LEGISLATIVE COUNCIL

Tuesday, 27 October 2015

The PRESIDENT (Hon. R.P. Wortley) took the chair at 14:18 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

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

Assent

His Excellency the Governor assented to the bill.

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

Assent

His Excellency the Governor assented to the bill.

WATER INDUSTRY (THIRD PARTY ACCESS) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

CONSTITUTION (GOVERNOR'S SALARY) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

WHYALLA STEEL WORKS (ENVIRONMENTAL AUTHORISATION) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the President—

Auditor-General—Supplementary Report—Information and Communications Technology, 2014-15
Police Ombudsman—Report, 2014-15

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

Reports, 2014-15—
Administration of the State Records Act 1997
Attorney-General's Department
Construction Industry Long Service Leave Board
Department of the Premier and Cabinet
Department of Treasury and Finance
Director of Public Prosecutions
Distribution Lessor Corporation

Essential Services Commission of South Australia
Funds SA
Generation Lessor Corporation
Legal Services Commission of South Australia
Liquor and Gambling Commissioner—Licensee Barring Orders
Local Government Finance Authority of South Australia
Lotteries Commission of South Australia
Operations of the Auditor-General's Department
South Australian Classification Council
South Australian Government Financing Authority
Southern Select Super Corporation
Super SA Board
TAFE SA
The Commissioner for Kangaroo Island
The Senior Judge of the Industrial Relations Court and the President of the Industrial Relations Commission
Transmission Lessor Corporation

Listening and Surveillance Devices Act 1972, Report 2015
State Election and By-Election—Report, 2014-15—Erratum
Regulations under the following Acts—
Development Act 1993—Acts and Activities which are not Development
Independent Commissioner Against Corruption Act 2012—Miscellaneous
Rules of Court—
Supreme Court—Supreme Court Act 1935—
Land and Valuation Division—
Amendment No. 1
Amendment No. 1—Supplementary
Serious and Organised Crime (Unexplained Wealth) Act 2009—Review of the execution of powers exercised during the period from 1 July 2013 to 30 June 2015

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

Independent Gambling Authority—Report, 2014-15

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

Reports, 2014-15—
Adelaide Dolphin Sanctuary Act 2005
Adelaide Entertainment Centre
Dairy Authority of South Australia
Department of Environment, Water and Natural Resources
Forestry SA
Lake Gairdner National Park Co-Management Board
Primary Industries and Regions SA (PIRSA)
Veterinary Surgeons Board of South Australia
Yumbarra Co-Management Board
Zero Waste SA
State of the Sector—Report, 2015
Regulations under the following Act—
Food Act 2001—Miscellaneous

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

Attributing to Employment to Exports—Report.

Ministerial Statement

ADELAIDE FASHION FESTIVAL

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) (14:24): I table a copy of a ministerial statement relating to the Adelaide Fashion Festival 2015 made earlier today in another place by my colleague the Premier.

EMERGENCY DEPARTMENTS

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:24): I table a copy of a ministerial statement relating to emergency department presentations made earlier today in another place by my colleague the Minister for Health.

STATE EXPORT FIGURES

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (14:24): I table a copy of a ministerial statement relating to a report entitled 'Attributing Employment to Exports' made earlier today in another place by my good friend the Minister for Investment and Trade.

Parliamentary Procedure

ANSWERS TABLED

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

Question Time

NATURAL RESOURCES MANAGEMENT LEVY

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): I seek leave to make a brief explanation prior to asking the Minister for Sustainability, Environment and Conservation a question about NRM levies.

Leave granted.

The Hon. D.W. RIDGWAY: My colleague the Hon. Michelle Lensink and others have been raising for some time in this place questions around the steep increases proposed in the NRM fees. In particular I was pleased to note that in *The Advertiser* on Monday this has finally made the mainstream media, in an article written by Nigel Austin under the headline, 'End the torture on fees, landowners plead'. The article goes on. I think we should also understand that at this time the South-East of the state has just recorded its driest 18 months on record. So, there are particularly difficult farming times down there, something we have not seen since European settlement. The article goes on to say:

> Regional ratepayers are facing higher water planning and management fees and are fed up with the ever increasing government charges, and a revolt is brewing over the $6 million-plus burden.

It goes on to say:

> Through increases in the NRM levy, the State Government will charge ratepayers a combined $6 million-plus a year in higher water planning and management fees and a new corporate services charge to cover the rising cost of its bureaucracy.

I think it was captured very nicely in the editorial in the same paper, under the headline, 'Troubling tax grab', which stated:

> Struggling farmers are set to cop another hit in the hip pocket from the State Government. Following recent steep emergency services levy rises, it is no surprise that landowners are furious about the increased water planning and management fees.

It goes on to say:

> Reducing the cost of doing business for farmers should be a priority, not making it more expensive to bolster an already top-heavy bureaucracy.

Further, it says:

> The cost of doing business in SA is simply too high. Major industries such as manufacturing and mining are already in trouble and job losses have hit the state hard. Growing the agricultural sector will help bolster the economy and create jobs. Until the State Government changes its attitudes to the South Australian primary producers the situation is unlikely to change.

My questions to the minister are:

1. When will the government realise it can't tax its way out of the troubles we're in at the moment?

2. What will be funded by the new corporate services charge?

3. Given the food sector is one of the possible saviours of the South Australian economy, when will the government reduce the cost of doing business for South Australian farmers?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:30): I thank the honourable member for his most important questions. In line with the government's commitment to beneficiary pays principles in accordance with the South Australian commitments under the National Water Initiative, the 2010-11 state budget established significant cost-recovery targets for water planning and management activities from 2011 onwards.

I congratulate the Hon. Mr Ridgway for being on the ball as usual. This matter was first raised in 2010-11, and it's only taken them four or five years to actually come up with a question on these matters in this place. That's the usual time lag that we expect from the Liberal Party opposite. They're not out there talking to their communities; they're waiting for an article in *The Advertiser* before they get up and ask a question in this place. That's how much in touch they are with their community; that's how much in touch they are. The 2010-11 state budget introduced this; not a peep out of the Hon. Mr Ridgway; nothing at all. He does not even interact with his local communities until it is on the front page of *The Advertiser* and then he stands up and asks a question.

As I say, that's what we expect from those opposite. Since 2011, the Department of Environment, Water and Natural Resources has negotiated temporary budget relief against that cost-recovery target, but from 2015-16 this relief will no longer be provided. Again, it is not mentioned by the Hon. Mr Ridgway that the department has provided recovery and relief against this cost-recovery target in the 2010-11 budget; not a word of that. Not a word of that, because he simply doesn't know or doesn't understand.

The state government currently pays $40 million for water planning and management activities. Only a very small portion of this overall amount is going to be recovered from NRM boards. In 2015-16, this means a total of $3.5 million is to be recovered from NRM boards, with $6.8 million to be recovered in 2016-17, thereafter indexed.

Abiding by user pays principles or beneficiary pays principles is seen as the fairest way to recover the costs of these activities. Even so, we are only recovering, as I said, a very small portion of these costs from users. What do these costs include? The honourable member asked me these questions. In South Australia, these costs include supporting the water management requirements of the Natural Resources Management Act 2004, including: water licensing; compliance activities; science to support the development and management of water resources; development review and amendment of water allocation plans; and debt recovery.

These activities are central to sustainable water resources management in our state and, as such, supporting our state's priority to be recognised for premium food and wine produced in our clean environment and exported to the world. Some examples of some specific programs that the Hon. Mr Ridgway can get his head around include:

- A water monitoring network of 1,500 observation wells and 240 surface gauging stations measured at least quarterly to provide an annual report on the state and condition of the water resources in the South-East.
- Levy funding will also support 10 monitoring sites across the Adelaide Mount Lofty Ranges region which collect ecological water quality and hydrological data. This

information provides the basis of validating the science in existing water allocation plans. This data is collected manually or through automated telemetered stations depending on the site. The initiative involves a number of stakeholders, including the South Australian Research and Development Institute, the Environment Protection Authority, Hydro Tasmania and community landholders, all working together on this scientific endeavour.

- Another water science project in the AMLR region supported by levy funds is to provide hydro-ecological studies to better understand the distribution of environmental assets in the region and their responses to changes in water flows. These investigations provide a strong understanding of the distribution of environmental assets and risks, the current level of surface water use and demand, and the connections between surface water and groundwater.

Just to give the honourable member some point of comparison with charges that are made interstate for comparable zones, it is of course important that we understand that NRM boards themselves determine how this small portion of water planning and management costs is to be funded. However, even if the boards determine that the cost will be entirely passed on to water users, we need to put these current water levy rates into perspective, comparing them, as I said, to other states, other jurisdictions.

The current water levy rate in the South-East in 2015-16, I am told, is $2.67 per megalitre. An obvious comparison point is groundwater charges in New South Wales. The majority of these New South Wales charges range from $5.92 per megalitre to $6.95 per megalitre. Remember, the charge in the South-East is $2.67. In New South Wales, they range from $5.92 per megalitre to $6.95. Moreover, water levies in the South-East will remain well below those New South Wales levels, even if proposed increases in cost recovery from the South East NRM Board are passed on in full to water users.

Similarly, the current water levy of $5.63 per megalitre in the South Australian Murray-Darling Basin NRM region is well below equivalent charges in New South Wales and Victoria. In the New South Wales Murray, the equivalent charge is $10.51 per megalitre, assuming the use of the full entitlement, and in the Victorian Murray, the lowest equivalent charge is around $11.05 per megalitre, compared to $5.63 here in South Australia for the Murray-Darling Basin.

Water levies in the SA Murray-Darling Basin NRM region will also remain below these interstate levels, even if proposed increases in cost recovery from the SA MDB NRM are passed on in full to water users. That is a matter for the NRM board to determine, and they are discussing that right now.

The NRM boards have a limited ability to meet the additional costs from existing revenue sources in the year 2015-16, given that the 2015-16 business planning processes are finalised for that year only. So, for that year only, DEWNR has negotiated a range of once-off measures to reduce the amount to be recovered from the NRM water levy revenue. In 2015-16, this means a total of $3.5 million is to be recovered from NRM boards, with $6.8 million to be recovered in 2016-17, indexed, and that's across the state.

This amounts to only a partial recovery of the full costs borne by the government in relation to water planning and management activities. In addition, the government has made a decision that $1 million of costs associated with the operations and maintenance of the Patawalonga Lake system will be recovered from the Adelaide and Mount Lofty Ranges NRM Board from 2015-16 ongoing.

This measure will not be funded from water levies. Contrary to the view that is being peddled around this state by members of the opposition, particularly from the lower house, that funding will not be funded from water levies, and I want to make that absolutely clear, as I have done to the members who were making those inaccurate claims in the past.

In 2015-16, $0.3 million of costs associated with administering the NRM land levy and outside council area levies will also be collected ongoing from NRM boards. This cost recovery measure applies across all boards to cover the substantial administrative support that DEWNR undertakes as part of the NRM levy adoption process, the review of NRM board business plans and the collection of the outside council areas levy.

As from 2016-17, $0.6 million of costs will be recovered by extending the NRM water levy to the extraction of co-produced water by the gas and petroleum industry in the Far North Prescribed Wells Area in the South Australian Arid Lands NRM region. To date, they haven't been charged any costs associated with that. We think it's appropriate to cost recover from that industry as well.

I understand these changes will have significant impacts on NRM board programs, particularly in 2015-16 when, as I said, additional revenue won't be easily sourced. I have made it very plain to NRM boards that I am open to them resubmitting their 2015-16 business plans for my consideration, once the spending profile has been adjusted, and respective to each individual area.

The timing and the communication of these decisions enable NRM boards to begin consulting on their 2016-17 business plans as per previous years, as boards are now fully informed of the impacts of allocating costs going forward. It was important to give them that advance warning.

In terms of trust, transparency and fairness, I remain committed to these values, which is why the government has followed the National Water Initiative principles in making the water planning and management cost recovery a budget decision as we have done. This is also why I sought and accepted the advice of NRM board presiding members on a way to fairly apportion these costs across the state.

I have agreed with NRM board presiding members that water planning and management costs be apportioned for both 2015-16 and 2016-17 and beyond in accordance with National Water Initiative principles, while also considering where the water planning and management costs are incurred and where the beneficiaries of sustainable water management reside.

With those few points, I want to correct the honourable member and also remind him that all jurisdictions around the country are doing just this. All jurisdictions, through our agreement on the National Water Initiative—be they Labor states or Liberal states, or former Liberal states that are now Labor states or former Labor states that are now Liberal states—are passing on the costs of water management to those beneficiaries who absolutely benefit from water management and planning.

OFFICE OF THE TRAINING ADVOCATE

The Hon. S.G. WADE (14:40): My question is to the Minister for Employment, Higher Education and Skills. Can the minister advise whether the Office of the Training Advocate has received direction from the minister, her office or her department since 1 July this year and, if so, what was the direction?

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): I thank the honourable member for his question. Not that I can recall. I can't recall any direction to the Training Advocate, but I will double-check, because a lot comes over my desk. If I do find anything, I am happy to return with that information to the chamber.

PUBLIC SECTOR EXECUTIVE SALARIES

The Hon. R.I. LUCAS (14:40): My question is to the Leader of the Government. Has cabinet approved a salary increase for chief executive officers of government departments and agencies and, if so, what was the level of that increase and was it made retrospective to an earlier date?

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): I thank the honourable member for his question and will take that question on notice and bring back a response.

INTERNATIONAL STUDENTS

The Hon. G.A. KANDELAARS (14:41): I seek leave to make a brief explanation before asking the Minister for Employment, Higher Education and Skills a question about international students.

Leave granted.

The Hon. G.A. KANDELAARS: A number of Indonesian students recently arrived in South Australia under an Australia Awards program. Can the minister inform the chamber about this important initiative?

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): I thank the honourable member for his important question. As I have mentioned in this place before, last year more than 30,000 international students were enrolled to study here in South Australia. With our multicultural community, our safe and sophisticated urban centre, our clean coastal location and family-friendly atmosphere, South Australia really is Australia's premier study destination. This is not to mention that South Australia is also one of the most affordable cities in Australia, being around 20 per cent more affordable than cities like Sydney and Melbourne and apparently around 5 per cent more affordable than Brisbane.

While the vast bulk of students coming to South Australia to study do so without financial support, the Australian government and the South Australian government as well as our universities are pleased to support a number of scholarship opportunities. Yesterday, I was very pleased to be invited to welcome a group of scholarship students from Indonesia to the University of South Australia. These students are in Adelaide to undertake a graduate certificate in quantitative data analysis for public policy evaluation and formulation under the Australia Awards scheme.

The Australia Awards are prestigious international scholarships and fellowships funded by the Australian government, offering the next generation of global leaders an opportunity to undertake study, research and professional development. The awards strive to develop leadership potential and stimulate lasting change by empowering a global network of talented individuals through high-quality education experiences in Australia and overseas. Recipients return home with new ideas and knowledge and the ability to make a significant contribution to their home countries as leaders in their own fields.

The University of South Australia successfully won a contract valued at more than $1 million and will deliver the graduate certificate in quantitative data analysis for public policy evaluation and formulation from October 2015 to July 2016. I understand the participants in the program are all middle to senior managers in Indonesia's ministry and that an induction workshop was held in Indonesia in September and 25 students arrived in Adelaide in October to commence their program. The program consists of relatively short courses, with a study period back in Indonesia, and is in a particularly strategic area of focus for Indonesia.

It is clear that the University of South Australia's delivery of this course is a genuine opportunity for both the university and the government to build relationships and forge stronger trade and diplomatic ties with Indonesia. Of course, Indonesia is our closest international neighbour.

The South Australian government is committed to growing our state's reputation as a leader in delivering a premium education and student experience. This is reflected in the government's South Australia-South East Asia Engagement Strategy, as well as our Destination Adelaide Plan, which I announced while in Kuala Lumpur in August this year.

We have committed to delivering a range of strategic initiatives to position South Australia as the premier destination for international students. Our vision, as part of our Destination Adelaide Plan, clearly establishes the importance of government-to-government relationships in opening up opportunities for trade, education and research.

I would like to congratulate the University of South Australia on its success in bidding to deliver Australia Awards international scholarships and I wish the scholarship holders a wonderful and rewarding experience during their stay here in Adelaide.

RESERVOIR RECREATIONAL FISHING

The Hon. J.A. DARLEY (14:46): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions with regard to offline reservoirs.

Leave granted.

The Hon. J.A. DARLEY: Prior to the 2014 state election, the government announced plans to open offline reservoirs to recreational fishers at Warren, Bundaleer, Baroota, Tod and Hindmarsh Valley. My questions are:

1. Can the minister advise the progress for each of these sites and when they will be open for recreational fishers?

2. Can the minister provide details of other offline reservoirs that have been opened for recreational purposes?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:47): Thank you, Mr President. I was just writing down the names of those five reservoirs from memory. I just got to three, but I will work on the rest in a moment.

I thank the honourable member for his most important question. The offline reservoirs have been a matter of some discussion between government and members of the community for some time. Particularly, I seem to recall the former member for Schubert, Mr Ivan Venning, had a view about this which he prosecuted with a previous minister—

The Hon. K.J. Maher: And our former president.

The Hon. I.K. HUNTER: Sorry?

The Hon. K.J. Maher: Bob Sneath.

The Hon. I.K. HUNTER: Really? Our former president, I think, has thrown in his lot as well. We know that a number of people in South Australia enjoy fishing as a pastime. The government has therefore committed over $3 million over three years from 2014-15 to help increase opportunities for recreational fishing in South Australia.

Part of that funding package includes $750,000 over three years for recreational fishing grants programs, $600,000 for an artificial reef trial and $200,000 per year for two years to provide fishing access at up to five offline reservoirs across the state.

The first call for recreational fishing grants was made in April 2015. Following the eight-week call, over 80 applications were received which was pretty healthy indeed. The first round of grants has been underway and has recently been issued, I think, on 8 October. Round 2 of the grants, for anybody who is interested, will be opening in January of next year and I expect it will be a very competitive field.

In terms of SA Water reservoirs that are not currently used for the direct supply of drinking water and are being investigated for recreational fishing, the Warren, Bundaleer, Baroota, Tod and Hindmarsh Valley reservoirs were the five on the list. The state government has established the Reservoir Recreational Fishing Taskforce to oversee the project, allocating $400,000 for minor infrastructure, including toilets, picnic benches, fencing, etc. We are working very closely with local government, of course, which has control of the access areas to those reservoirs—car parks and minor roads, for example. The taskforce is working with RecFish SA and councils to prioritise opportunities to identify infrastructure needs at each reservoir.

On 23 June the government awarded two grants of $20,000 each to support this initiative, I understand. The first was to The Barossa Council to support the provision of minor infrastructure and develop a master plan to support recreational fishing in the Warren Reservoir, which is south of Williamstown. The second was to the Port Lincoln High School to study the environmental condition of the Tod Reservoir, located approximately 27 kilometres north of Port Lincoln, to determine the most appropriate species of fish that might be used to stock this reservoir for recreational fishing.

By way of an aside, SA Water has advised me that there needs to be some remedial works on the reservoir wall to bring it up to standard and, of course, that may delay any access to recreational fishing at the Tod. We are continuing to work with all stakeholders on these important projects. There is a lot of community excitement about this. I understand, Hon. Mr Darley, if you are very interested, you can go and drop a line at the Warren Reservoir right now and try your luck.

FUR SEALS

The Hon. T.J. STEPHENS (14:51): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions about the protection of the Coorong from New Zealand fur seals.

Leave granted.

The Hon. T.J. STEPHENS: The very excellent member for Hammond has brought to my attention that the overpopulation of New Zealand fur seals is beginning to affect the protected area and unique biodiversity of the Coorong. With reports of local bird populations, some which are protected by international bilateral agreements such as JAMBA and CAMBA, being devastated by the presence of the seals, not to mention the destruction of the wetlands protected under the Ramsar agreement, my questions are:

1. Does the minister accept that the government's protection of the New Zealand fur seal by the National Parks and Wildlife Act conflicts with the commonwealth's JAMBA, CAMBA and Ramsar agreements?

2. Does the government's protection of the New Zealand fur seal under the act prevent the minister from taking action on this issue which is concerning the community?

3. What will the minister do to ensure the Coorong and its unique ecosystem remain protected?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:52): I thank the Hon. Mr Stephens for his most important questions. The government, of course, is taking very seriously the concerns expressed by the local communities, including fishing organisations and traditional owners, about the impacts of long-nosed fur seals in the Coorong and Lower Lakes area. We obviously have listened to these groups and we are taking action to ensure that any impacts from seal interactions are kept to a minimum.

While the state government understands the concerns expressed by some local Coorong and Lower Lakes communities, we certainly do not support a cull of long-nosed fur seals, and the reason for that is pretty plain: it is based on science and evidence. We know from the best available science, we know from available evidence, that culling would be ineffective. Culled seals would simply be replaced by new seals and the culling would fail to address the impacts being felt by commercial fishers. It would also create welfare and safety issues for seals and for fishers.

Other population management options such as relocation and sterilisation have been proven to be costly and ineffective in other parts of Australia, and we can use the experience of seal interactions and government interventions in Tasmania as a starting point which show the failure of these management options.

The South Australian government has taken a number of steps to help fishers and local communities mitigate the impacts felt by the presence of long-nosed fur seals. Some of the steps the government has recently taken to help the fishing community include the Department of Environment, Water and Natural Resources and Department of Primary Industries and Regions SA working closely with the Southern Fishermen's Association on a plan to mitigate interruptions felt by the fishing industry from seal interactions.

This includes the state government investment of $100,000 into research into fishing gear, methods and deterrent devices. I understand that the Fisheries Research and Development Corporation, which is co-funded by the commonwealth and industry, has contributed more money to this project; and now approximately $260,000 of funding has been secured to investigate alternative fishing gear and practices and to trial deterrent seal devices.

In addition, on 12 September 2015, the government announced that it would waive the 2015-16 licence fees and other charges to provide operators with additional flexibility. These changes include increasing the season length in which hauling nets may be used in Area 1 of the fishery by 106 days, permitting drum nets to be used by all Lakes and Coorong fishery licence holders, and increasing the number of relief days per licence holder from 28 to 90 days.

I am told that the seal deterrents will be trialled in November of this year. Once all the legal obligations and approvals for their use have been met, Rural Business Support, which incorporates Rural Financial Counselling Service SA, has offered to assist fishers with free, independent and confidential financial information and business support. They are also able to refer fishers to other professional service providers, such as personal and social counsellors.

As well as these steps, the government has established a high-level working group to address the issues that have arisen from seal interactions. This working group is made up of representatives from relevant government agencies, local councils, natural resources management boards, environmental NGOs, research institutions and industry groups. The Ngarrindjeri Regional Authority has also been invited to attend this high-level working group.

Alongside these processes, DEWNR continues to work with the Ngarrindjeri community to find appropriate solutions for problems created by seals impacting aspects of the Ngarrindjeri culture. This working group had its second meeting on Thursday 24 September 2015 and progressed the issues surrounding long-nosed fur seals in the Coorong and Lower Lakes area to identify and implement appropriate short and long-term actions.

After the first meeting of the working group, and as a result of the government's efforts to address issues arising from seal interactions, the Mayor of the Coorong council has been reported as saying in the media that he is optimistic that some of these issues will soon be resolved. He is further quoted as saying that the issue is not a 'them and us' scenario: it is an issue that requires all parties coming to the table to work together to put forward and implement workable solutions, and I am pleased to say that it is happening through the working group right now.

DEWNR continues to monitor the situation and has undertaken a series of seal counts in the Coorong. I am told that DEWNR's most recent count found 22 seals and that this count included the areas in and around Mundoo, Goolwa Barrage, the Murray Mouth and Tauwitchere Barrage. I also understand that the local communities carried out a seal count and that the count showed 45 seals. This count was carried out in the same area as well as on the ocean side of the Coorong and a small part of Lake Alexandrina.

Historically, seals have been hunted in our country to the point of extermination, and the population was more than decimated by the beginning of the 19th century. Since hunting has ceased, the number of long-nosed fur seals in South Australian waters has recovered over the last 100 years or so to an estimated number now of around 100,000 animals spread across the state. This recovery of a state and nationally protected species has brought economic benefits to South Australia through wildlife tourism on Kangaroo Island and the West Coast region. It has also the potential to impact some fish farms and wild catch fisheries, including the Coorong and Lower Lakes commercial fishery, which developed during a period when seal numbers were obviously lower.

This impact is best dealt with by industry and the government working together to identify solutions and through industry investing in new techniques, equipment and changing practices, not by killing seals, which, from interstate and overseas evidence, has been shown not to work. When developing policy responses to wildlife issues, the South Australian government draws from a wide range of sources. These include current laws and existing policies, published text, journal articles, literature from government and industry groups and input from the community.

The increase in the long-nosed fur seal population in the Coorong and the Lower Lakes is documented by Goldsworthy, Shaughnessy and Mackay in their report, 'The long-nosed fur seal in South Australia in 2013/14: Abundance, status and trends (2015)' As part of the Science for Decision Makers series, the Australian government report, 'Managing interactions between humans and seals: A national seal strategy to minimise adverse interactions between humans and seals in the fisheries, aquaculture and tourism sectors 2008' by Stewardson, Bensley and Tilzey sets out background information on seal interactions in Australia.

Experience from Australia and overseas has shown that site-specific, lethal options for fur seal control are ineffective and that non-lethal options available to manage fur seal populations are often limited to alternative fishing practices or improved fish farm design. For example, research published in 1993 by Pemberton and Shaughnessy, titled 'Interaction between seals and marine fish-

farms in Tasmania and management of the problem' demonstrates that shooting individual seals is ineffective in managing negative interactions with fishing activities.

I am advised that recent experience in Tasmania highlights the difficulties in attempting to sterilise seals, including technical complications, expense and welfare implications. Translocation has also had little success in minimising conflict between seals and fishers, and the Tasmanian Marine and Marine Industries Council has recently recommended that translocation programs be phased out due to their inefficiency.

A technical meeting, I am advised, was held in June of 2015 to further investigate the options available, such as the use of 'bangers' (seal scarers), to deter seals from nets. 'Bangers' are not lethal to fur seals. They emit a sound wave that is uncomfortable to them, I am advised. I am also advised that 'bangers' are currently used by fish farm licence holders in Tasmania as part of an integrated approach to keep seals from entering farm nets.

We need to also consider the complex marine systems and interactions based on the science we have before us and the lessons from other jurisdictions. The government is very well aware of the complexity of the issue and is working with stakeholders to arrive at a long-term and sustainable solution. DEWNR is also currently working to develop a statewide policy to guide the management of interactions between long-nosed fur seals and other pinnipeds and aquaculture and the Lower Lakes and Coorong fishery, together with PIRSA, industry bodies and other stakeholders.

This policy encourages a 'living with wildlife' approach through using different fishing practices and/or fishing gear. I am advised the policy will give industry clear guidance on any appropriate and legal means they may have to reduce the impact of seal and sea lion species on aquaculture and fishing operations. I am advised that consultation on this draft policy closed at the end of June 2015 and comments are now being collated and analysed before the policy is to be updated.

FUR SEALS

The Hon. T.A. FRANKS (15:00): Supplementary: noting that the minister observed that there has been both licensing relaxation in terms of fees and also other supports offered to those facing increased risk in their occupation and the flow-on effect of this on their industry—for example, their mental health—can the minister provide us with some information, or take it on notice, about what documentation is being undertaken on the occupational health and safety for those now in this region where seals have increasingly jumped onto boats and workers are at risk of physical harm? Also, what additional supports have been made for either employment transition or mental health supports for people in this region?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:01): I thank the honourable member for her most important and sensible question, unlike the previous one. I will undertake to seek a response on her behalf and bring it back.

BAROSSA COUNTRY CABINET

The Hon. J.M. GAZZOLA (15:01): My question is to the Minister for Climate Change. Could the minister inform the chamber about the recent jobs forum held in the Barossa Valley during the country cabinet, and how the state government is working with the farming industry to ensure sustainable growth for the sector?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:01): I thank the honourable member for his most important question. From 18 to 21 October, state government ministers attended cabinet and other important meetings in the Barossa, a region that is renowned the world over for the quality of its food and wine. As part of this country cabinet visit, I initiated and attended a forum to discuss the changing nature of the agricultural sector and local employment opportunities. The participants who attended the meeting on Tuesday 20 October showed enormous initiative and innovation in areas such as viticulture, grazing, soil health and community-based environmental programs.

It is clear that there are many diverse challenges associated with the efforts of farmers to produce our valuable food in the face of impending climate change and coming to terms with the impacts of climate change on farming in the region. It is very important that we work together to address these challenges and ensure the viability and growth of this very important sector to our state.

That is why the government provides grant funding through the Sustainable Industry Grants Scheme to a number of primary producer groups in the northern part of the region, particularly to groups in the Barossa Valley and surrounding areas. This funding supports industry and community-driven projects which focus on a range of production and natural resource management issues confronting primary producers in the region.

Working together to innovatively address these issues helps to underpin farm viability, job security and sustainably produced food for our state. The great results achieved through these projects are being shared with the broader farming community through local newsletters, media and farm walks.

This work will complement the Barossa Regional Adaptation Plan that was launched in June 2015. This is one of the 12 innovative regional adaptation plans that will be finalised for each of our geographical regions by 2016, setting out a regionally driven approach to future climatic changes and the challenges they pose.

The Barossa plan was developed in collaboration with natural resources management boards, state and local government, regional development, emergency services management, industry and community service sectors. The priority areas identified in the plan include ensuring the region maintains its quality viticulture and agricultural production, ensuring sustainable water supplies into the future, maintaining biodiversity and natural habitats in the region, maintaining adequate community and emergency services, and supporting a strong rural business environment.

Having a regional adaptation plan will guide and assist the region to address the effects of climate change and, in doing so, identify new avenues and solutions through innovation and change. There is no doubt that climate change will bring challenges with projected sea level rise, increases in temperatures, declining average rainfall and exposure to severe weather events right across the state.

However, challenges also bring with them opportunities, and the secret really is to be prepared for those opportunities when they arise and to grab them. None of us can be complacent when it comes to the value and availability of our clean and natural resources and their importance in underpinning economic prosperity for the state. It was very encouraging to see the level of leadership and enthusiasm that I saw during the Barossa jobs forum. In particular, it was great to hear from Barossa Youth in Agriculture, Ms Georgie Keynes, about the fantastic work they are doing to engage and encourage young farmers and the particular challenges that they faced.

I would think like to sincerely thank all the participants, the entire community, for welcoming us to the Barossa, for showcasing their absolute commitment to this import region and its industries into the future, and for their desire to be ahead of the curve. I look forward to continuing to work together with these communities to ensure that farming enterprises remain profitable and grow and continue to drive economic growth and job opportunities for our state.

STATE OF THE STATES REPORT

The Hon. D.G.E. HOOD (15:05): I seek leave to make a brief explanation before asking the Minister for Business Services and Consumers questions regarding the State of the States Report issued by CommSec.

Leave granted.

The Hon. D.G.E. HOOD: As the minister is no doubt aware, the October 2015 State of the States Report ranked each state and territory's overall economic performance and was released yesterday, the latest one by CommSec, and compares performance on eight key indicators: economic growth; retail spending; equipment investment; unemployment; construction work done; population growth; housing finance; and, dwelling commencements.

South Australia reported some $25.5 billion in economic performance, and this compares with New South Wales reporting something like $107 billion. This result placed South Australia seventh of all states and territories, and ahead only of Tasmania. However, the report noted that in economic performance Tasmania shows better momentum; that is, it is growing at a faster rate. CommSec Chief Economist noted:

> We are now seeing that transition to housing-led growth, so it is the states that are stronger in population growth that are leading the way, as you might expect.

Unfortunately for South Australia, housing finance and dwelling starts are also significantly lower than other states. Further, as was announced with the 2015 budget, the net debt is expected to increase in South Australia over the forward estimates from $4.1 billion, as of 30 June 2015, to a peak of $6.5 billion, as at 30 June 2017, whilst employment was projected to grow by a paltry 1 per cent in 2015-16, and the economy will only grow by 2 per cent, compared with Australia's forecast economic growth of 2.75 per cent. Not surprisingly, the report was not positive about the prospects of economic growth in South Australia. My questions are:

1. What is the government doing to ensure affordable housing to improve the immediate rankings on the housing finance and dwelling commencement indicators and subsequently move our economy from reliance on former industries to a more diverse group of industries, as outlined in the report?

2. What concessions is the state making to ensure growth in the retail and construction sectors, including such things as reviewing the burdensome regulations and barriers to entry?

3. Will the government move to quickly reduce the very high level of taxation that currently applies, particularly to the residential building sector?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:08): I thank the honourable member for his most important question. Indeed, South Australia is facing considerable challenges at this point in time. We know that one of the reasons we are facing these challenges is because the federal government withdrew its support from the automotive industry and sat by and let it collapse here in South Australia. In fact, the former Liberal treasurer goaded them to leave, and that is how out of touch the Hon. David Ridgway is. That is how out of touch and incompetent he is.

Holden's have already contracted by about 750 jobs, and it is not over. There are thousands of jobs to go. That is how incompetent the Hon. David Ridgway is. They have already contracted by 750 jobs, with thousands to go within the foreseeable future. So, the federal Liberal government would not stand up for jobs here in South Australia, would not stand up for industries here. The audacity—the audacity. We also know that South Australia's economy is particularly reliant on commodity prices and we know that they have dropped significantly and this is—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order! The Hon. Mr Ridgway, you asked the minister a question, which she is answering. I think you should just give her the respect of allowing her to answer it in silence.

The Hon. D.W. Ridgway: Mr Hood asked the question. I'd like to correct you, Mr President.

The PRESIDENT: Well, it doesn't matter. You still should have the respect to listen to the—

The Hon. D.W. Ridgway: I don't think he's really interested in her silly answer.

The PRESIDENT: Well, he looks very interested to me. Minister, finish your answer.

The Hon. G.E. GAGO: Thank you, Mr President. As I said, the drop in commodity prices, particularly around iron ore, has had a considerable impact on the industries here in South Australia as well. Of course, we also know that the federal Liberal government has slashed hundreds of millions of dollars from health, education, science and research, and the VET training sector—hundreds of millions of dollars the Liberal government has slashed out of spending here in this state. It's not surprising that we do face challenges. Indeed, as the Hon. Dennis Hood refers—

The Hon. T.J. Stephens interjecting:

The PRESIDENT: The Hon. Mr Stephens, would you please desist from interrupting.

The Hon. G.E. GAGO: They squeal like stuck pigs, don't they, Mr President? As the Hon. Dennis Hood made reference, the latest CommSec report shows that South Australia's economy is showing signs that we are weaker than most other states, and it should be noted that according to CommSec report there is little that separates the economies of Queensland, ACT, South Australia and Tasmania. However, in some areas, such as population growth and equipment investment in South Australia, they are still ranking quite strongly here, being third in the nation. As I have said before, the competitiveness of key industries in South Australia was impacted on by the high Australian dollar, with some effects still being felt.

The Hon. R.I. Lucas: That affects the other states too.

The Hon. G.E. GAGO: Here we have the failed former Liberal treasurer saying, 'Oh yes, but it affects other states too.' This is like a tsunami. If they don't get it, they're incompetent. Not only is the Hon. David Ridgway incompetent, so is the Hon. Rob Lucas. It's a tsunami of things that have happened, and because South Australia's economy has been so heavily reliant—more heavily than other states—on those aspects, commodity prices and the automotive industry together have had a compounded effect our economy.

However, some analysts are saying that it is anticipated that the depreciating Australian dollar may very well underpin rebound competitiveness and a resurgence in key industries, such as manufacturing, agriculture, tourism and education services to international students. There are some positive signs in relation to our state's economy, which show a number of indicators at high level, including investment, retail turnover and the value of exported goods, education services and international visitors, including international students studying here.

The state government has chosen initiatives to diversify the economy by undertaking long-term structural reform while investing in new and growth industries to protect and create jobs. I have talked about the return to work reforms that have delivered savings of more than $180 million to South Australian businesses. We are working with businesses to help generate investment here, to grow businesses, to grow jobs as we transition from the old economy to a new economy, where we look to new and emerging industries and jobs. That's why we work so hard with WorkReady, to make sure that we have our workers skilled up, so that those who need reskilling are able to meet new and emerging jobs.

The last budget built on these reforms, through some of the largest tax cuts ever seen. More recently, we have seen the announcement of Qatar Airways beginning a daily flight to Adelaide from next year—good news in one of our growth sectors. We have also ensured that 15 per cent of tender evaluations for South Australian government contracts worth $220,000 and above had a focus on local jobs and local products, so that will assist in helping local jobs grow as well.

As I said, we have put a range of reforms in place. We continue to roll out major tax reforms. We have already delivered considerable relief to businesses in relation to the WorkCover levy changes. Businesses have benefited by I think it was something like $180 million-odd in savings as a result of that. As I said, we continue to work to attract investment, to work with businesses to help them grow their businesses and to grow jobs here in South Australia.

OFFICE OF THE TRAINING ADVOCATE

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) (15:15): While I am on my feet, in relation to the question the Hon. Stephen Wade asked in relation to any directions issued to the Training Advocate, I requested that my staff check for me. I have been advised that no direction or directions have been issued by me.

WOMEN IN PARLIAMENT

The Hon. J.S. LEE (15:16): I seek leave to make a brief explanation before asking the Minister for the Status of Women a question about women in politics.

Leave granted.

The Hon. J.S. LEE: A couple of months ago, minister Gago issued a media release calling on South Australian women to be 'bold' and 'brave' in their endeavours to break through the glass ceiling that sees them under-represented in the South Australian parliament. Last week, it was reported that Treasurer Koutsantonis used highly obscene language in meetings with public servants.

His language was highly offensive to women, and yet the minister has been silent on this matter. She has not stood up for women when a senior minister in the state Labor government behaved in a manner that could drive women away from a career in politics. My questions to the minister are:

1. When will the minister condemn the use of obscene language in meetings by her ministerial colleague?

2. Can the Minister for the Status of Women clarify whether the 'bold' and 'brave' message her government is sending to women includes accepting offensive language by senior politicians?

3. How does the government intend to attract women to politics when unacceptable, abusive behaviours by senior politicians are not being addressed?

The Hon. G.E. GAGO (Minister for Employment, Higher Education and Skills, Minister for Science and Information Economy, Minister for the Status of Women, Minister for Business Services and Consumers) (15:17): What hypocrisy! Where was the Hon. Jing Lee when lower house members Mr Pisoni and Mr Pengilly made sexist, offensive comments down in the lower house? Where was the Hon. Jing Lee then? When did she get to her feet to challenge that sexist, offensive language used by her Liberal colleagues? Where was she then? Silent—silent as a lamb.

Unlike the Liberal Party, which never dealt with the issue, we have had our Premier come out and formally counsel the Hon. Tom Koutsantonis for his offensive language—unacceptable language, unacceptable from anybody in any place. He has counselled him. The Hon. Tom Koutsantonis has come out and publicly apologised. It was clearly language that was below standards. He recognised that, the Premier has counselled him, and that matter has been addressed. Again, where was the brave, courageous Hon. Jing Lee when her Liberal colleagues got up in parliament and said offensive, sexist things? She was silent—absolutely silent. What a hypocrite!

COMMISSIONERS FOR ABORIGINAL ENGAGEMENT

The Hon. T.T. NGO (15:19): My question is for the Minister for Aboriginal Affairs and Reconciliation. I am told recently the minister appointed two Commissioners for Aboriginal Engagement. Could the minister tell the house more about those two appointments?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:19): I thank the honourable member for his very important question. As many members would be aware, particularly those members who are on the Aboriginal Lands Parliamentary Standing Committee, as a number in this place are, in 2007 the state government established a new independent voice for Aboriginal and Torres Strait Islander people in South Australia with a direct line to the state government. The establishment of a Commissioner for Aboriginal Engagement provides to the state government, as well as being a point of contact for Aboriginal people in South Australia, an avenue to express their views about policy and programs.

In January 2008, the government appointed South Australia's inaugural commissioner for Aboriginal engagement, Mr Klynton Wanganeen, who held the position until 2011. In 2011, the then minister for Aboriginal affairs and reconciliation appointed Ms Khatija Thomas as the state's first female commissioner for Aboriginal engagement. I would like to take this opportunity to congratulate Ms Thomas for her time and achievements as the state's inaugural female commissioner for Aboriginal engagement.

Ms Thomas was born in Port Augusta and is a proud Kokatha woman. Prior to her appointment, she was a solicitor with the South Australian Native Title Service, working hard to

encourage Aboriginal people's participation and governance on issues affecting native title. Ms Thomas has also previously worked for the Aboriginal Legal Rights Movement and completed a 12-month Australian Youth Ambassador for Development placement as a legal adviser at the Community Legal Education Center in Cambodia. Ms Thomas was also formerly a chair of the Tandanya National Aboriginal Cultural Institute and a member of the Law Society of South Australia's Indigenous issues committee.

During her four years in the role as commissioner for Aboriginal engagement, Ms Thomas has a lot to be proud of. Whether it be her strong support for reconciliation initiatives, her advocacy for recognition of Aboriginal people in the federal constitution and the Recognise campaign generally, or her advocacy for Aboriginal people accessing government services, Ms Thomas was a worthy ambassador for Aboriginal people in this state.

I was pleased to announce earlier this month the appointment of two new co-Commissioners for Aboriginal Engagement, being Ngarrindjeri and Kaurna man Frank Lampard OAM and Inawantji Scales from the APY lands, as Joint Commissioners for Aboriginal Engagement. During the next 12 months, they will share the role of providing Aboriginal leadership in South Australia, advocating on behalf of all Aboriginal people in communities across the state. I know that both Mr Lampard and Ms Scales will bring a diverse range of experiences and knowledge to the role.

Many in this chamber will know Mr Frank Lampard. He spent over 20 years on advisory bodies such as the Council of the University of South Australia, a range of government bodies and Tauondi College; he was chair of the board of the Aboriginal Legal Rights Movement, chair of the South Australian Aboriginal Heritage Committee, and the native title commissioner for South Australia. Mr Lampard is also currently Deputy Chair of the Aboriginal and Torres Strait Islander War Memorial Committee.

Ms Inawantji Scales, or Ina Scales, has lived for most of her life in the central desert region and her mother is an Aboriginal woman from the Pipalyatjara/Kalka area, a community in the very far north-west of the APY lands. From 2003 until 2005, Ms Scales was a member of the NPY Women's Council and remains a very active member of the NPY community. I know that, only in the last couple of weeks, Ms Scales was elected to the board of the NPY Women's Council. She is also working with the other council to support the Empowered Communities reform initiative.

Mr Lampard and Ms Scales bring together both a gender balance and a diversity in terms of their experience, being based in regional South Australia and in metropolitan South Australia, and I think they will ensure that there is great statewide representation for Aboriginal people and matters in the Aboriginal affairs area.

This shared commissioner role will enhance and broaden the reach of the commissioner as an independent public advocate for the interests of the Aboriginal people, benefiting all South Australians. On behalf of the government of South Australia, I welcome Mr Lampard and Ms Scales to their roles. I look forward to working with the new commissioners and realising the benefits of their experience and commitment to the benefit of all Aboriginal South Australians.

The PRESIDENT: Supplementary, the Hon. Ms Vincent.

COMMISSIONERS FOR ABORIGINAL ENGAGEMENT

The Hon. K.L. VINCENT (15:25): Will the Commissioners for Aboriginal Engagement be working specifically with the First Peoples Disability Network to get an understanding of the barriers for Aboriginal people with disabilities, especially access to support services in remote areas like the APY lands?

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:25): I thank the honourable member for her important question. I would be happy, if it would be of benefit, to introduce her to the Commissioners for Aboriginal Engagement. They will work across a whole range of areas. Their life experience will mean that they will pursue particular areas and, over the next few weeks, we will be discussing more widely where they would like to concentrate their work. I would be happy to work with the Hon. Kelly Vincent to make sure that the issues that are important to her are known about by our commissioners.

RAINBOW FLAG

The Hon. T.A. FRANKS (15:26): Mr President, I seek leave to make a brief explanation before addressing a question to you about flying the rainbow flag above state Parliament House.

Leave granted.

The Hon. T.A. FRANKS: As you are well aware, many buildings, particularly government buildings, across the world and in Australia, fly the rainbow flag as a symbol of acceptance of sexuality and gender identity diversity. I am very pleased to see that, for the Feast Festival, which is coming up in November this year, at least 17 councils are flying the rainbow flag across our state, and I commend that show of support for diversity in those communities. Also, many businesses have been encouraged, particularly in the CBD area.

I note that in the last week of sitting, a petition was presented to the other place which urged the government to restrict councils or other organisations from displaying a rainbow flag or any other design with a rainbow as a symbol of homosexuality and that that would be an offence with a fine imposed. I note that even the White House lit up in rainbow colours recently. Certainly, no-one in America I have seen has suggested that people should be restricted in all businesses and have a fine imposed on them for flying a rainbow flag or displaying a rainbow symbol.

As you are aware, the Greens have been strong supporters of flying the rainbow flag and would dearly love to see this happen for the Feast Festival or other days of significance, but also for flags to be used to recognise many of the other features of the absolutely wonderful tapestry of the communities of South Australia. I note that in the past we have had the Eureka flag flown in December in recent years.

I also draw to all members' attention that there are at least three unused flagpoles on the roof of this building that have no flags flown on them at all, 365 days of the year. I ask you, as President, to give some guidance on how we could move to having a mature, informed debate of this parliament about flying not just the rainbow flag but also other flags, particularly with a view to ensuring that perhaps next year we might see the rainbow flag flown during the Feast Festival, IDAHOT and other appropriate days, should this parliament be able to come to a consensus.

The PRESIDENT (15:28): Thank you for your question. You wrote to me regarding that issue. I took it upon myself to discuss the issue with the Speaker, because the flying of the flag is really a responsibility between the Speaker and the President. I took it upon myself also to actually get the views of various people within the parliament and within this caucus—

The Hon. S.G. Wade: Not this caucus!

The PRESIDENT: —within this chamber, and I took the view that there was not strong enough support to allow that flag to be flown. Bear in mind that if you want to pursue that—and, I must say, it was not unexpected that you did—even though it is under the joint decision-making process of the President and the Speaker, you should write to the JPSC. We can then have the whips go back to their caucuses and gauge the views from there.

RAINBOW FLAG

The Hon. T.A. FRANKS (15:29): A supplementary. I raised the issue of the three unused flagpoles and also exploring this for other flags, so could that also be incorporated into further discussions?

The PRESIDENT (15:29): Yes, I will have discussions with the clerks to find out exactly why they are there and what they are used for. The Hon. Mr Parnell brought up that issue with me, and there are some flagpoles at the back of the parliament. So, yes, I will get back to you with an answer on that as well.

RAINBOW FLAG

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:30): A further supplementary: would you think it appropriate for a motion of this house to indicate its views to you in guidance on this matter? Would that be useful?

The PRESIDENT (15:30): Well, I must say, maybe putting a motion to the house and getting a view of this house probably would give a good indication, so maybe I will recommend the honourable member to put a motion to the house and get the views.

Bills

LOCAL GOVERNMENT (ACCOUNTABILITY AND GOVERNANCE) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 13 October 2015.)

The Hon. J.A. DARLEY (15:30): I rise briefly to indicate my support for this bill and to foreshadow that I will be moving a series of amendments aimed at further strengthening those measures aimed at providing greater transparency and accountability. In a nutshell, those amendments include ensuring that expenditure by CEOs and senior executive officers of council is accounted for by requiring credit card statements and primary returns to be published online for inspection by members of the public.

The amendments will also require the register of salaries to be made available online. Currently, councils are only required to ensure that the register is available for inspection during business hours at council premises. If a person requires an extract for information contained in that register, then they can be charged by the councils. The amendments would overcome the need to attend council offices to inspect the information and to pay any associated fees for obtaining copies of the information.

I know from experience that on at least one occasion I have requested this information from a council, and I have been quoted somewhere in the order of $2,000 or $3,000 in order to have it copied and provided to me. That is an absurd amount of money, particularly when you consider that other councils of roughly the same size have been willing to offer the equivalent information free of charge. These amendments would certainly overcome that by enabling someone to print off the information required without being charged an exorbitant fee by council.

The bill also seeks to reform the conflict of interest provisions of the Local Government Act. This is considered an extremely important element of the bill and one that has been the subject of considerable consultation, especially in terms of perceived conflicts versus actual conflicts. I am advised that the changes regarding these provisions have been recommended by the Ombudsman and supported by the Independent Commissioner Against Corruption and the Local Government Association. In addition, it also seeks to strengthen confidentiality provisions in line with concerns raised by the Ombudsman.

Overall, this bill appears to have the support of most, if not all, members, including me. I understand some members have sought their own advice about the amendments I intend to move. I certainly hope those amendments can be supported. That said, if they are not supported on this occasion, then I certainly hope the government will consider consulting on them further.

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:33): I thank members who have made a contribution to the debate on this bill. This bill aims to strengthen accountability and governance in local government through a package of improvements that have been proposed over the past few years, in addition to some aspects which have been developed through consultation with the current Minister for Local Government (the member for Frome) in another place.

The clarification of provisions of the Local Government Act 1999 relating to conflicts of interest is of significant importance to elected members and ultimately to public confidence in local government decision-making processes. The ICAC Commissioner, the Ombudsman and the LGA have been key drivers behind giving advice on most of the proposed amendments in this bill. I think it is important to stress that there has been thorough and widespread consultation about the provisions of this bill and an eagerness for the bill's timely passage through parliament and the implementation of improvements to local government processes.

Members have raised issues and put forward views about the local government at large, but I think that some of the suggestions for change are beyond those contained in the bill and will require more extensive consultation across the local government sector and the community broadly. It is my intention to address some of those specific matters, and matters that were raised by the Hon. John Darley in his speech earlier, as they arise during the committee stage of this bill. I will, however, comment briefly on the requirement in this bill for parts of the elected member register to be published on a website.

The objective of this measure is to improve transparency and accountability by allowing members of the public to access information in a way that meets contemporary community expectations. The information required to be disclosed by elected members is already required under the current act. This bill simply provides what many would consider a more convenient and accessible method for obtaining the information.

In bringing the second reading debate to a close, on behalf the Hon. Geoff Brock, the local government minister, I acknowledge the assistance and cooperation of the Local Government Association, the ICAC Commissioner, the Ombudsman, parliamentary counsel and the staff of the Office of Local Government. Without their support and preparedness to negotiate, these legislative improvements would have been very difficult indeed.

Bill read a second time.

Committee Stage

Clause 1.

The Hon. D.W. RIDGWAY: During the second reading debate on this bill, I made some comments in relation to information provided to me by the shadow minister, Steven Griffiths (the member for Goyder) about the notes that had been provided to me by my office. I was a little confused and indicated that we had not heard from the LGA at that time. In fact, Steven had met with the LGA and had provided to me a briefing that had been provided by the LGA. I wanted to correct the record. I did say that we had not from the LGA and that I had not heard from the member for Goyder but, in fact, he had been doing his work. He had met with the LGA and was provided with a briefing on the Hon. John Darley's amendments.

Clause passed.

Clauses 2 to 20 passed.

New clauses 20A and 20B.

The Hon. J.A. DARLEY: I move:

Amendment No 1 [Darley–1]—

New clauses, page 13, after line 22—Insert:

20A—Amendment of section 105—Register of remuneration, salaries and benefits

(1) Section 105(3)—after 'to inspect' insert:

(without charge)

(2) Section 105(4)—delete subsection (4) and substitute:

(4) The chief executive officer must also cause the Register of Salaries to be made available on a website determined by the chief executive officer for inspection (without charge) by members of the public.

20B—Insertion of section 105A

After section 105 insert:

105A—Publication of certain expenditure

(1) A council must publish, within 14 days of the end of each month, on a website determined by the chief executive officer, the following details in relation to each credit card provided by the council for use by a designated officer:

(a) the name of the designated officer entitled to use the credit card;

(b) a statement of expenses for the month incurred using the credit card.

(2) Any details published under subsection (1) must remain available on the website for inspection (without charge) by members of the public for a period of 5 years from the date of publication.

(3) In this section—

designated officer means the chief executive officer or a senior executive officer of a council.

This amendment does two things. Firstly, it requires the register of salaries, established under section 105 of the Local Government Act, to be made available online. Secondly, the amendment requires that councils provide details of charges to corporate credit cards by chief executive officers and senior executive officers of council. Both amendments are aimed at strengthening transparency and accountability measures.

Currently, councils are required to make available for inspection at council premises a register of salaries. Where a person attends council and requests a copy of the register (or part thereof) councils are able to charge for the provision of that information.

Certainly, in terms of trying to draw comparisons between councils, it can become a very expensive exercise. As I mentioned during my second reading contribution, my officers previously requested the information from the council which, from memory, has indicated that it would require payment of $6 per entry, for a grand total of something in the order of $3,000, in order to provide that information in hard copy.

If the information was provided on the web, obviously it would alleviate the need for payment altogether. I can understand charging a nominal fee for a service, but this is an absurd amount of money to be charging for the provision of such information. I think you would be hard-pressed to even find a law firm that is able to charge such astronomical fees for what really is photocopying or printing off information that is already available to council. It is certainly more than what is prescribed in the Supreme Court scale of costs for an equivalent service.

Broadening the scope of publication of expenditure to include chief executive officers and senior executive officers is also a very sensible move aimed at providing more transparency. There is no question that having this sort of information is beneficial to the public and also to ensuring accountability.

I think it is fair to say that we have probably now reached the point where many members of the public also feel it is their right to know where and what their funds are being spent on, whether that be taxpayer dollars or council rates. There is absolutely no reason why, in this instance, the disclosure of such information should be limited to elected council members. This is a sensible amendment and I would ask all honourable members to support it.

The Hon. K.J. MAHER: I thank the honourable member for his contribution and appreciate the genuine earnestness in the way in which he has gone about moving the amendment and what he seeks to do. However, the government will not be supporting these particular amendments at this time as they propose significant changes to the Local Government Act that have not yet been consulted on properly with the local government sector or more widely.

The Hon. D.W. RIDGWAY: We gave an indication in our second reading contribution that we needed to take the Hon. John Darley's amendments through our party room process, which we have done, and we think these amendments would be best included in the wide ranging review of the act, proposed by the minister, in 2016. It has been flagged and I suspect that will happen.

At this point in time, we indicate that we will not be supporting the Hon. John Darley's amendments, but we do indicate that we would be very interested in looking at, and urging the minister and the government to have a look at, some improved standards of accountability and transparency. These people are being paid with ratepayers' money and expending ratepayers' rates and so I think the community has a right to have some greater degree of transparency and accountability, which is something that has been missing to a fair degree with this state government over the last 14 years. The opposition party is a strong supporter of increased transparency and accountability in all levels of government, but we will not be supporting the Hon. John Darley's

amendments today, and look forward to the government including it in their review of the Local Government Act maybe later next year.

The Hon. D.G.E. HOOD: We can see where the numbers lie here so there is no point in a protracted debate. I would just like to put on the record that Family First will support the amendments.

New clauses negatived.

Clause 21 carried.

New clauses 21A and 21B.

The Hon. J.A. DARLEY: I move:

Amendment No 2 [Darley–1]—

New clauses, page 13, after line 32—Insert:

21A—Amendment of section 115—Form and content of returns

Section 115(2)—delete subsection (2) and substitute:

(2) A person who has submitted a return under this Division must notify—

(a) in the case of the chief executive officer—the principal member of the council; or

(b) in the case of a prescribed officer—the chief executive officer,

of a change or variation in the information appearing on the Register in respect of the person or a member of his or her family within 1 month of the change or variation.

Maximum penalty: $10,000.

(3) It is a defence to a prosecution for an offence against subsection (2) to prove that the person did not know, and could not reasonably be expected to have known, of the relevant change or variation.

21B—Substitution of sections 118 and 119

Sections 118 and 119—delete the sections and substitute:

118—Inspection of Register

(1) A council must publish, in accordance with the regulations, the following details in relation to each person to whom this Division applies contained in the Register on a website determined by the chief executive officer (and cause the details on the website to be updated at regular intervals):

(a) the person's income sources or employer;

(b) the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which the person is a member;

(c) any gifts received by the person that are required to be included in the information entered in the Register in relation to the person.

(2) A person is entitled to inspect (without charge) the Register at the principal office of the council during ordinary office hours.

(3) A person is entitled, on payment of a fee fixed by the council, to a copy of the Register.

(4) A word or expression used in this section that is defined in Schedule 3 clause 1(1) has the same meaning in this section as in that subclause (and as if any reference in that subclause to a *member* were a reference to an officer to whom this Division applies).

119—Restrictions on publication

(1) A person must not—

(a) publish information derived from a Register unless the information constitutes a fair and accurate summary of the information contained in the Register and is published in the public interest; or

(b) comment on the facts set forth in a Register unless the comment is fair and published in the public interest and without malice.

(2) If information or comment is published by a person in contravention of subsection (1), the person, and any person who authorised the publication of the information or comment, is guilty of an offence.

Maximum penalty: $10,000.

The amendments are in the same form as those provisions of the bill that apply to council members, namely clauses 11, 12 and 13. The intention is to bring chief executive officers and senior executives into line with elected council members and to treat them in the same way when it comes to requirements regarding the disclosure of interests.

Like the previous amendment, it is aimed at ensuring a higher level of transparency and accountability. As we know, chief executive officers of councils are paid anything up to $350,000-odd for the role they undertake. It is only reasonable that ratepayers have access to appropriate information regarding their remuneration, other packages they may receive and their affiliations with any political parties or professional organisations in appropriate circumstances. Basically, this amendment aims to ensure that, for the purposes of such disclosure, they are treated the same as council members. I ask all honourable members to support the amendment.

The Hon. K.J. MAHER: Again, I thank the honourable member for bringing these amendments to us today, but as with the last amendment they are not supported by the government as they propose significant changes that have not yet been consulted on widely with the local government sector.

The Hon. D.W. RIDGWAY: As I indicated before, we are attracted to looking at these issues in the broader, wider-ranging review of the Local Government Act, hopefully next year, but we will not be supporting the amendments today.

The Hon. D.G.E. HOOD: Again, I indicate Family First support for the amendment.

The Hon. T.A. FRANKS: I indicate that the Greens also support this amendment.

New clauses negatived.

Remaining clauses (22 to 40), schedule and title passed.

Bill reported without amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (15:46):

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT AND REPEAL (BUDGET 2015) BILL

Second Reading

Adjourned debate on second reading.

Continued from 23 October 2015.

The Hon. G.A. KANDELAARS (15:47): I rise to support the Statutes Amendment Repeal (Budget 2015) Bill. This bill contains measures that form part of the government's budget initiative for 2015-16, and implements the outcomes of the State Tax Review. The changes the government is making in this bill will remove significant cost barriers to business investment and expansion and encourage the creation of new businesses in the state, which will provide lasting improvements to the South Australian economy.

These changes will reduce the harmful impact that inefficient taxes have on the economy, and are consistent with the views expressed by South Australians during the State Tax Review. In total, almost $670 million in tax relief will be provided over the next four years as part of this tax reform package, including ongoing relief of more than $268 million per annum from 2018-19. Over the next decade these changes will return almost $2.5 billion to businesses and the community. The tax reform measures are in line with the government's commitment to make South Australia the best

place to do business and recognises that the state's tax system must not stand in the way of investment and job creation.

These tax reform measures build on the considerable other tax and related relief already introduced by the government. Businesses in South Australia already enjoy the most competitive payroll tax regime in the nation, as assessed by the Commonwealth Grants Commission, and the government's recent changes to WorkCover will deliver a reduction in business costs to South Australia of about $180 million per annum.

In addition to the legislative changes required to implement the outcomes of the state tax review, the bill also includes legislative amendments that will enable a new cost of living concession of up to $200 per annum per household for those eligible, which will commence from 1 July 2015; a new fee structure for probate matters with a reduction to the current fee structure for estates valued at less than $200,000; and the payment of royalties recovered by councils in South Australia for the benefit of all South Australians.

On the issue of the cost of living concessions, this bill amends the Rates and Land Tax Remission Act 1986 to provide a cost of living concession. A new cost of living concession of up to $200 per annum per household will be paid to eligible householders from 1 July 2015. The cost of living concession will replace the existing council rate concession of up to $190 per annum provided to pensioners, low income earners and specified self-funded retirees who are homeowners.

Eligibility for the new concession will be expanded to include pensioners and low income earners and specified self-funded retirees who are tenants. Expanding the criteria means an extra 45,000 households that are tenants will benefit from the new concession. Eligible pensioners and low-income earners who own their own homes will receive $200 per annum to put toward their greatest needs. Eligible pensioners and low-income earners who are tenants and eligible self-funded retirees who hold a commonwealth seniors health card will receive $100 per household.

On the issue of probate, the bill amends the Supreme Court Act 1935 to allow for a tiered fee structure for court fees in respect of probate matters. The new fee structure will be based on the value of the estate and will commence from 1 January 2016. The current fee of $1,088 will be reduced for estates of less than $200,000, and the highest fee will be $3,000 for estates valued over $1 million.

On the issue of royalties, the bill proposes to make a royalty payable on minerals recovered by councils in South Australia from their borrow pits at a royalty rate of 55¢ per tonne from 1 July 2015. This will replace the royalty exemption provided to councils and ensure the state receives royalties for those materials that are owned by the Crown in the right of the state of South Australia for the benefit of all South Australians.

I can advise the chamber that ongoing discussions are occurring between the government and the Local Government Association that are likely to see further amendments around this issue. I also advise that council borrow pits will continue to be regulated and controlled apart from the royalty payable under the provisions of the Local Government Act 1999. I commend this bill to the council.

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

COMPULSORY THIRD PARTY INSURANCE REGULATION BILL

Second Reading

Adjourned debate on second reading.

(Continued from 23 September 2015.)

The Hon. R.I. LUCAS (15:54): I rise on behalf of Liberal members to speak to the second reading of the Compulsory Third Party Insurance Regulation Bill. The government second reading indicates that they believe this bill is about ensuring a fair and affordable CTP scheme and consumer protection for motorists and CTP insurance claimants by establishing an industry specific and independent regulator.

As you and other members will be aware, on 1 July this year the Legislative Council passed a motion which referred the whole issue of the privatisation of MAC to the Statutory Authorities

Review Committee for an urgent inquiry. That committee has already commenced that inquiry and commenced taking evidence. On 9 September of this year, the Legislative Council passed a motion referring the impact of the lifetime care and support scheme and the CTP insurance scheme on persons injured in motor vehicle accidents to the Social Development Committee for inquiry.

During briefings by government advisers on this legislation, I asked a series of questions to the government advisers in terms of the progress of the government's privatisation process. As you know, the government is proceeding with the privatisation process as we speak. I was advised by the government that it does not need any legislation to proceed with and to conclude the process.

I was also advised that the current process is that the government is at the RFT stage (which is the request for tender stage), having been through an expression of interest stage sometime earlier this year, and the government's intention is to finalise that process and announce between three and five successful private operators by no later than December of this year. We were further advised that private operators have indicated they will need about six months to employ staff and to establish functioning offices to be ready to service customers from the newly privatised market on 1 July next year.

We were further advised that the government has considerable powers under the existing Motor Vehicles Act to undertake everything that it needs to undertake for the privatisation of MAC and that is why legislation is not required, and that the government's intentions are that, with the contractual requirements on private operators, it will be able to conclude the privatisation process. We were further advised that those same powers under the Motor Vehicles Act will be used by the government to ensure the continuation of MAC's existing community programs such as road safety, etc., at exactly the same level.

Let me indicate clearly that I put a specific question to the government and asked: if the Legislative Council was to defeat this bill, or if the Legislative Council was to delay the passage of this bill until next year, what impact would that have on the privatisation process? It was a clear, explicit question, and the clear and explicit response was it would have no impact, or it would not stop the government's privatisation process. The government has all the powers it requires under the Motor Vehicles Act and, through binding contractual arrangements on the operators, will conclude the process by the end of this year.

I think, to be fair to the government, their position is that they strongly prefer the passage of the legislation as quickly as possible. Their argument for that is that future private sector operators are strongly supportive of knowing the detailed nature of the proposed independent regulatory model beyond the three-year transition period, but again, and I repeat, the clear and explicit question I put was: if the Legislative Council was to defeat this bill, or if the Legislative Council was to delay the passage until next year, would it stop the process of privatisation? The government indicated no, it would not.

I think it is important for all members in this chamber to therefore understand where we are in the process. We clearly have the capacity to influence the nature of the regulatory environment, but we have no capacity to either prevent or halt the privatisation process which, as I said, will conclude in the next month or two, on the advice from the government.

I put a series of questions to the government and I will ask the government to, in their response, put on the public record the government's responses to the questions. The questions I put were: given the claims that have been made in relation to premium impacts of privatisation in New South Wales and Queensland, can the government provide their response to those claims about the premium impacts in those two states as a result of privatisation? Secondly, I asked some questions in relation to an issue which I will address in the second reading, which is the fair and reasonable provisions within the existing Motor Vehicles Act. I will address some comments to those in my contribution to the second reading.

The third question which I asked the government to place a response to is the following: how is the stronger regulatory model the government claims proposed for South Australia reflected in either this bill or in the contract? Fourthly, my question was: why did the government not choose to use ESCOSA as the independent regulatory authority, but rather establishing a separate independent regulatory authority?

Fifthly, on the government's future commitment to road safety funding and the mechanism by which that will be achieved, I asked the government to provide some detail in terms of how in practice the government proposes that existing commitments for road safety funding and other community programs would be maintained at the same level. As I said, I seek a response from the government or putting on the public record the responses they have already provided to me in private.

There are very many questions in relation, obviously, to the whole privatisation process but also in relation to this proposed regulatory arrangement. The government's proposal is that, for a three-year period, there will be what they refer to as 'CPI like' increases. I seek further clarification from the government (given that they are, I would imagine, already engaged in contractual discussions) as to exactly what the government means by 'CPI like'.

It is quite clear, through the use of that phrase, that they are not using CPI. They are leaving themselves some wriggle room for something, either a bit above or a bit below—one would imagine a little bit above, but that is not clear. Nevertheless, one would assume that there will be some basis for what they are referring to as 'CPI like' and I think it is important that that is placed on the record as to where the government is in relation to their interpretation of 'CPI like'.

As I said, there are many questions. The only one that I do want to flag here in some detail is that in the government's bill there is a reference to clause 17, and this is what it says:

> Repeal of section 129 [of the Motor Vehicles Act]
>
> The proposed amendment repeals section 129 of the principal Act which provides for the appointment of a committee to inquire into and determine premiums in respect of insurance under Part 4 of the Act. This amendment is consequential on the establishment of the CTP Regulator.

On the surface of that, it is a fairly pedestrian clause. It is saying, 'We are establishing an independent regulator; we therefore don't need the third party premiums committee and all this is doing is repealing that particular section.' But it is important for what is not included in that explanation of the clauses, nor in the government's explanation in the bill, as to what the government has deliberately excluded from both of those. That is, when you go to section 129(1) of the Motor Vehicles Act, it says:

> Upon the recommendation of the Minister, the Governor may appoint a committee to inquire into and determine from time to time what premiums in respect of insurance under this Part are fair and reasonable.

That section provides for the establishment of a third-party premiums committee, and the minister's explanation refers to its abolition because we are establishing an independent regulator. What the minister's explanation does not include, clearly by deliberate intent, is the provision that says that the guidelines for the third-party premiums committee state that they have to determine premiums that are fair and reasonable.

The government is removing that 'fair and reasonable' provision for the independent regulator. One question I did not put to the government—but, clearly, I can now—is: why didn't you actually put that in the second reading explanation and the detailed explanation of clauses? Putting that aside, my question to them was: why are you getting rid of the 'fair and reasonable' provision in relation to the proposed regulatory environment for compulsory third-party?

I note particularly that the first sentence of the minister's second reading explanation says, 'This bill is about ensuring a fair, affordable CTP scheme.' The second reading explanation says it is all about ensuring a fair and affordable CTP scheme, but it actually removes the provision that says that premiums need to be fair and reasonable. I seek a response from the government on this.

The best response we could get from the government in relation to why they had abolished the provision was that 'fair and reasonable' is a legally vague concept and does not provide any specific guidance to the third-party premiums committee. I have lost count of the number of pieces of legislation that have used certainly the term 'reasonable' within them.

I am sure members who have been in this chamber for longer than one parliamentary session will be well aware of examples where the word 'reasonable' is used frequently in government bills. There are also a reasonable number of examples where the notion of 'fair' is used as well. Anyway, the bottom line is that it already exists within the Motor Vehicles Act and has done so for many years.

It is not as if it is a new phrase. It is something that the third-party premiums committee has obviously successfully interpreted and used for a long period of time.

Before this bill passes the parliament, there needs to be debate about a number of issues and that one in particular, as to whether the government can give us a good argument—and there may well be a good argument; certainly that one was not a good argument, but there may well be one—in relation to why the government has not included that particular protection within the new regulatory environment.

A cynic might suggest—and I am not going to suggest that at this stage; I will give the government the benefit of response—that maybe the government does not want to see fair and reasonable CTP premium increases after the three-year transition period. I would hope that that is not going to be the case, but it is for the government to justify to the parliament why they have not included within the proposed regulatory environment the protection that exists within the existing regulatory environment.

There are two final points I want to make. First, as I indicated at the outset, the Statutory Authorities Review Committee inquiry into the MAC privatisation has already commenced taking evidence and, to be fair, we have already taken some evidence in public session from witnesses referring to the importance of the proposed regulatory environment.

As you would well know, Mr Acting President, some witnesses have already referred to the fact that the proposed regulatory environment is going to be an important part of how the market operates in the future, and one would expect that as a matter of common sense, anyway.

The Liberal Party has indicated publicly that our original intention was to refer this bill to the Statutory Authorities Review Committee upon passage of the second reading. However, that is not possible under the standing orders that apply to our procedures in this place, and that is why I have given notice today that tomorrow I will be moving a motion to ask the Statutory Authorities Review Committee in its current inquiry to ensure that it looks at the existing regulatory environment that applies to the Motor Accident Commission and any proposed changes. That is really through an excess of caution because, as I said, the committee has already been taking evidence on that and I think as a matter of course we probably would have.

I will do so formally. I will indicate tomorrow that, given the fact that the committee has already commenced taking evidence, I will seek a vote on it—not tomorrow but on the next sitting week after that—so that if the Legislative Council agrees, that advice can go to the Statutory Authorities Review Committee to assist it in its deliberations. If that motion were to be successful, it is my view that the Statutory Authorities Review Committee has a body of work to do to look at the regulatory arrangements that are most akin to the proposed model in South Australia, and they exist in New South Wales, Queensland and the ACT.

It may well be an issue for that committee as to whether it will need to take evidence in some way in relation to those independent regulatory environments. I think it would make sense because clearly the government is going ahead with the process come what may. I will be indicating that on behalf of the Liberal Party, given that course of action, we will not be supporting this bill proceeding to a final vote.

We will be moving at the appropriate stage for this bill's progress to be adjourned in the Legislative Council until the Statutory Authorities Review Committee can conclude its urgent inquiry into the Motor Accident Commission and, if the subsequent motion is successful, ensuring that it looks at the regulatory environment that exists and the proposed one which would mean that it could take evidence on this proposed model. It could also offer advice in relation to whether or not removing the requirement that premiums be fair and reasonable is a reasonable decision by the government in this bill and there are, of course, other issues that will need to be addressed as well.

If I can wrap that up by saying that we will await further contributions to the second reading. But probably either at the end of the second reading stage or at the start of the committee stage, we will either move for adjournment of the debate or a continued series of motions to report progress. I accept the government is unlikely to, even though it has supported the Statutory Authorities Review Committee inquiry into the privatisation motion. I expect the government's position will not be to support this reference but I will leave that as a judgement to the government.

For other members I can only repeat that the government's clear advice is that, irrespective of whether this bill is defeated or delayed, the government will be announcing the successful private sector competitors in the next month or two so, well prior to final resolution of this bill, and that is why we believe some inquiry into what would be a reasonable regulatory environment for the privatised compulsory third party market would make a lot of sense, and it would make a lot of sense that the Statutory Authorities Review Committee undertakes that work urgently on behalf of the council as part of its current inquiry.

Debate adjourned on motion of Hon. J. S. Lee.

STATUTES AMENDMENT (INDUSTRIAL RELATIONS CONSULTATIVE COUNCIL) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 13 October 2015.)

The Hon. R.I. LUCAS (16:15): I rise on behalf of Liberal members to support the second reading of the Statutes Amendment (Industrial Relations Consultative Council) Bill. The Liberal Party has for many years supported the general proposition that there should be a reduction in the number of state government boards and committees. We welcomed the fact that in 2014, I think, the government committed to some reform in the area and to some reduction in the number of boards and committees.

This bill is consistent with that general policy direction and seeks to establish the industrial relations consultative council to replace three existing committees: the Industrial Relations Advisory Council, the SafeWork SA Advisory Council and the Asbestos Advisory Committee. We are advised that the total board fees for 2013-14 for IRAC were $9,888; for the SafeWork SA Advisory Council, it was $127,638; and for the Asbestos Advisory Committee, it was $5,600. To be clear, we are not talking significant sums of money: there is a total of about $140,000 in terms of fees that are paid to board members.

The government's position has been that these three committees duplicate their effort and therefore, in some respects, are inefficient. The government has also argued that the same members are often represented on more than one committee. The government also argued to us that the role of the Industrial Relations Advisory Council has also significantly decreased since this state took the decision to refer certain industrial relations powers to the commonwealth, on 1 January 2010.

The Liberal Party received limited responses from industry groups in relation to the bill. In broad terms, Business SA, the Australian Hotels Association and the MBA verbally indicated to us that they supported the bill. I think that to be fair I should place on the record that some concerns were raised with us by the South Australian Wine Industry Association, which opposed the merger of IRAC with the SafeWork SA Advisory Committee. They believed that those bodies required two different and unique skill sets and that it was the exception, rather than the rule, to find both skill sets in the one individual. So, they as one industry stakeholder, did express some concerns.

The government also advised us that they had been lobbied by one stakeholder, which they did not name, which had opposed incorporating the Asbestos Advisory Committee into the new body. The same argument was used to the government, we are advised, by that stakeholder, that is, that the skill set for the Asbestos Advisory Committee was unique and therefore it should not be incorporated into the other bodies.

The government did advise that this new body had the capacity to establish, in essence, a subcommittee or working party or whatever it might be (I am not sure what word they used) as required on particular issues; for example, when we asked about the issue of asbestos. Certainly, we were led to believe that, if required, this council could establish a working group or a subcommittee in particular areas.

It therefore had the flexibility to, as required, appoint groups to do work and provide advice in certain specialist areas. The government's position was that that was not required 24 hours a day, seven days a week, 52 weeks a year. It could be done on an ad hoc and as required basis. Nevertheless, given those concerns, the majority view from stakeholders to the Liberal Party has

been broadly supportive. As I indicated, it is broadly consistent with our overall philosophy towards government boards and committees, and for those reasons the Liberal Party supports the second reading of the bill.

The Hon. T.A. FRANKS (16:20): I rise today on behalf of the Greens to make a short contribution to the bill before us today, the Statutes Amendment (Industrial Relations Consultative Council) Bill. This bill is, of course, part of the state government's promise to reform the state's boards and committee processes and membership in our state to reduce doubling up and waste. The Premier was quoted in an InDaily article on 8 July 2014 as stating:

> The large number of boards and committees currently in existence contribute to duplication, unnecessary complexity and inefficiency within government.

This bill does, indeed, seek to address some duplications that currently exist with regard to the three committees of the Industrial Relations Advisory Council, the SafeWork SA Advisory Council and the Asbestos Advisory Committee, and seeks to consolidate these committees into the Industrial Relations Consultative Council.

The Greens support this bill. In saying this, we certainly have not received correspondence raising any concerns about the bill. I think it is a reasonably simple and noncontroversial piece of legislation. I want to outline briefly the role and membership of the current committees.

The Industrial Relations Advisory Committee was established by section 46 of the state Fair Work Act 1994 and advises the minister on implementing policies affecting industrial relations and employment in the state and legislative proposals, and considers matters referred to the committee by the minister or by members of the committee. The current membership consists of 14 members, including the minister and the executive director of SafeWork SA. The other 12 members are appointed by the Governor, consisting of six persons nominated by the minister after consultation with SA Unions and six persons who are nominated upon recommendation from employer groups.

The SafeWork SA Advisory Council advises the Minister for Industrial Relations on work health and safety standards. It also promotes work health and safety education and training. It oversees the strategic directions of SafeWork SA and provides leadership on workplace safety. There are 11 members of this committee.

I did have some questions for the minister regarding this committee, specifically with respect to the advisory council's Strategic Plan 2012-2017. Will the goals and measures outlined in the strategic plan continue to be implemented under the Industrial Relations Consultative Council and will the target of a 50 per cent reduction in workplace injuries by 2022 continue to be the target under the new council? If the minister could take those on notice and provide a response as we press through the debate on this bill that would be most appreciated.

Finally, the Asbestos Advisory Committee consists of 13 members. As mentioned, we have not heard any hesitation from stakeholders that we have spoken to about dissolving this committee with the understanding that it will be merged into the Industrial Relations Consultative Council. I note that in the other place the questions that I would have asked about the cost implications were both asked and addressed, and the financial impact of this bill is not of a great scale. I do note that, in fact, these are committees where people undertake the work for very minimal sitting fees and certainly it is not one of the gravy train committees that perhaps might better be the target of some of the state government's reform. That would be my only comment on that.

The bill sets up the Industrial Relations Consultative Council which will act as the chief advisory body responsible for providing advice to the Minister for Industrial Relations and will facilitate the administration of laws covering policy matters on work health and safety, asbestos-related matters and relevant industrial relations policies.

We are convinced that members of this new committee will be able to be drawn from a pool of people who can walk and chew gum on industrial relations at the same time, and will have the broadness of the expertise required, and we look forward to further reforms to improve work health and safety and industrial relations in this state. With those few words, I commend the bill.

Debate adjourned on motion of the Hon. T.J. Stephens.

STATUTES AMENDMENT (TERRORISM) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 15 October 2015.)

The Hon. T.T. NGO (16:25): While this bill is relatively short and simple, it is an important one. This bill extends the operation of two acts that are of great assistance to police when responding to an imminent terrorist threat. The secure environment today is different when compared to when the acts were introduced in 2005. The threat of Al Qaida has been replaced with the threat of Islamic State or Daesh. Islamic State has used the internet and social media to reach out to people in countries, such as Australia, who are at risk of being influenced by a violent and fundamentalist world view. This has made the challenge of responding to Islamic State more difficult, as it is harder to identify those who would cause our community harm.

While the acts have not yet been used in South Australia, the corresponding acts in both New South Wales and Victoria have been used. The powers that these acts provide are intended to be used in very rare circumstances, and thankfully South Australia has so far been spared the terrible events and threats that have affected other states. The fact that these events are rare, and the fact that the use of acts such as these are rare, shows that the powers given to police have not been misused or overutilised.

The concerns about civil liberties, which were raised when these acts were originally introduced, have therefore been shown to be largely unsubstantiated. I commend the bill to the council and hope that it receives a speedy passage through this place to ensure that our police continue to have the tools they need to prevent and respond to threats to the safety of our community. I commend the bill.

The Hon. M.C. PARNELL (16:28): I will commence by commenting very briefly on the remarks we have just heard from the Hon. Tung Ngo, where he pointed out that the fears of 10 years ago that these laws would breach civil liberties have turned out to be unfounded. Well, of course unfounded, because the laws have never been used. If the laws had been used, then maybe those fears would not have been unfounded. It is a very hollow argument to say, with laws that have never been used, that therefore the criticism made of those laws was unfounded.

Back to the bill: it extends for another 10 years laws that have never been used. In fact, it is more than just a mirror or repeat of the 2005 legislation, because it actually excludes some of the very few checks and balances that were in the original act. In the original act there is provision for a review, and that review was to take place on the second and fifth anniversaries of the bill, but the bill now before us includes no such review. That would mean, effectively, that these laws would operate (or in our case not operate, because they have not been used) for 15 years without any obligation on the executive to report back to parliament as to their use.

The Greens will be moving, when we get into the committee stage, for review provisions. Members might think that that is a very onerous responsibility to place on the executive, that every two years they must come back to parliament with a one-line report which says, 'Again we have never used these laws,' end of report. That has been the content of the last two reports and I expect will be the content of the next reports. My amendments propose for two-yearly reviews.

In terms of the actual mechanics of the bill, what it does, I do not propose to go into detail of all the different powers that are now being extended to the year 2025, but I did have opportunity to go back through the *Hansard* debate of 2005 and have a look at what some of the honourable members said back then. There was one contribution which quoted the debate from the House of Lords, because the UK parliament has in similar timeframes to Australia passed similar laws.

One of the quotes came from a Lord Hoffman, whom I have never met, and I do not know anything about him, but Lord Hoffman, in House of Lords, said the following:

> Terrorist crime, serious as it is, does not threaten our institutions of government or our existence as a civil community. The real threat to the life of the nation in the sense of a people living in accordance with its traditional laws and political values comes not from terrorism but from laws such as these.

The Hon. K.L. VINCENT (16:31): I speak today in support of the second reading of this bill. I thank the government for providing a briefing and appreciate the amendments my colleagues the Hon. Andrew McLachlan and the Hon. Mark Parnell have brought to improve this bill. I say at this point that Dignity for Disability will be supporting the Hon. Mr Parnell's amendments, as we believe review of significant powers such as these is important for accountability, and I would hope we all consider accountability important in this place.

I know the government will say that it is an overly onerous burden for laws that are rarely used, and in fact have never been used, never been invoked in South Australia, as I understand it, but surely that makes them all the more easy to review. Accountability is important when laws such as these could, if used, possibly infringe upon civil liberties to such an extent. With those brief words, we will support the second reading and the amendments of the Hon. Mr Mark Parnell.

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (16:32): I thank honourable members for their contributions to this bill. I will not speak very long at all. I note that there will be debate through the committee stages upon the Hon. Mark Parnell's amendments, and I believe that they are now the only amendments that are going to be pursued, so we will deal with that when we come to the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. A.L. McLACHLAN: I would indicate the Liberal Party position as we proceed into committee. A number of amendments have been filed, including some from myself. I advise the chamber that I will not be proceeding with those amendments, as we will be supporting the Greens' amendments. The Liberal Party position was that we would be seeking one review in the subsequent 10 years, but on discussion with a variety of members in the chamber we have settled on supporting the Greens' amendments for every two years. We thank honourable members for their time in discussing the way forward in relation to the amendments of this bill.

Clause passed.

Clause 2 passed.

New clause 2A.

The Hon. M.C. PARNELL: I move:

Amendment No 1 [Parnell–1]—

Page 2, after line 8—Before clause 3 insert:

2A—Amendment of section 30—Review of Act

(1) Section 30(1)—after paragraph (b) insert:

(c) the twelfth anniversary of the commencement of this Act; and

(d) the fourteenth anniversary of the commencement of this Act; and

(e) the sixteenth anniversary of the commencement of this Act; and

(f) the eighteenth anniversary of the commencement of this Act.

(2) Section 30—after subsection (1) insert:

(1a) The Minister must, within the 4-month period preceding the expiry of this Act, cause the operation of this Act to be finally reviewed.

I would like to thank the Hon. Andrew McLachlan and the Hon. Kelly Vincent for their indications of support for this very simple amendment which, as I said in my second reading contribution, seeks to incorporate regular reports to parliament on how these laws have or have not been used. In the past, those reports have been very brief because there has been nothing to report on, and I expect and I hope that the subsequent reports, every two years under this amendment, will be similarly brief.

The mechanics are that this bill has been operating for 10 years, and the amendment proposes that, at the end of years 12, 14, 16 and 18, there will be reports to parliament and that, within four months after the act has expired, there will be a final review. I just repeat that this is not an onerous obligation on the executive because, in fact, if these laws are used, then it will be absolutely important for us to find out the circumstances in which they were used and the manner in which they were used. So, I do not think it is an onerous responsibility, and I am grateful that the chamber, on the numbers, appears to be supporting this sensible series of amendments.

The Hon. K.J. MAHER: I will just very briefly put on *Hansard* the government's view on the amendment. The government will not be supporting the amendment. We understand why the Hon. Mark Parnell is moving the amendment. The Hon. Tung Ngo pointed out that the act has not been invoked, and I know the Hon. Mark Parnell made comments that it would not have infringed civil liberties because you have not had a chance to see the result if the act had been invoked, but I also note that a similar argument could be used.

I note the Hon. Mark Parnell foreshadows the very real likelihood that the reports will just be a very small one-line report that the act has not been used, so one might also argue then: what is the point of having those constant reviews under the act? It is a good thing that the act is not being used. It highlights the fact that there has been no need to invoke it and no-one would wish for the conditions to be present for its deployment to be established.

It is clear that, if the deployment of these powers was to arise, the facts that cause the obviously extraordinary occasion would be the subject of very intense public and government scrutiny. The rapid review of the Martin Place siege by both state and commonwealth governments shows in real life what would happen. If circumstances did arise such that these extraordinary powers were invoked, we have seen what has happened and that has given rise to a very, very quick review of the circumstances of the law surrounding it. For those reasons, the amendment is opposed.

The Hon. J.A. DARLEY: I indicate that I will be supporting the Hon. Mark Parnell's amendment.

Amendment carried; new clause thus inserted.

Remaining clauses (3 to 5) and title passed.

Bill reported with amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation) (16:39): I move:

That this bill be now read a third time.

Bill read a third time and passed.

SUMMARY OFFENCES (BIOMETRIC IDENTIFICATION) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 24 September 2015.)

The Hon. A.L. McLACHLAN (16:40): I rise to speak to the Summary Offences (Biometric Identification) Amendment Bill 2015 and indicate that I will be speaking on behalf of the Liberal members of this chamber. During my second reading, I will be raising a number of questions in relation to this bill which I would like the government to respond to in their summing up ahead of the committee stage in order to facilitate the further debate that will inevitably occur in the committee stage.

The bill amends the Summary Offences Act 1953 to permit the use of mobile fingerprint scanners by South Australia Police. We understand that South Australia Police currently operate 150 of these devices, but under current law they need to obtain the consent of the person being fingerprinted before they can be utilised. Currently, under section 74A(1) of the act, if a police officer

has reasonable cause to suspect that a person is committing an offence or is about to commit an offence or that person may be able to assist in the investigation of an offence or suspected offence, the police can require that person to state all or any of their personal details. If that person refuses, they commit an offence under the Summary Offences Act. The penalty, I understand, is a fine of up to $1,250 or imprisonment up to three months.

Pursuant to the bill, a police officer will have the power to, in the same set of circumstances, require that person to submit to a biometric identification procedure using a mobile fingerprint device. Under the bill, a scan of the person's fingerprint is taken on the spot by the police. The portable system will then send the scanned data to the National Automated Fingerprint Identification System and a hit or no-hit will be returned. If a hit is returned, the person's identity and criminal history will appear on the screen. The same maximum penalty will apply for failure or refusal to submit to a biometric identification procedure as at in the current provisions for failing to state personal details.

The bill provides that biometric data must not be stored for longer than is reasonably required for the purposes of carrying out the identification procedure. The bill introduces a new offence prohibiting persons from retaining or storing biometric data derived from the identification procedure for longer than is required for the purposes of carrying out the procedure. The maximum penalty is equivalent to the penalty for unauthorised storage of a DNA profile under the Criminal Law (Forensic Procedures) Act 2007, being a fine of up to $10,000 or up to two years imprisonment.

There has been some opposition to the introduction of this bill, significantly from the Legal Services Commission, and some concerns expressed by the South Australian Bar Association. In a letter from the Legal Services Commission to the Attorney-General dated 13 April 2015, they advised as follows. The commission's main concerns related to clause 74(1)(b) of the draft bill. The commission would prefer to see the use of this technology restricted to circumstances where the police have reasonable cause to suspect a person has committed, is committing or is about to commit an offence.

The commission considers that the circumstances described in clause 74(1)(b) of the draft bill, where the police officer has reasonable cause to suspect that a person may be able to assist in an investigation of an offence or suspected offence, are too broad and would allow police to engage in 'fishing' expeditions amongst a large number of persons for matters unrelated to the case under investigations and are simply too intrusive. The Bar Association expresses similar concerns in a letter to the Attorney-General dated 27 May 2015, and I will just read a couple of the more significant paragraphs, which state:

> These powers with respect to a suspect are safeguarded by the need for the relevant officer to make an application to take fingerprints from a person suspected of a serious offence that is punishable by imprisonment. If necessary, this application may be made via telephone to an Inspector of Police or a higher ranked officer.

They are referring there to the current power to take fingerprints, which is found in sections 7 and 14 of the Criminal Law (Forensic Procedures) Act 2007. The letter continues:

> We are concerned as to the proposed power to substantially expand the scope of police powers when they already have strong powers and investigative tools to acquire the necessary information for identity. The giving of a name and address has the ability to be quickly checked.

The letter goes on to say:

> The concern of the expansion of powers is primarily for the situation of someone who may be able to assist in the investigation of an offence or suspected offence.

They share similar concerns to those of the Legal Services Commission. The essence of this submission is that there are sufficient powers that are extant in their operation. This bill potentially signals the Orwellian future that awaits us. I fear, although I hope it is unjustified, that this bill may originate from the desire of the police to ultimately have the ability to invade our privacy at will. I hope that is not the case but, with some of the legislation coming before this chamber, it appears that they have a continued desire and drive to adopt practices that suit them rather than the community that they are supposed to serve.

The nature of these amendments are such that there needs to be a proper explanation to this chamber—and I ask for it—as to what the police procedures will be when they are handling this device. This device is not like a breathalyser. It is not specifically prescribed under legislation and

therefore there are regulations that allow for the expansion of the biometric identification procedure, but not of the device itself.

Therefore, some of my questions to the government relate to how we can have assurance that this device is operating accurately but also is not storing the data that is prohibited for longer than is reasonably required. In particular, is there any chance that, when the portable system is interfacing with the national automated fingerprint identification system, the fingerprints will be stored inadvertently?

We have all read and understand that there are many instances, both in the policing sphere and outside of it, of data being retained inadvertently. I would be seeking an assurance from the government that this has been properly investigated and that we have some assurance or even auditing practice so that fingerprints are not retained inadvertently or unintentionally.

I also raise the question: how do we know that the fingerprints are not being stored? I understand that the scanners that are currently being used destroy the image on the machine the next time you use the machine, but what practices are going to be put into place to ensure that, if a machine may be left on the shelf or is not used in an intervening period, it is cleansed of someone's fingerprints? It seems to me that would be inconsistent with what is reasonably required.

Is there going to be an audit of these devices or some sort of audit of the practices on an ongoing basis to give the community assurance that they are not only being used correctly but they are fit for purpose, and continue to be fit for purpose, and that there is not even unintentional keeping of people's personal data—in this case, fingerprints?

It seems to me that whilst there is an appropriate criminal sanction for unauthorised storage, there does not seem to be any compliance mechanism that is accompanying it, either in the body of the legislation or being stated to this chamber to give the members necessary assurance that the operation of this bill, when it comes into law, is appropriate and practicable. In essence, there seems to be the opportunity for the police to be policing themselves. How will we ever know unless there is an external body ensuring that the law is being complied with?

In relation to the new offence which is for prohibiting persons from obtaining or storing, I would like clarity around who would be charged in those circumstances. Is it the police officer? Is it those in the police force who are accountable for the operation and maintenance of the equipment? Is it senior officers such as the police commissioner who have issued directions in relation to using the equipment? We could have a situation where a police officer, following procedures, using the equipment, technically breaches the law or even knowingly breaches the law by facilitating the storage of the fingerprint for an unreasonable period of time.

We are advised by the government that the wider use of mobile fingerprint scanners by the police will improve identification rates and reduce the incidence of people avoiding being identified. I ask the government to advise on how many occasions have members of the community been asked to voluntarily provide their fingerprints using the biometric scanners, and how many times have they refused? The collection of this data, in my view, would be absolutely necessary to justify the statements being made by the government and the warranting of this amendment.

Also, on how many occasions have the police needed to have this system or some other system where they needed to provide identification in addition to the laws that are already in place such as driver's licences or some other form of identification? I would have expected this data to be kept to warrant the need for these amendments, so they are of great interest to the Liberal opposition. In particular, how many occasions have individuals avoided being identified under existing laws, as I have indicated? Again, the number of incidences is really the driver for these laws and the consequence of possible invasion of people's privacy.

I would ask the government to advise the chamber in its summing up, in essence, the practices and procedures that the South Australian police will be using to wrap around this bill if it is passed. In essence, as we are authorising the use of these sorts of testings, it is critical that we have assurances that not only will it be used reasonably but because it is of an electronic nature that the proper practices are in place to give assurance that the members of the public will not be inadvertently impacted. I ask the government the following questions:

- How many prosecutions have been made under the Criminal Law (Forensic Procedures) Act for offences of unauthorised storage of a DNA profile?
- How many apprehensions or arrests or warrants has South Australia Police made in the last five years due to an inability to confirm identification?
- What will police officers be required to explain to suspects before they can exercise the power; for example, will they be required to explain the reasons for the prints being taken and the power under which they are to be taken and that their fingerprints may be subject to a speculative search against other fingerprints?
- Are police officers going to be required to delete the image once the procedure has been conducted, or do they wait until they conduct the next identification procedure and wipe out the older one?
- How instantaneous is the response from the national database?
- When the fingerprint image is deleted from the mobile unit, does the device retain the deleted data in a back-up drive—and I use the example of photocopiers, which often retain images for long periods of time?
- What happens when a new device is being used by the police? How will parliament know that this new device has the comfort of sufficient operation that fingerprints will not be retained inadvertently into the future? We have received some assurances in the other place, but this is in relation to existing equipment that is being used.
- As I have indicated earlier, will audit procedures be in place to ensure that the data is not being stored on the prescribed time frame?

We have seen in the federal sphere difficulties with the retention of personal data. What comes to mind for me is the incident in 2014 regarding the Department of Immigration, which is a classic, where data was released more broadly and not retained in the manner that it should have been. In my view, we are in desperate need in this state for an adequate privacy regime, with an adequate enforcement arm, which will give comfort to our community, because with this legislation and these sorts of regimes or amendments maintaining the trust of individuals is paramount.

If individuals believe that data about them is going to be held securely or deleted, where appropriate, and only collected for stated purposes, they may be more comfortable relying on the organisations to inform them and to seek their consent for the use of personal data, or to hand it over. This, across a range of government instrumentalities, is the issue of the day.

Much of my questioning to the government is based around giving the Liberal opposition the assurance that the government will maintain the trust of the community and not overtly or inadvertently retain data that it should not otherwise retain.

I indicate the Liberal opposition's support for the second reading, but I look forward to the government's responses in the summing up ahead of the committee stage. We potentially flag that, depending on the government's responses, we may have further questions at the committee stage.

The Hon. M.C. PARNELL (16:58): This is indeed a worrying bill. I am indebted to the Hon. Andrew McLachlan for putting on the record a large number of questions, many of which are the same questions the Greens have in relation to this bill. The honourable member referred to a potential Orwellian future, and I do not believe that that is an exaggeration. In fact, I think that we are only a short time away from having the technology available for a complete biometric record of every living person being held by the state. That might sound like an exaggeration, but each of the steps that have been taken over the years, I think, is leading to that conclusion. If you start with this bill and you just look at the definition of biometric data, it says:

> biometric data means fingerprint data or any other prescribed data or data of a prescribed kind that describes physical characteristics of a person or part of a person that may be used to identify the person;

So, we are not just talking about fingerprints, although that is the method that has been named in the bill. But the bill has been opened for the executive by delegated legislation to add any other form of

identifying a characteristic, which would include, no doubt, iris scans of people's eyes, measurements of people's height, their weight, and certainly photography.

It is not a far stretch of the imagination to see that those deluded individuals who protested against the Australia Card—and I will put my hand up—thinking that that was a great infringement of our civil liberties only to find that technology has marched so far ahead that not only were we fearing carrying a plastic card around with identifying information that must be disclosed on demand, but that the state will potentially have a record of every physical characteristic of every person on a database.

People might scoff and think that is not going to happen, but I just point out to members that that is the direction that this is heading in. Members might think that these laws are only going to be used for crooks, people who are likely to be crooks, people caught in the act or people suspected of committing crimes, but that is not what it says. It says:

> (1) If a police officer has reasonable cause to suspect…
>
> (b) that a person may be able to assist in the investigation of an offence or a suspected offence,

That is a person, in other words, who can assist them with their inquiries. Is it all those attending the Adelaide cricket ground when an altercation might have occurred in Tier 3? Do you round up everyone in Tier 3 and fingerprint them because they may be able to help with inquiries? It is not so far-fetched to see where laws like this can end up.

The Hon. Andrew McLachlan asked a number of questions in relation to the supposed protections in this bill that a person must not retain or store biometric data derived from a biometric identification process for longer than is reasonably required for the purpose of carrying out the biometric identification process. Now, that is fairly meaningless and it is impossible for individuals to be confident that it is being enforced. There is no mechanism to know whether data has been held, where it has been held and for how long it has been held.

It is well and good for the government to suggest that they are currently using fingerprint machines that simply wipe the fingerprint the next time the machine is used, but this bill is not limited to that type of machine. That type of machine has not even been mentioned.

I do not pretend to be the most technologically savvy person in the world, but it seems to me that any machine is going to be connected to a database that is in the cloud or back at headquarters or whatever, so whether it is fingerprint information, iris or photographs, they are going to be sent off electronically to be matched against a database that exists somewhere else. For us to accept that that information will be deleted if no match is found I think beggars belief, because remember the test is that it is not allowed to be kept for longer than is reasonably required for the purpose of carrying out the identification procedure. That may well be a lengthy period of time.

The government might think they have worded it in a way that that is going to be fairly instantaneous, but it does not mean that at all. It could be days, it could be months or it could be years that is regarded as a reasonable period, especially where you are trying to match people with crimes where the information from the crime scene is incomplete, and if those investigations are ongoing they are going to want to hang onto the fingerprints, for example.

If they have not yet extracted the fingerprints from the crime scene or the body has not been found in the case of a murder, they are going to hang on to all of those fingerprints, so that when the body is found or the murder weapon is found—the gun, the knife, whatever it is—they are going to want to make sure they have the fingerprints that they have collected to be able to match for when they eventually do get their hands on the murder weapon.

I do not think that this is beyond the realms of possibility, because the bill before us certainly does not put the checks and balances in place to prevent that from happening. But, even if the government is right, and even if the information collected will be ephemeral, where is the identification ombudsman, where is the ability for citizens to apply to inspect the database and find out what information has been recorded about them? There is no such mechanism, and I think that that is very worrying.

I am looking forward to the committee stage of this debate for the minister to, first, come back with the answers to the questions that have been posed, and no doubt more questions will arise in the meantime. For now, the Greens will let this go through to committee, but it is a very worrying piece of legislation, and the concerns raised by legal bodies are absolutely justified.

Debate adjourned on motion of the Hon. G.A. Kandelaars.

LONG SERVICE LEAVE (CALCULATION OF AVERAGE WEEKLY EARNINGS) AMENDMENT BILL

Second Reading

Adjourned debate on send reading.

(Continued from 13 October 2015.)

The Hon. R.I. LUCAS (17:06): The Liberal Party supports the second reading of the Long Service Leave (Calculation of Average Weekly Earnings) Amendment Bill. This bill seeks to amend the Long Service Leave Act 1987, and has been drafted in response to a landmark court case in January of this year. In that case, Flinders Ports Pty Ltd v. Woolford, the Supreme Court of South Australia set a significant precedent with a decision that overturned the long-held interpretation of the Long Service Leave Act.

This decision related to a casual worker at Port Lincoln, who had worked on a series of contracts from 1990 until to 2008. From 2008 to 2011, when his employment was formally terminated, the worker was unable to work due to a work-related injury. Judge Stanley's conclusion in part stated:

> He was entitled to a payment in lieu of long service leave upon the termination of his employment on 23 September 2011. However, in the unusual circumstances that obtain in this case, where the deceased did not work for almost all of the three years immediately preceding his entitlement to payment in lieu of long service leave arising, the calculation of that entitlement pursuant to section 3(2) is in a negligible sum. This is an unfortunate result; I consider it deserves the attention of the parliament.

As a result of that determination this legislation has been introduced. Payments under the Long Service Leave Act are based on an average calculation of the worker's last three years of employment. In this case, the last three years involved virtually zero earnings due to workers compensation, rather than the last three years when the worker was actually working and being paid.

The bill seeks to clarify and confirm the principle that part-time and casual employees should not been treated differently from full-time employees who do not have their long service leave payment impacted as a result of workers compensation. The government has argued that, 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.

The government has indicated that the bill was supported by IRAC (Industrial Relations Advisory Committee), which includes both employer and employee organisations. Verbal confirmation of support for the bill has been received by a number of stakeholder organisations, such as the Master Builders Association, the Australian Hotels Association and the Law Society of South Australia. To be fair, a number of stakeholders, such as the Australian Industry Group and the South Australian Wine Industry Association, have expressed some concern about this being potentially yet another cost for business.

One of those organisations did raise a question, to which I seek a response, and that is that in that organisation's view the government had outlined to employers that there would be no retrospective claims made under this legislation. This employer organisation contacted us with the following comment:

> However, the Bill includes a retrospective application to the amendment. Under Schedule 1 of the Bill the amendment will apply to absences of a worker occurring before the commencement of the Act. This is unreasonable and should be opposed.

We seek a response from the government to that particular question from that employer organisation. With that question, we indicate the Liberal Party's support for the second reading of the bill.

The Hon. T.A. FRANKS (17:10): I rise on behalf of the Greens to make a contribution to the Long Service Leave (Calculation of Average Weekly Earnings) Amendment Bill 2015. SafeWork

SA's website provides an excellent summary of long service leave. As members would be aware, it is an entitlement that provides for additional leave to long serving workers. Most South Australian workers are entitled to 13 weeks' leave upon the completion of 10 years' service with an employer or related employers. A worker can also be eligible for a pro rata entitlement after seven years of service.

The bill before this chamber seeks to amend the Long Service Leave Act 1987 and arises from a recent decision in the case of Flinders Ports v Woolford, which was heard by the full court of the Supreme Court of South Australia. In this case, Mr Woolford 's long service leave payment was reduced significantly due to the interpretation of the full court of the Supreme Court's interpretation of 'unpaid leave for the purpose of calculating a long service leave entitlement'. I would like to read out part of Justice Stanley's judgement:

> The worker was entitled to a payment in lieu of long service leave upon the termination of his employment on 23 September 2011. However, in the unusual circumstances that obtain in this case, where the deceased did not work for almost all of three years immediately preceding his entitlement to payment in lieu of long service leave arising, the calculation of that entitlement pursuant to section 3(2) is in a negligible sum. This is an unfortunate result. I consider it deserves the attention of the Parliament.

And so here today the attention of the parliament is indeed being observed. The purpose of this bill, of course, is to remedy this situation. It is important to note that Mr Woolford was a casual worker and a member of the Maritime Union of Australia. A member for some 16 years, Mr Woolford, who passed away in 2014, held a number of contracts with Flinders Ports from 1990 to 2008. My office has been advised that he was unable to work due to a work-related injury he sustained from 2008 to 2011.

As members would be aware, payments under the Long Service Leave Act are based on the average calculation of a worker's last three years of employment. Obviously, in this case Mr Woolford was on workers compensation in this period and so his earning capacity was limited. It is important to note that full-time workers do not have their long service payment reduced as a result of workers compensation.

The Greens believe that it is paramount that casual and part-time workers are not negatively impacted by our laws if they are injured at work, and this bill seeks to remedy that situation. I note that we have an increasing casualisation of our workforce, and of course this was highlighted by the Independent Inquiry into Insecure Work in Australia chaired by the former deputy prime minister Brian Howe. The Australian Council of Trade Unions (ACTU) reported that 40 per cent of Australia's workforce of almost 12 million is employed on a casual or contract basis.

Indeed, in my generation and those generations following mine, we do not envisage a future where we have a job for life with one employer or one group of employers, and certainly the Greens put on notice that the idea of portable long service leave is an idea whose time has come and should be investigated into the future.

Submissions made to this inquiry into insecure work, however, stated that casual workers fronted up for work when ill rather than losing a day's pay or risking being dismissed. The casualisation of our workforce is important to note, because the bill before us today should reflect the hours worked versus the hours paid. Employees are paid based on a minimum hours requirement even if the job takes as little as half an hour. This, of course, in many awards is to ensure that workers are not called in for 20 minutes and treated as if their time is not valuable, and indeed sets minimum hours that must be paid if a worker is called in.

Those workers who have family and caring commitments and myriad other life commitments have to put those commitments on hold to undertake paid work. It is unfair to have a society that expects a worker to turn up for 20 minutes for any particular job, and this is why we have those protections of those minimum hours that, if a worker is called in, must be paid.

One of the concerns the Greens would like to put to the chamber today is that casual and part-time workers are potentially disadvantaged because the minimum payments that they are entitled to, varying depending on the award or agreement, may exceed the time physically worked. The Long Service Leave Act should be aligned with the reality of awards and enterprise bargaining agreements reached regarding the minimum number of hours to be paid to these workers.

I note that the contribution and feedback that we have had from the union most involved in the particular case that led to this bill before us, the MUA, has requested, I understand, both of the government, but without any joy, and now of the Greens, that we investigate in the debate on this bill an amendment to ensure that the worker's ordinary weekly rate of pay will be ascertained by averaging the number of hours worked per week, and any other period of hours worked shall not be less than the minimum pay provided for in any applicable award or agreement, in that period of the three years and multiplying that rate by the worker's rate of pay per hour as at the relevant date, exclusive of overtime, shift premiums and penalty rates.

Certainly, I note that the MUA put a strong case to government, but I am not in a position today to put that amendment because I can read the writing on the wall that the government did not support it and the Liberal opposition is incredibly unlikely to support it. I certainly am not in the business of holding this piece of legislation up, which I understand is one where time is of the essence. For the purposes of ensuring that the debate progresses speedily through this chamber, I just note those concerns.

I call on the government to investigate further the idea of not only these protections for those workers who are in that situation where they can be called in for small periods of time but should quite rightly be entitled to have that time recompensed at a longer rate to ensure that the sanctity of their private lives versus their working lives is protected, but also that portable long service leave in this day and age is something that I think would reflect the realities of Australians' working lives and is an idea whose time has come. I look forward to some response from the government in terms of any directions in that area and the speedy passage of this bill today.

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

LIQUOR LICENSING (PROHIBITION OF CERTAIN LIQUOR) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 15 October 2015.)

The Hon. R.I. LUCAS (17:18): I rise on behalf of Liberal members to support the second reading of the Liquor Licensing (Prohibition of Certain Liquor) Amendment Bill. The government has advised that there is no explicit power under the Liquor Licensing Act for the minister to prohibit the manufacture, sale or supply of what are deemed to be undesirable liquor products on general public interest or community welfare grounds. This bill seeks to correct that by amending section 131AA of the act to provide a clear ability to exercise this power.

This bill has been drafted, we are told, largely in response to concerns about the introduction of powdered alcohol (Palcohol) into Australia. Palcohol is approved for sale in the United States of America, and the manufacturer is now seeking to distribute the product in Australia. We are advised that Palcohol has already been banned in Victoria and New South Wales.

The AMA has warned that the product is dangerous and open to abuse. For example, swallowing the product without dissolving it in liquid or inhaling the powder, similar to illicit drugs like cocaine and heroin, increases the rate at which a person can become intoxicated.

The government is also concerned the product will appeal to minors or will be confused with confectionary or non-alcoholic beverages and is easy to get into venues, being carried around in backpacks, or being brought into schools and so on. As one would imagine, the manufacturers and distributors have rejected those concerns of the government and other organisations and have criticised what they have deemed are 'kneejerk reactions' to banning it.

Under the proposed legislation, before the minister can exercise this power, they must give the manufacturers, importers and distributors of the liquor product at least seven days to comment on the proposed prohibition. A temporary notice of 42 days of prohibition can be issued through the *Government Gazette*. Following this, the government would issue a regulation for a permanent ban, which would obviously be disallowable by either house of parliament.

The Liberal Party sees that final provision as an important safety net for this. That is, if the government sought to use this new power in an unreasonable fashion, there would at least be time

for those interested—the manufacturers, importers, distributors and supporters of a particular product—to lobby members of parliament. There would be this temporary ban which the government could institute in the interim, but then there is a requirement for the government to introduce a regulation, which is potentially disallowable. We are advised that the government cannot permanently issue temporary notices and bypass the parliamentary process. It is on that basis that the Liberal Party indicates its willingness to support the second reading of the bill.

The Hon. D.G.E. HOOD (17:21): I rise to support the second reading of the Liquor Licensing (Prohibition of Certain Liquor) Amendment Bill. Palcohol, as it is called, or powdered alcohol, was designed for the easy carriage and storage of alcohol originally. The inventor famously said it was a very convenient way to carry whilst hiking, as it was light and could easily fit into a backpack. Whilst this is no doubt true, Family First is concerned that for this very reason (that is, its transportability) it could pose significant unintended consequences for our youth in particular and for those who are able to sneak alcohol into locations where it is not meant to be.

I am told that approximately three-quarters of a cup of water added to a sachet of Palcohol yields one standard alcoholic drink. Whilst there may be a market for the responsible use of Palcohol, there are certainly several significant areas of concern where this product could also be abused. Some of those concerns that we have with Palcohol are that, first of all, it might encourage children to drink alcohol because of the novelty factor. Children in particular could easily take Palcohol to school, for example.

It would be easier to sneak Palcohol sachets into both licensed and unlicensed venues. The rate of intoxication could be greatly increased by consuming the product 'neat' (that is, alone or without any additives). It does encourage the snorting of the powder itself. It may be easier to spike drinks using Palcohol. Regulating the amount of alcohol in the powder would be difficult, and regulating the use of Palcohol especially at parties or other gatherings would be next to impossible.

After a series of setbacks, Palcohol was given approval to be produced in the United States of America last year. Despite not having been released on the market yet, Palcohol has been banned outright in several US states, which is important to note, with several other states currently considering banning the product apparently. Prohibition has also occurred in Australia, with both Victoria and New South Wales declaring a ban on the sale, manufacture and distribution of Palcohol.

This prohibition has been supported by notable organisations in both the United States and in Australia. The Victorian president of the Australian Medical Association, Dr Tony Bartone, in March this year publicly supported moves to ban the powder. He raised concerns that labels or warnings on the product would easily be ignored and would not stop people abusing the product. He supports control measures that ensure people have a predictable amount of alcohol in each item they purchase.

Jim Mosher from the John Hopkins School of Public Health weighed in on the discussion, saying that there was currently no research on the effects of Palcohol, but that it posed the potential for serious brain damage or death in some instances. This is, of course, something that we actively want to avoid here in South Australia, or no doubt anywhere else for that matter. Geoff Munro from the Australian Drug Foundation holds grave concerns about the product. He told news.com.au that:

> Youth drinking is slowly declining and parents are helping children avoid drinking. A product like powdered alcohol is an anti-social product, it would be easier to disguise and use unsupervised and we know that young people are attracted to the novelty of new things.

Whilst the manufacturer of Palcohol has attempted to play down the potential dangers of this product, Family First believes that it is potentially dangerous and, therefore, something that needs to be viewed with some scepticism.

We believe that the sale of Palcohol could lend itself to the possibility of abuse, which contradicts the message of alcohol moderation that society in general has worked so hard to convey over the last few decades in particular. We support the move in South Australia to place a ban on this product as they have done in Victoria and New South Wales.

This bill represents a straightforward and what we would consider a clever approach to the current issue that has been raised regarding Palcohol and has highlighted the potential for such a

potentially dangerous substance to pass through a loophole in our current legislation, should this product make its way into South Australia. This is not something that Family First wants to see.

The bill provides the minister with the power to prohibit the manufacture, sale or supply of liquor on public interest or community welfare grounds, the same as has occurred in New South Wales, Queensland and Western Australia. The current procedures under the act in relation to prohibition remain—that is, the minister can impose a 42-day prohibition or make a regulation prohibiting a product. Where a regulation is made, the minister must give the manufacturers, importers and/or distributors at least seven days to comment on the proposal.

The regulations would also be subject to disallowance, obviously, should either house of parliament disagree with what the minister is trying to achieve and that, as I think the Hon. Mr Lucas pointed out, provides a safety net and it provides us with some comfort. Given the seriousness of introducing products such as Palcohol into South Australia, Family First is supportive of the second reading of this bill and looks forward to its passage through the chamber.

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

TATTOOING INDUSTRY CONTROL BILL

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) (17:26): 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.

As part of its continued commitment to tackling organised crime in South Australia, the Government is introducing the *Tattooing Industry Control Bill 2015*.

The Bill fulfils the Government's election commitment to ban organised crime gangs and their associates from owning or controlling tattoo parlours and pawnshops and using them as a front for illegal activities, including drug trafficking, weapons trading, and money laundering. Legitimate businesses in these industries are threatened on a regular basis by acts of violence, arson, and other property damage. Customers of businesses owned by organised crime gangs are exposed to risks to their safety and well-being.

The conduct of the business of a tattoo parlour is currently unregulated in this State. However, second-hand dealers and pawnbrokers are regulated by the *Second-hand Dealers and Pawnbrokers Act*. The Act regulates the conduct of the business of second-hand dealers through a negative licensing scheme. It is an offence for a person to carry on a business as a second-hand dealer if the person has been given a disqualification notice by the Commissioner of Police. A second-hand dealer is also subject to other requirements under the Act. For example, dealers must give written notice to the Commissioner of Police at least one month before commencing a business. A second-hand dealer is also required to keep records in relation to each of the second-hand goods bought or received in the course of, or for the purposes of, the dealer's business and must ensure that the goods are labelled appropriately.

The Bill before the House introduces a negative licensing scheme for the tattooing industry and makes consequential amendments to the *Second-hand dealers and Pawnbrokers Act*. The use of a negative scheme will ensure that the regulatory impact upon legitimate businesses is minimal. Under the new scheme, it will be an offence, with a maximum penalty of 4 years imprisonment for a natural person or a $250,000 fine for a body corporate, to provide tattooing services if disqualified from doing so. A person provides tattoo services if he or she (whether or not for fee or reward) tattoos another person; or carries on a business in the course of which he or she or another person tattoos a person; or is director of a body corporate that carries on a business in the course of which he or she or another person tattoos a person; or sells or supplies prescribed tattooing equipment.

Disqualification can occur in one of two ways. A person will be automatically and permanently disqualified from providing tattoo services if he or she is a member of a prescribed organisation; or is a close associate of a person who is a member of a prescribed organisation or is subject to a control order under the *Serious and Organised Crime (Control) Act 2008*; or is disqualified from providing tattooing services (however described) under a law of the Commonwealth or another State or Territory; or is a person, or is a person of a class, prescribed by the regulations.

The Commissioner of Consumer Affairs will also have the power to disqualify a person from providing tattooing services if certain criteria are satisfied. For example, if the person was, at any time within the preceding 5 years, a member of a prescribed organisation; or the person is found guilty, or has within the preceding ten years been found guilty, of a prescribed offence; or if the Commissioner reasonably believes that to allow the person to provide tattooing services, or to continue to provide tattooing services, would otherwise not be in the public interest. A

disqualification notice has effect from the date specified in the notice and continues in force indefinitely; or for the period specified in the notice, or until the notice is revoked, whichever is the sooner.

The Bill also gives authorised officers the power to issue directions to a person who provides tattooing services for the purpose of averting, eliminating or minimising a risk, or a perceived risk, to the safety of person to whom tattooing services are provided.

Traders will also be required to provide certain information to the Commissioner of Consumer Affairs, which can be used to determine whether or not a person is providing tattooing services in contravention of the Act and gives further powers to police in relation to general drug detection and random weapon and explosive searches.

The Bill will be of great assistance to South Australia Police in the fight against the devastating effects of organised crime in our community.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines key terms used in the Bill.

4—Providing tattooing services

This clause sets out when a person (both natural and legal) will, for the purposes of the measure, be taken to be providing tattooing services.

5—Criminal intelligence

This clause regulates the disclosure of information classified by the Commissioner of Police as criminal intelligence.

6—Commissioner for Consumer Affairs to be responsible for administration of Act

This clause provides that the Commissioner for Consumer Affairs is responsible for the administration of the proposed Act. This is consistent with other Acts falling within the scope of the Commissioner's functions. However, the Commissioner is subject to the direction and control of the Minister.

Part 2—Regulation of providers of tattooing services

7—Automatic and permanent disqualification from providing tattooing services

This clause creates in subsection (1) an offence for a person who is disqualified under the proposed section from providing tattooing services to do so. The maximum penalty for a contravention is 4 years imprisonment for natural persons, and a fine of $250,000 for bodies corporate.

The disqualifications contemplated by this section are automatic and permanent. Proposed subsection (2) sets out natural persons who are so disqualified, and subsection (3) sets out the bodies corporate that are disqualified.

8—Commissioner for Consumer Affairs may disqualify person from providing tattooing services

This clause empowers the Commissioner for Consumer Affairs to disqualify the persons referred to in proposed subsection (1) from providing tattooing services. This is done by notice in writing. Proposed subsection (3) is an offence committed where a disqualified person knowingly or recklessly contravenes a disqualification notice. The maximum penalty for a contravention is 4 years imprisonment for natural persons, and a fine of $250,000 for bodies corporate.

The disqualifications under this proposed section are not permanent, although a disqualification notice may operate indefinitely.

9—Service of disqualification notice

This clause sets out how disqualification notices under proposed section 8 are to be served.

10—Variation or revocation of disqualification notice by Commissioner for Consumer Affairs

This clause sets out how the Commissioner for Consumer Affairs may vary or revoke a disqualification notice.

11—Offence to allow disqualified person to provide tattooing services

This clause creates an offence for a person carrying on a business in the course of which tattooing services are provided to allow a disqualified person to provide tattooing services in the course of that business. The maximum penalty for a contravention is 4 years imprisonment for natural persons, and a fine of $250,000 for bodies corporate.

However, it is a defence to such a charge for the person to prove that he or she believed on reasonable grounds that the person who provided tattooing services was not in fact disqualified.

Part 3—Authorised officers may direct providers of tattooing services etc

12—Authorised officers may direct persons

This clause provides that authorised officers under the measure can give directions a person who provides tattooing services for the purpose of averting, eliminating or minimising a risk, or a perceived risk, to the safety of members of the public.

The clause sets out requirements in respect of such directions, and creates an offence for a person to refuse or fail to comply with the direction. The maximum penalty for a contravention is 1 year imprisonment for natural persons, and a fine of $250,000 for bodies corporate.

Part 4—Information gathering and reporting

13—Providers of tattooing services etc to provide certain information to Commissioner for Consumer Affairs

This clause requires a person who proposes to commence carrying on a business in the course of which tattooing services are provided to give the Commissioner for Consumer Affairs written notice in accordance with the proposed section. A similar requirement applies to a person who, on the commencement of the proposed section, is carrying on such a business, or who commences carrying on such a business after the commencement of the proposed section. A failure to comply with the requirements is an offence carrying a maximum penalty of 1 year imprisonment for natural persons, and a fine of $250,000 for bodies corporate.

The clause sets out procedural and other requirements in relation to the notices required, and also creates an offence for a failure to notify the Commissioner of changes to certain information, with the same penalties.

14—Employees to provide certain information to Commissioner for Consumer Affairs

This clause requires a person who commences employment involving the provision of tattooing services to advise the Commissioner for Consumer Affairs of that fact. A failure to do so is an offence carrying a maximum penalty of 1 year imprisonment.

15—Commissioner for Consumer Affairs may require information

This clause provides that the Commissioner for Consumer Affairs may require a person who he or she reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration or enforcement of this Act to provide to him or her such information as may be specified in the notice. A failure to do so is an offence carrying a maximum penalty of 1 year imprisonment.

16—Record keeping

This clause requires a person carrying on a business in the course of which tattooing services are provided to keep such records as may be required by the regulations, and to keep the records for a period of at least 2 years.

Part 5—Appeal

17—Appeal

This clause sets out appeal rights to the Administrative and Disciplinary Division of the District Court against a decision of the Commissioner for Consumer Affairs under the measure, or a direction under proposed section 12.

Part 6—Enforcement and further offences

18—Authorised officers

This clause sets out who are authorised officers for the purposes of the measure, and makes procedural provision regarding those officers.

19—Powers of authorised officers

This clause sets out the powers, and limitations to those powers, of authorised officers under the measure.

20—Further powers of police officers—general drug detection

This clause provides that a police officer may carry out general drug detection (which is defined under the *Controlled Substances Act 1984*) in relation to premises that he or she reasonably suspects are being used to carry on a business in the course of which tattooing services are provided.

21—Offence to possess certain items in premises where tattooing services provided

This clause creates an offence for a person to possess certain prescribed items in premises used to carry on a business in the course of which tattooing services are provided. Those items include firearms, explosives and certain items regulated under the *Summary Offences Act 1953*. The maximum penalty for contravention is 2 years imprisonment.

22—Further powers of police officers—random weapon and explosive searches

This clause provides that a police officer may carry out random searches for weapons and explosives in relation to premises that he or she reasonably suspects are being used to carry on a business in the course of which tattooing services are provided, and sets out related procedural provisions.

Part 7—Miscellaneous

23—Exemptions

This clause provides that the Minister may grant exemptions from this measure.

24—False or misleading information

This clause creates an offence for a person to make a statement that is false or misleading in a material particular in any information provided, or record kept, under this measure. The maximum penalty for a contravention is 1 year imprisonment for natural persons, and a fine of $250,000 for bodies corporate.

25—Commissioner of Police may provide information to Commissioner for Consumer Affairs

This clause authorises the Commissioner of Police to provide the Commissioner for Consumer Affairs with information relevant to the operation or enforcement of the measure.

26—Statutory declaration

This clause provides that the Commissioner for Consumer Affairs may require information to be verified by statutory declaration. If that is the case, a person will not be taken to have provided the information as required unless it has been so verified.

27—Offences by bodies corporate

This clause provides that each director of a body corporate is (unless he or she proves that they could not by the exercise of due diligence have prevented the commission of the offence) guilty of an offence if the body corporate is guilty of an offence.

28—Service

This clause sets out how documents are to be served for the purposes of the measure.

29—Evidentiary provision

This clause allows certain specified evidence to be given in proceedings by means of certificate.

30—Regulations

This clause sets out the regulation making powers in respect of the measure.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Second-hand Dealers and Pawnbrokers Act 1996*

2—Amendment of section 3—Interpretation

This clause amends section 3 of the principal Act to define key terms used in the Act.

3—Insertion of section 5A

This clause regulates the disclosure of information classified by the Commissioner of Police as criminal intelligence

4—Amendment of section 6—Disqualification from carrying on business as second-hand dealer

This clause amends section 6 of the principal Act to make disqualifications under that Act consistent with the provisions of this measure relating to the provision of tattooing services.

5—Insertion of section 6A

This clause inserts new section 6A into the principal Act, to provide the Commissioner of Police a discretionary power to disqualify a person from commencing or continuing to carry on business as a second-hand dealer consistent with the equivalent provision under proposed section 8 of this measure.

6—Amendment of section 27—Regulations

This clause amends section 27 of the principal Act to allow the regulations under that Act to make provisions of a savings or transitional nature.

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

SURVEILLANCE DEVICES 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) (17:28): 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 *Surveillance Devices Bill 2015* overhauls and brings up to date with modern technologies the law dealing with electronic surveillance. In general terms, the Bill proposes a replacement to the current *Listening and Surveillance Devices Act 1972*.

The last amendments to the *Listening and Surveillance Devices Act 1972* were made by the *Listening Devices (Miscellaneous) Amendment Act 1998*. Sixteen years have passed since the Act was reformed, and much has changed, not least developments in electronic surveillance and methods of intruding into privacy. South Australia has fallen behind the rest of the country and, as such, the legislation is in urgent need of revision.

On 5 April, 2002, the Council of Australian Governments (COAG) held a special meeting on Terrorism and Multi-Jurisdictional Crime. One outcome of that meeting was that Leaders agreed:

> *To legislate through model laws for all jurisdictions and mutual recognition for a national set of powers for cross-border investigations covering controlled operations and assumed identities legislation; electronic surveillance devices; and witness anonymity. Legislation to be settled within 12 months.*

The task of developing these model laws was given to a task force known as the national Joint Working Group (JWG) established by then Ministerial Councils (the Standing Committee of Attorneys-General and the Australian Police Ministers Council) and consisting of representatives of both bodies. The JWG published a Discussion Paper in February 2003 that discussed and presented draft legislation on all four topics (controlled operations and assumed identities legislation, witness anonymity, and electronic surveillance devices) and received 19 submissions nationally. A Final Report was published in November 2003.

The first three topics were dealt with by what has become the *Criminal Investigation (Covert Operations) Act 2009*. So far as the subject of electronic surveillance was concerned, no national agreement was reached on a model domestic law, and so the agreed model related only to cross-border recognition. Interstate, New South Wales, Victoria, Queensland and Western Australia have all passed their respective versions of electronic surveillance legislation. Since 2009, Police have taken the view that the existing South Australian legislation was long overdue for overhaul.

The *Surveillance Devices Bill 2012* was introduced into Parliament in September 2012 and passed the House of Assembly. It then stalled in the Legislative Council. The Opposition and cross-benchers voted to refer the provisions of the Bill that were not referable to police powers to the Legislative Review Committee. The ensuing process took over 12 months. Strongly held positions from various interest groups were ventilated and debated at length.

The Legislative Review Committee reported on 13 November 2013. The Government placed on file amendments designed to implement the recommendations of the Committee on 26 November. Unfortunately, the Bill was not brought on for debate, Parliament was prorogued and the Bill lapsed.

The *Surveillance Devices Bill 2014* was introduced in the Legislative Council on 5 June 2014. The views of various interest groups were again debated at length. There was resistance from the Opposition and cross-benchers to the proposed amendments to regulate the communication or publication of information or material derived from the use of a listening device or optical surveillance device where the device was used in the public interest. This resistance arose from the requirement that the communication or publication of such information obtained in the public interest could only occur with the order of a court. While these concerns were addressed by amendments to the Bill that allowed media organisations to communicate and publish information without an order of a court, the Opposition continued to

oppose the Bill as a result of continued pressure from the media. These amendments have been retained and expanded upon in the new Bill.

The *Surveillance Devices Bill 2014* was also strongly opposed by groups who erroneously interpreted the Bill as being similar to legislation already in force in other parts of the world that prohibit the use of covert devices to document activities relating to agricultural facilities or factory farming, despite the clear public interest exception that the Bill contemplated.

The *Surveillance Devices Bill 2014* was negatived at its third reading in the Legislative Council on 23 September 2014.

The *Surveillance Devices Bill 2015* revises the position on the regulation of communication and publication of information and material derived from the use of listening or optical surveillance devices in the public interest. The powers granted under the Bill to law enforcement agencies remain unchanged from the *Surveillance Devices Bill 2014*. There was little controversy surrounding the proposed amendments to police powers during debate on the Bill in 2014.

This Bill contains the recommended provisions allowing for cross-border recognition of surveillance device warrants. So far as South Australia is concerned, this means that the law of this State will regard as validly issued those surveillance device warrants of a corresponding Australian jurisdiction declared by regulation. It is up to those other Australian jurisdictions to pass laws recognising our warrants for the purposes of the law of their State. This is nationally regarded as important for the often stated and obviously true reason that criminals do not respect State and Territory borders. The measure is a target in, for example, the National Organised Crime Response Plan.

In addition, a review of the existing Act, in close consultation with South Australia Police, has resulted in extensive proposals for amendments. These are:

1 Under current law, an urgent warrant application is done by telephone or fax application to a Supreme Court judge at any time of the day or night. In practice, the Supreme Court rosters judges for this purpose. South Australia Police says that the process takes about two hours, during which no action can be taken in urgent situations. The alternative is to allow emergency authorisation for urgent situations to be made by a senior police officer. Many Australian jurisdictions have this procedure and it is part of the JWG model. The Commonwealth has accepted the JWG model. The Bill proposes a similar procedure including, notably, a requirement that police seek judicial confirmation of the emergency warrant within two business days after the emergency warrant is granted.

2 The Commonwealth provisions dealing with urgent or emergency warrant applications restrict the procedure to certain kinds of offences. The warrant applications are limited to where:

- an imminent risk of serious violence to a person or substantial damage to property exists; and
- and the use of a surveillance device is immediately necessary for the purpose of dealing with that risk; and
- and the circumstances are so serious and the matter is of such urgency that the use of a surveillance device is warranted; and
- it is not practicable in the circumstances to apply for a surveillance device warrant.

However, neither current South Australian law nor Commonwealth law allows for explicit emergency authorisation for serious drug offences and this defect will be remedied with similar pre-conditions.

3 New technology means that a tracking device can be attached to a vehicle in a public place or a place under the control of police (such as a yard for keeping seized vehicles). This will sometimes have to be done quickly before a vehicle decamps. In such a scenario, attaching a surveillance device with tracking capability will be permitted without a warrant so long as it is non-intrusive and does not draw power from the vehicle. Other Australian legislation deals with this situation in different and inconsistent ways. The police will be allowed to use subterfuge to covertly attach such a device to a vehicle. For example, the police might temporarily move the car so as to attach the device out of the public eye.

4 The JWG model contains special provision for 'remote applications' to deal with instances where physical remoteness means that it is impractical to make a warrant application. The Commonwealth legislation adopts the model. This is a commonsense exception to the usual requirement that a warrant be sought by personal application and is provided for by the Bill.

5 The JWG model contains provision for 'specified person warrants'. The point of this is to allow a warrant to be brought for the surveillance of a specific person, wherever he or she may be, instead of the usual warrant allowing the surveillance of a particular place. The Bill contains provisions designed to allow for this sensible proposal.

6 Material obtained by use of listening or other surveillance devices installed pursuant to a warrant is prohibited from being communicated or published unless it falls within one of the exceptions in s 6AB of the current Act. Obviously, material must be used for the purposes of a criminal investigation and that remains and will remain to be the most common use of the material. However, law enforcement today has tools available to it that move beyond the simple arena of the criminal justice system. The Government can and will pursue criminals through civil legislative remedies, such as those contained in the *Criminal Assets Confiscation Act 2005*, *Serious and Organised Crime (Control) Act 2008* and the *Serious and Organised Crime (Unexplained Wealth) Act 2009*. The Bill provides that the output from listening and other surveillance devices installed pursuant to a warrant must be made available for these crime-fighting purposes.

7 The judges of the Supreme Court (who are the issuing authorities under the Act) have interpreted the Act so that all people authorised to exercise powers under the warrant are specified in the warrant. South Australia Police argues that the specification of police personnel in the warrant poses potential security risks—risk of retribution from targets of the warrants because of the intrusive nature of the work they perform. There has been extensive consultation with the former Chief Justice on this issue. The former Chief Justice agreed that an amendment to provide for a degree of anonymity was acceptable—using a code on the warrant instead—but was concerned about who will hold the key to the code. The code names scheme is in the Bill. The holder of the key is not specified in the Bill—it will be up to the court to determine how it will deal with the matter.

8 There are other more minor changes proposed. All are consistent with the JWG model.

a. The Bill authorises the use of a surveillance device on specified premises; in or on a specified object or class of object; or, in respect of the conversations, activities or location of a specified person or a person whose identity is unknown.

b. The definition of '*premises*' is expanded in line to include land; and a building or vehicle (includes an aircraft or vessel) ; and a part of a building or vehicle; and any place, whether built on or not.

c. The definition of *'surveillance device'* is amended to mean a data surveillance device; a listening device; an optical surveillance device; or a tracking device; or a device that is a combination of any two or more of the above devices; or a device of a kind prescribed by regulations.

d. Extensive oversight and reporting provisions are proposed in order to safeguard the public interest as best as can be managed without jeopardising criminal investigations and other sensitive police information. In particular, there has been no watering down of current requirements.

The Bill contains amendments that were recommended by the Legislative Review Committee in its 2013 report. There are amendments that are designed to accommodate the concerns expressed by security and investigation agents representatives during debate on the previous Bill, increased protection for house-holders against intrusion on their privacy by optical surveillance devices overseeing private property, and a loosening of restrictions on the use of surveillance devices together with very detailed regulation of the uses to which information so obtained can be put.

The general ability to use a listening device to record a private conversation if it is in the course of duty of the person, in the public interest or for the protection of the lawful interests of that person in the current s 7(1)(b) of the Act is too broad and ill-defined. It is unsuited to the threats to personal privacy posed by the technological realities of the 21st century. In line with the recommendations of the Legislative Review Committee, the section has been eliminated and more specific and targeted allowances made for lawful use.

The Bill prohibits the installation, use or maintenance of a listening device to overhear, record, monitor or listen to a private conversation except where all principal parties to the conversation provide their consent. There are exceptions where such a listening device is authorised for law enforcement authorities and for security and investigation agents. A further exception exists where the use of the device is reasonably necessary for the protection of the lawful interests of that person, or where the installation, use or maintenance of a listening device is in the public interest.

The installation, use or maintenance of an optical surveillance device is subject to similar restrictions and exceptions. The Bill prohibits the installation, use or maintenance of an optical surveillance device on or in premises to record visually or observe the carrying on of a private activity, without the express or implied consent of each party to the activity. The Bill prohibits trespass onto premises or interference with premises to install, use or maintain an optical surveillance device to capture private activity. 'Private activity' is defined as an activity carried on in circumstances that may reasonably be taken to indicate that a party to the activity desires it to be observed only by the other parties to the activity, or where there is only one party involved, that the person does not desire to be observed by anyone else. Like listening devices, there are exceptions for law enforcement authorities and for security and investigation agents. A further exception exists where the use of the device is reasonably necessary for the protection

of the lawful interests of that person, or where the installation, use or maintenance of an optical surveillance device is in the public interest.

The Bill prohibits the use, communication or publication of information or material derived from the use of a listening or optical surveillance device. It creates an offence for the use, communication or publication of information or material derived from the use of a listening device or an optical surveillance device in circumstances where the device was used to protect the lawful interests of a person. There are exceptions to this prohibition that include for investigative of court related purposes, by a media organisation (defined as an organisation that is licenced or authorised under a law of the Commonwealth to engage in broadcasting or datacasting), or in accordance with an order of a judge.

The Bill creates a similar offence provision for the use, communication or publication of information or material derived from the use of a listening device or optical surveillance device in circumstances where the device was used in the public interest except in accordance with an order of a judge. The Bill departs from its 2014 predecessor in providing an exception to the general rule that there must be a court order for:

- a media organisation;
- information or material that is used, communicated or published to such a media organisation;
- the Royal Society for the Protection of Animals (SA) (RSPCA) where issues of animal welfare are concerned; and
- information or material that relates to issues of animal welfare that is used, communicated or published to the RSPCA.

The revision to the scope of the public interest exception in the Bill follows the opposition raised in debate in 2014 over a more stringent public interest exception that required as a blanket rule an order of a judge for the use, communication or publication of information or material derived from the use of a listening device or optical surveillance device in the public interest.

The Bill incorporates necessary provisions to take into account the needs of the ICAC.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions of words and phrases used for the purposes of this measure.

Part 2—Regulation of installation, use and maintenance of surveillance devices

Division 1—Installation, use and maintenance of surveillance devices

4—Listening devices

This clause provides that, subject to the exceptions set out in the clause and the public interest exception (see clause 6), it is an offence if a person knowingly installs, uses or causes to be used, or maintains, a listening device—

- to overhear, record, monitor or listen to a private conversation to which the person is not a party; or
- to record a private conversation to which the person is a party.

The maximum penalty for such an offence is $75,000 for a body corporate, and $15,000 or imprisonment for 3 years for a natural person.

5—Optical surveillance devices

This clause provides that, subject to the exceptions set out in the clause and the public interest exception—

- it is an offence for a person to knowingly install, use or maintain an optical surveillance device on or within premises or a vehicle or on any other thing (whether or not the person has lawful possession or lawful control of the premises, vehicle or thing), to record visually or observe the carrying on of a private activity without the implied or express consent of each party to the activity;
- it is an offence for a person to knowingly install, use or maintain an optical surveillance device on or in premises, a vehicle or any other thing, to record visually or observe the carrying on of a private activity

without the express or implied consent of each party to the activity and, if the installation, use or maintenance of the device involves entry onto or into the premises or vehicle, without the express or implied consent of the owner or occupier of the premises or vehicle;

- it is an offence for a person to knowingly install, use or maintain an optical surveillance device on or in premises, a vehicle or any other thing, to record visually or observe the carrying on of a private activity without the express or implied consent of each party to the activity and, if the installation, use or maintenance of the device involves interference with the premises, vehicle or thing, without the express or implied consent of the person having lawful possession or lawful control of the premises, vehicle or thing.

The maximum penalty for an offence against this provision is $75,000 for a body corporate, and $ 15,000 or imprisonment for 3 years for a natural person.

6—Listening devices and optical surveillance devices—public interest exception

This clause provides for there to be an exception to the prohibitions provided for in clauses 4 and 5 if it is in the public interest.

7—Tracking devices

This clause provides that, subject to the exceptions set out in the clause, it is an offence for a person to knowingly install, use or maintain a tracking device to determine the geographical location of—

- a person, without the express or implied consent of that person; or
- a vehicle or thing, without the express or implied consent of the owner or a person in lawful possession or control, of that vehicle or thing.

The maximum penalty for an offence against this provision is $75,000 for a body corporate, and $15,000 or imprisonment for 3 years for a natural person.

8—Data surveillance devices

This clause provides that, subject to the exceptions set out in the clause, it is an offence for a person to knowingly install, use or maintain a data surveillance device to access, track, monitor or record the input of information into, or the output of information from, or information stored in, a computer without the express or implied consent of the owner, or person with lawful control or management, of the computer.

The maximum penalty for an offence against this provision is $75,000 for a body corporate, and $15,000 or imprisonment for 3 years for a natural person.

Division 2—Regulation of communication or publication of information or material derived from use of surveillance devices

9—Communication or publication of information or material—lawful interest

This clause provides that a person must not knowingly use, communicate or publish information or material derived from the use of a listening device or an optical surveillance device in circumstances where the device was used to protect the lawful interests of that person except—

- to a person who was a party to the conversation or activity to which the information or material relates; or
- with the consent of each party to the conversation or activity to which the information or material relates; or
- to an officer of an investigating agency for the purposes of a relevant investigation or relevant action or proceeding; or
- in the course, or for the purposes, of a relevant action or proceedings; or
- in relation to a situation where a person is being subjected to violence or there is an imminent threat of violence to a person; or
- to a media organisation; or
- in accordance with an order of a judge under this Division; or
- otherwise in the course of duty or as required or authorised by law.

The clause also regulates the use, communication and publishing of information or material derived from the use of a listening device or an optical surveillance device by licensed investigation agents and loss adjusters.

The maximum penalty for any of the offences under this clause is $50,000 for a body corporate or $10,000 for a natural person.

10—Communication or publication of information or material—public interest

This clause provides that a person must not knowingly use, communicate or publish information or material derived from the use of a listening device or an optical surveillance device in circumstances where the device was used in the public interest except in accordance with an order of a judge under this Division.

The maximum penalty for any of the offences under this clause is $50,000 for a body corporate or $10,000 for a natural person.

However, exceptions are provided in circumstances where the device was used in the public interest if—

- the use, communication or publication of the information or material is made to a media organisation; or
- the use, communication or publication of the information or material is made by a media organisation and the information or material is in the public interest; or
- the information or material relates to issues of animal welfare and the use, communication or publication of the information or material is made to the RSPCA; or
- the use, communication or publication of such information or material is made by the RSPCA and the information or material is in the public interest.

11—Orders authorising use, communication or publication of certain information or material

This clause provides that a person may, for the purposes of clauses 9 and 10, in accordance with the rules of court, apply to a judge for an order authorising the use, communication or publication of information or material derived from the use of a listening device or an optical surveillance device.

Such an order may—

- specify the information or material the subject of the order; and
- specify the manner in which, and to whom, the specified information or material is to be used, communicated or published; and
- may contain conditions and limitations and any other matter as the judge thinks fit.

12—Prohibition on communication or publication derived from use of surveillance device in contravention of Part 2

This clause prohibits a person from knowingly using, communicating or publishing information or material derived from the use (whether by that person or another person) of a surveillance device in contravention of Part 2.

The maximum penalty for such an offence is $75,000 for a body corporate, and $15,000 or imprisonment for 3 years for a natural person.

However, the prohibition does not prevent the use, communication or publication of information or material derived from the use of a surveillance device in contravention of this Part—

- to a person who was a party to the conversation or activity to which the information or material relates; or
- with the consent of each party to the conversation or activity to which the information or material relates; or
- for the purposes of a relevant investigation or relevant action or proceeding relating to that contravention of this Part or a contravention of this section involving the communication or publication of that information or material; or
- in the course of proceedings for an offence against this measure; or
- otherwise in the course of duty or as required by law.

Part 3—Surveillance device warrants and surveillance device (emergency) authorities

Division 1—Surveillance device (tracking) warrants

13—Application of Division

This clause provides that this Division applies if, for the purposes of the investigation of a matter by an investigating agency, the agency requires the authority—

- to install on a vehicle or thing situated in a public place, or in the lawful custody of the agency, 1 or more tracking devices; and
- to use those devices.

14—Application procedure

This clause sets out the application procedure for the issue, variation or renewal of a surveillance device (tracking) warrant by an officer of an investigating agency to the chief officer of the agency.

15—Surveillance device (tracking) warrant

This clause sets out the grounds on which the chief officer of a law enforcement agency to whom application is made to issue a surveillance device (tracking) warrant and specifies the information that must be set out in the warrant.

Subject to any conditions or limitations specified in the warrant—

- a warrant authorising the use (in a public place or elsewhere) of a tracking device in respect of the geographical location of a specified person or a person whose specific identity is unknown who, according to the terms of the warrant, is suspected on reasonable grounds of having committed, or being likely to commit, a serious offence will be taken to authorise interference with any vehicle or thing situated in a public place, or in the lawful custody of the relevant investigating agency, as reasonably required to install, use, maintain or retrieve the device for that purpose; and
- a warrant authorising (whether under the terms of the warrant or by force of the preceding paragraph) interference with any vehicle or thing in a public place, or in the lawful custody of the relevant investigating agency, will be taken to authorise the use of reasonable force or subterfuge for that purpose; and
- the powers conferred by the warrant may be exercised by the responsible officer or under the authority of the responsible officer at any time and with such assistance as is necessary.

Division 2—Surveillance device (general) warrants

16—Application of Division

This clause provides that this Division applies if, for the purposes of the investigation of a matter by an investigating agency, the agency requires the authority to do any or all of the following:

- to use 1 or more types of surveillance device (including a tracking device);
- to enter or interfere with any premises for the purposes of installing, using, maintaining or retrieving 1 or more surveillance devices;
- to interfere with any vehicle or thing for the purposes of installing, using, maintaining or retrieving 1 or more surveillance devices.

17—Usual application procedure

This clause sets out the application procedure for the issue, variation or renewal of a surveillance device (general) warrant by an officer of an investigating agency to a judge of the Supreme Court. Subject to clause 18, an application must be made by providing the judge with a written application and by appearing personally before the judge. The clause sets out the information that must be specified in the application and provides that the application must be accompanied by an affidavit verifying the application.

18—Remote application procedure

This clause sets out the procedure for a remote application for a surveillance device (general) warrant if it is impracticable in the circumstances to make an application according to the procedure set out in clause 17. In those circumstances, an application for the issue, variation or renewal of a surveillance device (general) warrant may be made by fax, email, telephone or other electronic means. This clause sets out the procedure to be followed in relation to any such application.

19—Surveillance device (general) warrant

This clause provides that a judge may issue a surveillance device (general) warrant on application if satisfied that there are in the circumstances reasonable grounds for so doing. The clause sets out other matters that must be specified in the warrant, including that the warrant may specify a code name rather than a real name if satisfied that the disclosure of a person's name in the warrant may endanger a person's safety. Subject to any conditions or limitations specified in the warrant—

- a warrant authorising the use of a surveillance device in respect of the conversations, activities or geographical location of a specified person, or a person whose identity is unknown, who, according to the terms of the warrant, is suspected on reasonable grounds of having committed, or being likely to commit, a serious offence will be taken to authorise—
    - entry to or interference with any premises, vehicle or thing as reasonably required to install, use, maintain or retrieve the device for that purpose; and
    - the use of the device on or about the body of the person; and

- a warrant authorising (whether under the terms of the warrant or by force of paragraph (a)(i)) entry to or interference with any premises, vehicle or thing will be taken to authorise—
    - the use of reasonable force or subterfuge for that purpose; and
    - any action reasonably required to be taken in respect of a vehicle or thing for the purpose of installing, using, maintaining or retrieving a surveillance device to which the warrant relates; and
    - the extraction and use of electricity for that purpose or for the use of the surveillance device to which the warrant relates; and
- a warrant authorising entry to specified premises will be taken to authorise non-forcible passage through adjoining or nearby premises (but not through the interior of any building or structure) as reasonably required for the purpose of gaining entry to those specified premises; and
- the powers conferred by the warrant may be exercised by the responsible officer or under the authority of the responsible officer at any time and with such assistance as is necessary.

Division 3—Surveillance device (emergency) authorities

20—Application procedure

This clause sets out the procedure for an officer of an investigating agency to make an application (in person, in writing or by fax, email, telephone or other means of communication) to the chief officer of the agency for a surveillance device (emergency) authority in relation to the use of a surveillance device. The clause sets out the grounds and circumstances on which such an application may be made.

21—Surveillance device (emergency) authority

This clause provides that the chief officer of a law enforcement agency to whom an application is made may, if satisfied that there are, in the circumstances of the case, reasonable grounds to do so, grant a surveillance device (emergency) authority in relation to the use of a surveillance device authorising the officer to do 1 or more of the following (according to its terms):

- the use of 1 or more types of surveillance device;
- entry to or interference with any premises as reasonably required for the purposes of installing, using, maintaining or retrieving 1 or more surveillance devices;
- interference with any vehicle or thing as reasonably required for the purposes of installing, using, maintaining or retrieving 1 or more surveillance devices.

The clause sets out the matters that must be specified in the surveillance device (emergency) authority, including any conditions and limitations on the authority. The powers that may be authorised under a surveillance device (emergency) authority are similar to the powers that may be authorised by a surveillance device warrant.

22—Application for confirmation of surveillance device (emergency) authority etc

This clause provides that the chief officer of a law enforcement agency must, within 2 business days after granting an emergency authorisation, make an application (by personal appearance following the lodging of a written application) to a judge for approval of the granting of, and the exercise of powers under, the emergency authorisation. Any such application must not be heard in open court.

23—Confirmation of surveillance device (emergency) authority etc

On hearing an application under clause 22, the judge—

- must—
    - if satisfied that the granting of the surveillance device (emergency) authority, and the exercise of powers under the authority, was justified in the circumstances, confirm the authority and the exercise of those powers; and
    - cancel the surveillance device (emergency) authority; and
    - if a surveillance device (general) warrant is sought and the judge is satisfied that there are reasonable grounds to issue a warrant in the circumstances—issue a surveillance device (general) warrant;
- may, if not satisfied that the circumstances justified the granting of the surveillance device (emergency) authority, make 1 or more of the following orders:
    - an order that the use of the surveillance device cease;
    - an order that, subject to any conditions the judge thinks fit, the device be retrieved;

- an order that any information obtained from or relating to the exercise of powers under the authority, or any record of that information, be dealt with in the way specified in the order;
- any other order as the judge thinks fit.

If a judge confirms a surveillance device (emergency) authority, and the exercise of powers under the authority, evidence obtained through the exercise of those powers is not inadmissible in any proceedings merely because the evidence was obtained before the authority was confirmed.

Division 4—Recognition of corresponding warrants and authorities

24—Corresponding warrants

This clause provides that a corresponding warrant may be executed in this State in accordance with its terms as if it were a surveillance device (tracking) warrant or surveillance device (general) device warrant (as the case may be) issued under this measure.

25—Corresponding emergency authorities

This clause provides that a corresponding emergency authorisation authorises the use of a surveillance device in accordance with its terms in this State, as if it were a surveillance device (emergency) authority granted under this measure unless the judge has ordered, under a provision of a corresponding law, that the use of a surveillance device under the corresponding emergency authority cease.

Division 5—Miscellaneous

26—Management of records relating to surveillance device warrants etc

The chief officer of an investigating agency by whom a surveillance device (tracking) warrant is issued, or a surveillance device (emergency) authority is granted, must cause the application and the warrant or authority (and any copy of the warrant or authority) to be managed in accordance with the regulations.

A judge by whom a surveillance device (general) warrant is issued, varied or renewed must cause each of the following to be managed in accordance with the rules of the Supreme Court:

- the application;
- the warrant (and any duplicate or copy of the warrant) as issued, varied or renewed;
- any code name specified in the warrant;
- the affidavit verifying the application.

27—Limitations on use of information or material derived under this Part

This clause provides that a person must not knowingly communicate or publish information or material derived from the use (whether by that person or another person) of a surveillance device under an authority under this Part except—

- to a person who was a party to the conversation or activity to which the information or material relates; or
- with the consent of each party to the conversation or activity to which the information or material relates; or
- for the purposes of a relevant investigation; or
- for the purposes of a relevant action or proceeding; or
- otherwise in the course of duty or as required by law; or
- if the information or material has been taken or received in public as evidence in a relevant action or proceeding.

The maximum penalty for an offence against this provision is $75,000 for a body corporate, and $15,000 or imprisonment for 3 years for a natural person.

Part 4—Register, reports and records

28—Interpretation

This clause defines the class of persons to whom this Part applies.

29—Register

This clause provides that the chief officer of an investigating agency (other than the ACC) must keep a register of warrants and authorities issued to the agency under this measure and specifies the information that must be contained in the register.

30—Reports and records

This clause makes provision for the reports that must be given to the Minister by the chief officer of an investigating agency (other than the ACC) in relation to surveillance device warrants issued to officers of the agency under this measure and the uses and outcomes relating to such warrants.

31—Control by investigating agencies of certain records, information and material

This clause provides that the chief officer of an investigating agency must keep certain records and information relating to warrants and authorities under this measure, and control, manage access to, and destroy any such records, information and material, in accordance with the regulations.

32—Inspection of records

This clause provides that the review agency for an investigating agency may, at any time, and must, at least once in each period of 6 months, inspect the records of the agency for the purpose of ascertaining the extent of compliance with this measure. The review agency must, not later than 2 months after the completion of any such inspection, provide the Minister with a written report on the inspection.

33—Powers of review agency

This clause sets out the powers of a review agency for an investigating agency for the purposes of carrying out an inspection under this Division. Under this clause, it is an offence (the penalty for which is $15,000 or imprisonment for 3 years) to refuse or fail to comply with a requirement of the review agency under this clause, or to hinder or give false or misleading information to the review agency.

Part 5—Miscellaneous

34—Offence to wrongfully disclose information

This clause provides that it is an offence for a person to knowingly communicate or publish information or material about a surveillance device warrant or surveillance device (emergency) authority except—

- as required to do so under this measure; or
- for the purposes of a relevant investigation; or
- for the purposes of a relevant action or proceeding; or
- in the course of proceedings for an offence against this measure; or
- otherwise in the course of duty or as required by law.

The maximum penalty for an offence against this provision is a fine of $50,000 for a body corporate or, in the case of a natural person, a fine of $10,000 or imprisonment for 2 years.

35—Delegation

This clause provides that the chief officer of an investigating agency may only delegate his or her functions under this measure to a senior officer (as defined in the clause).

36—Possession etc of declared surveillance device

This clause provides for a mechanism by which the Minister may, by notice in the Gazette, declare that this clause applies to a surveillance device or a surveillance device of a class or kind specified in the notice. A person is prohibited from having in his or her possession, custody or control any such declared surveillance device (the penalty for which is, for a body corporate, a fine of $50,000 and, for a natural person, $10,000 or imprisonment for 2 years) without the consent of the Minister.

37—Power to seize surveillance devices etc

This clause provides that, if an officer of an investigating agency suspects on reasonable grounds that—

- a person has possession, custody or control of a declared surveillance device without the consent of the Minister; or
- any other offence against this measure has been, is being or is about to be committed with respect to a surveillance device or information derived from the use of a surveillance device,

the officer may seize the device or a record of the information.

38—Imputing conduct to bodies corporate

This clause makes provision for certain conduct to be imputed as conduct of a body corporate.

39—Evidence

This clause makes provision for evidence in proceedings for offences in the usual terms.

40—Forfeiture of surveillance devices

This clause makes provision for the forfeiture of surveillance devices in the case of a conviction of an offence against this measure.

41—Regulations

This clause provides that the Governor may make regulations for the purposes of this measure.

Schedule 1—Related amendments, repeal and transitional provisions

This Schedule makes related and consequential amendments to the *Criminal Investigation (Covert Operations) Act 2009* and the *Director of Public Prosecutions Act 1991*; repeals the *Listening and Surveillance Devices Act 1972*; and makes provision for transitional arrangements consequent on the repeal of that Act and the enactment of this measure.

Debate adjourned on motion of Hon. J.S. Lee.

EVIDENCE (RECORDS AND DOCUMENTS) 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) (17:29): 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 *Evidence (Records and Documents) Amendment Bill 2015* amends the *Evidence Act 1929* to reflect modern technological modes of communication and generation of material. The current law in South Australia has not been amended with the advent of the modern electronic age. The provisions in the *Evidence Act 1929* to facilitate the proof and admission of computer-generated evidence are archaic and not utilised in practice. Further, there are no provisions directed toward the proof and admission of electronic communications. In practice, it appears that the courts and litigants improvise and work around the current law. It is unsatisfactory that such a significant aspect of modern practice should be the subject of such outdated laws. There is a real need for a workable and effective framework for this type of evidence to be received and used in court proceedings.

In 2012, the South Australian Law Reform Institute reviewed the way South Australian evidence law deals with new technologies. The South Australian Law Reform Institute released a report entitled *Modernisation of South Australian evidence law to deal with new technologies*, which included a number of recommendations for reforms to the *Evidence Act 1929*. In particular, the South Australian Law Reform Institute recommended that the *Evidence Act 1929* be amended to provide for the 'proof and admission of information that is generated, stored, reproduced or communicated by a technological process or device that reflects modern technologies and can accommodate future, as yet unknown, technologies'.

The Bill includes a number amendments to the *Evidence Act 1929* to implement the recommendations of the South Australian Law Reform Institute. The amendments aim for consistency with the Uniform Evidence Act models. The Bill:

1 Repeals Part 6 and Part 6A of the *Evidence Act 1929* that deal with the admission into evidence of lettergrams and telegrams and a narrow class of information produced by computer.

2 Includes a new provision in Part 4 of the *Evidence Act 1929* that provides for the proof and admissibility of evidence of electronic communications (for example, text messages, emails and social media postings).

3 Includes a new provision in Part 4 of the *Evidence Act 1929* to simplify the rules applying to the admissibility of evidence of telegraphic messages.

4 Includes a new provision in Part 4 of the *Evidence Act 1929* to facilitate proof of evidence that is produced by processes, machines or other devices and is intended, among other things, to facilitate the admission of computer-generated evidence.

5 Amends Part 4 of the *Evidence Act 1929* to redefine 'document' to default to the definition in the Acts *Interpretation Act 1915* which includes all records made by any process whereby information is stored and can be retrieved.

6 Amends the modification of the best evidence rule in Part 4 of the *Evidence Act 1929* to facilitate the admissibility of documents that are reproduced in a format different to the original evidence (for example, where words or images are reproduced by a device into a hard copy format from electronically stored data, such as computer coding).

As a starting point, the Bill redefines 'document' to default to the definition in the Acts *Interpretation Act 1915* which includes all records made by any process whereby information is stored and can be retrieved. It is a wide definition that extends to sophisticated modes of storage of electronic information as well as the recording of electronic and digital communications. The definition of 'business record' in the Bill includes any 'document prepared or used in the ordinary course of a business for the purpose of recording any matter relating to the business', and thus, by extension, incorporates the wide definition of document in the Acts *Interpretation Act 1915*. The Bill import sections 45A and 45B of the *Evidence Act 1929* in their entirety in sections 52 and 53; however, the new sections will have a broader application with the extended definition of 'document'.

Computer-Generated Evidence

The Bill repeals Part 6A of the *Evidence Act 1929* that deals with the admission into evidence of a narrow class of information generated by computer. Part 6A is seldom used to admit evidence of computer output because its requirements are unduly exacting and it is an aid to proof only. The relevance of Part 6A has been questioned given the rapid changes in the way that computers and their output can be used and communicated. For example, since the introduction of Part 6A, developments have included the Internet, mobile phones, social networking, surveillance and encryption technologies and cloud computing. Further, Part 6A cannot be used to regulate the admission of evidence of information produced or communicated by the Internet and modern electronic devices or digital processes.

The Bill includes new provisions to be inserted in Part 4 of the *Evidence Act 1929* to facilitate proof of evidence that is produced by processes, machines or other devices and is intended to facilitate the admission of computer-generated evidence. The provisions aim for consistency with the relevant provisions in the Uniform Evidence Act models.

The Bill inserts section 56 into the *Evidence Act 1929* to create a rebuttable presumption of accuracy for evidence produced by computers. Section 56 is consistent with section 146 of the Uniform Evidence Act models. It removes the requirement for authentication in every case and provides, instead, that for documents that are produced, recorded, copied or stored electronically or digitally, there is a rebuttable presumption that the technological process or device so used did in fact produce the asserted output and did so reliably. This means that a party adducing evidence of such documents would no longer have to prove the authenticity and reliability of the process or device unless there is evidence that is adduced to displace the presumption. For example, it would not be necessary to prove the reliability or accuracy of a computer from which an email had been produced as a pre-condition to the admission of that email into evidence. This amendment reflects contemporary understanding of the accuracy of ordinarily reliable devices or processes. The section does not operate to facilitate the admission of a document generated by a process or device as to the truth of its content—rather, it is presumptive aid to proof as to the accuracy and reliability of the production of the document by the technological process or device.

The Bill inserts section 57 into the *Evidence Act 1929* to replace current section 45C which modifies the common law best evidence rule. Section 57 operates to facilitate the admissibility of any document that is reproduced in a format different to the original evidence, as well as those that are reproduced in the same manner. The section provides for the admissibility of documents that have been reproduced by instantaneous process (like a photocopier or scanning device), as well as by a process where the content of a document has been recorded and stored on a storage device and reproduced in the same or different form, or in any other way. 'Data storage device' is defined by the Acts *Interpretation Act 1915* to mean any article or material from which information is capable of being reproduced with or without the aid of any other article or device. This definition is intended to include local storage items, such as hard drives and flash drives, as well as remote storage. It is not intended to include items such as filing cabinets, books and newspapers. Some examples of documents that could be admissible under this section as a reproduction of the original evidence could include:

- a recording of words on a device that is produced as sound is reproduced as a document that is a transcript of the words (such as a recording of a conversation on an electronic recording device); and
- images or words that are reproduced by a device into a hard-copy format from electronically stored data, such as computer coding (for example, data from social media sites like Facebook or Instagram could be tendered to the court by printing from a computer or tablet a screen shot of a relevant message or post in a hard-copy form, rather than producing the document through the use of a computer or tablet, or through a storage device that contains the computer coding for the message or post).

The amendments made by section 57 of the Bill will facilitate the admissibility in court proceedings of copies of documents in their original form, as well as the proof of a wide variety of documents that are reproduced in a different form than their original. The amendments have regard to modern technologies and the variety of ways that data can be produced through digital processes and modern electronic devices. The section is confined to the form of admissible evidence, and does not extend to make admissible the contents of a document to prove the truth of the representations it contains.

Evidence of Electronic Communications

At present, the *Evidence Act 1929* only deals with telegraphic messages. It does not refer to electronic communications. Given the widespread availability and use of electronic communications, the South Australian Law Reform Institute saw a need for amendments to the *Evidence Act 1929* to include presumptive aids for the proof and admissibility of evidence of electronic communications.

The Bill amends the *Evidence Act 1929* to insert a new section 54 in Part 4 to provide for the proof and admissibility of evidence of 'electronic communications' (for example, short message service, multimedia messaging service, emails and social media postings and messages). 'Electronic communications' is defined as having the same meaning as the in the *Electronic Transactions Act 2000*, namely:

(a) a communication of information in the form of data, texts or images by means of guided or unguided electromagnetic energy, or both; or

(b) a communication of information in the form of sound by means of guided or unguided electromagnetic energy, or both, where the sound is processed at its destination by an automated voice recognition system.

The definition is to be read with the definition of 'information', which means information in the form of data, text, images or sound.

The definition of 'electronic communication' is not device-specific or method-specific, and is intended to be broad enough to embrace all modern technologies and capture future technologies. It encompasses computer or phone communications whether made via wireless connections or by wire or cable. Email communications, communications via the Internet such as social networking, communications between mobile phones such as SMS and MMS, are all captured via the definition of electronic communications. Conversations between two people over the telephone do not fall within the definition.

The definition of 'electronic communication' under the Bill is consistent with the definition for 'electronic communications' in the *Electronic Transactions Act 1999* (Cth) which similarly defines the term for the purposes of the Uniform Evidence Act models. The terms 'electronic communication', 'communication' and 'information' are intended to be interpreted broadly. The terms are intended to have the same interpretation and operation as the Commonwealth legislation, which has been explained as follows in the Explanatory Memorandum to the *Electronic Transactions Act 1999* (Cth):

> *'Electronic communication' is defined as a communication of information by means of guided and/or unguided electromagnetic energy. This term is used throughout the Bill…and is intended to have the widest possible meaning. Communications by means of guided electromagnetic energy is intended to include the use of cables and wires, for example optic fibre cables and telephone lines. Communications by means of unguided electromagnetic energy is intended to include the use of radio waves, visible light, microwaves, infrared signals and other energy in the electromagnetic spectrum. The use of the term 'unguided' is not intended to refer to the broadcasting of information, but instead means that the electronic magnetic energy is not restricted to a physical conduit, such as a cable or wire. The term 'communication' should also be interpreted broadly. Information that is recorded, stored or retained in an electronic form but is not transmitted immediately after being created is intended to fall within the scope of an 'electronic communication'.*
>
> *This definition should be read in conjunction with the definition of 'information', which is defined to mean data, text, images or speech. However, as a limitation is applied on the use of speech the definition of electronic communication is in two parts. Paragraph (a) states that, in relation to information in the form of data, text or images, the information can be communicated by means of guided and/or unguided electromagnetic energy. Paragraph (b) provides that information in the form of speech must be communicated by means of guided and/or unguided electromagnetic energy and must be processed at its destination by an automated voice recognition system. This is intended to allow information in the form of speech to be included in the scope of the Bill only where the information is provided by a person in a form that is analogous to writing. 'Automated voice recognition system' is intended to include information systems that capture information provided by voice in a way that enables it to be recorded or reproduced in written form, whether by demonstrating that the operation of computer program occurred as a result of a person's voice activation of that program or in any other way. This provision is intended to maintain the existing distinction commonly made between oral communications and written communications. The intention is to prevent an electronic communication in the form of speech from satisfying a legal requirement for writing or production of information. For example, it is not intended to have the effect that a writing requirement can be satisfied by a mere telephone call, message left on an answering machine or message left on voicemail.*
>
> *'Information' is defined to mean information that is in the form of data, text, images or speech. These terms should be interpreted broadly. These terms are not intended to be mutually exclusive and it is possible that information may be in more than one form. For example, information may be in the form of text in a paper document but is then transferred in to the form of data in an electronic document. The term 'information' is used in the definition of electronic communication and is also used throughout the Bill.*

Section 54 is modelled on sections 71 and 161 of the Uniform Evidence Act models. It facilitates the proof of electronic communications (other than lettergrams or telegrams) by creating a rebuttable presumption that their sending and making, the identity of their sender or maker, when and where they were sent from or made, and when

and where they were received, is as it appears from the document. It is not restricted to electronic communications sent within Australia. The section further provides an exception to the hearsay rule for electronic communications so that the rule may not apply to what is represented in a document recording the electronic communication if this concerns the identity of the person from whom or on whose behalf the communication was sent, or the date on which or the time at which the communication was sent, or the destination of the communication or the identity of the person to whom the communication was addressed.

Section 54 thus achieves the following purposes:

1. providing a presumptive aid to proof for an electronic communication as to the accuracy of what appears from the face of the communication to be its sending and making, the identity of the sender or maker, when and where it were sent from or made, and when and where it was received; and

2. providing for the admissibility of an electronic communication in proceedings to prove the truth of what is contained in the electronic communication as to the identity of the person who sent the communication and the identity of the person to whom it was addressed, the date on which or the time at which the communication was sent, and the destination of the communication.

This section creates a framework for the efficient proof and admissibility of electronic communications while still maintaining a discretion for the evidence to be excluded if, for example, its reliability is contested.

In addition, the Bill repeals Part 6 of the *Evidence Act 1929* that deals with the admission into evidence of telegraphic messages. The South Australian Law Reform Institute noted that there are no South Australian cases which have considered or applied Part 6. The South Australian Law Reform Institute recommended that, although there has been no public telegraphy service in Australia since 1993, the *Evidence Act 1929* should continue to provide a way to facilitate proof of the transmission of telegraphic messages. Although Part 6 describes an outdated telegraphic technology, and is drafted in an outmoded legislative style, it is possible that a party may need to prove the transmission of a telegraphic message that was once sent through historical telegraphic services.

Accordingly, the Bill includes a new section 55 in Part 4 of the *Evidence Act 1929* to simplify the rules applying to the admissibility of evidence of telegraphic messages. Again, this section is consistent with the Uniform Evidence Act models. The section facilitates the proof of communications by lettergrams or telegrams by creating a rebuttable presumption of receipt by the addressee within 24 hours of the delivery of the communication to a post office for transmission as a lettergram or telegram. It is not restricted to lettergrams or telegrams sent within Australia. The section provides a simple and effective mode of proving the sending and receiving of a lettergram or telegram without requiring a party to produce records of receipt and fee payments from Australia Post that pre-date 1993 as is currently the case.

The current law in South Australia governing the proof and admissibility of computer-generated evidence and evidence of electronic communications is outdated and ineffective and in need of change. The amendments made by this Bill to the *Evidence Act 1929* will contribute to the efficient conduct of litigation in South Australia by facilitating the proof and admissibility of electronic communications and computer-generated evidence that is consistent with contemporary views of its use, accuracy and reliability. The Bill in no way derogates from the common law powers of a court to decline to admit evidence where such admission would be unfair or prejudicial to a party, thus retaining a safeguard for the admission of evidence where there is a dispute about its authentication or reliability.

This Bill will provide South Australia with a workable and effective framework for the use in court proceedings of this type of evidence and will bring South Australia in line with the law in other jurisdictions.

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 *Evidence Act 1929*

4—Substitution of heading to Part 4

5—Insertion of heading to Division 1

6—Insertion of heading to Division 2

7—Insertion of heading to Division 3

These clauses are consequential and insert Part and Division headings to reflect the proposed structural changes made by this Act relating to the admission of documents and other records.

8—Repeal of sections 45A to 45C

This clause repeals sections 45A to 45C.

9—Substitution of heading to Part 5

This clause is consequential and replaces the Part 5 heading with a divisional heading to reflect the proposed structural changes made by this Act relating to the admission of documents and other records.

10—Amendment of section 46—Definitions

This amendment is consequential.

11—Insertion of Part 4 Divisions 5 to 7

This clause inserts new Division 5—other documents and records.

Division 5—Other documents and records

52—Admission of certain documents in evidence

Proposed section 52 substantially re-enacts current section 45B of the principal Act. References to the term document in the provision are proposed to adopt the broader meaning of the term set out in the Acts *Interpretation Act 1915*.

53—Admission of business records in evidence

Proposed section 53 substantially re-enacts current section 45A of the principal Act.

Division 6—Matters relating to communications

54—Electronic communications

Proposed section 54 creates an exception to the hearsay rule for the admission of electronic communications. The exception to the hearsay rule is limited to the admission of evidence as to the identity of the person who has sent the electronic communication, the date on which the communication was sent or the time at which the communication was sent and its destination or the identity of the person to whom the communication was addressed.

55—Telegrams and lettergrams

Proposed section 55 creates an exception to the hearsay rule for the admission of a document purporting to contain a record of a message by lettergram or telegram. The exception to the hearsay rule extends to creating a presumption that the message was received by the person to whom it was addressed no later than 24 hours after it was delivered to a post office for transmission.

Division 7—Miscellaneous

56—Evidence produced by processes, machines and other devices

Proposed section 56 provides an exception to the hearsay rule for the admission of evidence produced by a device or process. The provision creates a presumption that the document or thing was produced by the device or process.

57—Modification of best evidence rule

Proposed section 57 modifies the best evidence rule in relation to the reproduction by one document of the contents of another document by certain processes.

12—Repeal of Part 6 and Part 6A

This clause repeals Part 6 and Part 6A of the principal Act.

Debate adjourned on motion of Hon. J.S. Lee.

At 17:29 the council adjourned until Wednesday 28 October 2015 at 14:15.

Answers to Questions

VOCATIONAL EDUCATION AND TRAINING

In reply to **the Hon. J.M.A. LENSINK** (4 June 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): I have been advised—

1. Between 2012-13 and 2013-14, the net loss of young people aged 20 to 34 to other states and territories reduced by 400 people from 2,300 to 1,900.

2. In relation to the 100,000 jobs target, my answer is recorded in *Hansard*, 25 September 2014, page 1080-1081.

South Australia has achieved 106,600 training places for women, well over the six year target of 50,000 additional training places. For Aboriginal people, South Australia achieved 8,200 training places, well over the six year target of 4,400 additional places.

3. There are no specific targets for the number of people with a disability in training.

Over the past five years people with a disability have enrolled in over 50,000 training places.

In 2014, compared with 2013, the number of training places for people with a disability increased by 2.5 per cent (or 350 training places) to 14,500.

From a training completion perspective, the National Partnership Agreement on Skills Reform has a qualifications completion target for people with a disability in South Australia of an extra 760 over five years to 2016. After two years South Australia has achieved an extra 4,668 qualification completions by VET students with a disability, well above the five year target.

TRANS-PACIFIC PARTNERSHIP

In reply to **the Hon. M.C. PARNELL** (16 June 2015).

The Hon. K.J. MAHER (Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Aboriginal Affairs and Reconciliation): The Minister for Investment and Trade has provided the following advice:

Yes.

TIME ZONES

In reply to **the Hon. D.W. RIDGWAY (Leader of the Opposition)** (2 July 2015).

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

1. South Australian Centre for Economic Studies.

2. $34,059.09 (GST exclusive).

3. Yes.

4. $91,000. This includes $11,220 of air travel for the Minister and accompanying ministerial staff and public servants.

WORKREADY

In reply to **the Hon. D.W. RIDGWAY (Leader of the Opposition)** (8 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): I am advised—

Information regarding subclass 457 visa holders, currently working in South Australia, is managed by the Commonwealth Department of Immigration and Border Protection and is available at http://www.border.gov.au/about/reports-publications/research-statistics/statistics/work-in-australia.

TAFE SA LEASES

In reply to **the Hon. S.G. WADE** (9 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): I am advised—

31 Agreements (includes Memorandum of Administrative Arrangements with Government Agencies) have been signed over the last 12 month period:

- 19 of these are for a term of 12 months or less
- Seven are for a term of between 13 – 24 months
- Three are for a term of 36 months
- Two are for a term of 60 months

It is expected that an income of approximately $295,000 in rent will be received from these agreements in 2015-16.