the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. S.G. WADE: I understand that the registrar can refuse offensive or obscene names that are contrary to the public interest. Is that possible on a non-adult application?

The Hon. G.E. GAGO: We just cannot find the section.

The Hon. S.G. WADE: Considering that it is not directly relevant to this bill, I am happy to take that on notice.

The Hon. G.E. GAGO: We just cannot get our hand on the appropriate section. We think that that can occur, but hopefully we will find the right section before too much longer.

The Hon. S.G. WADE: I think that would be of interest. It is an interesting precedent. Would you like me to go on to a question more directly relevant?

The ACTING CHAIR (Hon. J.S.L. Dawkins): I think the Hon. Mr Wade indicated that he is happy to have that provided.

The Hon. S.G. WADE: Yes. I am just wondering whether we have a precedent. Even if we do not have a precedent, we will support it. The second reading explanation notes that it is already an offence to knowingly make a false or misleading representation in an application, with a maximum penalty of $1,250. The second reading explanation states:

> To assist the Registrar to identify a restricted person, the Bill amends the Births, Deaths and Marriages Registration Act to require an applicant for a change of name to declare on his or her application form whether he or she is a restricted person or a registrable offender within the meaning of the Child Sex Offender Registration Act.

I presume that a registrable offender under the Child Sex Offenders Registration Act would already have been duly notified, but I am just wondering how confident we are that a restricted person would know that they are a restricted person under the act and, in that context, I would like to confirm that they would actually need to know that they are one of those two.

The Hon. G.E. GAGO: Yes, obviously, they would need to know that they are a restricted person.

The Hon. S.G. WADE: And a restricted person, is that subject to a notification requirement?

The Hon. G.E. GAGO: I am advised that they are not necessarily notified, as a restricted person means that they are a prisoner or a parolee or a person subject to an extended supervision order under the Criminal Law (High Risk Offenders) Act or a person released on licence under section 24 of the criminal law. These people are easily identified.

The Hon. S.G. WADE: Yes, I thank the minister, and the minister's second reading made it clear that that aspect was to assist the registrar, it was not the only means. There was a comment later in the speech about administrative arrangements that would also help alert the registrar to serious offenders through mechanisms such as the Department for Correctional Services. I appreciate the clarification that the knowing would still apply and that the registrable offenders would be notified.

Clause passed.

Remaining clauses (2 to 7), schedule and title passed.

Bill reported without amendment.

Third Reading

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (16:23): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) (MISCELLANEOUS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 23 September 2015.)

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (16:24): I believe that all second reading contributions have been made. Honourable members have indicated their support for this bill without amendment; I appreciate that and I look forward to it being dealt with expeditiously through the committee stage.

The Hon. T.J. Stephens interjecting:

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order!

Bill read a second time.

Committee Stage

Bill taken through committee without amendment.

Third Reading

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (16:27): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LOCAL GOVERNMENT (ACCOUNTABILITY AND GOVERNANCE) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 10 September 2015.)

The Hon. D.W. RIDGWAY (Leader of the Opposition) (16:27): I rise to speak on behalf—

An honourable member interjecting:

The Hon. D.W. RIDGWAY: Sorry, I was a little distracted there with some comments from behind me. I should not be listening to comments from behind me—

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): They are obviously out of order.

The Hon. D.W. RIDGWAY: They were not interjections: they were comments for my ears only, but they distracted me. I rise on behalf of the opposition to support the Local Government (Accountability and Governance) Amendment Bill 2015, and I will make some relatively brief comments.

This bill is not a contentious bill and my colleague, the member for Goyder in the other place and shadow minister for local government, has had extensive opportunity to consult and examine this bill in more detail in the other place, and I know there has been a reasonable amount of comment in that chamber. I would also like to acknowledge that this is the first bill introduced by minister Brock.

It has been well over a year since he became a member of cabinet and although this bill probably does not go far enough in implementing the comprehensive local government reform that he canvassed in the other place, the opposition welcomes the progress, no matter how incremental and snail's-paced it may be.

My understanding is that this bill seeks to implement a few good practice provisions, and in part it does that by amending the conflict of interest and confidentiality provision of the Local Government Act. In regard to conflict of interest, the bill intends to make a number of legislative changes which will add another dimension to the existing clause. Generally speaking, this amendment seeks to broaden the scope of the conflict of interest as it relates to local government members.

At present, any conflict of interest is captured under one category, whether it be a minor or a greater conflict of one's interests. In doing so, this leaves only one course of action for council members with a conflict of interest, which is to declare that interest and leave the meeting. The amendment seeks to redefine a conflict of interest into different categories. These include material conflicts of interest and actual or perceived conflicts.

It is encouraging to see that the LGA has undertaken to provide detailed guidance, materials and training sessions to ensure the effect of this proposed bill is understood and ensures a smooth transition. I am very pleased that the LGA has done that. I think it is important for all elected members to be made aware of their rights and responsibilities and obligations, and I think it is important that any change in these provisions is well understood.

We also, I think only just a couple of days ago, received some draft amendments from the Hon. John Darley, which we are still looking at. I did check; they are not actually on file yet, but I think they have been provided to our office. His amendments are quite substantial in their impact, we believe, and require proper consultation with local government. I have sought advice from our shadow minister Steven Griffiths, the member for Goyder, about that, and asked whether he has had any consultation or conversations with the Local Government Association. As yet, I have not had a response from him.

I will just quickly outline the opposition's understanding of the amendments. Amendment 20A is to clause 28—The register of remuneration salaries and benefits. This register must be kept by the chief executive in relation to employees, but the information is currently only available to council members. This amendment would require the register to be published on the web.

The Hon. Mr Darley's second amendment, I think, is 20B—Publication of certain expenditure. This is a completely new clause, requiring council to publish all transactions on corporate credit cards and the names of officers to whom they are allocated. His third amendment is to 21A, The form and content of the primary and ordinary returns. Our understanding is that the council chief executive officer and certain employees designated by council must fill in primary and ordinary returns.

This amendment would require the submitter to advise the mayor, for the CEO, or the CEO for other employees, if anything in the return changes. This must be done within one month of the change occurring. This is in the same terms as the proposed amendment for council members. This is not necessarily big in itself, but it imposes a possible $10,000 fine for non-compliance and our advice at this stage is that there has not been any actual consultation on that particular provision.

The final amendment proposed by the Hon. John Darley is the inspection of the register. This requires the same information to be published on the website as the controversial amendment for council members, but applying to the employees register. This information has never been publicly available and is only available to council members. To provide that publications be made public, let alone on the web, is a substantial change.

As mentioned, I am seeking advice from the shadow minister on these amendments. I indicate that we are not necessarily opposed to the amendments but we certainly are yet to consult with the Local Government Association. Until we are able to at least speak to the Local Government Association and also to see what the government's response is, we are not opposed to the Hon. John Darley's amendments. We would need to take them back to the Liberal Party party room and have a further discussion. With those few words, I indicate we are supporting the bill and we are leaving ourselves open minded about the Hon. John Darley's amendments.

The Hon. T.T. NGO (16:33): I rise to support this bill and make some remarks about particular elements within it. Having been a councillor for 18 years at the City of Port Adelaide Enfield council, I am well aware of the many issues that face local government in this state. I think I am well placed to provide some considered commentary on these issues for the interest of this chamber. From the outset, it is everyone's understanding that a broader view of this act will be undertaken by the minister at some stage next year. I, as I am sure will be the case with other honourable members of this council, will use that as an opportunity to progress some of the necessary reforms needed in local government in this state.

It seems as though this bill has been brought up to address some of the more immediate concerns which need to be addressed in the act. I would like to speak about some of these briefly in my contribution today. The attempt in this bill to separate a councillor's material conflict of interest from other conflicts of interest in order to establish harsher penalties for material conflicts is certainly welcome.

Other conflicts of interest are now defined as being 'actual and perceived conflicts of interest'. This will provide the opportunity for a councillor to report a perceived conflict of interest without having to withdraw from the chamber. It is good to see the requirements on councillors to maintain their register of interests through their ordinary returns as has been enhanced in this bill. This bill now ensures that if there are changes to a councillor's interests, those changes must be made to their register within a 30-day period.

The bill also clarifies exactly what types of information must be maintained in a councillor's register of interests such as income sources, political trade union affiliations, hospitality benefits and gifts. In truth, this information has always been available through a councillor's primary and ordinary returns. The real change is that this information will now be made available online. This is a good development. It is a commonsense move that the minister is demonstrating can be made without the need for a full-scale review of the act.

I see no reason why the minister cannot apply these very same changes to chief executive officers and all other senior executive level staff in local government. I have spoken to a number of senior executive level staff who would welcome further transparency in their dealings because it would show the public that they have nothing to hide. Currently a CEO's or senior executive's (as determined by the CEO) register of interests can only be obtained by request of a councillor.

This does not sit comfortably with me given the nature of the close working relationships that exist between councillors and their administrations. I was made to feel very uncomfortable once when I queried about this particular matter in my previous role as a councillor—so much so that I didn't make further inquiries because I did not want to rock the boat.

The media and general members of the public should not be locked out of this process. It is possible that any FOI request made to obtain information on a senior executive staff's register of interests could legally be rejected by the CEO and the council administration itself. Ultimately it is senior executive level staff who direct council policy. They are full-time professional staff whose recommendations to its part-time community-minded elected body almost always get approved.

It is not hard for people to figure out that, while councillors make the decisions, all the groundwork leading up to council decisions is done in the background by an unelected body, namely council administration directed by the CEOs and other senior executive level staff.

In our parliamentary system, we have a strange but very crucial element which is uncommon in non-Westminster parliaments: there is an overlapping in our separation of powers. Members of the executive, our state's ministers, also happen to sit in the legislature, which is the parliament. This means that federal and state ministers become public figures who are subject to all the checks and balances that come with being a member of parliament.

Most people would not even be able to name their local council's CEO, yet these are the people who wield an enormous amount of power, with a significant amount of autonomy to run their organisation. This is far from a bad thing, as long as it comes with an appropriate level of transparency.

Surely, it is important that the media and members of the public are able to access an executive officer's register of interests online, just as they will be able to with respect to their local councillors, as proposed in this bill. This is particularly the case when it comes to the provision of gifts and hospitality from private sources. The fact that senior executive officers are unelected is irrelevant considering the amount of power they hold in influencing the decision-making process of a council. I would be very interested to know what the Local Government Association would be advocating with respect to this matter, as outlined by the Hon. David Ridgway.

Finally, there has been a bit of commentary on whether or not the minister was considering the inclusion of a provision which would have exempted councils from having to provide the 75 per cent rebate to the community housing sector. This would have been in response to the transfer of 5,000 homes from Housing SA to the community sector.

I am pleased that the minister has demonstrated his care for some of the poorest people in our community by not bowing to the pressure from the Local Government Association to include any exemption. It shows that, even though the minister is an Independent member of parliament, he really is a Labor member of parliament at heart. Perhaps that is why he was happy to support this government when he had the opportunity early in the term. He knew in his heart that—

The Hon. T.J. Stephens: Who are you talking about?

The Hon. T.T. NGO: Minister Geoff Brock.

The Hon. T.J. Stephens: Why would you waste your breath?

The ACTING PRESIDENT (Hon. J.S.L. Dawkins): Order! The honourable member has the floor.

The Hon. T.T. NGO: He knew in his heart that he could not support a Liberal government. The transfer of 5,000 homes to the community sector is an important reform of this government, and it is highly likely that any rebate exemption provided to local government would have forced the community sector to increase rent or to invest less in their stock. This blanket approach would have hit tenants in existing community housing. We do not want to see any changes made that will affect the investment decisions of the community sector when they are contributing to the amenity of local areas.

If local government is requesting that the state government covers the shortfall, the Attorney-General has already indicated that he would be happy to undertake negotiations on a case-by-case basis rather than providing blanket legislation. This sounds entirely appropriate to me. I congratulate the minister for his strong stand on the traditional Labor policy of protecting the most vulnerable people. With that in mind, I commend this bill to the house.

The Hon. M.C. PARNELL (16:44): The Greens are supporting the second reading of the bill, and I note that we have had correspondence from constituent groups including the Local Government Association and also the Southern and Hills Local Government Association. In relation to the latter group, they are quite happy with the amendments being made in this bill, so they are easily satisfied.

As we have heard, the Local Government Association does have some concerns; they are not happy and, in fact, in their words were 'adamantly opposed' to the proposal to require council members to publish particular personal details on a website. The information that they are unhappy about being published is the detail included in clause 13 of the bill, which includes the members' income sources and the names of any political parties, any body or association formed for political purposes, or any trade or professional organisation of which the member is a member, and any gifts received by the member that are subject to disclosure.

The Local Government Association argument, as I understand it, is that they are not opposing the disclosure of that information, but they are not happy with it going onto a website. I must admit to struggling a little bit with the rationale behind that. It seems to me that those of us who are parents basically educate our children that in the modern day, everything that you do, say or think is going to end up on the web; it is going to last there forever, and it is just the way things now are. Given the fact that information on elected members is available by asking for it by getting a piece

of paper from the council, it is not that much removed to say, 'Well, it's actually more efficient for it to be searchable by it being online.'

The Local Government Association points out that information can date quickly online. Well, it can, as photos of ourselves date quickly online. I do not think the fact that a snapshot of aspects of a person's life exists at a point in time is a reason not to put stuff online; it will be out of date, potentially, by the very next day, but we all understand that. That is the nature of online archives.

It seems to me that the thrust of what is being achieved here is in relation to accountability, and the question that is being addressed by this provision is whether a member of a council might be answerable to anyone other than their constituents. In other words, are they answerable to a political party? Are they answerable to an employer? Are they answerable to someone else? That is what is sought to be achieved by disclosure. That then raises the question that with the particular affiliations that have been identified in this bill, why is it that this short list has been chosen for online disclosure, whereas other aspects of a person's life are not?

I understand that political party affiliation is definitely a relevant consideration. People would want to know whether their local ward councillor is a member of the Liberal Party or the Labor Party, but they might also be interested to know whether that person was a member of The Flat Earth Society or whether they were a member of some strange religious cult that denied the fossil record and believed the earth was only a few thousand years old. I have got to say that for me, knowing that about a person would be, in fact, a lot more telling in terms of whether they deserve my support or not than whether they are a member of a political party.

Similarly, with trade and professional associations, whether someone is a member of the Royal Society of Engineers or not seems to be neither here nor there. But I understand that there is a grey area, especially in relation to bodies or associations formed for political purposes. My personal approach has been to err on the side of caution, and I have disclosed on my register of interests everything that I belong to—every social, sporting, cultural, political and neighbourhood organisation. I think I am up to about 60. The list includes the 'Friends of' different parks around the place that I am a member of. There is only one that I have not disclosed, and that is simply so I do not bring myself into disrepute, but it does not fit within the category, so I am not going to even tell you what that is. It may or may not involve folk music, but we will leave that to one side.

The next aspect is that it is one thing to disclose information about people once they are elected to office, but I think of far more interest is finding out about them before they are elected to office. I understand that the Local Government Association says that it supports making this information available about all candidates for office, not just sitting members of councils. I also understand that that is a matter that the government is investigating. I think there is some consultation process out there at the moment but I will just put on the record now that whilst we support this disclosure in this bill, we are eagerly anticipating the electoral disclosure laws because I think that is far more relevant—for people to find out about their candidates before they vote for them rather than to find out afterwards.

With those few brief words, the Greens will certainly be supporting the second reading of the bill. We have not had a chance to look at amendments and if there are arguments that I have missed in relation to the Local Government Association's adamant opposition to the aspect of the bill then I look forward to hearing those arguments, but they have not fallen on fertile ground at present.

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

STATUTES AMENDMENT AND REPEAL (BUDGET 2015) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 23 September 2015.)

The Hon. R.I. LUCAS (16:51): I rise to continue my second reading contribution. As I indicated last time, the remaining significant (in length) section of my speech is based on a 20-page submission from a very prominent tax lawyer, raising quite detailed and complex questions about clauses in the legislation. I will repeat the suggestion I made to the government last time. For the

benefit of Hansard, I do have a typed copy of this, so I will read quickly and provide you with a printed copy.

The suggestion I made to the government—and it is for them to respond as they see fit—is that if the government's detailed response to these questions, which I am sure will be prepared by the competent officers in Revenue SA, could be made available to the opposition prior to the delivery in the house that would assist, because once I receive the government's response I then want to consult with the tax lawyer and other stakeholders before we conclude the debate in the committee stage, to know which particular issues need to be pursued in detail in the committee.

It may well be that the government is able to respond satisfactorily to a number of the detailed questions that the tax lawyer has raised. So with that introduction, I now refer to and quote from this submission on the Statutes Amendment and Repeal (Budget 2015) Bill:

Clause 8—Section 13A

The fundamental difficulty with these provisions is that section 13A was introduced to deal with minor interests arising from a tenancy in common (i.e. a 1% interest as a tenant in common) for the language of the provision, particularly with these further amendments, is not limited to such interests. Accordingly, the substantive provisions as amended by this amendment appear to extend to life and other lesser estates or interests other than ones arising from occupation. This raises the issue of how to measure any of these lesser interests that are not excluded? This may create issues on which there is no guidance.

What does beneficiary in sections 13A(4)(a), 13A(5) and 13A(9)(a)(ii) mean? There is no guidance in the legislation. In some contexts it extends to objects of discretionary trusts; in others it does not. Ideally, the scope of the word should be defined. This type of problem arose recently in the scope of section 71CC of the Stamp Duties Act 1923 and is now the subject of amendments proposed by this bill to deal with the issue (see clause 45).

The exclusion in section 13A(9)(a) only extends to an interest consisting of a right of occupation. Whether a right of occupation (such as a right of a widow to the personal use of a dwelling) applies to life interests not simply lesser rights of occupation may be questioned.

A footnote refers to a court case: 'In re Reid [1943] SASR 254'.

A life interest is something more than a right of occupation; in most cases it includes not only the right of occupation but the right to receive the income from the land. In section 2(1) the Land Tax Act 1936 the definition of "owner" in paragraph (a) excludes a leasehold interest. Technically, a leasehold interest is something more than a right of occupation in this provision. Why occupation only is excluded, should be classified. Ideally the definitions and particularly the exclusions should be consistent in all provisions.

There is a continuing concern about the requirement in section 13A that one of the purposes of holding the interest is the reduction of land tax. Realistically, is there ever a situation, in the commercial world, that consideration is not given to the land tax consequences and it is not taken into account? We suggest land tax reduction should be the dominant purpose is not simply one of the purposes. The burden of proving the purpose is ultimately on the taxpayer, if they pursue the issue on objection and then appeal under the Taxation Administration Act 1996 (SA).

Clause 9—Section 19(2)

The scope of section 19(2)(b)(ii) requires some qualification. Land tax is not a return based tax. In most situations the Commissioner makes an assessment based on the valuation role and the ownerships shown on that role. There are limited circumstances when information is to be provided by a taxpayer to the Commissioner.

There are situations where information may be provided to the Commissioner in connection with an exemption application or an application under section 13(3)(b) to disassociate property held on trust. In these situations the failure to provide the Commissioner with information that should have been provided should be covered.

As drafted the provision is not expressed to simply apply to situations that involve an application to the Commissioner or the loss of the relief afforded by the Act. It appears to be much broader. It appears to be imposing an obligation to provide any information at any time affecting a land tax liability under threat of a serious tax default. It only need be a contributing factor for the failure, as a basis of serving an assessment.

Clause 10(3)—Retrospective Operation of Section 13A

Elsewhere in this submission there are submissions about the use of retrospective legislation. There can be no justification for the operation of the proposed amendments to have any retrospective operation whatsoever. In these provisions it is proposed that section 13A apply in a manner that whilst prospective in operation applies to arrangements made prior to the commencement of the legislation (see section 10(3), Transitional Provisions). We submit that the provisions should only apply in respect of arrangements made from the commencement of the legislation.

Part 8—Amendments of the Stamp Duties Act 1923

Clause 23

It is proposed to delete sections 102G(3) and (4). In part, they were carried forward from the former land rich provisions and expanded. Whilst they may not always be applicable, they provide some opportunity for amelioration of some of the possible unintended consequences of the broad thrust of Part 4.

Further, one of the main issues that lead to the suggestion that these provisions be removed was the concern that they constitute backdoor reconstruction relief. In view of the introduction of very broad reconstruction relief, we question whether this issue remains and, if not, what other reason exists for their removal.

A further concern, as we understand it, is the broad scope of the concept of just and equitable. This provision is not as broad as the discretion to be found in section 163H of the Duties Act 1997 (NSW). We suggest that in the circumstances that the provisions, if they are to be repealed, should be replaced with a provision similar to this section…

Obviously, the use of discretions in such a situation is undesirable. More targeted provisions, rather than very broad provisions that bring with them unintended consequences, would avoid the need for these discretions. Such submissions in the past to the Commissioner have not been acted on. So these provisions remain important in ameliorating the breadth of Part 4.

The extended width of who constitutes an associate in section 91(8) can also raise situations, which may not always be adequately addressed by the exempting bracketed provision in that section, giving the Commissioner a discretion to exclude, in certain limited circumstances. So section 102G(3) and (4) remain important relief provisions where it is just and equitable to provide such relief in situations where these grouping provisions apply.

Section 101 provides for the aggregation of certain other transactions. There is no express power to relieve from the application of those provisions. Such a provision should be included, if Part 4 is to be the subject of amendments.

From 1 July 2018 Part 4 will apply to many more situations than it has in the past because of the removal of the $1 million threshold. Whilst, in more recent years, the holding of primary production land has been in disc0retionary trusts there are still situations where it is held in a company. In most of these situations the shares are held by family members, they are aggregated on the Commissioner's preferred view, by section 91(8). In these circumstances relieving provisions in section 102G(3) and (4) are likely to be even more relevant and should therefore not be repealed or should be replaced with a provision to the foregoing effect.

Clause 24—Corporate Reconstructions

The definition of hold in the proposed section 102H(1) raises a number of issues. The first is the scope of the concept of controlling the exercise of rights attached to property. This concept is proving somewhat illusory in other areas in the Stamp Duties Act 1923 (SA), particularly with no definition of the concept of control.

Further, the right must be attached to the property. This appears to be broader than 'inherent' in the nature of the property (i.e. voting power of a share is inherent in its nature rather than attached). It raises the question as to whether something can be attached which is not inherent in the nature of the property and if it can should it be taken into account.

The proposed section 102H(2) uses an 'and' at the end of each paragraph. This is a conjunctive 'and' and this is consistent with the collation intended to operate as a 'hendiadys' or at least something similar. We question whether that is the best way of dealing with what appear to be three very different concepts (i.e. unit trusts, partnerships and conveyances of motor vehicles).

There is a reference in that paragraph to D.C. Pearce and R. Geddes, Statutory Interpretation in Australia, 6th edition. The letter continues:

In treating a member of a partnership as having a proportionate interest in each partnership asset in section 102H(3) there is no indication of how the extent of the proportionate interest in each asset is to be determined. Is it to be by reference to capital entitlements, profit share or voting rights where they are different? Guidance is required, preferably in legislation.

The corporate reconstruction relief should provide relief from section 71E. It should be expressly included in section 102K. The corporate reconstruction relief is likely to be of use after 1 July 2018 in connection with primary production land in a corporate group. If section 71E applies to a particular transaction then reconstruction relief should be available.

If the Commissioner is satisfied that the transaction is one to which the Part applies and the Commissioner exempts the transaction, it is submitted he must also exempt any statement required to be brought into existence under section 71E or under Part 4 in addition to any conveyances. An alternative is to provide relief from the requirement to create such statements where the Commissioner grants an exemption in advance.

And there is a note—

As is proposed in connection with the abolition of gaming machine surcharge (see clause 38, the proposed section 104F(3).

The letter continues:

If the duty has been paid on an assessment, is simply granting an exemption sufficient to authorise a refund in the face of the express terms of Parts 3 and 4 of the Taxation Administration Act 1996 (SA)? Is there to be an entitlement to interest on any refund where the duty has already been paid?

New South Wales allows such applications to be made within five years, Queensland and Victoria allow three years and Western Australia one year. A period of five years would be consistent with the Commissioner's powers of reassessment found in section 10 of the Taxation Administration Act 1996 (SA) and other rights of refund under that Act. Five years is the period proposed by this Bill in respect of waivers and refunds of land tax in clause 7(2).

The proposed section 102M(2) requires the application to be accompanied by certain documents. They do not appear to extend to statements to be brought into existence under section 71E and under Part 4. It refers to drafts. What is the position in respect of already stamped documents? How does this provision apply?

Section 102M(5) does not appear to extend to the statements to be brought into existence under section 71E and under Part 4.

In sections 102H(2)(c) and 102K(d) the word 'asset' is used, though elsewhere the word property is used. Ideally 'property' should be used on all occasions other than in section 102K(b) because of the use of the expression local land assets in Part 4.

The provisions do not appear to apply to:

companies limited by guarantee;

indigenous corporations established under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) where there are membership interests only.

Clause 25—Definition of Land

It is unclear how these provisions will operate in respect of leasehold interests. Ideally they should be specifically excluded. It appears that if there is a transaction involving a leasehold interest it will be within the scope of these provisions.

This definition appears to include an aquaculture lease granted under the Aquaculture Act 2001 (SA), notwithstanding that it is not expressly referred to in the provision by way of inclusion or exclusion. This is different to the approach previously taken in the landholder provisions. It is suggested that if it is not intended to include such leases that they be expressly excluded. If an aquaculture lease is included will it be regarded as a lease of commercial property or primary production land?

As proposed it appears that any transfer of a leasehold interest will be dutiable, but it is likely that in most situations the leasehold interest will have minimal value and only attract nominal duty or be exempt in other situations where it relates to commercial land after 1 July 2018. It will raise the issue as to whether goodwill is an incidence of the site or the broader assets. If an incidence of the site, then some of that value could be attributed to the lease and attract stamp duty.

It will also raise the issue as to whether plant and equipment used in connection with the land whether prescribed goods or not are prescribed goods (in this case because they have a significant connection with the land) and must be included. Such items are not excluded. So if they have a significant value, belong to the lessee and pass with the leasehold estate then it appears they will be dutiable, at least up to 1 July 2018 in connection with commercial land thereafter with non-commercial land.

After 1 July 2018 leases of commercial properties should be exempt. We query whether the operation of these provisions simply does not become red tape for leases of primary production land and residential premises after that date and could be avoided by excluding leases of, say, less than five years.

Clause 26—Instruments to be separately charged

This provision renders a document relating to different types of property in effect separate instruments in respect of each type of property to which it relates. It assumes that it is possible to look through the mass of property and split it up. That may not always be the case nor appropriate.

The provision leaves a number of significant aspects to practice without providing any indication as to how such matters are to be dealt with, some express provisions are required to address these issues. Some of the issues include:

what does type of property mean. We query whether that is the best description. The Macquarie online dictionary describes 'type' inter alia as follows: Noun

1. a kind, class, or group as distinguished by a particular characteristic.

2. a person or thing embodying the characteristic qualities of a kind, class, or group; a representative specimen.

3. the general form, style, or character distinguishing a particular kind, class or group.

Whilst goods, financial products and land may be different types of property we query whether primary production land, commercial land and residential land are different types of property or only the same type of property, namely land, simply put to different uses from time to time. It is preferable that, at least in these circumstances, the basis for differentiation is further described;

is an interest in a trust a type of property or can you look through it to the underlying property (i.e. unit trust, fixed trust, interest through a deceased estate and an object of a discretionary trust);

what if the trust has debts (see Revenue Ruling SDA003 for aspects):

do they come off;

how are they apportioned;

what happens if they are secured on some specific property;

there is interstate property and debts;

does section 2(2) impact on this concept.

In the case of a unit trust with land of $.8 million (less than the landholder threshold) and $2 million of public company shares it appears to assume you can say that a transfer of half the units constitutes a transfer of half the land (i.e. $400,000) and half of the shares.

There is a note which says this assumes you can look through the trust to the assets in the trust rather than look at the nature of what is being conveyed. I continue:

It then appears to imply that as it is a separate instrument in respect of the land it is to be assessed on that basis (i.e. $400,000). That may work if the unit trust has no liabilities. If it has liabilities of $2.1 million it is no longer clear whether the liabilities are attributed to any portion of the land or ignored. Prior to these amendments, in most situations, the duty would have been paid on half the net value of the unit trust namely on $350,000. There is no doubt many more of these types of examples. Similar issues will arise with most other trust arrangements (i.e. fixed trusts, discretionary trusts and deceased estates).

In the proposed section 14(2) the use of the word 'or' between 'an instrument relating to types of property that are chargeable with different rates of duty' and 'relating to a type of property chargeable with duty and a type of property not chargeable with duty' suggests that these are the only two alternatives. There may be situations where there will be types of property chargeable with different rates and no duty. Ideally these situations should that be expressly addressed.

Clause 27—Section 31 Amendments

Primarily these amendments arise because of the amendments being made to section 60A(1) in respect of the meaning of what is the date of sale. They highlight the anomaly in the assertion that the Commissioner has consistently adopted the view, for the last twenty years, that the date of sale is the date of the conveyance. Apart from the insertion of section 31(1)(b) and the repeal of section 31A the remaining amendments, like the change to section 60A(1) proposed elsewhere by the bill, are not required. If they are to be made, they should not be retrospective as currently provided by clause 40, for the reasons described elsewhere in this submission.

The operation of the existing section 31(2) should also be preserved for those conveyances that are made pursuant to contract stamped in accordance with section 31 or 31A prior to the commencement of the operation of the proposed provisions.

The insertion of section 31(1)(b) and the repeal of section 31A otherwise simplifies these provisions and should be made.

The proposed section 31(2)(a) refers to the value being greater than the consideration specified in the contract. It should refer to the value of the interest under the conveyance being greater than the consideration expressed in the contract or the value of the property if the Commissioner has assessed the contract on that value under section 31(1b).

Clauses 31 and 40—Section 67

The amendments to section 67 are to have retrospective effect. As mentioned elsewhere in these submissions retrospective legislation is inimical to the concepts of the rule of law. Other than the most exceptional of circumstances, and then generally only in favour of citizens to correct errors of the state, it should not be used.

Its use is counter-productive to compliance insofar as it provides an example to citizens that the state will disregard its compliance obligations on the grounds of economic convenience. There is nothing to support its use in this situation.

Clause 32—Repeal of Section 71B

Section 71B has long existed in stamp duties acts. It permits commonly owned property to be divided between the owners without further duty other than on the amount of any payment by way of inequality.

Even after 1 July 2018 such relief will still be important. A couple of examples highlight it. A and B are farmers conducting their own farming operations in partnership with say their wives. They are each using some land owned by their father (Lot 1 and Lot 2 respectively). Their father dies leaving the land to A and B under his will. As A and B are not in a business relationship with each other section 71CC is not available. Under section 71B they could divide the land between them so that A takes Lot 1 and B takes Lot 2. If each lot is of similar value than under section 71B there would be no stamp duty. After this amendment A and B will each pay stamp duty on the value of each half interest being transferred to them.

Part 9—Amendments to the Stamp Duties Act 1923, clause 38

It is suggested that the definition of 'dutiable land transaction' in section 104A be broadened along the following lines:

'dutiable land transaction' means a transaction that results in duty being chargeable on or in respect of a conveyance or transfer of land or as if there were a conveyance or transfer of land including a statement under section 71E.

The proposed section 104B(2), which is apparently designed to preserve duty on transfers of units in a unit trust that have an interest in land, is simply both too subtle and too broad. The provision should be recast in clear and express terms and identify with particularity what it applies to, primarily unit trust situations and the operation of the landholder provisions including prescribed goods.

The effect of this provision is to preserve not only unit trust situations but in effect any other possible arrangements (including trust arrangements) that affect interests in land. So in effect, its operation is potentially much broader than that described in the limited comments emphasising unit trusts, particularly in conjunction with the proposed section 14(2). If it is to simply apply to unit trusts then it should be so stated. If it is to be broader that should be clearly described.

In section 104B(4):

there is a reference to land used for primary production. There is no definition of primary production in the Stamp Duties Act 1923; there is a definition of a business of primary production. It would appear that a definition of primary production should be included and the definition of the business of primary production and land used for primary production reference to such a definition. This issue also arises in other provisions;

it is suggested after the word 'land' in the third line of the definition of 'prescribed goods' the words 'the subject of a dutiable transaction' be inserted;

the definition of prescribed goods in this provision and in Part 4 should be in the exact same terms rather than different terms with similar effect. It avoids issues as to whether there are intended differences arising from the difference in wording.

Clause 39—Section 109

We suggest that, rather than this suite of new provisions, Part 6A of the Taxation Administration Act 1996 be extended to apply to the situation of concern proposed to be dealt with by the proposed section 109.

Clause 40—Transitional Provision

For the reasons given elsewhere these provisions should not have retrospective effect.

Part 10—Amendments of the Stamp Duties Act 1923

Clause 41

The proposed amendment to section 60 clarifies an issue that has arisen, in practice, though the Full Court decision in JWW Nominees Pty Ltd vs The Treasurer [2004] SASC 163 rather suggests it was not an issue. The difficulty is that the Commissioner apparently has advice that indicates that if a conveyancer is exempted by section 71(5) or (7a) and also answers the conveyance on sale head of charge then it may be assessed on that basis notwithstanding the exemption in section 71(5) applying to it. The avoidance of this issue is desirable.

Against this difficulty the provision does not go far enough. It still leaves the possible issue that a conveyance within the scope of section 71(3)(a) can also constitute a conveyance on sale, in some situations. Section 71 has a number of other provisions that differentiate a conveyance within the scope of section 71(3) from a conveyance on sale. These provisions should prevail, so it is suggested that the proposed provision makes it quite clear that a conveyance deemed by section 71(3)(a) to be a conveyance operating as a voluntary disposition cannot be a conveyance on sale.

Clauses 42, 43 and 49—Introduction

The operation of these amended provisions is to have retrospective effect by reason of clause 49. The provisions together with the changes to section 31 fundamentally alter the operation of the conveyance duty provisions. Whether such changes are necessary or can be justified, is questioned.

The Stamp Duties Act 1923 currently provides and was administered until relatively recently, in terms of the history of the Act, on the basis that the value of property the subject of a sale was fixed as at the date of sale. That is the date a contract or agreement was entered into by the parties. What happened after that was generally irrelevant from the perspective of the liability for conveyance duty on a sale.

Section 31 reinforced that view by providing that the conveyance attracted no further duty where the duty was paid on the agreement. Even the proposed anti avoidance provision to be introduced in section 109 by this Bill and the qualifications on the reduction and abolition of stamp duty on commercial properties do not apply to property conveyed pursuant to a contract of sale entered into prior to certain dates before the reduction of the duty. Emphasising that the usual trigger point is the date of the contract not the date of a conveyance, in the stamp duty arena.

Even if the amendments are considered necessary, which we submit is not the case, retrospective legislation is simply not warranted in this situation.

Clauses 42, 43 and 49—Distinction between Conveyance on Sale and others. The stamp duties legislation in South Australia since its inception in 1886 distinguished between conveyances on sale and other forms of conveyances. The Stamp Act 1886 (SA) apart from imposing duty on certain other instruments, when it came to conveyances, only imposed duty on conveyances on sale.

In the Stamp Act Amendment Act 1902 (SA) any other conveyance was made dutiable with a fixed duty. This distinction between conveyances on sale and other conveyances has long had its counterpart provisions in the United Kingdom stamp duties legislation where conveyances on sale were charged with ad valorem duty based on the consideration for the sale and the other conveyances were charged with fixed duty only.

In the Stamp Act Further Amendment Act 1915 (SA) the concept of a conveyance operating as a voluntary disposition inter vivos was introduced in South Australia and duty on such conveyances was set at one half of the duty payable on a conveyance on sale substituting for the consideration, the value of the property, in such situations.

On the adoption of the Stamp Duties Act 1923 (SA), this distinction between conveyances on sale and conveyances operating as voluntary dispositions inter vivos was carried forward into a piece of consolidating legislation.

The rates of duty on conveyances operating as a voluntary disposition inter vivos were further changed in 1928. Those rates were subsequently brought into line, in most respects with the rates of duty on conveyances on sale, by 1982, but the duty on conveyances operating as a voluntary disposition inter vivos were still determined by reference to the value of the property.

In 1982 section 60A and a number of other amendments, including amendments to the heads of charge, were introduced. The fundamental change to the heads of charge was to provide that stamp duty on conveyances on sale were thereafter to be assessed by reference to the value of the property conveyed rather than by reference to the value of the consideration passing. For this purpose, section 60A(1) was inserted. It provides that for the purpose of determining the market value of the property conveyed, in the case of a conveyance on sale, it was to be determined at the date of the sale in any other case as at the date of the conveyance.

The distinction that was drawn between the date for determining the value of the property the subject of a conveyance on sale and the value of the property in any other case reflected the practice that had effectively been adopted since the introduction of stamp duty in South Australia. Further, there is nothing in the Second Reading Speech of the Premier and Treasurer [see *Hansard* 8 December 1982], at the time, to suggest that there was to be any change in the then subsisting practice as to determining the relative date of sale and in practice nothing changed in that respect. That is a conveyance on sale was assessed by reference to the value of the property as at the date of the agreement of sale not the date of the conveyance.

There is a reference to a case: The Crown v The Bullfinch Proprietary (WA) Limited (1912) 15 CLR 443.

The proposed amendments are intended to overturn this position. This is notwithstanding that the Stamp Act is to continue the distinction between conveyances on sale, and conveyances operating as voluntary dispositions inter vivos, when for most purposes, the rates of duty are the same and the date for determining the liability for duty is now to be the same. It makes a confused set of provisions even more confusing. These are concepts that have long been abolished in the other Australian States. Further, if this legislation is to be business friendly then a Duties Act model, as is used in all other States needs to be adopted. Not the current patchwork quilt.

Under clauses 42, 43 and 49—Interstate Approach there is a summary over some three or four pages of the approach of stamp duties in relation to clauses 42, 43 and 49 in Victoria, New South Wales, Queensland, Western Australia, Tasmania, the Northern Territory and the ACT. If the government advisers want copies of this part of the submission I am happy to provide it but I am sure they are probably familiar with the equivalent provisions to section 42, 43 and 49 in the interstate stamp duties

legislation and I therefore do not believe that it will be required for the Revenue SA officers to have me read that into the *Hansard*. The submission continues:

> The foregoing table—

that is, the table of the interstate approaches—

> highlights that there are two different approaches in the other States and Territories. One is the approach adopted in Victoria and Tasmania. The duty is paid on the conveyance based on the consideration or dutiable value as at the time the contract of sale was entered into or in any other case, at the time the dutiable transaction occurred. The only effective legislative difference with South Australia on the fundamental aspect is that the legislation in those jurisdictions is even more explicit about what the date of sale means, namely the time of the contract. There is no suggestion that in those jurisdictions they have adopted a practice similar to that of the Commissioner or indeed there is any need to do so.
>
> The other approach is that adopted in the remaining jurisdictions. The contract is liable for duty as a conveyance and is assessed with duty as at that date on the higher of the consideration or the unencumbered value. A transfer made in conformity with the contract is not dutiable or dutiable with nominal duty. In some cases there is an express provision to the effect that improvements made by a transferee prior to the transfer not for the benefit of the transferor are excluded from any duty consequence.
>
> The foregoing interstate provisions would suggest that there is no real issue to be addressed in South Australia. What has occurred in South Australia, the practice adopted by the Commissioner, it is submitted, is unauthorised by law and what is now proposed in adopting that approach is changing fundamentally the taxing regime by altering the legislation to conform with what appears to be an unauthorised practice. It is a problem that does not appear to occur in any other Australian jurisdiction. Further, it creates yet a new approach in Australia, differentiating South Australia from all other jurisdictions on what should be capable of being a common approach, that is determining the value for duty purposes as at the date of the contract of sale not the date of the conveyance where the conveyance is pursuant to a sale.

I would just interpose at this stage and indicate that this particular issue is an issue that has been raised not just by this highly respected tax lawyer but a number of other people as well in relation to this issue, and certainly whilst I am seeking a response from the government to all issues raised in this submission in particular, there are a number of individuals and groups who have raised questions in relation to the government's proposed approach in that particular area. I continue with the submission:

> Clauses 42, 43 and 49—Agreements for Sale and Conveyances on Sale
>
> As already described, it is proposed to amend section 31 in respect of agreement for the sale of property so that it accords with the proposed amendments to section 60A(1). The suggestion that the long established practice of the Commissioner in respect of section 60A supports retrospectivity is not always supported by his practices in respect of section 31 or indeed the section itself. Section 31 supports the contrary view.
>
> Under the assessing practices prior to 18 June 2015, if there was an agreement for the sale of a business consisting of goodwill, plant and equipment, stock in trade and a transfer of a registered lease of leased premises that was to settle twelve months after the agreement, the whole of the duty would be assessed on the agreement and was payable within two months of the date of the agreement, other than in respect of the stock in trade, that is not then known.
>
> However, if there was an agreement for the sale of the business consisting of goodwill, plant and equipment, stock in trade and a transfer of fee simple land that was to settle within twelve months after the agreement, then duty would be assessed on the agreement in respect of the non land component as of the date of the agreement (other than stock in trade) and the duty on the land would be imposed on the land transfer. Otherwise it appears all was assessed on the contract and the subsequent conveyance adjudged to the contract if in conformity.

There is a note which says:

> The basis for this practice of differentiating between contracts with postponed settlements finds no obvious justification in the terms of existing legislation.

It goes on to say:

> If all property were assessed, as at the date of the agreement, then there is consistency, though it is not clear from section 31 how the exception is to apply, if there is a single consideration for all assets that is not apportioned. Any practice of apportioning some part of the consideration for land does not appear to be authorised by the section. Even if it did, nothing in the section authorised the adoption of a date other than the date of the agreement for sale to be used for determining the value on any such apportionment.
>
> In these situations where the duty was paid in the agreement any subsequent conveyance made in conformity with the agreement, is to be adjudged in affect to the agreement. That is, no further duty was payable on the

conveyance whenever it may be executed, whether it is one year or ten years later. This once again emphasises that the date of sale is the date of the agreement not some subsequent date.

If the proposal to amend section 31 by adopting section 31(1a), as currently drafted is adopted, then it may also be necessary to amend the head of charge in respect of conveyances or transfers on sale in item 3(1) of Part 1 of Schedule 2.

The head of charge currently provides that the duty be assessed on a 'Conveyance or transfer on sale of any property (not otherwise charged), including contract or agreement for sale'—is to be on (a) 'the value of the financial product' and (b) in any other case 'where the value of the property conveyed…' This appears to create yet further inconsistencies.

Further, in view of the Commissioner's recent revenue ruling about conveyances by direction (refer to revenue ruling SDA009 Conveyance by Direction) the limitation in proposed 31(2)(a) requires reconsideration. The effect is that if the conveyance is made to a person other than the purchaser under the contract, namely to a person by direction to which section 68 does not apply, then the conveyance will not have the benefit of the credit under section 31(2). It is to be noted that proposed section 31(2)(a) is in similar terms to the existing section 31(2). So far, the current section 31(2) is rarely created an issue because a letter of nomination was produced and consequently the purchaser under the contract was the principal not the agent. It may have been more problematic where there was an assignment, though it is arguable that the assignee was the purchaser under the contract by virtue of the assignment and paying the purchase price. A person taking a conveyance by direction is unlikely to be ever described as the purchaser under the contract.

Clauses 42, 43 and 49—Some Other Anomalies or Reservations

The proposed amendments will create yet other anomalies. We would submit that what appears to have been overlooked in proposing to legislate in this way is that fundamentally, on the execution of the contract and the sale of property certain rights accrue in respect of that property and may be enforced in the courts. In arm's length matters, the parties have agreed the price and therefore usually the market value.

In many of those situations specific performance is available to ensure performance by either party. The purchaser has an interest in the property commensurate with the ability to obtain specific performance. The purchaser is no stranger to the property any longer. Under the described practice and the proposed amendments, the realities of commercial transactions is to be effectively ignored and an artificial criterion for the imposition of duty prescribed.

Some simple examples highlight issues….A developer of an apartment building will develop a program for the sale of the apartments recognising that those persons who are prepared to purchase off the plan, before the building has even started, should be offered an incentive. Sometimes these persons enter into the contract a year or two before completion. It often assists the developer in financing the development. The price agreed for the apartment at that point recognises many trade-offs and the acceptance of certain risks. Under the Commissioner's current practice and this proposal those very realities are ignored in a one-sided way. If the completed or near completed apartments sell well then the price of the apartments will increase over time. The Commissioner will under his current practice and these amendments assess the duty on this later higher price. If they do not sell well and the price drops, the Commissioner will assess the duty on the consideration.

A developer of broad acres enters into a contract with a farmer to purchase a relatively large tract of land on the Metropolitan fringe for a significant premium over the price the land will sell for as farming land. The contract is subject to the developer obtaining all necessary rezoning approvals and allows the developer some years to achieve it. The developer then obtains the rezoning approvals and deposits the development plans including subdividing the land into a substantial number of lots. This takes a number of years. Under the practice and proposed legislation the duty will be assessed on the considerable enhanced value of the land at the time of the transfer not at the time of the contract of sale. This will be the case notwithstanding the existence of the contract, the risks assumed by the developer and the enhancement in value primarily comes from the efforts and expenditure of the developer.

A person purchases a dwelling house at an auction. The purchaser achieves a favourable price at the auction. The purchaser does not appreciate the property is being sold as part of an acrimonious divorce settlement. One of the spouses refuses to sign the transfer and the matter becomes the subject of protracted litigation leading after nearly a year to an officer of the court executing the transfer. The value of the property at that time of the conveyance is significantly in excess of the price because of the much improved market conditions and the advantage achieved at the auction. The purchaser will pay duty on the value as at the date of the transfer not on the consideration. It also fails to recognise that in such a situation the purchaser is likely to incur considerable expenses.

The foregoing examples highlight the practice adopted and the proposed amendments simply do not recognise that the price at the date of the contract reflects the risks taken by a purchaser at the time of the contract and can be wholly unrelated to the value of the property when it is to be transferred. The approach proposed will also often give the Commissioner the best of both worlds. It is submitted that the practice and the proposed legislation is artificial and inconsistent with the original purpose of the amendments that adopted section 60A.

Accordingly, if the proposed changes are to be persisted with, it is submitted that the provisions relating to duty on conveyances be wholly reformed with one suite of consistent and intelligible provisions rather than the continuing patchwork of amendments. Further, as fundamentally the conveyance duty is now to be based on value,

the consideration passing should be ignored. In future the duty should be assessed on the Valuer-General's capital value, where the property involved is land, on the day the transfer is lodged at the Lands Titles Office. This will further simplify the system of payment, collection and ascertaining values.

In broader terms as one of the examples has highlighted, the proposed amendments, as does the practice, have the potential to significantly impact on the cost of vacant building allotments. It is common for developers to enter into agreements to purchase land subject to obtaining certain development approvals. Such agreements usually provide for the land owner to receive a significant amount in excess of broad acre value once such approvals are obtained. Such approvals can sometimes take many years.

The effect of the proposed amendments is to render the conveyance of the land dutiable on the post development and subdivision approval value, which is often considerably in excess of the consideration actually being paid or the value at the date of the sale. In effect the stamp duty cost becomes so high that any development arrangement is likely to take a very different form, than a sale.

Clauses 42, 43 and 49—Retrospective Operation

The Second Reading speech reflects the Commissioner's view that the amendment, and by implication the justification for retrospective legislation, is to reflect the Commissioner's longstanding practice and that the practice has persisted for in excess of twenty years. Whatever may be the Commissioner's practice and no matter how longstanding that practice may have existed it does not justify retrospectively making the law accord with the Commissioner's practice. It is fundamentally inimical to our concept of the rule of law.

I interpose at this stage with my own question to the minister to ask the government to respond to the fact that is it the case that Revenue SA had received legal advice that their longstanding practice, in essence, was not supported by the current legislation, and that the legislation needed to be changed to provide validity to what the Commissioner has indicated was the longstanding practice? I flag that I would like to pursue that particular issue within the committee stages, in particular, because as this submission and others have highlighted, this is an issue of significant concern to people and some have intimated to me that this is as a result of legal advice being received by the government that their current practices were unsustainable and unsupported by the existing legal position and that the government needed to amend the legislation to support what the Commissioner has identified as a longstanding practice. I return to the submission:

The fundamental starting point in a consideration of a proposal that legislation be retrospective is that retrospective legislation is inimical to our system of law and democracy. A few quotes from F. Bennion [*Bennion on Statutory Interpretation* (5th ed.)] provide both an explanation and some justifications for this view. The fundamental proposition is that the law should be certain.

The anathema that retrospectivity constitutes is highlighted in the following quote:

> The essential idea of a legal system is that current law should govern current activities…If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. '…those who have arranged their affairs…in reliance on a decision which has stood for many years should not find that their plans have been retrospectively upset'…
>
> Retrospectivity is artificial, deeming a thing to be what it was not. Artificiality and make-believe are generally repugnant to law as the servant of human welfare.

As Bennion yet further highlights:

> A law that is altered retrospectively cannot be predicted. If the alteration is substantive it is therefore likely to be unjust. It is presumed that Parliament does not intend to act unjustly.

Further, this is not a new controversy. In 1910 the Commissioner in Western Australia sought to adopt the position contended for by the Commissioner. The High Court rejected that view in The Crown v the Bullfinch Proprietary (WA) Limited. In addition the Stamp Duties Act 1923 has been amended in excess of ninety times since it effected a consolidation of the laws relating to stamp duties in this State in 1923, but at no time since, it appears, has the Executive been concerned to ensure the current view of the Commissioner, is to prevail by approaching Parliament to do what is now proposed.

Nothing in *Hansard* in 1980 suggests that there was to be a change in practice or the law on this aspect. In addition, the review of the Commissioner's Circulars highlights that it was only with the advent of Circular 234 issued on 3 October 2002 that the subject practice was described, in a particular context, notwithstanding earlier opportunities to do so.

Further, in December 1990, over twenty three years ago, the Commissioner issued the first of his now superseded Circulars. A number of those circulars mention section 60A but it is not apparent prior to Circular 234 in 2002 that there has been a departure from the previous practice described above, notwithstanding the statements to the contrary.

And there is a reference in a note underneath to Circular 27 from 1992, Circular 87 from 1993, Circular 149 from 1997, Circular 157 from 1997, Circular 166 from 1998, Circular 209 from 2000.

One would suggest that on the occurrence of such fundamental change in practice the circular system should have been used to announce it. Circular No 9 Stamp Duty Fishing Licences—Liability for Duty in December 1990 and Circular No 13 Stamp Duty Transfer of Realty (Land Rich Entities) Aggregation Provisions in May 1991 are two simple examples of where the Commissioner used those circulars to publish and clarify his views. It is submitted simply asserting that the practice of the Commissioner fundamentally changed and that the community must therefore see the law changed to conform to that view is not a justification. Even if that change occurred on the basis of advice, which now appears to be incorrect, it makes no difference to the fundamental principle that the retrospectivity is inimical to our law.

In our submission taxpayers are entitled in our society to order their affairs on the basis of the law as it is stated by Parliament and the advice they take on its meaning. Their view may be different to the Commissioner. If it is subsequently found that such views are correct and prevail over that of the Commissioner's view, the clients are entitled to have the benefit of that. If it is found to be wrong, then they pay the tax and any relevant interest and penalties. In the circumstances of this matter we submit there is nothing to justify the use of retrospective legislation, whatever the practice of the Commissioner may have been or said to have been in the past.

Further, if the Commissioner argues the justification is to protect the Revenue against serious loss he should provide details, both legal and financial, from which the extent of the threat might be determined. From a legal perspective that would require the Commissioner to say that, most likely, his practice would be found to have been unlawful. This would squarely raise the question whether the unlawful expropriation of monies from taxpayers ought, at any level of Government, then be ratified.

Also of relevance will be whether the taxpayers who have paid too much can recover in light of the limitation periods for objecting to assessments, obtaining refunds and requesting reassessments. While the Commissioner may, in regard to these time limits, be caught by his own current argument that a stamping on his RevNet system does not generate an assessment it seems unlikely that many taxpayers would have stamped on the basis of the value at the date of conveyance rather than at the date of sale, in stamping instruments via RevNet (i.e. most are likely to have used the agreed consideration in the contract of sale).

Retrospective provisions that preserve and protect against the adoption and application of a misinterpretation of the law is an even greater anathema to the rule of law than simple retrospective amendments. It ought not to be countenanced in this situation, even if there are situations where retrospective legislation can ever be countenanced.

Clause 43(3), the transitional provisions protects those who have had a favourable objection decision. It appears anomalous that it is a requirement that the objector must have lodged the objection within the 60 days, where the objector could have lodged out of time with in effect the approval of the Minister for up twelve months.

Clauses 42, 43 and 49—Conclusion

This long accepted and established practice has some shortcomings where there are house and land packages involved. This has been addressed in other jurisdictions. Each of the other jurisdictions use the sale contract as the relevant date. In some jurisdictions the duty is paid on the agreement and in others on the conveyance. The proposed change will differentiate South Australia on this aspect and one must question whether it is warranted.

It is further submitted, that rather than simply making a yet further amendment that simply blurs, yet further, the evaporating differences, between the two concepts, the provisions relating to duty on conveyances be wholly reformed with one suite of consistent and intelligible provisions, if the amendments are to be persisted with.

Even if the amendments are warranted, retrospective legislation is simply not warranted in this situation.

Clauses 42, 43 and 49—Retrospective Operation—Penalties and Interest

The retrospective provisions in clause 49 provide for no relief from penalties or interest in respect of these retrospective changes. The Commissioner appears however to have indicated in Revenue Ruling SDA008[V3] that these provisions will only apply in respect of instruments processed via RevNet on or after 18 June 2015.

If the provision is to have retrospective effect then there must be an express provision that no penalties or interest can apply to any instruments assessed retrospectively.

Part 11—Stamp Duties Act 1923

Clause 50

In the proposed section 71DC(1)(b) there is a reference to land used for primary production. As explained earlier there is no definition applicable to such use.

In the proposed section 71DC(2) there is the repeated use of the expression "after taking into account information provided by the Valuer-General". Whilst it appears implicit that the Commissioner may have regard to other information it is highly preferable to say so. It is therefore suggested that this provision be amended as follows or some

wording to like effect "after taking into account information provided by the Valuer-General and such other information as may be appropriate in the circumstances".

It would appear that the classification is to be determined at the time of the conveyance not the date of the contract of sale. In view of the difficulties described above about what is the relevant date, this should be explicitly stated.

It is unclear from these provisions how broad acres under development for sale as residential allotments are to be classified. If at the time of the conveyance (assuming that is the test point) land had been used as primary production land but then rezoned as residential land, is it to be regarded as non residential because it is yet to be developed and is not then used as primary production land?

Part 12—Stamp Duties Act 1923

Clause 53

Much the same comments as in paragraphs 105 to 108 apply to this proposed section.

There is also a question as to whether the staged abolition will create a series of cliffs in the property market. This is a matter that an economic adviser may be able to comment on.

Part 13—Supreme Court Act 1935

Clause 54

This will allow for the introduction of ad valorem probate fees by regulation.

Ad valorem probate fees were the forerunner of death duties.

In effect these provisions will allow for a form of death duty.

Part 14—Taxation Administration Act 1996

Clause 55

Section 93 of the Taxation Administration 1996 currently provides that to appeal to the Supreme Court it is first necessary to pay the tax in dispute, unless the Minister waives this requirement. The decision of the Minister is, unfortunately, declared to be a non-reviewable decision, which means in most situations that it cannot be called into question. This restriction should also be removed.

The proposed amendment is simply limited to reducing the amount required to be paid to 50 per cent. This appears to be based on the Federal Commissioner's practice that a taxpayer can pay 50 per cent of the tax in dispute. Under the Federal Commissioner's practice, if the 50 per cent is paid no interest thereafter accrues nor are recovery proceedings taken. Neither apply in this situation, so interest continues to accrue on the unpaid 50 per cent and the Commissioner may enforce the assessment. The Commissioner does enforce some assessments by the use of caveats or charges on the land.

The requirement to pay the tax in dispute before appealing applies in only one other jurisdiction and then in different terms. In the Taxation Administration Act 1997 (Vic) there is no similar requirement though the Commissioner may apply to the Supreme Court for an order as to the payment or some part of the tax in dispute. The Taxation Administration Act 1997 (NSW), the Taxation Administration Act 2001 (QLD) and the Taxation Administration Act 2003 (WA) do not contain any similar requirement. The Taxation Administration Act 1997 (Tas) does contain a similar provision to South Australia except that the decision to waive payment is to be made by the Commissioner but that decision does not appear to be non-reviewable.

It is submitted that the Victorian or New South Wales provision should be adopted rather the 50 per cent approach. If the 50 per cent is to prevail the decision of the Minister should also be reviewable, no further interest accrues and no enforcement processes undertaken. Recent decisions and practices further highlight the difficulties the current requirement can cause.

That concludes, as I said, the quite detailed submission from this tax lawyer. I thank that particular person (a) for his expertise, (b) for his devotion to duty and (c) for his willingness to commit in writing all of the detailed questions and concerns he and others have about aspects of the legislation.

I conclude my remarks by again repeating to the minister my request that a copy of the detailed response that the minister provides in relation to this be made available to me as soon as the Treasurer has approved it so that I can commence my consultation with the tax lawyer and indeed others who have interest in this particular area, which will assist our progress through the committee stage of this debate.

The Hon. K.L. VINCENT (17:45): I will speak briefly to indicate Dignity for Disability's general support for the second reading of the bill, but I would also like to raise a few questions. Firstly,

I would like to thank the Treasurer's office for arranging, I believe, eight people to brief my office on the bill, so it was obviously a very comprehensive briefing.

We support some of the measures in this bill which support people with disabilities, family carers and disability support providers where relevant, including exemptions from conveyance duty on properties transferred to special disability trusts and as used by the beneficiary's principal place of residence; exemptions from stamp duty on motor vehicle transfers where the patient or guardian of an 'incapacitated child' buys a vehicle to transport that child; and exemptions from stamp duty on motor vehicle transfers where disability service providers buy vehicles to transport persons with disabilities.

Dignity for Disability has raised some additional issues in relation to the stamp duty exemption. We would like to see it extended to all family vehicles used to transport adults with disability where their disability would prevent them from independently transporting themselves. At the moment, it only extends to people under the age of 18. I am sure that I do not need to tell anyone in this chamber that just because someone turns 18, it does not mean that their disability and their related needs disappear and they no longer require assistance in a modified vehicle, where that is what they require.

We have also sought some clarification around what the term 'incapacitated' means and whether that is the definition we are looking for and the one we should be using. It is certainly not a 21st century definition of disability and it would be good to see legislation starting to reflect appropriate person-first language appropriate to this century, not the last. Language certainly does matter. However, I think the use of the term 'incapacitated' is also unclear for another reason. It is my understanding that this refers specifically to someone whose disability affects the use of their legs and thereby their ability to drive a car.

My office certainly deals with lots of constituents who do not necessarily have a physical disability but may have a disability that is intellectual or sensory in nature, which would impact their ability to independently use a vehicle, so we would like this exemption expanded to cover them. I understand from speaking to the Treasurer that he is open to expanding this definition, and I thank him for that, but I would like to make sure that that is what will happen.

This bill also amends the Rates and Land Tax Remission Act 1986 to provide a new cost of living concession to replace the existing council rate concession. While Dignity for Disability applauds this initiative, we have had some concerns raised with us by constituents around the awareness of this new concession for renters and the accessibility of the website administering the payment.

On 30 July, members may recall that I asked some questions in this place about this website and I have not yet received an official answer. In the briefing my office had yesterday, some questions were provided when put to the government briefer but some still remain unclear, so perhaps I will put some of those on the record now.

1. Why is the downloadable application form in PDF only, meaning that it could be inaccessible to people using screen readers due to a vision impairment? I would certainly hate for people to have to rely on someone to read the form out to them.

2. Is there a plan to make a version of the application form that is not only not in PDF but also in easy English and plain language for people with literacy issues?

3. Why can't those applying for the concession post 31 October access the payment for this financial year?

4. Why will it take up to 31 March, that is nine months, if you apply on 1 July for this payment to be received? Why does it take nine months to process an application for $100.

5. Will the department be providing face-to-face support as well as phone and internet based support for South Australians through an agency such as Service SA to assist people to apply for this concession?

I appreciate that I have already put some of these questions on record, but given that they have been raised to me by constituents who are interested in applying for this concession, I would appreciate an answer so that I can go back to them and support them with applying for this important concession.

With having put those questions on record, I indicate again Dignity for Disability's general support for the bill.

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

CONSTITUTION (GOVERNOR'S SALARY) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 24 September 2015.)

The Hon. R.I. LUCAS (17:52): On behalf of Liberal members, I rise to support the second reading of this bill. This bill amends the act to refer the matter of the Governor's remuneration to the Remuneration Tribunal. The government has outlined that the intention of the bill is to allow the Governor, like other significant office holders such as members of the judiciary and the legislature, to have the benefit of establishing appropriate salary arrangements, including superannuation and salary sacrificing. The government argues the current legislative framework and a recent tax ruling limits the ability of the Governor to enter into these arrangements and, therefore, places the Governor at a disadvantage.

I have been provided by the government a copy of the relevant tax ruling which, for those avid readers of tax rulings, is referred to as TR 2001/10. I refer them in particular to paragraphs 55, 56 and 57 under the heading of 'Office holders'. Paragraph 55 states:

> An office may be created under the Constitution or a law of the Commonwealth, a State or a Territory. The duties of the office may be set out in the instrument that creates the office or may be determined by the entity to whom the office holder reports.

Paragraph 56 states:

> However appointed, terms of remuneration that an office holder is to receive will usually be set out in either the instrument that creates the office or more likely in a written agreement between the office holder and the entity to whom the office holder reports.

Then, the critical paragraph of this tax ruling is paragraph 57, as follows:

> If the terms of remuneration for the office holder are set out in the instrument that creates the office, it may not be possible for the office holder to enter into an effective SSA.

SSA refers to a salary sacrifice arrangement. The paragraph continues:

> Where the instrument permits the relevant entity to enter into a remuneration agreement with the office holder, the agreement may be amended during the period that the office holder occupies the office to reflect changes made to responsibilities and remuneration arrangements, such as by a SSA.

The government's legal advice, and the government's advice to the opposition, has been that that particular tax ruling currently restricts the Governor from entering into salary sacrifice arrangements such as those that are available to others in the community, and that is the principal purpose for the legislation that we see before us.

I do note that there has been some media publicity that the government, through this legislation, was seeking to give the Governor a significant pay rise of $100,000. I can only refer to statements made by the Premier, who indicated that that was not the intention of the legislation and that he did not believe that would be the end result of the passage of the legislation. However, the opposition accepts that the final decision with this will rest with an independent body, the Remuneration Tribunal; it will be a decision for that tribunal. Nevertheless, in the briefings the government provided to the opposition it indicated that the bill is essentially in response to that particular tax ruling, which has created particular difficulties, and this is the government's attempt to sort that out.

There is one other aspect that should be referred to, and that is that the current legislation and arrangements for the Governor actually provide that where a governor has served four years and six months of a five-year turn the Governor is entitled to furlough leave, entitled to their salary for the final six month period. We are advised that this particular clause, or furlough leave, gave effect to an historical practice where English governors would take six months' furlough to return to

England. As the government considered this provision was antiquated and the Governor supported its removal, this particular provision is being removed from the current practice and the antiquated notion of six months' furlough leave for governors will be removed.

As I said, on the basis of the undertakings that have been provided to the opposition from the government and, indirectly through persons representing the Governor (we did not judge it to be appropriate to directly consult the Governor on this particular issue), we were provided with an indication that he had no objection to legislation being passed. On the basis of those undertakings the Liberal Party supports the second reading and the passage of the bill.

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

Bills

LONG SERVICE LEAVE (CALCULATION OF AVERAGE WEEKLY EARNINGS) AMENDMENT 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) (17:58): 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.

The Long Service Leave (Calculation of Average Weekly Earnings) Amendment Bill 2015 seeks to amend subsection 3(4)(a) and subsection 3(4)(b) of the *Long Service Leave Act 1987*. Subsection 3(4)(a) disregards whole weeks of unpaid leave from the calculation of long service leave payments for casual or part-time workers. Subsection 3(4)(b) stipulates that for the purposes of performing this calculation, the relevant periods when the worker was not at work due to work injury and in receipt of weekly payments will also be disregarded.

The intention of the amendments to subsection 3(4)(a) and subsection 3(4)(b) is to clarify that in addition to the unpaid leave exclusions, any week that a casual or part-time worker is absent from work for a work injury, is also excluded in the same manner.

The need for this clarity arises from a recent significant decision in the case of *Flinders Ports Pty Ltd v Woolford*, which was heard by the Full Court of the Supreme Court of South Australia.

In this matter, a worker's long service leave payment was reduced to almost nothing as a result of the Full Court of the Supreme Court's interpretation of 'unpaid leave' for the purpose of calculating a long service leave entitlement. The Full Court of the Supreme Court held that 'unpaid leave' does not include the absence of an employee from work due to a compensable injury.

The Bill aims to remedy the unsatisfactory consequences of the Flinders Ports decision for casual and part-time employees under the *Long Service Leave Act 1987.* If a casual or part-time employee is entitled to long service leave payments, they should not end up with a zero or minimal payment because they were injured while performing their work.

Further, a compelling argument for the Bill is that casual and part-time employees, as employees eligible for long service leave under the *Long Service Leave Act*, should have their long service leave payments protected in the same manner as full-time employees. Currently full-time workers who are absent from work because of a work-related injury do not have their payment in lieu of long service leave upon termination reduced under the *Long Service Leave Act*, as the averaging provision of subsection 3(2) does not apply to them.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Long Service Leave Act 1987*

4—Amendment of section 3—Interpretation

This clause amends section 3 to ensure that any week in which a worker is absent from work on account of a work injury (within the meaning of the *Return to Work Act 2014*) for which the worker received weekly payments under that Act or, before 1 July 2015, under the *Workers Rehabilitation and Compensation Act 1986* is excluded from the calculation of averaging weekly earnings under subsection (2)(a) or the number of hours worked per week under subsection (2)(b).

Schedule 1—Transitional provision

1—Transitional provision

This clause inserts a transitional provision to provide that the amendment effected to the *Long Service Leave Act 1987* by this Act applies in relation to any long service leave taken (or any payment made in lieu of long service leave) on or after the commencement of this Act (including so as to apply in relation to absences of a worker occurring before the commencement of this Act).

Debate adjourned on motion of Hon. D.W. Ridgway.

STATUTES AMENDMENT (INDUSTRIAL RELATIONS CONSULTATIVE COUNCIL) 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) (17:59): 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.

In July 2014 the Government committed to a process of reforming State Government boards and committees.

In considering the role and function of the Industrial Relations Advisory Council, SafeWork SA Advisory Council and the Asbestos Advisory Committee, I am of the view that these committees should be abolished with a broader engagement approach adopted to create a central consultative point for key State industrial relations policy matters, work health and safety issues, and asbestos.

The Statutes Amendment (Industrial Relations Consultative Council) Bill 2015 will establish the Industrial Relations Consultative Council to replace the Industrial Relations Advisory Committee, the SafeWork SA Advisory Council and the Asbestos Advisory Committee, which was a non-statutory committee that lapsed on 30 June 2015.

The functions of the three committees are at times considered to be duplicative, and so inefficient, with the same members often represented on more than one committee. In the case of the Industrial Relations Advisory Committee, the role has been significantly diminished since the referral of certain industrial relations powers to the Commonwealth effective from 1 January 2010.

The Bill also makes a consequential amendment to the *Work Health and Safety Act 2012* (SA) integrating the small business commissioner's role in the approval of work health and safety codes of practice, creating a streamlined, less bureaucratic consultation process.

The Industrial Relations Consultative Council will provide an integrated approach to the consideration of the full range of industrial relations issues. It will be responsible for core consultative and advisory functions and providing high level advice to the Minister for Industrial Relations to facilitate the effective and efficient administration of laws covering safe and fair workplaces. It will also have the ability to establish time-limited, outcome-driven issues groups for specified purposes to assist it with the exercise of its functions.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Fair Work Act 1994*

4—Amendment of section 4—Interpretation

This clause amends section 4 of the principal Act to remove the definition of the Committee and insert a definition of the Consultative Council.

5—Amendment of section 7—Industrial authorities

This clause amends section 7 to substitute the Industrial Relations Advisory Committee with the Industrial Relations Consultative Council.

6—Repeal of Chapter 2 Part 5

This clause repeals Chapter 2 Part 5.

7—Insertion of Chapter 6AA

This clause inserts Chapter 6AA.

Chapter 6AA—Industrial Relations Consultative Council

Part 1—Establishment of Consultative Council

218—Establishment of Consultative Council

This clause establishes the Industrial Relations Consultative Council.

Part 2—Functions and powers

218A—Functions and powers of Consultative Council

This clause establishes the functions and powers of the Consultative Council.

Part 3—Composition of Consultative Council

218B—Membership of Consultative Council

This clause establishes the membership of the Consultative Council.

218C—Terms and conditions of office

This clause establishes the terms and conditions of members of the Consultative Council.

218D—Fees Allowances and expenses

This clause establishes the fees, allowances and expenses of the Consultative Council.

Part 4—Proceedings of Consultative Council

218E—Meetings

This clause establishes the meeting requirements of the Consultative Council.

218F—Proceedings

This clause establishes the proceedings of the Consultative Council.

218G—Conflict of interest under *Public Sector (Honesty and Accountability) Act 1995*

This clause inserts conflict of interest requirements to be observed by members of the Consultative Council.

218H—Validity of acts

This clause preserves the validity of acts of the Consultative Council.

Part 5—Use of staff and facilities

218I—Use of staff and facilities

This clause enables the Consultative Council to make use of staff and facilities.

Part 6—Committees

218J—Committees

This clause enables the Consultative Council to establish committees.

Part 7—Related matters

218K—Confidentiality

This clause imposes a confidentiality requirement on members of the Consultative Council and members of any committee established by the Consultative Council.

8—Transitional provision

This clause inserts a transitional provision ensuring that a member of the Industrial Relations Advisory Committee ceases to hold office on the commencement of the clause.

Part 3—Amendment of *Work Health and Safety Act 2012*

9—Amendment of section 4—Definitions

This clause amends section 4 of the principal Act to remove the definition of the Advisory Council and insert a definition of the Consultative Council.

10—Amendment of section 68—Powers and functions of health and safety representatives

This amendment is consequential.

11—Amendment of section 274—Approved codes of practice

This clause makes changes that are consequential. It also makes a change to the consultation process to incorporate the involvement of the Small Business Commissioner.

12—Amendment of Schedule 2—Local tripartite consultation arrangements

This clause makes changes that are consequential.

13—Amendment of Schedule 5—Provisions of local application

This clause makes a consequential change.

14—Transitional provision

This clause inserts a transitional provision ensuring that a member of the SafeWork SA Advisory Council ceases to hold office on the commencement of the clause.

Debate adjourned on motion of Hon. D.W. Ridgway.

CONTROLLED SUBSTANCES (SIMPLE POSSESSION OFFENCES) AMENDMENT 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) (17:59): 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.

This Bill will amend the *Controlled Substances Act 1984* to address an anomalous application of the Police Drug Diversion Initiative, which operates under that Act to divert people charged with simple possession offences away from the criminal justice system into drug assessment for counselling and/or treatment.

The Police Drug Diversion Initiative (PDDI) was introduced in South Australia in 2001 through legislation under the *Controlled Substances Act 1984* (sections 33L, 34-40). Under the PDDI, if a person is alleged to have committed a simple possession offence, ie possessing a small amount of illicit drugs, a police officer must refer the person to a nominated assessment service for assessment, which involves attending interviews and/or medical examinations. Underpinning the scheme is the notion that personal drug use is more appropriately and effectively addressed with a health response, rather than a criminal justice response.

It is important to ensure that the PDDI scheme is targeted appropriately, however. It has been brought to the Government's attention that the scheme can be invoked in unintended circumstances.

Regularly when a person is apprehended for manufacturing illicit drugs, the person is also found to have a small amount of the drug in their possession and therefore also charged with simple possession. In these

circumstances the offending is not properly characterised as personal drug use, therefore this is not considered to be an appropriate application for the PDDI scheme.

To address this, this Bill will amend the *Controlled Substances Act 1984* to preclude a person who is charged with a 'serious drug offence', as defined in the Bill, from being diverted under the PDDI scheme for a simple possession offence arising out of the same circumstances.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Controlled Substances Act 1984*

4—Substitution of section 34

This clause substitutes a new section 34 to provide that the Division dealing with simple possession offences does not apply to a person who is alleged to have committed a simple possession offence and is charged with a serious drug offence (which is defined) arising out of the same circumstances.

Schedule 1—Transitional provision

The Schedule provides that a referral to an assessment service under the relevant Division before the commencement of the measure is unaffected.

Debate adjourned on motion of Hon. D.W. Ridgway.

At 18:00 the council adjourned until Wednesday 14 October 2015 at 14:15.

Answers to Questions

MINISTERIAL TRAVEL

7 The Hon. R.I. LUCAS (4 December 2014). (First Session) For any overseas trip undertaken by the Minister for Regional Development and staff or officers since 1 January 2014, can the minister advise—

1. How much of the total cost of the trip was paid by the minister's office budget and how much by the minister's department or agency?

2. What are the names of officers or staff who accompanied the minister on each trip?

3. Was any officer or staff member given permission to take private leave as part of the overseas trip?

4. What the details of the cities and locations visited if they have not been already previously published on the department's proactive disclosure website?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation):

Staff members and I did not travel overseas during 2014.

LAKE BONNEY

In reply to **the Hon. J.S.L. DAWKINS** (6 August 2014). (First Session)

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation): The Minister for Transport and Infrastructure has received this advice:

The Department of Planning, Transport and Infrastructure (DPTI) administers geographical names within South Australia as part of it's broader mapping functions. The current proposal to add the name 'Barmera' to that of the current name of 'Lake Bonney Riverland' is part of a program to dual name South Australian landmarks to reflect the indigenous heritage associated with natural features.

This request was initiated by the First Peoples of the River Murray and Mallee Region. The name of 'Barmerara' was initially proposed by the First Peoples. It derives from the word 'bahrank' meaning large expanse of water. Early in the discussions the name of Nookamka was suggested but advice from the First Peoples was that this is a clan name, and it was common for clan names and place names to be confused by the early European settlers.

The Geographical Names Unit of DPTI was advised of the Berri-Barmera Council's decision to support the dual naming of the Lake on 18 February 2014. In that advice they indicated that a local elder of the First Peoples was supportive of dropping the 'ra' meaning 'of' from 'Barmerara'. The Geographical Names Unit confirmed this with the elder.

Following extensive public consultation by the Berri-Barmera Council, the Minister for Transport and Infrastructure issued a notice of intent to assign a dual name at the end of July 2014, inviting submissions from the public by the end of August 2014. None of the subsequent submissions raised concern at the dropping of the 'ra' from the original proposal 'Barmerara'. This was the final step in the public consultation process and the Surveyor-General forwarded his report to the Minister for Transport and Infrastructure for consideration and approval of the dual name shortly thereafter.

The minister has now approved the dual naming of the Lake and following the official gazettal, the name will be Lake Bonney Riverland/Barmera.