LEGISLATIVE COUNCIL

Thursday, 28 September 2017

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 and their cultures, and to the elders both past and present.

Bills

PUBLIC INTEREST DISCLOSURE BILL

Conference

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:19): I seek leave to move a motion without notice concerning the conference on the bill.

Leave granted.

The Hon. P. MALINAUSKAS: I move:

That the sitting of the council be not suspended during the continuation of the conference on the bill.

Motion carried.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

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

Regulations under the following Acts—
- Independent Commissioner Against Corruption Act 2012—Definition of Authorised Examiner
- Passenger Transport Act 1994—
  - Fares Adelaide Airport
  - Fares Lifting Fee
- South Australian Civil and Administrative Tribunal Act 2013—
  - Fees—General
  - Revocation of Fee Provisions

Ministerial Statement

TAFE SA AUDIT

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:20): I table a copy of a ministerial statement relating to the Australian Skills Quality Authority made in the other place by the Minister for Higher Education and Skills.

DEFENCE SA CHIEF EXECUTIVE APPOINTMENT

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:20): I table a copy of a ministerial statement, entitled Employment of New Defence Executive, made in the other place by the Minister for Defence and Space Industries.

EXTREME WEATHER CONDITIONS

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:20): I table a copy of a ministerial statement relating to the Burns Review made in the other place by the Minister for Emergency Services.

Question Time

QUEEN ELIZABETH HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): My question is to the Minister for Health. In the more than three months since the Premier's announcement that all cardiac services will remain at The Queen Elizabeth Hospital, what steps have been taken to remedy staff, bed and equipment shortages in The QEH cardiology services?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:21): I thank the honourable member for his important question around an important and iconic health institution in South Australia but, more importantly, to the western suburbs.

The Queen Elizabeth Hospital has had a proud history of serving the residents of the western suburbs for many decades. It is certainly an institution that is close to my heart as my grandmother volunteered there for almost 30 years with the Friends of The Queen Elizabeth Hospital. I know many residents of the western suburbs have been born there and have witnessed loved ones pass away there. It is, indeed, an important institution and one that attracts a lot of affection and emotion, which is a good thing, but it is also a very proud institution, having delivered outstanding clinical services for many years.

The government is committed to making sure that the proud history of The QEH is also reflected with a commitment for ongoing service delivery to the people of the west and also South Australians generally. That is why the state government has committed an extraordinary investment in excess of $250 million—closer to $270 million—for the upgrade to The QEH over coming years. This very substantial investment will see a new emergency department, improvements to operating theatres and a brand-new car park, and it speaks volumes around just how seriously this government takes its obligation to ensure that residents of the western suburbs have access to the absolute best.

When the government made its announcement around these additional funds, the government and the Premier committed to the retention of cardiac services and respiratory services at The QEH. That is an appropriate commitment; it is in line with feedback that the government has had. We have said from the outset that Transforming Health is a serious piece of public policy. It has seen substantial change to our health system in South Australia. It has resulted in the modernisation of our health system in South Australia and, as I have already talked about over the last 48 hours, it is delivering good results.

However, we are also a government that understands that community feedback should be listened to and responded to if it can be done safely. We believe that the retention of cardiac services and respiratory services at The QEH can be retained safely. I am in the process of working with senior executives and clinicians to work through the detail around how that will be delivered going forward.

The government's commitment is clear: we will deliver it, and we will deliver it in a way that ensures safety for residents or for people who access those services at The QEH, but it will also be done in a way that acknowledges the extraordinary $270 million commitment that this state government has made to The QEH.

QUEEN ELIZABETH HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:24): Supplementary question: has the implementation plan for the restoration of services, as proposed by Professor Horowitz more than two months ago, been put into practice, including adequate staffing and bed numbers and replacement of ageing equipment?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:25): Professor Horowitz is one clinician who has been, naturally, a very vocal contributor to the debate around modernising our health system, particularly in and around The QEH. I am certainly looking forward to the opportunity to be able to meet with Professor Horowitz. I think that meeting has already been arranged, but if it hasn't been, efforts are underway to ensure that it does, because I have had contact from Mr Horowitz. I am very keen to meet him and ensure that his insights and his perspectives are heard as we work through the policy details.

But he is just one clinician; there are obviously a lot of other people who will have views around how this is rolled out. We are working through the detail. It is a bit complex, it is fair to say. I think all things in health tend to be that way, as I am sure the Hon. Mr Wade can attest to. So, there is a lot of detail that we are working through here, but we should be clear about this: the government has an absolute commitment that has been made. It was made back in June. It will be delivered upon, and that work is underway to ensure it is as quickly as possible.

QUEEN ELIZABETH HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:26): A further supplementary: can the minister actually explain to the house what exactly has been done to implement the Premier's decision, made over two months ago? What has actually happened in the two months since the Premier made the announcement that all cardiac service would remain at The QEH? What steps have been taken?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:26): I understand that the department has been working through a number of different options around how that will be done, and the planning around it has been put together.

Members interjecting:

The Hon. P. MALINAUSKAS: Now, now, I am sure the honourable members opposite, particularly the Leader of the Opposition in this place, would appreciate that when it comes to matters that are health, that require feedback from clinicians, detailed plans to be put in place, it is not just a matter of sitting down and having one meeting and all the answers flow from that. A lot of detail has to be worked through to ensure that things are done safely. If the member opposite is advocating that we do this in a way that is speedy, if he is indicating that we do it in a way that is reckless and that could compromise patient outcomes, then that is their prerogative.

We are aware that we have a change in health minister on the government side, and then 48 hours later, all of a sudden the Liberal Party come up with a policy in respect to Modbury Hospital. That's fine, but what we are doing, when it comes to making appropriate changes, is that we get the detail right. Getting the detail right is really important when we are talking about key clinical service delivery decisions. That is why we won't be rushing this in a way that would be reckless. We are making sure we work through the detail appropriately. I have already received one brief on this particular issue. I suspect there will be more to come, and we will make sure that when we do deliver on this commitment, it is done in a way that is utterly appropriate.

QUEEN ELIZABETH HOSPITAL

The Hon. S.G. WADE (14:28): A supplementary question: when the minister assures the house that the Premier's commitment will be delivered, could he clarify whether the Premier's commitment to retain all cardiac services at The QEH, including the cath lab, will mean that the cath lab will continue to operate 24/7, not on a nine to five basis, as is currently being proposed by his department?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:28): I thank the honourable member for his question because it gives me the opportunity to reiterate the Premier's commitment, which of course we will be honouring. He made a clear commitment; that will be delivered upon, including the $270 million investment that this state government is—

An honourable member interjecting:

The Hon. P. MALINAUSKAS: Two hundred and seventy million dollars is being invested in The QEH. Now, that is $270 million more than what those opposite have committed in the lead-up to the next election. So, all of that will be honoured. We look forward to delivering for the people of the western suburbs in respect to The QEH. We are the party that is serious about The QEH.

I know on this side of the house there is absolutely nobody here that has ever contemplated the privatisation of services at The QEH. I hope those opposite can attest to that principle. I wonder whether or not they can. I would welcome members of the opposition categorically ruling themselves out from ever having had anything to do with plans for privatising service at The QEH. We will never be party to such concepts or plans, but I am sure that all members opposite are in exactly the same position.

Members interjecting:

The PRESIDENT: Order! Minister, take your seat.

Members interjecting:

The PRESIDENT: Order! I do not want to hear any—

Members interjecting:

The PRESIDENT: It makes it much more difficult to control the house when ministers, who should know much better, are interjecting across at them. The honourable Minister for Health is trying to answer a very important question and he should be able to do that without any interjection. I hope the members of this chamber will respect that right. Minister.

The Hon. P. MALINAUSKAS: I was just concluding and welcoming the opportunity from the Hon. Mr Wade to reiterate the state government's commitment to the extraordinary investment we are making in The QEH. We are serious about putting funds into public hospitals in South Australia. The QEH is, of course, one of those key public hospitals and iconic institutions that should always remain in taxpayers' hands. I am sure that those opposite would never have had anything to do with any idea in the past to privatise The QEH. I am sure that if that information is out there, it will be found, but I am sure it doesn't even exist because no-one could even contemplate such a proposition.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Minister, take your seat. The honourable Leader of the Opposition, that is not an impressive word to use across the chamber, so I would like you to withdraw it.

The Hon. D.W. RIDGWAY: I will withdraw that, but I would like the minister to stick to the question—

The PRESIDENT: No, I just want you to withdraw it.

The Hon. D.W. RIDGWAY: —that he was asked and not bring up furphies.

The PRESIDENT: Sit down. Supplementary, the Hon. Mr Wade.

QUEEN ELIZABETH HOSPITAL

The Hon. S.G. WADE (14:32): Could I confirm that the minister's reaffirmation of the government's commitment to The QEH includes that the cath lab will continue to be a 24/7, not a part-time, service?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:32): I am very grateful for the fact that The QEH under this government will be remaining in public hands forever, which means that we are, as the government, the masters of the destiny of The QEH—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. MALINAUSKAS: —which means that the people of South Australia—

Members interjecting:

The PRESIDENT: Minister, take your seat.

Members interjecting:

The PRESIDENT: Order! Will the Leader of the Government in this chamber please desist and have a little bit of regard for your ministerial colleague—

An honourable member interjecting:

The PRESIDENT: I didn't ask your opinion—allowing him to answer the question. I would ask the opposition to allow the minister to answer a question that you have asked him. Minister.

The Hon. P. MALINAUSKAS: We believe that one of the key reasons The QEH always remained in public hands is so that the public can exercise its influence through our system of democracy to ensure that they get the services they deserve. That is why the Premier has made a clear commitment about the retention of key services, including cardiac services, at The QEH. That commitment will be delivered upon in conjunction with the other components of his commitment, including to spend $270 million on that site.

The PRESIDENT: A supplementary, the Hon. Mr Wade.

QUEEN ELIZABETH HOSPITAL

The Hon. S.G. WADE (14:33): Considering the minister has—

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. WADE: Considering the minister—

Members interjecting:

The Hon. S.G. WADE: Has the minister got the call or have I?

The PRESIDENT: I just pulled a member of this chamber up because he was interjecting while the minister was trying to answer a question. I am getting a little bit tired of the Leader of the Government in this house baiting the opposition leader into a debate across the chamber. The Hon. Mr Wade has a question. It's a very important issue and something that we need to discuss. The Hon Mr Wade.

The Hon. S.G. WADE: Thank you, Mr President. Considering the minister's assurance in his original answer that the Premier's commitment will be delivered, will that include restoring the 40 per cent cut in staff that Professor Horowitz says jeopardises the ongoing viability of the cardiac service at The QEH?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:34): As I said earlier, Professor Horowitz is one clinician who works at The QEH, amongst many. I am looking forward to the opportunity of meeting with Professor Horowitz. I have had the opportunity to meet him briefly once before. That was on the occasion of my being at The QEH with the Premier of South Australia when he made a significant commitment, including a $270 million investment on The QEH. I look forward to meeting with Professor Horowitz in a more formal capacity, and certainly in my new capacity, sooner rather than later. He certainly deserves the opportunity, in my view, to be heard in respect of his perspectives on Transforming Health, so I welcome the opportunity to have that meeting.

If we just tone down the debate, we have made a clear commitment. We have put our money where our mouth is in order to deliver that commitment. I look forward to working with all clinicians and the department to get through that detail, to make sure that we can have this investment, roll it out, and we can have our commitment honoured so that the people of the west get the services they deserve, but also that we do it in a way that represents the best possible outcomes, particularly around safety. That should be informed from a number of clinical perspectives, including that from Professor Horowitz.

BORDERLINE PERSONALITY DISORDER

The Hon. J.M.A. LENSINK (14:36): My questions are to the Minister for Health:

1. Given that it is almost three years since the government initiated the borderline personality disorder review and action plan, why is the government forcing people affected by BPD and their carers to wait for another two years for the implementation of the government's BPD action plan?

2. Given the work already done by the Mental Health Commissioner and SA Health, why is a further action plan required?

3. What work identified in the implementation plan has been completed, and is the government on track to meet its 2017 targets by the end of the year?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:37): I thank the honourable member for her question. Borderline personality disorder is a significant issue that is getting a greater degree of awareness throughout the community, as I think all mental health issues are. That is a good thing. The costs of borderline personality disorder are significant. It affects up to 43 per cent of psychiatric inpatients into our mental health services. That's certainly a number that jumped out at me when I read it; I think it was on the weekend that I read that particular brief. These are a significant number of people who are suffering from this concerning condition.

SA Health has been working with the South Australian Mental Health Commission to develop an action plan, as the honourable member refers to, for people who are suffering from borderline personality disorder. The action plan is the 2017-2020 action plan. The new service will see an investment of an extra $1.2 million over two years to assist recovery, to improve quality of life and to minimise the personal and social impacts of BPD in South Australia.

Establishing a specialised mental health service is the first step towards improving outcomes for people suffering borderline personality disorder. It will collaborate with other front-line agencies, including SAPOL, Correctional Services and Education. As the former minister for correctional services, I think it is fair to say that on more than one occasion Corrections has in its custody people who often are suffering mental illness. In some instances, borderline personality disorder was a contributing factor to their commission of a crime.

Doing things to help alleviate or assist those people suffering from borderline personality disorder getting access to treatment can in fact not just have an impact in terms of quality of life for people suffering from the condition but also can improve our standard of living generally, if it is preventing things like the commission of an offence. There will be additional training to be rolled out from later this year. It will ensure staff and emergency departments, hospitals and also community mental health services are better equipped to identify borderline personality disorder and support patients.

There will be six to eight dedicated clinicians who will also provide specialised borderline personality disorder support in the mental health system, and an evidence-based evaluation of the service's effectiveness in meeting the community need will be conducted in the first two years of the action plan, I am advised. This is something that we are working towards. The action plan is important. I mentioned that the government is investing money to make sure that there can be better outcomes. It is more than just a plan; we have to make sure that the resources are there as well. The state government is committed to doing that when it comes to this important condition.

BORDERLINE PERSONALITY DISORDER

The Hon. K.L. VINCENT (14:40): Supplementary: will the specialised borderline personality disorder service include a stand-alone bricks and mortar unit, as the BPD community and mental health professionals have been calling for for some time and as exists interstate?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:40): I will have to seek advice on that particular question. I haven't received any information as such, and I certainly haven't seen anything to suggest that that is something that

has already been funded or committed to, but that is not to say that it isn't the case, and I am more than happy to take that question on notice for the honourable member.

BORDERLINE PERSONALITY DISORDER

The Hon. J.M.A. LENSINK (14:40): Supplementary question: given that there was a significant amount of work done on this prior to the release of the government's plan just this month, which outlines the things that the minister has talked about and which were the subject of my question, why does the plan effectively roll out services with such a significant delay; that is, that the clinicians won't come on stream until 2020, and yet SA Health has known about this issue for some time?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:41): I thank the honourable member for her supplementary. To the best of my knowledge, people working within mental health are doing everything they can to try to make sure that the action plan is rolled out as quickly as possible. I have not received any specific advice up until this point—I am sure I will in due course—around any particular delays in terms of the rollout of the action plan.

Needless to say, the government is committed to the action plan. We have invested resources into it. I share the honourable member's desire to make sure that we can roll out key clinical services sooner rather than later. As I said, I have not received, to the best of my recollection, any specific advice around why there are delays, but if the honourable member has specific concerns, I am more than happy to hear what those are and seek advice as to what the situation is.

ELECTIVE SURGERY

The Hon. S.G. WADE (14:42): I seek leave to make a brief explanation before asking questions of the Minister for Health in relation to elective surgery.

Leave granted.

The Hon. S.G. WADE: Elective surgery activity is currently facing three significant events reducing activity levels. The window of reduction in elective surgery activity has been compounded by the ramp down of the Royal Adelaide Hospital and now the upcoming closure of the Repatriation General Hospital. The number of people overdue on the elective surgery waiting list has increased sixfold in the last three months. At the end of June, there were 174 people overdue on the list; now there are 1,000. At the Royal Adelaide Hospital, almost half of the 79 urgent elective cases are more than two months overdue. My questions are:

1. When will hospitals return to normal elective surgery workflows?

2. How is the government going to address the backlog, which they have created by their mismanagement of the transition to the new Royal Adelaide Hospital?

3. Does the government accept that its decision to move the Royal Adelaide Hospital at the peak of the flu season is contributing to the unacceptable delays, and will it reassess the wisdom of closing the Repatriation General Hospital next month?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:43): Let me thank the honourable member for his question, particularly the first half of his question. The first half of his question was absent of rhetoric that was inflammatory and lacked fact. The second half of the honourable member's question is harder for me to thank him for because, of course, he couldn't help himself but insert a whole bunch of rhetoric and things that weren't true. So, I am going to deal with the second component first and then I will come to the first component of the honourable member's question.

The second component of the honourable member's question tried to suggest that somehow there was a disaster as a result of the NRAH move. I'm not too sure what NRAH move the honourable member was witnessing because I think the whole of South Australia—including probably the honourable member, in his heart of hearts—witnessed an NRAH move that was largely probably one of the smoothest significant logistical undertakings that this state and this country has ever seen.

I have to say that, at the time of the NRAH move, I was watching it unfold in my capacity as a cabinet minister, having no particular connection to the health system. I was rather anxious about it because I was acutely aware from the briefings we had received at a cabinet level of all the effort and all the work that was associated with such a significant logistical undertaking, vis-a-vis all the risk that was associated with it. I am sure my other cabinet colleagues were watching this with a degree of anxiety as well. When it all happened, and it happened almost—

The Hon. I.K. Hunter: Flawlessly.

The Hon. P. MALINAUSKAS: —flawlessly, it happened in accordance with plans and we saw all the hard work that had been put into that move being realised in an exceptional outcome for South Australians generally. We were all applauding it, but not the Hon. Mr Wade. He was disappointed that he didn't see things going wrong in one of these significant logistical undertakings. So, when I hear the Hon. Mr Wade say things like, 'It was a disastrous move,' or, 'Bad for public policy'—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. MALINAUSKAS: —I think it is quite unbecoming of the opposition to be looking at it this way. The second part of the honourable member's question referred to the fact that it was a bad decision to move to the NRAH. We know what the opposition really think about the NRAH generally: they wish it didn't exist. They wish that the NRAH didn't exist and that everybody there was still currently holed up in a facility that was in excess of 100 years old, not built for the purposes of a modern health system and in rooms where they were sharing with many other patients, as distinct from having their own rooms.

The Hon. J.M.A. Lensink: Sharing a room—oh, my goodness!

The Hon. P. MALINAUSKAS: I'm sure the Hon. Ms Lensink has private health insurance and one of the reasons—

The Hon. T.J. Stephens: I'm sure you do, too.

The Hon. P. MALINAUSKAS: Yes, I do but I'm not complaining about members of the public getting the same level of health care as other people who make a conscious decision to have private health insurance. I believe that members of the public—

Members interjecting:

The PRESIDENT: Order! Minister, take your seat.

The Hon. J.M.A. Lensink: Have you ever worked in a hospital?

The PRESIDENT: The Hon. Ms Lensink, I know you get very passionate about these issues, but I would ask you in question time to allow the minister to answer his question without a tirade across the chamber, and the Hon. Mr Stephens, that does go for you as well. Minister.

The Hon. T.A. FRANKS: Point of order, Mr President: the minister was actually directing accusations and assumptions to the Hon. Michelle Lensink about whether she had private health insurance instead of addressing his response through you.

The PRESIDENT: I will just say that he asked that question during a tirade across the floor, so your point of order is out of order. The honourable minister.

The Hon. T.A. FRANKS: Point of order, Mr President: I dispute your ruling that all speakers do not address—

Members interjecting:

The Hon. T.A. FRANKS: I will come back with a standing order. You know that we address remarks—

Members interjecting:

The Hon. T.A. FRANKS: Mr President, I am trying to address a remark to you and your colleagues are all heckling me.

The PRESIDENT: I like to be consistent—

The Hon. T.A. FRANKS: I will go back and get the number. All remarks are to be addressed to the President, are they not, Mr President? Could you please rule on that?

The PRESIDENT: I'm not going to rule on anything. I told you, I don't accept your point of order. Minister, could you please get up and finish your answer?

The Hon. P. MALINAUSKAS: Mr President, if the honourable—

Members interjecting:

The PRESIDENT: If this keeps going on the way it is going, I will suspend this question time and I will just walk out until you come to your senses. I do not appreciate at all, while I am trying to control some of the behaviour in here, having anyone stand up with a silly point of order. Minister, will you please get on your feet and finish the question.

The Hon. T.A. FRANKS: Point of order, Mr President: I quote:

> Every Member desiring to speak shall rise uncovered, in their place or in the place of some other Member who does not object thereto, and address the President; and may advance to the Table for the purpose of continuing the address.

All remarks are to be made through the President. Could you please rule on that, Mr President? If standing order 167 no longer applies, I think this place deserves to know that that is how you are operating.

The PRESIDENT: Minister, continue your answer.

The Hon. P. MALINAUSKAS: Thanks, Mr President. The other issue that was raised in the Hon. Mr Wade's question was the suggestion that the timing of the move to the NRAH was a disastrous one. I think most people have seen this extraordinary spike in demand in emergency departments, not just in South Australia but throughout Australia, as a result of an extraordinary flu season. Everyone who has seen that unfold would be very grateful for the fact that the government did indeed make the decision when we did. If the decision wasn't taken to move from the ORAH to the NRAH when we did, then we would have seen this extraordinary spike occurring with less capacity than what we currently have.

Everybody knows, despite some of the mistruths that have been disseminated from some members opposite, that the capacity of the new Royal Adelaide Hospital exceeds the capacity of the old Royal Adelaide Hospital, including in the emergency department. I, for one, am glad that the government made the courageous decision that we did to move at the time we did, despite interference from the opposition, because that has enabled the state public health system to cope far better than would otherwise be the case with this extraordinary spike in demand that we have seen taking place.

The PRESIDENT: The Hon. Mr Wade has a supplementary.

ELECTIVE SURGERY

The Hon. S.G. WADE (14:51): The minister is misrepresenting the comments I made. My question relates to elective surgery. My supplementary question is: considering that the NRAH move involved planned reductions in elective surgery activity, even if nothing went wrong, it was planned by the department to reduce elective surgery capacity for the move. Therefore, can the minister explain, if it wasn't an NRAH move factor, what did lead to the increase in overdues on the list from 174 to 1,000 in the last three months?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:51): That is the component of the honourable member's original question that I was keen to respond to. It was the component of the honourable member's question that I thought was based on reasonableness rather than a mistruth. So, in answer to the honourable member's question, the advice I have received—

The Hon. S.G. WADE: On a point of order: the minister is not able to accuse me of lying without using a substantive motion.

The PRESIDENT: Can I just make a comment. I remember making a ruling once before in this chamber, where somebody accused the minister of lying, and the chamber did not support my ruling for that person to withdraw. So, please do not expect too much sympathy. Sometimes in the heat of debate people will say things and I think—has the minister finished his answer? Do you want to finish your answer?

Members interjecting:

The PRESIDENT: Order!

The Hon. S.G. Wade interjecting:

The PRESIDENT: The Hon. Mr Wade, will you please allow him to finish his answer, and will the Leader of the Government please desist.

The Hon. P. MALINAUSKAS: I am more than happy to go back to the *Hansard* when I get a moment and reflect upon the honourable member's remarks and point out what components I am referring to. Needless to say, in response to your question, my advice is that the ramp down in preparation for the move to the new Royal Adelaide Hospital saw an additional 186 elective surgery procedures postponed across the system. That is the answer to your question.

It is important to contemplate that: 186 elective surgeries that were planned to be ramped down is not an insignificant number, but it should be looked at in context. The honourable member asked the other day about my reference to elective surgery performance at the Modbury Hospital. I referred to the fact that there had been in excess of a 32 per cent increase in elective surgeries that had occurred at Modbury over the last 12 months since changes have been instituted.

The honourable member asked a really good question, and said, 'What does that mean in the context of things? Is it just simply elective surgeries that are increased at Modbury at the expense of Lyell McEwin?' I thought that it was a good question. I said that I would go away and get the information, and I've got it. In that same period at Lyell McEwin Hospital, there was a reduction in elective surgeries of 1.5 per cent. In the same period, there was an increase in elective surgeries at Modbury Hospital of 36.9 per cent, I am advised.

So, a 36.9 per cent increase at Modbury, and a 1.5 per cent reduction at Lyell McEwin. When you total that and look at it across the Northern Adelaide Local Health Network, that equates to a 11.9 per cent increase. In 2015-16, we had 6,535 elective surgeries take place, according to my advice, and that increased the following year to 7,313, so that is a net increase in the order of, or just under, 800 elective surgeries just in NAHLN as a result of decisions that the government has made. Now, I think that puts in context the decisions of the 186 elective surgeries that were consciously planned and deferred in order to accommodate with the NRAH.

The decision to do that, of course, was the right one because what we wanted to see on this side of the house is a smooth and orderly transition in a one in 200 year move from an old facility to a new one being done properly, being done in a way that is planned, to be done in a way that is methodical, to be done in a way that is safe, and that was largely achieved.

It wasn't just achieved because of the work of the former health minister; it was achieved because of the work that everybody within the system, right across the system, not just in the Central Adelaide Local Health Network but also northern Adelaide in conjunction with southern Adelaide, and also Country Health and peri-urban facilities, all working together to see an extraordinary undertaking achieved almost without a glitch. They should be proud of their efforts. The opposition should be proud of their efforts. I know this government certainly is proud of their efforts.

ELECTIVE SURGERY

The Hon. S.G. WADE (14:56): Supplementary question: given that the minister, on the basis of the figures that he has been provided, doesn't believe that the planned reduction activity for the NRAH move led to the blowout from 174 to 1,000 overdues in three months, can the minister tell us what is the reason for that impact. In particular, is he able to give us figures for the cancelled elective surgery as part of the normal winter reduction, and the cancellation or postponement of

elective surgery as part of minister Snelling's hospital emergency plan, which he released five days before he resigned?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:57): As I have said repeatedly in the last couple of days, we have seen an extraordinary flu season take place in South Australia, along with other states around the country. What the honourable member needs to understand, as I am sure he does, is that elective surgeries will be adjusted where there are major influxes into the system. We have seen this extraordinary spike in emergency department presentations. On one particular day, for example, on 11 September, SA Ambulance saw a massive increase in demand with up to 49 per cent more 000 calls in comparison with the same day last year.

They are big numbers, so of course when we see in our system an extraordinary spike in ED presentations and then the patient flow through the hospital system takes place on the back of that, there will need to be adjustments to elective surgery, so it isn't because of the NRAH move. I recited the statistic in respect to the deliberate, planned ramp down of elective surgery, so for the honourable member to suggest that this is because of the NRAH move is based upon a poor understanding of how the health system works.

The Hon. T.A. FRANKS: I rise on a point of order: I ask why you are not abiding by standing order 204 with regard to refusing to rule on my point of order on standing order 167?

The PRESIDENT: Look, you might not think question time is an important time of day; I do. I will look at the standing orders you are quoting to me and I will give you an answer at the next session.

The Hon. T.A. FRANKS: I then indicate that I will invoke standing order 205 and move a motion requiring you to abide by standing orders if you don't rule when people raise points of order.

The PRESIDENT: Are you fair dinkum?

The Hon. T.A. FRANKS: You are meant to rule on points of order and as you—

The PRESIDENT: The Hon. Ms Gago.

The Hon. T.A. FRANKS: —alluded to, we can then—

The PRESIDENT: The Hon. Ms Gago.

The Hon. T.A. FRANKS: —either accept them or—

The PRESIDENT: Sit down.

MEMBER FOR MOUNT GAMBIER

The Hon. G.E. GAGO (14:59): My questions are to the Hon. Andrew McLachlan MLC:

1. Can the member advise when he first learned that the member for Mount Gambier, Troy Bell, was being investigated for offences relating to the running of an independent learning centre in Mount Gambier?

2. Can the member please advise whether he passed that information along to people inside the Liberal Party, who he passed that information to, and when he did it?

3. Can the member please advise when he first learnt that the member for Mount Gambier, Troy Bell, had been reportedly charged with misappropriating more than $2 million of taxpayers' money, 20 counts of theft and six counts of dishonestly dealing with documents and could serve a maximum of 215 years in gaol?

4. Can the member please advise whether he passed that information along to people inside the Liberal Party, who he passed the information to, and when he did it?

5. Can the member please advise whether he still stands by Troy Bell and continues to advocate for him within the Liberal Party?

Parliamentary Procedure

PRESIDENT'S RULING

The PRESIDENT (15:01): The Hon. Ms Franks, in standing order 205, what you need to do is put that in writing immediately.

The Hon. T.A. FRANKS (15:01): Mr President, I indicated that that is what I will be doing. We could take it to a vote now, but I will put it in writing and bring it as a motion to the next sitting day.

The PRESIDENT: No, you are to do it right now and bring it up to the Chair.

The Hon. T.A. FRANKS: Do we not have the option of also putting it in writing?

The PRESIDENT: That is what I have just said. I don't know what you are up to, but put it in writing and bring it up to the Chair.

The Hon. T.A. FRANKS: Then I will put it in writing and bring it before this place so that all members can have an informed debate and that perhaps you can acquaint yourself—

The PRESIDENT: No, the standing orders make it quite clear—

The Hon. T.A. FRANKS: —further with the standing orders and run this place as it should be.

The PRESIDENT: Will you sit down. You have sat there and read standing order 205 and it says 'shall be taken at once'.

The Hon. T.A. FRANKS: Point of order, Mr President: I referred you to standing order 204 and I asked you to comply with 204 and I then said I would invoke standing order 205 if you did not comply with 204.

The PRESIDENT: I don't think anyone understands what you actually said and where you are going.

The Hon. T.A. FRANKS: Point of order: I think the Hon. Kelly Vincent does understand what's going on. Perhaps she would make a better Chair of this place. Perhaps we can have that decision revisited. If you are refusing to rule on points of order you are not doing your job as President.

The PRESIDENT: You want me to—just go through that again. I don't think anyone in this chamber understands 100 per cent exactly what you are saying—

The Hon. S.G. Wade interjecting:

The PRESIDENT: —except obviously Mr Wade. Could you please repeat exactly what you are expecting?

The Hon. T.A. FRANKS: At least two of my colleagues also understand. Mr President, I asked you to rule on standing order 167, whether or not comments are to be directed through you, or indeed we can have this criss-cross of accusations and conversations across the chamber and have an unruly council, as you were complaining of, that you are responsible for.

The PRESIDENT: Okay, I didn't want a life story. I will make a ruling that all discussion and questions are to be directed through the Chair. Are we all happy? Okay.

The Hon. T.A. FRANKS: Can you simply abide by standing order 167? Can you rule on that? Do you support standing order 167?

The Hon. I.K. Hunter interjecting:

The Hon. T.A. FRANKS: No, he didn't actually support 167; he decided to make a new one.

The Hon. I.K. HUNTER: Point of order, Mr President: the honourable member is trying to enter into a debate. Instead of asking you for a ruling, she is trying to encourage you into a debate, and that in itself is out of order.

The Hon. J.S.L. Dawkins: What number?

The Hon. T.A. FRANKS: What number?

The PRESIDENT: This is turning into a bit of a joke. All members of this chamber will address this chamber through the Chair. In saying that, so many times have I seen people not speaking through the Chair. If this is what the chamber wants, if you want to be very formal, then so be it. From now on, if people do not direct their questions or speech through the Chair they will be brought to order. Have you finished your question? The Hon. Mr McLachlan, I believe.

Question Time

MEMBER FOR MOUNT GAMBIER

The Hon. A.L. McLACHLAN (15:04): Thank you, Mr President. I will address my response to the Hon. Gail Gago through you, Mr President. I thank the honourable member for her question. I can't recall the exact date when I was informed but I understand that the information was in the public domain. Can I remind the honourable member that this matter is before the court and sub judice and, therefore, asking me for comments about this case is totally inappropriate—totally inappropriate. The Hon. Mr Malinauskas–

An honourable member interjecting:

The PRESIDENT: Order! Will you please sit down. Order! Allow the Hon. Mr McLachlan to answer the question.

The Hon. A.L. McLACHLAN: I'm doing the honourable member a courtesy to answer this question; I could refuse. But I think it's a bit rich when the Labor Party raise this issue in this chamber when they had Bernie Finnigan. I sat in this chamber for 3½ and, in the time Bernie Finnigan was in this chamber, they relied on his vote. They relied on his vote for every one of their successes—every one of their successes. Every vote, every piece of legislation they got through is tainted by a child pornographer—one of yours; one of the Hon. Mr Malinauskas's own factional members. A factional leader and former minister. The Hon. Bernie Finnigan, when he was 'the honourable' is a taint on this chamber, so it's a bit rich to ask me, a legal practitioner—but what I will say in response—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The PRESIDENT: Order! Will the Hon. Mr McLachlan please take his chair. A very serious question has been asked of the Hon. Mr McLachlan so I think he should have the right to answer the question without interjection.

The Hon. J.S.L. Dawkins: Yes, that's right.

The PRESIDENT: That also applies to the Hon. Mr Dawkins. The Hon. Mr McLachlan, please get up.

The Hon. A.L. McLACHLAN: Mr President—

Members interjecting:

The PRESIDENT: Order! I do think it—

The Hon. T.J. Stephens interjecting:

The PRESIDENT: The Hon. Mr Stephens, your comments are not helping at all. It is getting to the stage where I think this whole question time is turning into a bit of a farce. The Hon. Mr McLachlan, you should be able to finish your answer without any interjection.

The Hon. A.L. McLACHLAN: Other members might listen to me carefully because this is how you answer a question properly. I will say this: every member of society is presumed innocent until proven guilty.

An honourable member: A revelation!

The Hon. A.L. McLACHLAN: It's not a revelation to the Labor Party with the legislation that it brings through, taking away people's rights, and the rubbish we have had to see come through here. We must always give Mr Bell the opportunity to be heard in a court of law, and I will not make any further comment in relation to the same.

MEMBER FOR MOUNT GAMBIER

The Hon. G.E. GAGO (15:07): Supplementary: did the honourable member know of these incidents involving the member for Mount Gambier, Troy Bell, before the information was published and made available in the public arena? Did he know—

Members interjecting:

The Hon. G.E. GAGO: No, he didn't answer it. Did he know prior to that information being made—

The PRESIDENT: The Hon. Ms Gago, take your seat, please. On reflection, I think, at this particular stage of the proceedings with the Hon. Mr Bell, it is inappropriate to be doing it through parliament, so I will go on to the next question. The Hon. Mr Hood.

Members interjecting:

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

ROYAL ADELAIDE HOSPITAL SITE REDEVELOPMENT

The Hon. D.G.E. HOOD (15:08): I seek leave to make a brief explanation before asking the minister who represents the Minister for Urban Development a question relating to the development of the old Royal Adelaide Hospital site.

Leave granted.

The Hon. D.G.E. HOOD: Last week, it was announced that the $1 billion luxury apartment redevelopment proposal for the old Royal Adelaide site has fallen through and that it would not proceed as the public had expected. Consortium spokesman Trevor Cooke said the partners were 'deeply disappointed with what can only be characterised as a change of mind by the government'. He rejected the government's suggestions that the offer was not value for money, referencing the amount paid, timing of the payments and security offered, which he alleged had 'set new records for pricing in South Australia and is backed by strong guarantees'.

I have no knowledge of whether that is correct or not; hence my question. Since the announcement of the failed redevelopment plan the government has suggested there are several other possible development options that they are considering, and no doubt the public of South Australia looks forward to those being revealed. My questions are:

1. What are the alternative plans for the redevelopment, and when will they be disclosed to the public, other than what we have already seen?

2. How much has the government spent on this redevelopment thus far, which will not proceed?

3. How much has the government spent on investigating these alternative plans?

4. What process is the government undertaking to ensure the site is developed as quickly as possible?

5. What settlement payout provisions, if any, did the government put in the contract that may now be relevant in light of the proposed falling through of this proposed development, and what will the cost be to taxpayers, if any?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:10): I thank the honourable member for his question, and I will take that question and bring back answers from the minister responsible in another place.

SUICIDE REGISTRY

The Hon. J.S.L. DAWKINS (15:10): I seek leave to make a brief explanation before asking the Minister for Mental Health a question about the Suicide Prevention Plan.

Leave granted.

The Hon. J.S.L. DAWKINS: Members may be aware that I have called on the state government to establish a suicide register for a number of years. As such, I welcome the inclusion of the proposed suicide registry in the recently released 2017-21 Suicide Prevention Plan. My questions to the minister are:

1. Will the minister indicate whether the registry will need to be established by regulation, and if so when will that be effected?

2. How will the real-time data envisaged to be produced from the registry be communicated to suicide prevention networks and the general community?

3. Will the minister also indicate whether the Australian Institute for Suicide Research and Prevention, otherwise known as AISRAP, which has managed the Queensland Suicide Register for a number of years, will be involved in the development of the South Australian registry?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:11): I thank the honourable member for his question, and I again take the opportunity to acknowledge his hard work in the mental health space. Having now assumed the responsibilities as the Minister for Mental Health and Substance Abuse, I certainly welcome the opportunity to be able to work with the Hon. Mr Dawkins—

The Hon. J.S.L. Dawkins: Can the minister speak up, please? I can't hear him.

The Hon. P. MALINAUSKAS: Sorry. I certainly welcome the opportunity to work with the Hon. Mr Dawkins in my new capacity as the Minister for Mental Health and Substance Abuse and acknowledge that he has been a contributor in this public policy area for some time, and it is something I know he genuinely cares about. I have not received any specific advice regarding the suicide registry. I am happy to get that advice ASAP and bring back answers to the honourable member's specific questions, which I think sound meritorious, given what he has asked, and make sure he gets an answer back as soon as possible.

VENTURE CATALYST AWARDS

The Hon. T.T. NGO (15:13): My question is to the Minister for Science and Information Economy. Can the minister update the chamber on the latest recipients of the Venture Catalyst Awards?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:13): I thank the honourable member for his question and his ongoing interest in the entrepreneurial ecosystem in South Australia and particularly through things such as university programs.

Earlier this month, I had the opportunity to attend this year's Venture Catalyst Awards ceremony at the new University of South Australia business school facility at the City West campus. The government has proudly supported the University of South Australia in the start of the Venture Catalyst Program. Three tech start-ups joined the ranks of Adelaide's thriving start-up community, sharing in $135,000 of seed funding as part of the joint initiative between the state government and the University of South Australia, which over the last three years has been supporting and developing entrepreneurial talent in our state.

The program encourages collaboration between Uni of SA students and industry to turn knowledge and ideas into business opportunities and to create start-ups for the commercialisation of products, services or processes. It is helping increase the number of university graduates that are skilled at developing and commercialising new ideas, which is motivating them to start new local businesses, which in turn boosts employment opportunities for South Australians. The Venture Catalyst program continues to support some of the brightest and most innovative students and recent

graduates by providing up to $50,000 in seed funding, mentoring, support and working space in the Innovation and Collaboration Centre.

I want to congratulate Secure Nest, Playt and Studio Buddy, who each took out a Venture Catalyst award on the night. Secure Nest is led by UniSA graduate Sally Skewes and received $50,000 funding, taking out the social enterprise stream of the program. This start-up delivers an e-health platform that provides greater accessibility for clients of innovative schema therapy that helps to overcome negative behaviours and helps with treatment and recovery.

In addition, current UniSA student Nicole Henderson has established the start-up Playt and received $50,000 in the mainstream category. Playt is a start-up that makes recipe shopping very easy. It's a food tech start-up that converts text from online and print recipes into a digital shopping list, integrating it with both national and international grocery partners to provide reliable and accurate home deliveries.

Finally, the third recipient of seed funding was Studio Buddy, led by James Walsh, a UniSA graduate. The start-up received $35,000 in start-up funding and $15,000 worth of incubation space in the Innovation and Collaboration Centre. Studio Buddy has developed a business management software solution incorporating all aspects of studio management, with the added ability of being able to scale into other industries to capture data and track performance across the sector.

Through programs like Venture Catalyst, this government and our university sector are supporting entrepreneurship in this state and supporting new businesses that will drive economic growth and job creation into the future. I congratulate the three new start-ups that join a growing list of alumni who have progressed through the program. Start-ups that are progressing very well include Vinnovate, TCPinpoint, EcoJet Engineering, Jemsoft and Voxibox.

GREENHOUSE GAS EMISSIONS REDUCTION TARGETS

The Hon. M.C. PARNELL (15:16): I seek leave to make a brief explanation before asking the Minister for Climate Change—the neglected Minister for Climate Change—a question about state greenhouse emissions reduction targets.

Leave granted.

The Hon. M.C. PARNELL: Nearly two years ago, in November 2015, the minister released South Australia's Climate Change Strategy 2015-2050, entitled Towards a Low Carbon Economy. Amongst the measures included in that strategy was a commitment to move our state to net zero emissions by the year 2050. To quote the strategy:

> A net zero emissions target is critical to limit global temperature rise to under two degrees Celsius. This will signal the government's commitment to a low carbon economy and reinforce our national and international leadership on climate change.

But there's more: the strategy also commits the government to amend legislation to include the state's new target of net zero emissions by 2050. The strategy states:

> To send a clear and consistent signal to the South Australian community, the Climate Change and Greenhouse Emissions Reduction Act 2007 will be amended to legislate for the state's new emissions reduction target of net zero emissions by 2050…This will not only signal the government's clear intent, but will also provide policy certainty to businesses, critical for ensuring an effective and just transition process.

Ten years ago, the state target for greenhouse gas reduction by the year 2050 was 60 per cent. That may have seemed ambitious 10 years ago, but with our current understanding of the pace of climate change it's clearly inadequate today. Last year was the hottest year on record globally. Previously, the hottest year was 2015. Before that, the hottest year was 2014. In fact, the record for the hottest year on record globally has been broken five times since this act passed the parliament in 2007. My question to the minister is: why haven't you introduced legislation, as promised, to amend the state's emissions reduction target, or have you in fact abandoned that target?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:19): Thank you, Mr President. Through you, sir, I would like to answer the Hon. Mr Parnell and reassure him that in fact we haven't abandoned any such target; in fact, we have been hitting our targets way ahead of

time. As he has noted in his lengthy preamble, we actually have a target now of not just 50 per cent by 2025, which he is well aware of, but net zero by 2050.

You would think that the Hon. Mr Parnell would be the first to congratulate us on that well publicised target. Every target we have set so far, we have hit years before time. I do not hear the Hon. Mr Parnell jumping up in this chamber commending the government on achieving our targets way ahead of time. I don't see him doing that. That would be fantastic if he just got up in this chamber and said, 'Well done, Weatherill Labor government, not only are you hitting your targets, you're hitting them early.' I would be very pleased when he sends me a postcard to congratulate us on hitting those targets way ahead of time.

I am advised that in late May 2017 the federal government released emissions data for states and territories for the financial year 2014-15. This information is still being analysed by my agency. I have only had emissions data as it relates to last year's report, being greenhouse emissions from states and territories 2013-14, but I think the honourable member might be pleased at least to have those.

According to the data, South Australia's net greenhouse gas emissions, including emissions associated with net electricity imports, were 29.7 megatons of carbon dioxide equivalents in 2013-14. The 2013-14 inventory indicates that from the 1989-90 baseline, emissions have declined from 32.4 megatons to 29.7 megatons, or by 8.2 per cent. This reduction, it's worth noting, has been achieved whilst the economy grew by more than 70 per cent.

I will not dwell too much on the baseline, although it is a trick of the trade. When you see the federal government trying to talk about their achievements in this area, they move the baseline period. They move it way past the 1990 baseline to try to make their figures look better, but in fact they are just fudging them because they know they have not got anything to boast about in terms of climate change initiatives or even emissions reduction.

They have put in place the most useless emissions reduction program. In fact, it was a program instituted by then prime minister Tony Abbott that Malcolm Turnbull—who was not, of course, prime minister at the time—ridiculed as being useless, expensive and never able to reach the emissions reductions required to meet our COP21 targets.

Something else that the chamber should be aware of as well, if the Hon. Mr Parnell isn't, is that recently a report was released by the Climate Council. The Climate Council is an independent national body that provides advice on climate change and also tracks what governments and others are doing to help tackle this global challenge.

The council report 'Renewables Ready: States Leading the Charge,' released last month, shows South Australia leads the nation on renewable technologies. It's an incredibly exciting time to not only see—if the Hon. Mr Parnell won't—at least the Climate Council will acknowledge that we are leading the country in terms of emissions reduction programs and indeed the update on—

The Hon. M.C. Parnell: Where's the bill?

The Hon. I.K. HUNTER: The Hon. Mr Parnell thinks there's some satisfaction—

The PRESIDENT: The Hon. Mr Parnell, will you please make all comments through the Chair at the appropriate time?

The Hon. I.K. HUNTER: The Greens—the party of hypocrisy. We will have to forgive them that. The Hon. Mr Parnell thinks there's some satisfaction to be had in some legislation, but I tell him again: when we set the targets, we beat them. We smashed them out of the stadium. This Labor government is committed to our targets of 50 per cent by 2025 and net zero by 2050. Every target we have set for ourselves before then, we have not only reached, we have reached years ahead. That is what the Hon. Mr Parnell should be congratulating us for, not saying that we should be legislating for these targets. We have made these promises public. And not only that, we have delivered on them, and we will continue to do so.

Bills

CONSTITUTION (ONE VOTE ONE VALUE) AMENDMENT BILL

Standing Orders Suspension

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:24): I move:

That standing orders be so far suspended as to enable the introduction forthwith of the Constitution (One Vote One Value) Amendment Bill.

Motion carried.

Introduction and First Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:24): Obtained leave and introduced a bill for an act to amend the Constitution Act 1934. Read a first time.

Second Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:25): I move:

That this bill be now read a second time.

The Constitution (One Vote One Value) Amendment Bill 2017 proposes to amend section 77 of the Constitution Act 1934. After each general election, the Electoral District Boundaries Commission (commission) commences proceedings for the purposes of making an electoral redistribution. The guiding principle for that redistribution is found in section 77 of the Constitution Act, which is headed 'Basis of redistribution'.

Section 77 currently provides that a redistribution shall be made upon the principle that the number of electors comprised in each electorate must not, as at the relevant date, vary from the electoral quota by more than the permissible tolerance. The permissible tolerance is 10 per cent. The relevant date is a date prior to the making of the redistribution order.

The bill will delete current section 77 and replace it with a new paramount principle for the making of an electoral redistribution. The new paramount principle to which the commission must have regard is that the number of electors in each electoral district should be equal at polling day. This principle is not modified or watered down by a notion of tolerance. The commission must aim for numerical equality of electors across districts, or one vote one value. Proposed new section 77(2) expressly provides that the new paramount principle prevails over the provisions of section 83 of the Constitution Act, which sets out other considerations that the commission is, as far as practicable, to have regard to in making an electoral redistribution.

The primary reason for the change is as follows. In 2016, the commission departed from the approach that it had taken in previous years when making a redistribution. Prior to the 2016 redistribution, the commission focused on numerical equality of electors when making redistributions and sought to achieve an outcome whereby the number of electors in each district was as near as practicable to the projected quota at the time of the election. The 2007 commission sought to ensure that the number in each district was 'as near as practicable to the projected quota'. The 2012 commission sought to 'ensure that districts are as near as practicable to the projected quota at the time of the election'.

The 2016 commission took a different approach. It used the 10 per cent permissible tolerance in section 77(1) of the Constitution Act to try to address what the commission described as the 'innate imbalance, against the Liberal Party, caused by voting patterns in South Australia upon which have been imposed successive redistributions'. The government considers that the use of the 10 per cent permissible tolerance in this manner erodes the principle of 'one vote one value'. This government is firmly of the view that the commission should strive to achieve, to the extent possible, numerical equality of electors in each district at polling day, that is, to achieve one vote one value.

This bill seeks to reinforce in the Constitution Act the key democratic principle that each elector's vote at the ballot box should carry equal weight. Section 83 of the Constitution Act (the

fairness clause) is neither amended nor repealed. Having regard to section 88 of the Constitution Act, if the parliament passes this bill, it needs to be approved by voters at a referendum. The Referendum (One Vote One Value) Amendment Bill provides for this. I commend the bill to members. I seek leave to have the explanation of clauses inserted into *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement and operation

The measure will need to be submitted to a referendum under the proposed *Referendum (One Vote One Value) Act 2017*.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Constitution Act 1934*

4—Amendment of section 77—Basis of redistribution

Section 77 is substituted—new subsection (1) provides that the paramount principle that the Commission must apply in making an electoral redistribution is that the number of electors in each electoral district should (as at the first polling day for which the order is to be effective) be equal.

New subsection (2) provides that section 83 is subject to the paramount principle set out in section 77(1).

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

REFERENDUM (ONE VOTE ONE VALUE) BILL

Standing Orders Suspension

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:30): I move:

That standing orders be so far suspended as to enable the introduction forthwith of the Referendum (One Vote One Value) Bill.

Motion carried.

Introduction and First Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:30): Obtained leave and introduced a bill for an act to provide for the submission of the Constitution (One Vote One Value) Amendment Bill 2017 to a referendum. Read a first time.

Second Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:31): I move:

That this bill be now read a second time.

The Referendum (One Vote One Value) Bill 2017 (referendum bill) provides for the manner in which a referendum will be held on the Constitution (One Vote One Value) Amendment Bill 2017 (constitution amendment bill). The constitution amendment bill proposes amendments to part 5 of the Constitution Act 1934, which relates to electoral redistribution. Specifically, it proposes to replace section 77 of the Constitution Act and insert a new paramount principle that the Electoral Districts Boundaries Commission must apply when making a distribution. The principle is that the number of electors in each electoral district should (as at the first polling day for which the order is to be effective) be equal.

Section 88 of the Constitution Act entrenches part 5 of the Constitution Act. Having regard to section 88, the constitution amendment bill needs to be approved by electors at a referendum.

The referendum bill provides that the referendum will occur on the same day as the next general election of members of the House of Assembly. If the constitution amendment bill is approved by the majority of electors voting at the referendum, the referendum bill will be presented to the Governor for assent.

The referendum will be conducted by the Electoral Commissioner. The referendum bill provides that the Electoral Act 1985 applies to the referendum with such modification, adaptions and exclusions as are prescribed by regulation as if the referendum were a general election of members of the House of Assembly. Accordingly, regulations will need to be prepared to support the referendum bill and modify the Electoral Act 1985 for the purposes of the referendum. I commend the bill to members. I seek leave to have the explanation of clauses inserted into *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

1—Short title

This clause is formal.

2—The referendum

This clause provides for the *Constitution (One Vote One Value) Amendment Bill 2017* to be submitted to a referendum and provides for matters related to the referendum.

3—Conduct of referendum

This clause provides that the Electoral Commissioner is responsible for the conduct of the referendum and provides for the appointment of scrutineers for the purposes of the referendum, the application of the *Electoral Act 1985* to the referendum and the declaration of the result of the referendum.

4—Regulations

This clause provides for the making of regulations for the purposes of the measure.

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

DISABILITY INCLUSION BILL

Introduction and First Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:34): Obtained leave and introduced a bill for an act to promote the full inclusion in the community of people with disability; to assist people with disability to achieve their full potential as equal citizens; to promote improved access to mainstream supports and services by people with disability; to provide for the screening of persons who want to work or volunteer with people with disability and to prohibit those who pose an unacceptable risk to people with disability from working or volunteering with them; to provide for a community visitor scheme; to provide for responsibilities of the state during and following the transition to the National Disability Insurance Scheme; and for other purposes. Read a first time.

Second Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:36): I move:

That this bill be now read a second time.

The Disability Inclusion Bill aims to promote human rights and improve the inclusion in the community for South Australians with disability. It is an important piece of legislation in the context of significant change taking place in the disability sector at the present time.

The National Disability Insurance Scheme is transforming the way disability support is funded and delivered across Australia. We are currently in a period of transition from the state administered system to a national scheme delivered by the commonwealth government. The NDIS represents a major reform and heralds a new era in the provision of services and supports for people with disability, with an emphasis on individual choice and control.

South Australia was one of the first jurisdictions to sign up to the NDIS, and will also be one of the first jurisdictions to reach full scheme implementation from mid next year. In the context of these major reforms, the Disability Inclusion Bill seeks to clarify South Australia's role in supporting people with disability. The bill sets the state government's future direction, focused on rights and inclusion in line with the United Nations Convention on the Rights of Persons with Disabilities and the National Disability Strategy.

Previously, the state government was responsible for funding providers to deliver services to people with disability. The Disability Services Act 1993 was created for this purpose. It is, therefore, a service-orientated act, established to administer funding and regulate the state disability services sector. During transition, the South Australian government is progressively handing over responsibility for disability services and support to the commonwealth government and the National Disability Insurance Agency.

The Disability Services Act 1993 will not be required, once transition to the NDIS is fully realised, because the state government will no longer directly fund services. Instead, the NDIA will work with eligible individuals to create a personal budget to pay for their chosen services and supports. However, we know that there is more to living a fulfilling life than simply being able to access disability services and supports. People with disability also have a right to be included in all other aspects of the community on an equal basis to other citizens.

The inclusion covers ordinary things that may otherwise be taken for granted, like catching the bus to work, attending community events, going to the shops or the footy, and participating in training and other educational activities. It means access to broader community and mainstream services and opportunities that, without dedicated planning and action, are not always easily available to people with disability due to various factors like attitudinal and visible barriers. Enhancing inclusion and removing these barriers is the focus of the Disability Inclusion Bill.

These challenges were recognised in the NDS, which was Australia's response to the ratification of the UNCRPD. The state government will continue to have a role in implementing the aims of the NDS and the UNCRPD into the future once the NDIS is fully rolled out. The principles and visions of these landmark documents set the policy foundation for the Disability Inclusion Bill.

I will now turn to discuss features of the bill. The bill is underpinned by a range of rights-based principles that reflect the tone of the UNCRPD and the NDS. These principles are based on a recognition that whilst people with disability have the same fundamental human rights as others, they often feel undervalued as citizens and experience difficulty finding a place in the wider community. Through these principles, the bill gives visibility to the issues faced by people with disability.

The overall purpose of the bill is to ensure these issues are considered and the views of people with disability are incorporated into policies and programs that affect them. The bill also articulates a range of rights specific to certain groups who, it is generally accepted, face additional challenges and vulnerabilities. This includes women with disability, children with disability, Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability.

The principles will be brought to life through disability inclusion planning, which is another key feature of the bill. Achieving an inclusive society is a long-term vision that will require consistent efforts. The bill aims to support this by ensuring that appropriate planning takes place in a coordinated manner across state and local government. The planning will underpin a more inclusive community which provides equality of access to mainstream services and facilities for people with disability in line with the six outcome areas of the NDS.

Under the bill, a state disability inclusion plan will be developed every four years. This is also a requirement for state government departments, statutory authorities and local councils to develop and implement a disability access and inclusion plan (DAIP) every four years. A list of which statutory authorities are captured by this requirement will be prescribed through regulations at a later stage once the legislation is passed. This will be done in consultation with affected organisations.

The state disability inclusion plan will be the overarching framework. It will set the state government's disability inclusion agenda and provide guidance for agencies developing DAIPs.

DAIPs will detail the way in which agencies are captured by the bill's requirements, plan to improve access to their services and programs. DAIPs will address the identified barriers and specify the action required to ensure that people with disability can contribute to and participate more fully in their communities.

One annual report will be prepared providing a single reference point for tracking progress across the disability and inclusion plan and the various DAIPs. The need to involve people with disability, their families, carers, advocates and peak bodies in disability inclusion planning is strongly recognised. This is in line with the state government's approach to engagement, which is to involve South Australians in decisions that matter to them. Board requirements for consultation have been included in the bill. It stipulates that all plans must be developed in consultation with people with disability. The specific consultation requirements will be detailed in accompanying regulations and guidelines yet to be developed.

State government departments, statutory authorities and many local councils are already preparing these plans and doing much in this area. Including this requirement in the bill will place greater rigour and emphasis on the disability inclusion planning process and a consistent approach across the state. In addition to the rights and inclusion focus, the bill includes a range of supplementary aims.

The National Quality and Safeguarding Framework will set nationally consistent requirements for ensuring supports and services delivered through the NDIS are safe and of high quality. There will be joint responsibility between the commonwealth and state governments for certain aspects of the national framework. This includes worker screening. Current requirements for worker screening in the South Australian disability services sector is covered by the Disability Services Act 1993, which will no longer have any force once the NDIS is fully implemented. Therefore, a new legislative basis for worker screening is needed. Part 6 of the bill provides the ability to establish a worker screening scheme through regulations.

Where possible, the bill mirrors the new Working with Children Check scheme being established through the Child Safety (Prohibited Persons) Act 2016. Further operational details will be provided in the accompanying regulations that will also mirror the new Working with Children Check scheme and will be developed in line with the national policy proposed under the National Quality and Safeguarding Framework.

This bill also includes the ability to make regulations for a community visitor scheme. Currently, the South Australian disability CVS operates under the Disability Services Act 1993. The scheme will continue to operate during transition to the NDIS. A national evaluation into community visitor schemes is underway, the findings of which will inform the commonwealth government's position on such a scheme under the NDIS. Depending on the outcome of this review, part 7 of the bill allows the state government to develop regulations to establish a CVS if the need arises.

Lastly, the bill enables the drafting of general regulations that may include any measures to fill gaps that emerge as implementation of the NDIS continues, in particular elements of the National Quality and Safeguarding Framework. Part 6 of the schedule of the bill allows for the Disability Services Act 1993 to be repealed once it is no longer needed.

Importantly, it is not intended that the Disability Inclusion Bill will replace the Disability Services Act 1993. This is because the Disability Services Act 1993 is still required whilst we are in transition to the NDIS. Part 6 of schedule 1 will only be enacted once the NDIA fully assumes responsibility for the disability services sector in South Australia. A period may therefore exist in which both the Disability Inclusion Bill and the Disability Services Act 1993 operate at the same time. I commend the bill to members. I seek leave to insert the explanation of clauses into *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines terms and phrases used in the Bill.

4—Interaction with other laws

This clause clarifies that the provisions of the Bill do not limit the operation of other Acts unless the contrary intention appears in the Bill.

5—Act to bind, and impose criminal liability on, the Crown

This clause extends the potential for criminal liability under the Bill to include the Crown.

6—Part 2 etc not to create legally enforceable rights etc

This clause confirms that proposed Part 2 of the Bill does not create legally enforceable rights or entitlements, nor does it affect existing rights or liabilities.

Part 2—Objects and principles

7—Act to support United Nations Convention on the Rights of Persons with Disabilities etc

This clause sets out Parliament's intention that the proposed Act is to be administered so as to support and further the principles and purposes of the *United Nations Convention on the Rights of Persons with Disabilities*, as well any other relevant international human rights instruments affecting people with disability.

8—Objects

This clause sets out the objects of the Bill.

9—Principles

This clause sets out principles to be observed in the course of the operation, administration and enforcement of the proposed Act.

Part 3—Administration

10—Functions of Chief Executive

This clause sets out the functions of the Chief Executive under the proposed Act.

11—Powers of delegation

This clause is a standard power of delegation.

12—Guidelines

This clause empowers the Chief Executive to publish guidelines for the purposes of the proposed Act.

Part 4—State Disability Inclusion Plan

13—State Disability Inclusion Plan

This clause requires the preparation of a plan setting out or providing for the matters referred to in proposed subsection (3), to be known as the State Disability Inclusion Plan.

The clause makes procedural provision in relation to the preparation of the plan, including consultation requirements and requiring the plan to be laid before Parliament.

14—Annual report on operation of State Disability Inclusion Plan

This clause requires the Chief Executive to prepare an annual report on the State Disability Inclusion Plan in respect of each financial year, with the report to be laid before Parliament.

15—Review of State Disability Inclusion Plan

This clause requires the Minister to review the State Disability Inclusion Plan at least once in each 4 year period, with a report on the review to be laid before Parliament.

Part 5—Disability access and inclusion plans

16—Disability access and inclusion plans

This clause requires each State authority, as defined in proposed section 3, to prepare a disability access and inclusion plan and sets out how such plans are to be prepared and what they must contain. The plans are required to be published and accessible to people with disability.

17—Annual report on operation of disability access and inclusion plan

This clause requires each State authority to prepare an annual report on their disability access and inclusion plan in respect of each financial year, with a combined summary of the reports required to be laid before Parliament.

18—Review of disability access and inclusion plans

This clause requires State authorities to review their disability access and inclusion plans at least once in each 4 year period, with a report on the review to be submitted to the Minister.

Part 6—Screening of persons working with people with disability

19—Interpretation

This clause defines terms and phrases used in the proposed Part.

20—Working with people with disability

This clause defines what it means to work with people with disability for the purposes of the proposed Part.

21—Certain persons prohibited from working with people with disability

This clause prohibits persons of the kinds specified in proposed subsection (1) from working with people with disability, and creates an offence where they do so in contravention of the proposed subsection. The clause also creates an offence for an employer to employ, or continue to employ, a prohibited person in a prescribed position as defined in proposed section 19.

22—Working with people with disability without current screening check prohibited

This clause prohibits a person from working with people with disability unless a screening check has been conducted in relation to the person within the preceding 5 years, and creates an offence where they do so in contravention of the proposed subsection.

23—Regulations to set out scheme for screening checks

This clause is a regulation making power allowing the regulations to set out a scheme for the screening of people proposing to work with people with disability.

Part 7—Community Visitor Scheme

24—Community Visitor Scheme

This clause is a regulation making power allowing the regulations to set out a scheme for a community visitor or visitors in relation to people with disability.

Part 8—National Disability Insurance Scheme

25—Regulations for the purpose of implementing etc the National Disability Insurance Scheme

This clause is a regulation making power allowing the regulations to make provisions providing for, or relating to, the transition to the National Disability Insurance Scheme.

Part 9—Information gathering and sharing

26—Chief Executive may require State authority to provide report

This clause confers on the Chief Executive the power to require a State authority to prepare and provide a report to the Chief Executive in relation to specified matters, and sets out procedures for where a State authority fails to do so.

27—Sharing of information between certain persons and bodies

This clause enables specified persons or bodies to exchange certain information and documents with each other to enable them to perform official functions or to manage certain risks.

28—Interaction with Public Sector (Data Sharing) Act 2016

This clause clarifies that the provisions of the proposed Part do not limit the operation of the *Public Sector (Data Sharing) Act 2016*.

Part 10—Miscellaneous

29—Confidentiality

This clause is a standard provision preventing confidential information from being disclosed except in the circumstances specified in the proposed section.

30—Victimisation

This clause is a standard provision allowing a person who is the subject of an act of victimisation as defined in the proposed section to have the matter dealt with as a tort or under the *Equal Opportunity Act 1984*.

31—Service

This clause sets out how documents and notices may be served on a person.

32—Review of Act

This clause requires the Minister to review the operation of the proposed Act between 3 and 4 years after commencement, with a report on the review to be provided to the Parliament.

33—Regulations

This clause is a standard regulation making power.

Schedule 1—Related amendments, transitional provisions and repeal

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Carers Recognition Act 2005*

2—Amendment of section 5—Meaning of carer

This clause makes a consequential amendment.

Part 3—Amendment of *Disability Services Act 1993*

3—Repeal of sections 5B and 5C

This clause makes a consequential amendment.

Part 4—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

4—Amendment of section 3—Interpretation

This clause makes a consequential amendment.

Part 5—Repeal of *Disability Services Act 1993*

5—Repeal of *Disability Services Act 1993*

This clause repeals the *Disability Services Act 1993*, and will be brought into operation once the National Disability Insurance Scheme is operational.

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

SOUTH AUSTRALIAN PUBLIC HEALTH (IMMUNISATION AND EARLY CHILDHOOD SERVICES) AMENDMENT BILL

Second Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:47): I move:

That this bill be now read a second time.

The South Australian Public Health Act 2011 is an act to promote and to provide for the protection of the health of the public and reduce the incidence of preventable illnesses, injury and disability. Immunisation is a key method of reducing the incidence of illness through the prevention and reduction in morbidity and mortality from infectious diseases. According to the World Health Organisation:

Immunisation is one of the most powerful and cost-effective of all health interventions.

Yet, despite the proven health and safety outcomes arising from the effectiveness of vaccination in reducing illnesses and deaths from once common childhood diseases such as polio, diphtheria and measles, some parents choose not to vaccinate their children. The 2017 Australian Child Health Poll survey of almost 2,000 parents found that 5 per cent of those children were not up to date with their vaccinations and one in six of that group had been refused enrolment in an early learning service as a result.

The South Australian government believes that this state should have the best childhood immunisation rates in the country and the no jab no play bill proposes tough new laws to impose

immunisation among children, meaning that children must be appropriately immunised in order to attend early childhood care services. The mandatory immunisations would align with those realisations as listed on the National Immunisation Program childhood schedule and include hepatitis B, whooping cough, polio, measles, mumps and rubella. The no jab no play bill aims to improve South Australia's overall immunisation coverage while concurrently reducing pockets of underimmunisation.

The bill seeks to prevent and reduce morbidity and mortality from infectious diseases through an improved public health response and enhanced community immunity to cases of vaccine-preventable diseases occurring in early childhood services. The no jab no play bill seeks to protect all children from those infectious diseases that can be prevented by vaccinations to foster a safe and healthy environment for early childhood learning.

Early childhood care services are those which provide care of young children under the age of six years for fee or reward, such as child care, also called centre-based care, long day care and early learning centres, family day care, preschool and kindergarten, rural care program, mobile childcare services and occasional care.

According to the Australian Immunisation Register, the South Australian annualised immunisation coverage is approximately 90 per cent in the various measured groups. In addition, immunisation coverage differs by local government area, with areas of lower coverage occurring in both metropolitan and regional areas. Given the benefits of immunisation, the national aspirational immunisation coverage target has been set at 95 per cent. Most other states have the ability to exclude unimmunised children from an early childhood service when an outbreak of a vaccine-preventable disease is occurring. Additionally, New South Wales, Victoria and Queensland have passed state-based legislation that aligns childhood immunisation with child care enrolment.

The no jab no play bill proposes that in order to attend early childhood services, a child must be age appropriately immunised, on an immunisation catch-up program or meet the exemption requirements; that parents/guardians would be required to provide early childhood services with evidence that their child meets the immunisation requirements; and that a child with a vaccine-preventable disease or who is at risk of getting a vaccine-preventable disease may be excluded from the early childhood service when an outbreak of that disease is occurring at the service.

For consistency, exemption requirements will align with the commonwealth government's no jab no play legislation. The bill attaches a maximum penalty of $30,000 to any person who provides an early childhood service and enrols a child without the appropriate exemption or immunisation history required. It is also anticipated that the no jab no play bill will improve the recording of vaccines in the South Australian population, which, in turn, will protect our community by increasing the level of immunity as such a large percentage of the population would be immunised against specific diseases resulting in it becoming harder for vaccine-treatable diseases to spread. I commend the bill to members. I seek leave to have the explanation of clauses inserted into *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *South Australian Public Health Act 2011*

4—Insertion of Part 12A

This clause inserts new Part 12A into the *South Australian Public Health Act 2011* as follows:

Part 12A—Immunisation and Early Childhood Services

96A—Interpretation

This clause defines key terms used in the measure. For the purposes of the measure, an *early childhood service* is defined as a service for the education or care (or both) of young children provided for fee or reward but does not include the following services:

(a) the provision of primary education provided at or in connection with a primary school;

(b) a service comprising a person engaged by a parent or guardian of a child to baby sit the child in the child's home;

(c) a babysitting, playgroup or childminding service that is organised informally by the parents of the children concerned;

(d) a service provided for a child by a family member of the child or friend of the family of the child personally under an informal arrangement where no offer to provide that service was advertised;

(e) a service principally conducted to provide tuition to 1 child or a number of children who ordinarily reside together;

(f) a service principally conducted to provide instruction in a particular activity (such as sport, dance and music);

(g) a service where a parent or guardian of each child remains on site and is available to care for their child if required;

(h) a service comprising out of school care;

(i) care provided to a child by a person in accordance with a parenting order under the *Family Law Act 1975* or *Family Court Act 1997* of the Commonwealth;

(j) care provided to a child in accordance with an approval under the *Children's Protection Act 1993*;

(k) any other service, or service of a kind, prescribed by the regulations.

This clause also provides that a child *meets the immunisation requirements* if—

(a) an immunisation history statement indicates that the immunisation status of the child is up to date; or

(b) a document of a kind approved by the Chief Public Health Officer indicates that the child meets the immunisation requirements within the meaning of the *A New Tax System (Family Assistance) Act 1999* of the Commonwealth; or

(c) a certificate in writing issued by the Chief Public Health Officer indicates that the child meets the immunisation requirements.

96B—Requirement to provide immunisation records

This clause provides that the parent or guardian of a child that is enrolled, is to be enrolled, or attends at premises for the purposes of the provision of an early childhood service must provide immunisation records relating to the child to the provider of the service in accordance with the requirements of the Chief Public Health Officer.

The clause further provides that a provider of an early childhood service must, in respect of each child enrolled for the provision of the service, keep a copy of all immunisation records provided to the provider under the clause.

96C—Prohibition on providing early childhood services to children not meeting immunisation requirements

This clause provides that a person who provides an early childhood service must not enrol a child for the provision of the service, must suspend the existing enrolment of a child and must not provide an early childhood service to a child if—

(a) immunisation records relating to the child have not been provided to the person in accordance with clause 96B; or

(b) the child does not, according to immunisation records provided in accordance with clause 96B, meet the immunisation requirements.

A Maximum penalty of $30,000 is fixed.

96D—Requirement to provide information on outbreak of vaccine preventable disease

This clause provides that the Chief Public Health Officer may, if satisfied that there is an outbreak, or a risk of an outbreak, of a vaccine preventable disease at premises at which early childhood services are provided, require the person with responsibility for providing the service at the premises to provide to the Chief Public Health Officer—

(a) the name and date of birth of each child that is enrolled, or routinely attends, at the premises for the provision of an early childhood service; and

(b) current immunisation records relating to each child referred to in paragraph (a) provided under clause 96B; and

(c) the contact details for a parent or guardian of each child referred to in paragraph (a); and

(d) any other prescribed information.

If the Chief Public Health Officer requires the provision of information under the clause then the information must be provided within 1 business day of the requirement and a maximum penalty of $30,000 applies for a failure to comply.

96E—Prohibition on providing early childhood services to certain children on outbreak of vaccine preventable disease

This clause provides that the Chief Public Health Officer may, by notice in writing, direct that a specified child is excluded from attending at specified premises at which early childhood services are provided if satisfied that—

(a) the child has been diagnosed with a vaccine preventable disease; or

(b) there is an outbreak of a specified vaccine preventable disease at the premises and the child would, if the child attended at the premises, be at a material risk of contracting the vaccine preventable disease.

The clause provides that a person must not provide an early childhood service to a child at premises from which the child is excluded pursuant to a direction under the clause and a maximum penalty of $30,000 applies.

96F—Exemptions

This clause provides that the Chief Public Health Officer may, by notice in writing, grant an exemption from this Part or specified provisions of this Part—

(a) in relation to a specified child or children of a specified class; or

(b) to specified persons or persons of a specified class; or

(c) in relation to specified early childhood services or early childhood services of a specified class.

An exemption under this clause may—

(a) be subject to such conditions as the Chief Public Health Officer thinks fit; and

(b) apply for a specified period, until further notice or indefinitely; and

(c) vary according to the circumstances to which it is expressed to apply.

A person who contravenes or fails to comply with a condition of an exemption imposed under this section is guilty of an offence and a maximum penalty of $30,000 applies.

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

INDUSTRY ADVOCATE BILL

Second Reading

Adjourned debate on second reading.

(Continued from 26 September 2017.)

The Hon. J.A. DARLEY (15:52): I rise in support of this bill. I understand the Industry Advocate, Mr Ian Nightingale, has been performing very well so far and has support from the vast majority of stakeholders. By enshrining the functions and role of the Industry Advocate into legislation, this parliament will be sending a clear message to say that this is an important role which should continue into the future.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:53): I believe there are no further second reading contributions so I would like to thank honourable members who have contributed to the debate on this bill. The introduction of the Industry Advocate Bill and the changes in the South Australian participation policy signal the government's strong commitment to stimulating economic growth in South Australia.

This bill gives the Industry Advocate stronger powers to ensure that commitments made to South Australian businesses and workers in industry participation plans are being met all the way through the supply chain. One of the main statutory mechanisms in this bill, to assist the Industry Advocate to perform his functions, is the power to require information. The opposition has filed amendments that would prevent the Industry Advocate from being able to effectively do this.

The Civil Contractors Federation sums up industry sentiment about these amendments when it says, 'What is being proposed will seriously hamper the efforts of the Industry Advocate, and in some cases make the role almost unworkable.' The proposal to delete the partial freedom of information exemption proposed in the bill is simply astounding. This partial exemption is exactly the same as the exemption afforded to businesses to protect confidential information provided to the Small Business Commissioner. It does not protect the Industry Advocate from FOI requests about administrative, financial and statistical information. Businesses and industry associations, including the state's peak industry body Business SA, strongly support the retention of the partial exemption.

On Tuesday, the opposition adjourned off debate, and they referred to responses they received from the Ai Group and the Master Builders Association as the reason for doing so. However, I am advised that it is fair to say that the Ai Group is supportive of the bill, with the head of the SA division, Steve Myatt, having written to the Treasurer as follows:

> Feedback from our members is that the work of the Advocate has been instrumental in providing opportunities for members to showcase their capabilities. The Ai Group's preference is that the role and the work of the Advocate have bipartisan political support.

Also, Business SA continue to push for the advocate to have more teeth and more resources, and I am pleased that the state government has taken these steps. The Civil Contractors Federation CEO Phil Sutherland has advised, as part of the consultation, that:

> The establishment of a statutory authority to ensure compliance will provide the teeth necessary for the local participation policy to achieve true social and economic benefits for South Australia including regional areas of the State.

As recently as yesterday, the general manager of Sarah Construction, Adrian Esplin, wrote in support:

> I understand the Industry Advocate Bill is before Parliament at the moment and there is a provision to make the Industry Advocate's role a Statutory Authority. Any suggestion that the Industry Advocate role should not be established as a Statutory Authority misses the whole point of the legislation which gives power to require information when there are doubts over whether the Industry Participation Plan commitments are not being met.

It is also worth noting that a joint select committee of the federal parliament, which was formed to investigate the implementation of the new commonwealth procurement rules, recently recommended a national industry advocate, cast on the highly successful South Australian model. The committee also recommended that the Australian government legislate as a statutory authority under the responsibility of the Minister for Industry, Innovation and Science the role of Australian industry advocate.

The Hon. Rob Lucas has asked a number of questions during his second-reading contribution, which I will now provide the chamber with answers to. Question 1: why a five-year term instead of three? The answer is that the bill provides for the industry advocate to be appointed for a period not exceeding five years. This is consistent with the Small Business Commissioner and other senior government executive appointments. It is a matter for the minister and cabinet to determine the appropriate duration of the appointment up to the maximum of five years.

Question 2: why is the bill and a statutory position required if the existing work of the advocate is a success? The bill makes a long-term commitment to maintaining the South Australian Industry

Participation Policy. This provides business with certainty that the policy will operate, and this can support their investment decisions in this state. It also ensures the important role of the Industry Advocate becomes a statutory position.

While the advocate role and the South Australian Industry Participation Policy have been extremely effective to date, there is currently no statutory or contractual role for the Industry Advocate in enforcing the commitments made by contractors under the industry participation plans. At present, there are only contractual enforcement measures that are exercised by agencies but not the advocate.

The statutory role of the Industry Advocate has greater capacity to monitor and enforce commitments made on industry participation as part of a tender. The bill proposes specific powers to enable the Industry Advocate to investigate noncompliance with industry participation commitments, issue directions to participants to comply with their obligations and make recommendations to the minister about further action should the participant unreasonably refuse to comply.

Question 3: does the advocate make a report to parliament that is tabled by the minister? The Industry Advocate will be required under the Public Sector Act 2009 to produce an annual report which will be tabled in parliament.

Another question: why is there no power for the Industry Advocate to report directly to the parliament outside of annual reporting? The Industry Advocate investigates matters that are the subject of a contract between the South Australian government via the responsible minister and a contractor. Accordingly, the decision to take action based on a recommendation of the Industry Advocate will ultimately lie with the responsible minister and cabinet. Also, there are parliamentary committees which can call the Industry Advocate to be a witness.

Question 4: how is the role of the advocate changing with regard to government contracts? Does the advocate have a role in commercial arrangements of contractors and subcontractors? The Industry Advocate has a monitoring and compliance role of commercial arrangements between the South Australian government and its contractors and their subcontractors, but this is limited to only his or her functions, duties and powers which are focused on industry participation.

A contractor may make commitments on industry participation, and this is the scope of the monitoring and compliance. Where a business is fundamentally altering these commitments, especially in a negative manner for the state economy, the advocate will have a legitimate role of seeking information, potentially issuing directions or making recommendations to an agency chief executive or minister over action.

Question 5: does the advocate and Industry Participation Policy add complexity to procurement? Does it add cost? How is this cost monitored? The bill intends to establish in the legislation the requirements that currently exist under the South Australian Industry Participation Policy, and there will be no additional cost to businesses or industry sectors. In fact, the South Australian Industry Participation Policy is being revised into a more user-friendly document that contains all the strategic procurement policies that relate to industry participation.

In addition to this, the Industry Participation Plan and economic contribution test templates have been simplified and can be completed online from 1 October 2017. Under the bill, the role of policymaking will sit with the minister, which allows the Public Service to provide advice to the minister and to monitor the effectiveness and impact of the policy. The minister can issue a revised South Australian Industry Participation Policy as required.

Question 6: what is the interaction between the advocate functions of the South Australian Industry Participation Policy and those functions of the State Procurement Board? The bill and the South Australian Industry Participation Policy do not alter the role and functions of the State Procurement Board. The Industry Advocate does not have a reporting relationship to the State Procurement Board. The board has collaboratively worked with the Industry Advocate and the Department of State Development's Public Projects and Participation Division. The South Australian Industry Participation Policy Framework is incorporated into the board's policy framework.

In summary, I highlight the strong support of industry for the creation of a statutory post incorporating the proposed functions and powers. As Andrew Marshall, the managing director of Marshall and Brougham, advised yesterday:

> From the point of view of my Company and situation I think the current Bill should now be fully supported for the sake of all industry - which has demonstrated its wide support.

Again, I thank all honourable members for their contributions and support. I look forward to dealing with this through the committee stage.

Bill read a second time.

SOUTHERN STATE SUPERANNUATION (PARENTAL LEAVE) AMENDMENT BILL

Committee Stage

In committee.

(Continued from 22 March 2016.)

Clause 1.

The Hon. P. MALINAUSKAS: Firstly, I would like to acknowledge that it has been some time since we have addressed this bill in this place, but I understand there has been a fair bit of work that has gone on in the intervening period, principally around a number of questions that the Hon. Mr Lucas had. I think I have stated in this place previously that I thought they were good, legitimate questions.

I understand there has been some correspondence that has gone back and forth, or at least gone to the Hon. Mr Lucas. Most recently, there was correspondence to the Hon. Mr Lucas on the 22nd of this month that outlined answers to a range of questions he has. I am hopeful that the government can see this committee stage through now that there are a number of answers that are on the record to Mr Lucas. If Mr Lucas likes, I am happy to transcribe that correspondence into *Hansard*, if that is of benefit to him; otherwise, he might want to do that himself.

The Hon. R.I. LUCAS: Given these questions were raised 18 months ago, I would like the answers from the government that have been conveyed to me by way of letter dated 22 September 2017 to be part of the committee stage *Hansard* debate. So, I leave it to the minister. Either he reads the Minister for the Public Sector's letter to me onto the public record or I am happy to do it. By rights, I suspect it should be the minister to read it on behalf of the government.

The Hon. P. MALINAUSKAS: Thanks; I am happy to do that. I am just reading from a letter from the Attorney-General to the Hon. Robert Lucas, dated 22 September:

> Dear Mr Lucas,
>
> Following the last debate on the Southern State Superannuation (Parental Leave) Amendment Bill 2016, some investigations were undertaken into the scheme, and the implementation of the Statutes Amendment and Repeal (Superannuation) Act 2012.
>
> I offer the following by the way of background.
>
> The payment of superannuation for State Government employees is governed by the Southern State Superannuation Act 2009, and Section 3 of the Triple S Act contains the definition of 'salary'.
>
> The 2012 Act made amendments to the definition of salary to exclude state parental leave payments. This brought the Triple S Act into line with Commonwealth superannuation guarantee legislation, which explicitly excludes parental leave payments from the salary definition for the purposes of employers calculating their minimum superannuation guarantee requirements. This was done as the Government generally seeks to align itself to the minimum requirements under Commonwealth superannuation law.
>
> Despite the 2012 Act, it was subsequently discovered that superannuation continued to be paid on state parental leave as a result of administrative error. This was initially discovered by a Super SA employee in December 2014. This led to an investigation of the status of payments under the 2012 legislation between Shared Services and Super SA.
>
> This issue was rectified in April 2015 in relation to employees on the main payroll systems used by the Government. Employees on some of the smaller payroll systems however continued to be paid this superannuation on parental leave payments.

Upon review, it was apparent that the error came about as a result of ineffective communication between the government parties involved, which has now been addressed. The steps that have been taken to rectify this situation include enhanced communication between Super SA, Shared Services SA and impacted agencies for all legislative changes. Shared Services SA has also appointed a designated liaison officer who manages communication with key stakeholders. It is worth noting that Shared Services SA is an agent of the relevant agencies, and cannot independently change employee pay arrangements.

In May 2015, Super SA became aware that a cabinet submission was being prepared by the OPS to draft and introduce legislation to repeal the 2012 legislation. This cabinet decision to legislatively repeal the 2012 legislation was made in August 2015. When it became apparent through the decision of Cabinet to rescind the 2012 legislation, it was determined that employees on other payroll systems who were still being paid superannuation on Parental leave would continue to be paid as such.

It was in January of 2016, following the Cabinet determination to legislatively repeal the 2012 Act that I took over from Minister Close as the Minister for the Public Sector.

Since the 2012 amendment any superannuation paid in respect of State parental leave payments is beyond what is required of the State as an employer obliged to pay superannuation under the Triple S Act. Although the overpayments were not made in breach of superannuation or industrial laws, the payments, arising as they did from a technical error in the application of the amendments to the Triple S Act, were unauthorised.

As far as the existing enterprise agreement is concerned, the Government did not have specific legal advice on the relevant enterprise agreement in existence at the time in the context of the removal of parental leave payments from salary for superannuation purposes.

I do however note that the enterprise agreement is silent on the payment of superannuation on parental leave payments. I would agree with the principle that the terms of an enterprise agreement are technically overridden by the terms of the relevant statute.

Even though the Commonwealth legislation provides that superannuation need not be paid on parental leave payments, this legislation sets minimum amounts that must be paid for superannuation. There is no restriction on payment being made beyond these minimum requirements.

It is worth noting that some other public sector jurisdictions do pay superannuation on paid state parental leave, including Queensland, Victoria, Tasmania and Western Australia. The Government is not aware of the legal advice obtained by other States, but in choosing to make superannuation guarantee payments on parental leave, they would not appear to have been acting outside of the federal legislation. This is on the basis that the Commonwealth legislation sets out minimum payments only and employers may choose to make superannuation payments over and above these minimums. New South Wales has determined to restrict superannuation to Commonwealth minimal entitlements so does not pay superannuation on parental leave.

On this basis the Government has determined to pay superannuation on State based parental leave, despite the Commonwealth legislation. In particular, this Bill seeks to amend the Triple S Act to rescind the 2012 amendments. The government is seeking to make this legislation retrospective so that all employees are treated equitably. The government has chosen to legislatively repeal the 2012 legislation and in doing so has decided to reinstate the position prior to the 2012 legislation.

As a result of this Bill, superannuation paid in error will not need to be repaid by those employees who were paid superannuation on parental leave until the error was detected. I can indicate that there are 4,062 employees who fall into this category. In agencies where the error was addressed, employees who subsequently received state parental leave payments will need to be paid superannuation in relation to that leave. I can indicate that approximately 3,800 employees will be entitled to this benefit. These back payments will equate to approximately $6.75 million.

On the passage of this Bill, back payments of superannuation will be facilitated by Shared Services SA. Any employees who have left Government in the meantime will be notified of monies owing to them and will be asked to nominate a superannuation fund into which payment will be made.

Clearly the way we have arrived at this point is not ideal, but I have undertaken investigations since the last time we were debating this Bill, and I am confident that the appropriate arrangements have been put in place so that an error such as this does not occur again.

Yours Sincerely

John Rau

Deputy Premier

Minister for Public Sector

The Hon. R.I. LUCAS: I have been advised by way of text message from a staff member of the Minister for the Public Sector—and I ask that this be confirmed on the record—that the annual cost or saving of the original 2012 bill, if it had been implemented, was $3.7 million per year. Can the minister confirm the accuracy of that particular figure?

The Hon. P. MALINAUSKAS: My advice is yes, I can confirm that.

The Hon. R.I. LUCAS: The minister's letter that minister Malinauskas has now read onto the public record, and I thank him for that, says that back payments will equate to approximately $6.75 million. The letter also indicates that, upon the passage of this bill, those payments will be made. Can I assume that the government has budgeted the $6.75 million in this financial year as part of its 2017-18 budget contingencies?

The Hon. P. MALINAUSKAS: I am advised that individual agencies that are affected will have to meet that cost out of their own budgets.

The Hon. R.I. LUCAS: For 2017-18, has Treasury increased the appropriation for individual agencies for the component of the $6.75 million back pay, or is this just to be added to the savings task of individual agencies?

The Hon. P. MALINAUSKAS: My advice is that Treasury has not increased the appropriation as a result of this.

The Hon. R.I. LUCAS: I will just make some concluding comments. All I can say is that this is just symptomatic of the financial mismanagement and incompetence of the Weatherill Labor government and its ministers, including minister Rau and all those who have been responsible in relation to this. Put simply, what we have here is a situation where this government introduced legislation back in 2012 which said and directed that if the parliament passed the legislation, which it did, certain things should happen, that is, certain payments should not be made, a saving of $3.7 million a year. What minister Malinauskas has read out on behalf of minister Rau is that this government and its agencies just ignored the passage of an act of parliament.

We as an opposition did not introduce the legislation: the government introduced the legislation. The parliament passed it and what we are being asked to accept is simply the reality that the agencies of government for which ministers are responsible just ignored the passage of the legislation and continued to make the payments contrary to the intentions of the legislation that had been passed. Whereas savings of $3.7 million a year were meant to be achieved, they did not do so. Then, two or three years later, when they discover it, what we are being asked to do, and what we are doing now, is to fix the problem retrospectively.

What is going to happen is that we have to retrospectively pay $6.75 million. I instanced in the second reading contribution nearly 18 months ago, as a former minister for education, that there were many examples where there were overpayments by the education department to teachers and education department staff and there were requirements under Treasurer's Instructions and various other government directives where you are compelled to enforce the repayment of any overpayments. Now, to cover the government's financial mismanagement and embarrassment on this issue, we are being asked to fix the problem here, and the parliament is going to fix the problem.

This issue was raised by me 18 months ago, and for the life of me, I cannot work out why it has taken the minister and the government 18 months to address it. The legislation was introduced. Questions were asked 18 months ago and the letter that has now been read into the public record was only written to me in the last couple of weeks. It has taken 18 months for all the various arms of government—Super SA, Shared Services, Treasury, Office for the Public Sector, and heaven knows how many other government agencies—to actually concoct a reply to come back to questions that have been asked in the parliament.

We now find that in addition to the significant savings tasks that government departments and agencies have outlined in various transcripts of evidence to the Budget and Finance Committee—for example, Health only recently told the Budget and Finance Committee that in the final year of the current forward estimates their savings task is $405 million—the minister has just outlined that this error of $6.75 million is going to be added to the savings task of individual departments and agencies.

I will not belabour the point at the committee stage, other than to again indicate and highlight to those who read, listen to or watch the proceedings of the parliament that if ever there was a need for further evidence to justify after 16 long years of a Labor government saying, 'Enough is enough! How much financial mismanagement, incompetence and negligence can any state or any collective

of voters put up with?' the Southern States Superannuation (Parental Leave) Amendment Bill is a perfect example of the incompetence of this particular government.

I thank the minister on behalf of the minister for putting on the record the evidence of what this has cost the taxpayers of South Australia and indeed for highlighting the incompetence of this government.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill reported without amendment.

Third Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (16:20): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (UNIVERSITIES) BILL

Committee Stage

In committee.

Clause 1.

The Hon. I.K. HUNTER: I think at the second reading the Hon. Tammy Franks asked a number of questions regarding this bill, and I want to put on the record now some answers for her. The first question: why has the government not acted to ensure there is a minimum number on these university council bodies? Our response is that, if enacted, the act would specify the composition of the Flinders University Council. In practice, this means that the minimum size of the council would be 15, with council having the option to co-opt an additional member to ensure that it has the appropriate combination of skills and experience necessary for the corporate governance of a university.

The act would operate differently at the University of Adelaide, and the bill currently does specify that the council will consist of not less than 12 and not more than 16 members. This is to accommodate a degree of flexibility in the number of independent-appointed members, which I alluded to in my second reading close. The bill also specifies that a quorum is only achieved when there are one half of the total number of members, ignoring any fraction resulting from a division, plus one.

In response to her question: how is there no intention to weaken staff and student representation? While the bill does reduce the number of staff and student—and, in the case of the University of Adelaide, graduate—members of council, it does so in the context of an overall reduction in council size, but also affects independent-appointed members. As a result, the government would argue that the bill does not weaken staff and student representation, as a proportion of staff and student members of council remain broadly consistent with current levels.

The Hon. Tammy Franks asked: when was formal advice on the proposed amendments made to members of the NTEU and in what form? I am advised that the council held a series of discussions on the governance arrangements at the University of Adelaide throughout 2015 and 2016, and on 24 August 2015, approved the chancellor and vice-chancellor to commence discussions with the state government on this issue. Associate Professor Felix Patrikeeff, the Adelaide branch president of the NTEU, and Ms Julie Hayford, the Adelaide branch secretary of the NTEU, participated in these discussions as members of council.

I am advised that on 3 August 2016, the Hon. Kevin Scarce, the University of Adelaide Chancellor, wrote formally and met with Associate Professor Patrikeeff to discuss the amendments in his capacity as the Adelaide branch president of the NTEU. Minutes of the University of Adelaide council meetings are made available on the governance page of the staff intranet, I am advised. I

am also advised that minutes are typically uploaded within a day, having been approved by the council, which occurs at the following council meeting.

I am also advised that the chancellor has provided regular updates to the council on the progression of the amendments, which will be reflected in the minutes accessible to staff at subsequent council meetings in March, April, May, July, August and December 2016. Finally, the Hon. Tammy Franks asked: when did that meeting with staff and representatives take place, who was the meeting with, and what was the resolution of those staff and representatives after that meeting?

The Minister for Higher Education and Skills met with representatives from the South Australian division of the NTEU, including members of the Adelaide and Flinders branches on a number of occasions. The minister heard their views and responded. No requests for meeting with the minister on this issue were rejected, I am advised, and the minister also met with student representatives from the University of Adelaide and Flinders University when they were requested as well.

The Hon. T.A. FRANKS: The minister says he is advised that the proportion of staff, student and graduate positions remains broadly consistent with the current levels. Given the University of Adelaide's council is reduced from 21 to 16, and five of these positions are two staff, two graduates and one student, can the minister explain the mathematics of how this retains the current proportion?

The Hon. I.K. HUNTER: If I take one institution, for example, I am advised of the current proportions that will change as follows: in terms of independently appointed members, which I think I said applied to the University of Adelaide, currently there are seven. The proposals in the bill are up to seven, and depending on how that is enacted, the changes would be roughly consistent. In terms of staff, currently I am advised that there are two general and two academic, which is a proportion of roughly 20 per cent of the current position. The proposal is to reduce it to one general and one academic, which is roughly about 17 per cent, possibly about 13 per cent, depending on the number of independent appointed members that are appointed as per my previous point.

The number of students currently is three, with at least one being an undergraduate and one being a postgraduate, which is currently around about 15 per cent. I am advised that that would be reduced in the legislation before us to one undergraduate and one postgraduate, which would be a slight increase potentially of between 17 per cent, or it may go down to 13 per cent, but roughly commensurate. In terms of graduates, the current position is three. The proposal is to go down to one, that is a reduction from about 15 per cent to roughly about 8 per cent, so there is a marked reduction there but, as I say, in the other measures, it is roughly commensurate. I think my language was, 'remain broadly consistent with current levels'.

The Hon. T.A. FRANKS: The information I have from the NTEU is that the bill currently before parliament does in reality reduce the proportion of staff and student representatives. Indeed, the elected positions are reduced from 46 per cent to 31 per cent, and appointed positions are increased from 38 per cent to 50 per cent. Does the minister dispute these NTEU figures?

The Hon. I.K. HUNTER: I do not have the figures before me and I am not in a position to debate them at all. All I can do is give the chamber the advice I have just given.

The Hon. T.A. FRANKS: Given that the Weatherill government, in correspondence to concerned constituents, maintained that the ratio had, in fact, not changed, is the minister concerned that the Labor government is misleading the public on this matter?

The Hon. I.K. HUNTER: I am not sure that the proposition the honourable member just led in the chamber is accurate. My advice is the language that was used in the correspondence was similar to the language I have just used in my answers to the question, which I put on the record, which was to say 'will remain broadly consistent with current levels'.

The Hon. T.A. FRANKS: Under sections 32 and 33, will the University of Adelaide council be able to pay themselves a commission for the management of investment common funds?

The Hon. I.K. HUNTER: My advice is that these two provisions are about the council investing its own funds and provide for them to have a fund manager in place, in which case you

would then need to, of course, come to an arrangement about the conditions that you pay a fund manager.

I do not know why you would contemplate setting yourself up as the fund manager yourself where you are the beneficiary of the earnings of such a self-run fund and then pay yourself commissions. I am not aware of where the advantage may be. The honourable member may be able to enlighten me about that, but as far as I understand it, on my advice, this is about giving the council permission to engage a fund manager to manage their funds and to, obviously, strike a commission for the fund manager.

The Hon. A.L. McLACHLAN: If I may assist, I think the honourable member—and I do not want to put words in the honourable member's mouth—was raising the conceptual issue that the university could have a funds management arm, which it owns and it charges to the fund. So, the minister's logic is correct in the ordinary course: why would you be paying out and not receiving it as a beneficiary? It is a conceptual question, but you would in certain circumstances because you would then be taking it from the pool of the fund into the general revenue of the university and thus applied at the discretion of the CFO, versus taking it, potentially, from committed moneys to scholarships.

So, the question is relevant because the university gets the money as a whole, but some of that money may have to go out to bursaries and other universities. Really, the question is one of compliance. Does the section rule out self-enrichment, which is, in other contexts of trustee companies, strictly controlled under previous legislation when common funds were also used in pooling estates?

The Hon. I.K. HUNTER: My advice is that a proper reading of this construction would be to allow for the council to make provision for either a direct transfer to the fund manager or a transfer to the university to disburse to the fund manager. The council, in any case, needs to approve the level of commission, which gives a level of transparency and oversight to that process, is my advice.

The Hon. A.L. McLACHLAN: I suppose the real question is: where would that be disclosed outside of the council, because the council may like the arrangement if it is taking a profit out of the fund manager? I am not suggesting that that process is necessarily bad because they might have—the thing about universities is that they have a whole lot of technical skills on campus, so they are not exactly the usual corporation, if I can put it like that. So, where would that be, outside of the council itself? The council would be making that decision, so who would have the opportunity to reflect on that? Would it be in the annual report? I suppose that is the question I am asking.

The Hon. I.K. HUNTER: On the advice available to me, we would expect that there would be a report at least in the meeting minutes. One would expect that it would also be reported in the annual report of the university but I cannot unequivocally say that that is the case on the basis of what we have before us. Again, I am not sure about the exact mechanism of this but I would imagine that any fund manager has some commonwealth fiduciary obligations in terms of reporting publicly as well, certainly to their oversight body. However, again, I cannot give you the absolute degree of certainty you want about that. I might take that on notice for the honourable member and come back with a response.

The Hon. A.L. McLACHLAN: I am not asking the question to delay the bill, I am getting clarity, so if you can take that on notice. I suspect it would be audited. I suppose the more simple answer would be: if those arrangements had an internal fund management arm they would come within the remit of audit, then I think that would be an acceptable answer, but I would also like to know, of those relationships which are technical conflicts, as long as they are disclosed, where would they be disclosed?

The Hon. I.K. HUNTER: I will certainly get a response for the honourable member on that. I am also advised, of course, that they will be available and reported in the annual reports of the Auditor-General.

The Hon. T.A. FRANKS: In the minister's response to my previous question regarding when the Minister for Higher Education had met and consulted with the NTEU, a reference was made to meeting with the members of university council who were the staff representatives. Will the minister explain how that was a meeting with the NTEU when if a member of the NTEU is on the university council they are not there as a representative of the NTEU?

The Hon. I.K. HUNTER: That was not exactly what I said. Remember, it was in response to multiple questions asked by the Hon. Tammy Franks. When was the formal advice of the proposed amendments to the University of Adelaide Act made to the National Tertiary Education Union? To which members of the NTEU and in what form? When were staff given access to the council minutes for discussion on the issue? What was the date and in what form was that information provided? So, the five dot points that I read out in response to those contemplates that raft of questioning.

I suppose in the second dot point, where I said that this information was given at a meeting of the council and there were members of the NTEU who were formally on the council, that is when they would have had some advice on this as council members. The next dot point went on to say that when there was formal notification from the Hon. Kevin Scarce to the NTEU and so on.

The answers that I read out through those five dot points relate to the number of questions asked by the Hon. Tammy Franks. One of them, the second dot point, related to their membership as they were members of council, and the third dot point related to formal advice from the Hon. Kevin Scarce to them in their positions as NTEU officials.

The Hon. T.A. FRANKS: I acknowledge that there were several questions, and I did actually ask for specific dates and times and for clarity around when the minister engaged with the NTEU on this matter. Was it before or after the bill was drafted?

The Hon. I.K. HUNTER: Again, the honourable member can always go back and check the questions she asked and the answers I have just given. I have given dates, I have outlined where the information was provided to members of the NTEU, either as members of the council or in formal correspondence from the chancellor of the university, and I mentioned the date of 3 August 2016. Then, in response to the last question, I gave some responses about the meetings ministers had over a period of time and heard the views of various organisations and representative bodies. So, I think she will find, on closer reflection of the answers I have already given, that I have answered those questions.

The Hon. T.A. FRANKS: Given I asked these questions in the second reading stage, and it is common practice to respond to second reading questions before clause 1 and the minister chose to respond to my questions in clause 1 today, it would have been appropriate to have provided those answers to me in writing. The minister would have had them drafted. So, 3 August 2016, this is the golden date that is being presented as the date that the consultation occurred; is that the case? Can the minister indicate which day this bill was introduced into this parliament with regard to 3 August 2016?

The Hon. I.K. HUNTER: Chairman, I take issue with the statements made by the Hon. Tammy Franks. It is not common practice at all. At most stages of debate that I have been involved in it has been perfectly acceptable, so far, that questions that were asked in the closing stages of a second reading were answered at the first clause. That has been a common practice in this place as long as I have been here, so I dispute the assertion she has just made.

I reflect again on what I read into the *Hansard*. I am advised that on 3 August 2016 the Hon. Kevin Scarce, University of Adelaide Chancellor, wrote formally and met with Associate Professor Patrikeeff to discuss the amendments in his capacity as the Adelaide branch president of the NTEU.

The Hon. T.A. FRANKS: That was the date that Kevin Scarce met with the NTEU. What was the date that the minister met with the NTEU first on this bill? Was it before or after it was drafted?

The Hon. I.K. HUNTER: My advice is, as I have already reflected in my answers to your questions, there were a series of meetings that were held. I do not have those dates and times in front of me now, but as you will find when you read my answers previously, the Minister for Higher Education and Skills met with representatives from the South Australian division of the National Tertiary Education Union, including members of the Adelaide and Flinders branches of the NTEU, on a number of occasions, and I went on with another three or four dot points. That is the advice I have before me. I do not have any further information about what the relevant dates were of each individual meeting.

The Hon. T.A. FRANKS: On the point of it being common practice, it is not common practice necessarily to answer the questions on the same day that we enter a debate. I indicated that I would have appreciated the questions answered in writing. I note that respect was given to the Hon. Andrew McLachlan in answering his questions before we proceeded further in the debate, to give him a day to digest them. I would have appreciated a similar response.

I note that the minister is happy in this case that the very people most affected by this decision were not consulted appropriately and were not listened to by the Weatherill Labor government. Is it now the case that the Weatherill government has dumped the Premier's pledge that this government would not be a government of declare and defend but indeed a government of consult and decide, and are we back to the bad old days of declare and defend with this bill?

The Hon. I.K. HUNTER: What a ludicrous contribution. Quite frankly the Hon. Mr McLachlan gave us plenty of warning of his questions, unlike the Hon. Tammy Franks. Had she considered giving those questions to us in writing at some stage before the second reading close, she possibly could have got the answers earlier. The Hon. Mr McLachlan in his contribution several days ahead gave us warning, and we were then able to give him answers in the second reading closing speech.

The same courtesy would have applied to the Hon. Tammy Franks had she applied a certain level of courtesy to us in giving us advance notice of the questions. However, I did take them at the close of the second reading and undertook to give her answers during clause 1, which is common practice. As to the other comments she makes, they do not bear much comment back from me.

The Hon. T.A. FRANKS: I reflect that perhaps that courtesy might have been extended to the NTEU before the government actually introduced legislation affecting them. Clearly, it is back to the old days of declare and defend here, and damn the consequences and damn actually sticking by industrial democracy on our university campuses. We have seen misrepresentations about the ratios. The ratios of the elected members on these university councils are going down. I ask the minister: can he clarify why, given we are seeking in this bill to diminish university governance at a council level, the Adelaide University committee meeting this year was noncompliant with the act?

The Hon. I.K. HUNTER: This discussion of clauses is rapidly trending downwards into a general debate, I am afraid. In terms of the question the honourable member asked about an Adelaide University meeting, I do not have any information provided to me at this point in time in connection to what you may be talking about. I understand that they are required to have a public meeting, which I understand happened in February, where this matter was brought up. However, I do not have any details of the particular dates, who was there or any other information, other than that they had a public meeting in accordance with requirements.

The Hon. T.A. FRANKS: I draw the minister's attention to the fact that, under section 18 of the act, the annual public meeting is indeed required and is required within two months of the commencement of each financial year. The meeting was noncompliant in that way because it was held in February this year. The issue of this substantial legislative change was not put on the agenda of that annual meeting. It was not put on the agenda by the council. It was, in fact, only raised from the floor, where the chancellor stated that he saw no need for consultation. Thirty-six minutes and 45 seconds into that annual general meeting, Chancellor Scarce said:

> I don't see a need to go to the broader community to have that engagement.

This is totally out of line with the comments made by the minister responsible for this bill, minister Close, who told the parliament on 30 November 2016 that:

> …the universities put in place their own engagement processes to engage with their communities to explain the proposed amendments...

Why has the minister misled the parliament and accepted the words of the chancellor? Why has the minister not listened to the very people affected the most by this legislation?

The Hon. I.K. HUNTER: The only person who has misled parliament, as far as I know, is the Hon. Tammy Franks. As I understand it, and she is right, the council must, according to clause 18—Annual meeting:

> …within 2 months of the commencement of each financial year, convene and attend an annual meeting of the University community.

As I have just been advised and have advised the chamber, that was held in February. The Hon. Tammy Franks may not know, and I have been advised now, that the financial year of universities is a calendar financial year, so it was within two months of the commencement of the financial year, as the universities operate.

So, the Hon. Tammy Franks has her information wrong or has been misled in some way or has assumed that the calendar year was a half-yearly calendar, but my advice is that universities operate on a calendar financial year. As such, they would have met the two-month timing of the commencement of their financial year by holding the public meeting in February.

The Hon. T.A. FRANKS: I thank the minister for an actual answer and acknowledge that I accept that the university has a different financial calendar year than the regular community in South Australia. I appreciate that level of information, because I can tell you that if you are looking for information about council decisions and you are a member of the university community—

The Hon. I.K. Hunter: Why can't you accept that?

The Hon. T.A. FRANKS: I have accepted that, minister. I am saying to you that the government should not be accepting at face value what they are told by the leadership of the university council, and that they have not done their due diligence in ensuring that students and staff were properly consulted and engaged in this process.

That is actually the job of a good government that is bringing in a bill that they say is for good governance. That AGM did not put this legislation on the agenda. I think it is completely outrageous to then have a Weatherill government backing up a university leadership that has claimed to have consulted. The minister should be asking more questions of these university councils before accepting and bringing, on their behest, legislation such as that we have before us here today.

The ratios are incorrect—that is quite patent. Could the minister also explain what research has been done with regard to the changing of the name of Flinders University? Are there any concerns that international students may not identify that university with our state as a result?

The Hon. I.K. HUNTER: On the final question that the Hon. Tammy Franks asked about the change of name, my advice is the universities have campuses across the country. I think Flinders has one in the Northern Territory and they certainly have campuses in South-East Asia. I would find it very unlikely that the greatest university in the world would be taking a decision on changing its name that would disadvantage it in terms of competing or in attracting students to South Australia.

In regard to the earlier question about the minister seeking some information, I am advised that the minister did actually write to the vice-chancellors of the universities seeking their response to questions of engagement. She has received letters back from both the University of Adelaide and Flinders University, signed by Professor Colin Stirling on the Flinders situation and signed by Rear Admiral the Hon. Kevin Scarce in regard to the University of Adelaide, in light of the current debate on the Statutes Amendment (Universities) Bill 2016. The minister is relying on advice from the governor organisations and the vice-chancellors and the presidents of the universities responsible. That is what you would expect ministers to do.

The Hon. T.A. FRANKS: I have to say, you do not necessarily expect a Labor minister to ignore the industrial union that is involved in the sector when they are in fact slashing their places on the council. The minister clearly is happy that the Labor Party has not consulted with the NTEU in an appropriate manner on this matter. I do not actually expect them to have bothered consulting with the students given the contempt that they have shown over many years for students on our campuses with the corporatisation of education in this state. Indeed, we are seeing the corporatisation of TAFE in this state—a Labor legacy coming home to roost at this point.

The minister is clearly not going to answer my questions. It is standard practice that second-reading questions are answered before proceeding to the second reading vote and into clause 1. The minister may find that that is somehow an aberration for this bill, because everything about this bill in terms of consultation has been an aberration. I think it is reflecting that they want to ram this bill through, damn the consequences and silence the student and staff voices.

The minister and the Labor government may be happy with that, but the Greens are certainly very concerned that this flags a lessening of the student and staff voices on these campuses. It is a shame to the Labor government that they have abandoned their core values.

The Hon. I.K. HUNTER: I reject completely the colour the honourable member has put into that description about the minister's appropriate level of consultation in this matter. I just remind her and the chamber that this bill has been before parliament since 30 November of last year, so it is hardly a situation of being rammed through, for goodness sake.

The Hon. T.A. FRANKS: I just remind the minister that you should have consulted before bringing the bill and drafting the bill, rather than after. That is what the difference is between 'declare and defend' and 'consult and decide'. That was the downfall of the Rann Labor government, and I think it will be the downfall of the Weatherill Labor government.

The Hon. A.L. McLACHLAN: I have a few questions for the minister at clause 1. These come out of the minister's responses to the second reading summing up by way of clarification. I should add, given the context of these questions, that the Liberal Party is not opposing this bill and nor is it supporting amendments. My purpose with these questions is to understand and get on *Hansard* the process between the state and the university. I thank the minister and, through him, the staff who put together those responses.

In the minister's second reading, he said the government gave careful deliberation, as I would expect, to the request by the university. Does 'careful deliberation' mean a process was gone through? Would it be legitimate for the government to say simply that the university is best placed to give advice on the governance of its own affairs, or was there a process that the responsible minister went through in addition to receiving the information to test the assumptions? I am not talking about consultation here: I am talking about what is in the best interests of the state, since it is a state asset.

The Hon. I.K. HUNTER: I thank the Hon. Andrew McLachlan for that further question. My advice is that universities are required to undertake governance reviews from time to time under their federal regulations. Flinders University approached the government seeking a range of amendments to the Flinders University of South Australia Act 1966, as I understand it, arising from such a review of their governance.

In response, the Department of State Development commenced a process of consulting with all three public universities on potential amendments to their acts. I think I covered this in my second reading. The proposed amendments to the Flinders University of South Australia Act and the University of Adelaide Act 1971 contained in the bill were developed through that consultation process.

In particular, I am advised that the universities were consulted through the Premier's higher education committee, which comprises the Premier, the Minister for Employment, Higher Education and Skills, the Minister for Investment and Trade, the Minister for Manufacturing and Innovation and vice-chancellors of the three public universities. I am advised that the University of South Australia elected not to pursue any amendments to the University of South Australia Act 1990 at this time. I think I also advised that in my second reading summation.

That is the formal origin of the legislation, I suppose, that is before us, and the way the government engaged with the universities and the processes and the organisations, in this case the Premier's higher education committee, which discussed it.

The Hon. A.L. McLACHLAN: I thank the minister for that answer. In essence, it does answer my question. At one stage, there was a collaborative approach as opposed to—I am trying to get away from the word 'adversarial'—an exchange of letters. That is where I was going. I thank the minister and his staff for that question.

Just on the internal processes of the university, I think we have well traversed the consultation road. When the council signs off exactly what it wants, does it then take it to its senate, or anywhere else, or does it go direct? It is simply a technical question. Are there any other technical steps within the university hierarchy?

The Hon. I.K. HUNTER: My advice is that beyond the government review, which would have involved council and the university engaging with the academic senate or the board, there are

no other formal requirements, but of course in the correspondence we received from the universities, particularly the Adelaide University, they advised us of a formal decision of their council. I might just reflect very quickly on part of one of those letters to give the honourable member a feeling for the breadth of their internal discussions. A letter to the minister from Rear Admiral the Hon. Kevin Scarce states:

Discussions on improvements to Council governance were conducted throughout 2014, 2015 and 2016. Illustrative of these extensive discussions were:

- In 2014:
  - Council commissioned a Review of Governance in which all members participated. This review concluded that a reduced size of the Council might improve its overall effectiveness.
- In 2015
  - 29 March 2015: at the Council Retreat the Chancellor led a discussion on Outstanding Board Performance, where the size of the Council was one of the issues debated.
  - 25 May 2015: at the Council meeting the Chancellor discusses proposed specific changes to reduce the size of Council.
  - 6 August 2015: the Chancellor invited all elected members of Council affected by the proposed changes to the University of Adelaide Act to meet with him. All elected members accepted this invitation.
  - 24 August 2015: Council approved:
    - the Chancellor and Vice-Chancellor to engage with State Government on amendments to the University's governing legislation with respect to (1) an amendment to the size (not composition) of Council; (2) an extension of the power to delegate under section 10; and (3) a new section to expressly provide for a common investment fund.
    - At this Council meeting the Chancellor reemphasised that representation of staff, students, and graduates would be maintained.
  - 12 October 2015: at the Council meeting the Chancellor reported that the State Government had broadly accepted the University's proposed changes to the University of Adelaide Act. A commitment was given that any cuts would be applied to both appointed and elected members.
- In 2016, progress was reported to Council at its meetings in March, April, May, July, August and December.

That gives, if you like, an extensive understanding of the internal processes that the Adelaide University, at least, went through in this particular situation.

The Hon. A.L. McLACHLAN: I thank the minister for that comprehensive answer. It was excellent and fills in the gaps for me. I would like to go to one other issue, which is the payment of board fees. I know the response the minister has given, and he may wish to take this on notice. The minister I think said in response to my questions that they do not receive board fees, so the Chancellor of the University of Adelaide receives an honorarium.

I would like to know what the honorarium is. If it is not at hand, I do not want it to delay the progress of the bill, but I would like to be advised by letter. The minister then said that there are no current proposals. I have heard that, and I may have even used it myself in another context, but I would like to know (and it can be by letter) whether there have been proposals in the past. Has it been discussed at any time—I will be fair—in the last five years by the university council?

The Hon. I.K. HUNTER: I will undertake to find out what the honorarium is and bring that back for the honourable member. My advice is that yes, there was a discussion about a fee that was raised not at council—I guess we are talking about Adelaide University here—but at some sub-body of council but my understanding is that that was also killed very quickly. Again, I will make inquiries for the member and see if I can bring back further details.

The Hon. A.L. McLACHLAN: Can that be for both universities?

The Hon. I.K. HUNTER: I can certainly make inquiries for both.

Clause passed.

Clauses 2 to 6 passed.

Clause 7.

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

Amendment No 1 [Franks–1]—

Page 3, lines 30 and 31 [clause 7(2)]—Delete subclause (2)

Amendment No 2 [Franks–1]—

Page 4, lines 1 and 2 [clause 7(3)]—Delete subclause (3)

Amendment No 3 [Franks–1]—

Page 4, line 3 and 4 [clause 7(4)]—Delete subclause (4)

This suite of amendments restores the elected positions of students and staff to the university councils because the government has chosen not to keep the ratio. In fact, they have chosen to make the bulk of the cuts from the elected representatives in terms of this quest to meet this magical number of between 22 and I think it is 15 or 16. There is no reason or rationale for that particular magical number.

I think this chamber, with 22 members, and the other place, with 47 members, make decisions in their own ways and to their own culture, and universities have, over a significant period of time, made decisions that are to their culture. But this is an indication that student and staff voices are to be cut and culled from the very governing bodies of universities, and those who are on the ground at the very pointy end, the coalface if you like, of the decisions that the university councils will make will have the least say at the table.

The Greens put this amendment to keep the current representation of student and staff because we are shocked and surprised—well, actually, no, we are just disappointed. We are not shocked and surprised; in fact, it is just more of the same from the Weatherill Labor government, but we question why the Labor government continues to not ensure if not industrial democracy but that the academic community is respected and that those student and staff voices are at the table when decisions are made that affect them the most.

The Hon. I.K. HUNTER: I thank the Hon. Tammy Franks for moving her amendments all together; the government will not be supporting any of them, of course. I am not sure that the amendments moved by the Hon. Tammy Franks will do what she thinks they will do. They certainly reduce the representation from 21 currently down to 19. The bill, if it is supported, will reduce it further to 16. However, the current levels of staff and student membership on the councils would be retained under the Hon. Tammy Franks' amendment.

My advice is that councils would shrink from 21 to 19, as I said, but as a result there would not be a material change to the operation of the councils, which undermines the key purpose of the bill from the respect of the universities. Further, the reduction in numbers will only come about through reducing the number of independent appointed (in the case of University of Adelaide, graduate members of council), so this would alter the proportions between the classes of council members such that independent appointed members would be in the minority, I am advised.

The purpose and point of bringing this to parliament by the universities is the fact that universities recognise the need to exercise corporate governance effectively. Organisations such as the Australian Stock Exchange, the Australian Institute of Company Directors, Universities Australia, the G20 and the Organisation for Economic Co-operation and Development have all produced guidance on corporate governance structures, and in each case that guidance stresses the importance of having the appropriate combination of skills and expertise, be they financial, corporate, risk management, business and strategic, a majority of independent members and an overall size that is not so large as to not become unwieldy.

So, reducing the numbers of appointed members of council, while maintaining the current size of staff and student members, I think would threaten that skills mix required of council, resulting in, as I said, independent members being in the minority. I am not sure that is what the Hon. Tammy Franks would want, on reflection, to be the outcome of her amendments, but in any

case it would not appreciably impact councils' overall size, which is the point of one of the amendments, which would detract from any ability to get greater effectiveness of the way council operates. For those reasons, the government will oppose the amendments.

The Hon. J.S. LEE: I indicate that the Liberal opposition will not support the amendments.

Amendments negatived; clause passed.

Clause 8 passed.

New clause 8A.

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

Amendment No 1 [Franks–2]—

Page 4, after line 7—Insert:

8A—Amendment of section 16—Appointment of Chancellor, Vice-Chancellor etc

(1) Section 16(4)—delete 'subsection (5)' and substitute:

this section

(2) Section 16—after subsection (4) insert:

(4a) Despite any other provision of this Act, or any other Act or law, the salary of the Vice-Chancellor as determined by the Council must not exceed the salary payable to the Premier of South Australia (determined in accordance with the *Parliamentary Remuneration Act 1990*) at the time the Council makes the determination.

(4b) Nothing in subsection (4a) affects the salary payable to the Vice-Chancellor holding office on the commencement of this subsection, but that subsection will apply in relation to each appointment or reappointment of a Vice-Chancellor following that commencement.

I note that there is also amendment No. 2 [Franks-2]. If you like, I can move them both together.

The CHAIR: No, apparently they are separate.

The Hon. T.A. FRANKS: I will move amendment No. 1 and note that the vote will be consequential. This amendment, quite simply, seeks to ensure that at the decision-making table the vice-chancellors' future salary packages will be capped at no greater than that of our state's Premier. At the moment, they are in excess of $1 million annually. Of course, the university community only finds out through the commonwealth reporting what these salary packages actually are so we could be a year behind the times, but we know that currently at Adelaide and Flinders those packages are both in excess of $1 million a year.

I put this because, in fact, Australian academic institutions, universities across the country, are out of step internationally in terms of the senior management salary packages that are being awarded as we see continuous commonwealth funding cuts on our campuses. In fact, the vice-chancellor of Oxford university gets nowhere near the amount that the vice-chancellors of Adelaide and Flinders universities receive.

I think when the community is informed that our vice-chancellors are currently receiving pay packages well more than two, almost three, in fact, possibly larger than three times that of the Premier of this state they are surprised. I think it is no surprise that those people want to reduce the voice of students and staff at the decision-making table because they will have to explain those decisions when they sit at those tables. I was interested to hear the minister's answer before that indeed there was some consideration given to the council members receiving payment but that it was quickly quashed.

I fear in the future that it may not be so quickly quashed and so seek to secure and ensure than any ability for vice-chancellors of the future to continue to give themselves, through these secretive bodies, further extraordinary payments, when we are seeing cuts to library staff and when we are seeing overcrowded classes—when an academic staff member takes an entire year to earn what the vice-chancellor of his or her campus earns in a week, something is wrong in our universities.

The Hon. I.K. HUNTER: I rise to indicate that the government will not be supporting this amendment. I want to point out to the chamber that, despite perhaps a compelling oration from the Hon. Tammy Franks, this amendment is not well thought through and I will outline the holes in it. Clearly, it is here for grandstanding purposes. When you think about competition for the best talent in the higher education sector being as fierce as it is, you do understand what the proposal in this amendment means is that it will not be very attractive to come to South Australia to head up one of our universities.

The honourable member talks about the vice-chancellor of the University of Oxford but she fails to mention that the headline remuneration that the vice-chancellor of Oxford might get would probably not represent the entire remunerative package that is on offer, which might include lordships, board memberships, other stipends and chairs of various 500 or 700-year-old institutions, not to mention the prestige value of being a vice-chancellor of the University of Oxford. To limit the salary of the vice-chancellors at the University of Adelaide and Flinders University in the way proposed in this amendment would hinder their ability to compete for that best talent and would undermine their international reputation.

The Hon. Tammy Franks says we are out of step internationally, but what she is seeking to do is put us out of step with the rest of Australia, and it would certainly undermine our ability to attract talent from international universities. It would also mean that vice-chancellors—and this is one of the problems with coming up with amendments like this—at the University of Adelaide and Flinders University would earn less than some of the other senior executives at their universities.

In addition, the ability of the University of Adelaide and Flinders University councils to determine the vice-chancellors' salary would be limited in a way that University of South Australia is not. Again, this amendment creates real discrepancies, which I do not think the honourable member has taken into consideration. I will just finally say, without the ability to attract and retain the best vice-chancellors, the standard of education and research at these two institutions—critical institutions for our state—would be severely undermined and for those reasons we will not be supporting either this amendment or the subsequent one.

The Hon. J.S. LEE: I rise to indicate the Liberal opposition will not be supporting the amendments.

The Hon. T.A. FRANKS: Is the minister therefore indicating that the worth of an academic institution is determined by the salary of its vice-chancellor? And my second question is: is the minister, by equating that salary package as being required to attract the best talent, saying that we do not have the best Premier that we could possibly have?

The Hon. I.K. HUNTER: Mr Chairman, I have just been verballed again by the Hon. Tammy Franks. I mean exactly what I said.

The CHAIR: You are not the only one that has been verballed today, minister. The Hon. Ms Vincent.

The Hon. K.L. VINCENT: I just wanted to place on the record that, while I certainly empathise with the Hon. Ms Franks' intent in moving these amendments, I cannot support this. I think that if the market supports vice-chancellors earning a certain amount then perhaps it should be allowed.

Unfortunately, lots of people earn more than the Premier, for a variety of reasons. I think it is also worth pointing out that higher education is the fourth biggest economic contributor to the South Australian economy, largely because of the huge international student enrolment in Adelaide. Given those large responsibilities, I am hesitant to support this amendment, although I very much understand the intent in which it is moved.

The Hon. T.A. FRANKS: I will just quickly add that, indeed, I understand the Hon. Kelly Vincent's concerns and I put this amendment to this bill to point out the ludicrous nature in which this bill came before us without proper consultation by these vice-chancellors with their university communities. That is why I did not choose to include the University of South Australia's vice-chancellor in this amendment. That was a conscious decision, although the minister might think it was somehow forgotten. Indeed, I am from the University of South Australia and was on the

university council of South Australia as the student representative. I would not have forgotten the University of South Australia in any way.

I finally note that no less than the federal minister Simon Birmingham has actually called for some restraint to be brought in with regard to Australian vice-chancellors' salary packages and senior management salary packages. He, quite rightly, has belled the cat. The salaries are getting ridiculously high when we are seeing extraordinary and chronic university cuts. Something is wrong when an academic staff member can only earn in a year what a vice-chancellor earns in a week.

New clause negatived.

Clauses 9 to 14 passed.

Clause 15.

The CHAIR: The next amendment is the Hon. Ms Franks.

The Hon. T.A. FRANKS: This is consequential and as I noted before I only sought to raise this point because the vice-chancellors of Flinders University and Adelaide University did not see fit to properly and appropriately consult the university communities, and indeed the Labor government was happy to let that happen. I thought they should be exposed for the sham of a process that this bill is. I will not be moving it.

Clause passed.

Clause 16.

The CHAIR: The next amendment is amendment No. 4 [Franks-1]. The Hon. Ms Franks.

The Hon. T.A. FRANKS: I assume this is consequential. As I have indicated before, I will not be pursuing those amendments.

Clause passed.

Remaining clauses (17 to 20), schedule and title passed.

Bill reported without amendment.

Third Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:20): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (CRIMINAL ORGANISATIONS) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 2 August 2017.)

The Hon. M.C. PARNELL (17:21): The right of a defendant to put the prosecution to its proof in relation to each and every element of a criminal charge is a fundamental provision of our legal system. As we hear on an almost daily basis in this chamber, people are deemed to be innocent until they have been found to be guilty. The burden of proof rests with the prosecution. The prosecution must prove beyond reasonable doubt each and every element of the offence. All I have done is state the obvious: they are principles that we all know.

This bill, however, turns that principle on its head. Effectively, what the bill says is that there are certain defences which, of their nature, are putting the prosecution to its proof. There are certain defences that cannot be raised. Removing the ability of a defendant to put the prosecution to its proof is bad legal process in my view. For example, if you have been charged with being a member of an outlaw organisation and having attended a hotel whilst being a member of that outlaw or criminal

organisation, then at present you are entitled to put the prosecution to proof that the organisation that you are alleged to belong to is, in fact, a criminal organisation that is engaged in criminal activity.

The government says, 'Well, no, you shouldn't be able to claim that because the proof of whether an organisation is a criminal organisation is to be found in the statute books, in the *Government Gazette,* the government says you're a criminal organisation, therefore you are, and no correspondence will be entered into.' That is the government's position. The government says, 'We've declared you to be a criminal organisation and no further discussion can be had in court and certainly you cannot raise as a defence the fact that you claim your organisation is not a criminal organisation.' What the government does not want is for the courts to be second-guessing the wisdom of the executive arm of government.

The government goes further and says, 'It's not just that they do not want the courts second-guessing the executive, they do not want the court second-guessing the parliament.' The reason they say that is because, if members recall, the original lists of declared organisations were contained in a schedule to a bill that we debated here in parliament. However, if members cast their minds back, they might recall that that very extensive list lasted less than 24 hours before it was found to be in some cases completely wrong and in most cases it was ill-conceived to put some of these groups on the list.

Part of the debate that I remember is, having received the bill before parliament, it took me about 15 minutes of Googling to find out that one of these declared organisations was a group of middle-aged men up at Mallala who liked to race motorcycles around a track—and the government had just got that very wrong.

The government is claiming that they do not want the courts second-guessing the wisdom of parliament, because the original lists of outlaw organisations were included in a bill, but it hardly fills us with confidence to find that the bill before us denies people the right to second-guess parliament. The view of the Greens is that given that the criminal nature of the organisations is at the heart of the offence that people are charged with, such as going into a hotel or wearing certain insignia, if a defendant wants to claim that the government has got that terribly wrong and in fact their organisation is not criminal, they should be able to run that in court. They should be able to test that proposition.

I asked the government whether it was a live issue; in other words, were there bikies, for example, who had escaped the charges because they had successfully run such a defence? The answer of course was that no-one had. The best the government could do was provide two current cases where they feared the defendant might run these defences. One case involved the Hells Angels and another case involved the Comancheros.

I have to say I would be very surprised if a defence was raised saying, 'These are not criminal organisations' and the judge accepted that. I say I would be surprised, but the information I have to go on is really just one side of it. I have heard from the police; they are adamant that these are criminal organisations. I have read in the newspapers that there are some pretty bad people associated with these organisations. In all likelihood they are probably right, but that is not to say that a defendant should not be able to go to the court and say, 'No, no, the parliament and the executive got this terribly wrong. These aren't criminal organisations', and they can run that.

I reckon they will get one go at it. They very likely will fail, and that means that in subsequent cases, when further Hells Angels or Comancheros come before the courts and claim that it has all been a terrible mistake, that these are not criminal organisations, I would be very surprised if they lasted very long in court. I think there is one shot in the magazine and it will probably go off with a fizz.

I hope, however, that some of these people do raise these defences, and I hope that the courts seriously consider them, because that will give us some comfort in this parliament that the government has in fact got it right. I would be quite comforted to hear that a court has looked at the evidence of these organisations—what they do, what their members get up to—and has thrown one of these defences out, because that will give us, I think, comfort that the executive may have got this right. But to put in legislation a provision which says, 'You are not even allowed to run the argument. You are not allowed to raise the defence,' I think is getting this terribly wrong.

In conclusion, I would say that I do not expect these defences, in relation to the two cases that have been put to me—the Comancheros and Hells Angels—are likely to get very far, but that is not to say that the defendant should not be entitled to raise them. So, consistent with the position I have taken in relation to these bills—and we have had many of them over the past 10 years, and I have opposed the excesses of executive government—I would oppose it again now.

I think these defences should remain available to defendants. I will be very surprised if they succeed, but that is not to say that they should not be entitled to their day in court. That is what the justice system is about. It might be expensive, and it might be time consuming, but it is about getting justice and allowing people to put the prosecution to its proof.

The Hon. K.L. VINCENT (17:29): I do not intend to speak for very long, mostly because the Dignity Party has taken views exactly the same as we will be taking on this one on a number of very similar matters in the past. We certainly are concerned about the government's insistence on its tough on crime rhetoric at the expense of civil liberties, which the legal system should be there to protect wherever possible and not to take away unnecessarily. For those reasons, we do not support the bill.

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

LAND AGENTS (REGISTRATION OF PROPERTY MANAGERS AND OTHER MATTERS) AMENDMENT BILL

Committee Stage

In committee.

Clause 1.

The Hon. A.L. McLACHLAN: I indicate to the chamber that the Liberal Party supports the bill and has no amendments, and I have no questions for the minister.

Clause passed.

Remaining clauses (2 to 24) and title passed.

Bill reported without amendment.

Third Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:32): I move:

That this bill be now read a third time.

Bill read a third time and passed.

The Hon. A.L. McLACHLAN: Mr President, I draw your attention to the state of the council.

A quorum having been formed:

LIQUOR LICENSING (LIQUOR REVIEW) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 26 September 2017.)

The Hon. T.A. FRANKS (17:34): Sorry, Mr President, I am not actually prepared to speak on the bill at this stage.

Debate adjourned on motion of Hon. T.A. Franks.

STATUTES AMENDMENT (YOUTHS SENTENCED AS ADULTS) BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:35): I move:

That this bill be now read a second time.

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

Leave granted.

The Statues Amendment (Youths Sentenced as Adults) Bill 2017 provides that section 3 of the *Young Offenders Act 1993* will not apply in the sentencing of a young offender being dealt with as an adult before a higher court. The Bill makes it plain that any young offender sentenced as an adult in a higher court should be sentenced on the same principles as an adult offender with the safety of the community as the paramount consideration. This mirrors the approach for adult offenders in the *Sentencing Act 2017*.

Section 3 of the *Young Offenders Act 1993* presently requires a paramount rehabilitative focus in the sentencing of young offenders. Section 3(1) provides that the overriding object of this Act 'is to secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential.' We have recently seen the court declare that, reflecting the existing *Young Offenders Act 1993* and the linked case law, even when sentencing a young person in a higher court as an adult, the court continues to be bound by the overriding principles of rehabilitation set out in section 3 of the *Young Offenders Act 1993*.

The Bill represents a shift in how a small number of young persons are to be sentenced. There were only ten young offenders sentenced as adults in the higher courts identified from the available records in the three years between 2013 and 2015 inclusive. The Bill is not aimed at the typical young offender but rather at enhancing public protection from this very small group of serious young offenders, whose offending is so bad they are to be sentenced as adult offenders and whose offending is so bad they should not receive the mitigating benefit of the usual paramount rehabilitative focus of section 3 of the *Young Offenders Act 1993 Act* in sentencing

There is wide concern over the perceived inadequacy of sentences (and the underlying principles to be applied) imposed on young offenders who have committed grave offences and are dealt with as an adult offender. The Government shares these concerns. There is a need for a stronger focus on community protection.

The present overriding rehabilitative focus in the *Young Offenders Act 1993* is problematic to a young offender who is being dealt with as an adult in a higher court where he or she has committed a homicide related offence, a grave offence, or because the offence is part of a pattern of repeated offending. It is inconsistent to purport to deal with a young offender who has committed a grave crime as an adult in a higher court but then apply the sentencing principles in section 3 emphasising rehabilitation. Other jurisdictions, both in Australia and overseas, provide for various specialist adult sentencing regimes for certain young offenders who have committed grave or repeated crimes and/or are a real risk to the safety of the community that may dilute or, as in Western Australia, displace the usual overriding focus on rehabilitation for certain young offenders in favour of considerations of public protection, punishment and/or deterrence.

The intention of the Bill is that, mirroring the *Sentencing Act 2017* (once it commences), the paramount consideration of a court when determining the sentence for a young offender who is being dealt with as an adult is the protection of the safety of the community. The Bill provides that this paramount consideration should outweigh any other consideration, object or statutory principle, including the need to rehabilitate the youth.

A young offender being sentenced as an adult offender in a higher court will be sentenced according to the law that applies in sentencing an adult offender. The Bill will not necessarily result in a young offender receiving the same sentence as an adult offender would have. A court will still, as with any adult offender under the *Sentencing Act 2017*, be able to take into account any of a wide range of factors such as the circumstances of the offence and the offender's age, character, intellectual or physical condition and remorse. General sentencing considerations such as deterrence and rehabilitation also remain relevant under the *Sentencing Act 2017.* The application of those principles and factors and the resulting sentence will depend on the particular case and relevant offender. A court may still as a secondary factor attach more weight to a young offender's age and character than for an adult offender. This is not unique as a court may also attach more weight to the age and character of say an 85 year old over a 30 year old offender.

The Bill also amends section 31A(a1) the *Criminal Law (Sentencing) Act 1988*.

Section 31A(a1) states that a number of provisions do not apply in relation to a youth (whether or not the youth is sentenced as an adult or is sentenced to detention to be served in a prison or is otherwise transferred to or ordered to serve a period of detention in a prison), being sections 32(5)(ab), 32(5)(ba), 32(5a) and 32A.

The Bill amends section 31A(a1) so that these provisions do apply to a young person sentenced as an adult.

As a result, for a young person sentenced as an adult for murder, the requirement in section 32(5)(ab) to set a mandatory minimum non-parole requirements for murder of 20 years will be applied to a youth sentenced as an adult. In addition, for a young person being sentenced as an adult for serious offences against the person, the mandatory minimum non-parole period of four-fifths the length of the sentence as required in section 32(5)(ba) must be applied.

The Bill will also amend section 46(1) of the *Sentencing Act 2017* (once it commences) to mirror these same changes.

The Bill provides that it will apply to any young offender being sentenced as an adult in a higher court after the Bill receives Royal Assent, whether the offence was committed before and after the Bill comes into effect.

The Bill is a necessary and proportionate measure to reduce crime and support public protection in relation to the most serious young offenders.

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 *Young Offenders Act 1993*

4—Amendment of section 3—Objects and statutory policies

Section 3 of the *Young Offenders Act 1993* (the *YOA*) sets out the objects and statutory policies of that Act. The object is to 'secure for youths who offend against the criminal law the care, correction and guidance necessary for their development into responsible and useful members of the community and the proper realisation of their potential', and the powers conferred by the YOA are to be directed towards that object with proper regard to the statutory policies set out therein. Proposed new subsection (4) provides that section 3 does not apply to a court imposing sanctions on a youth who is being dealt with as an adult, whether because the youth's conduct is part of a pattern of repeated illegal conduct or for some other reason.

Part 3—Amendment of *Criminal Law (Sentencing) Act 1988*

5—Amendment of section 31A—Application of Division to youths

The proposed amendment to section 31A is consequential on the amendment to the YOA.

Part 4—Amendment of *Sentencing Act 2017*

6—Amendment of section 46—Application of Division to youths

Section 46 of the *Sentencing Act 2017* mirrors section 31A of the *Criminal Law (Sentencing) Act 1988* and is necessary because, in due course, the *Sentencing Act 2017* will repeal the *Criminal Law (Sentencing) Act 1988*.

Schedule 1—Transitional provision

1—Transitional provision

The transitional provision makes it clear that an amendment effected by this measure applies to a youth who is being sentenced as an adult after the commencement of the amendment, whether the offence in respect of which the youth is being sentenced occurred before or after that commencement.

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

STATUTES AMENDMENT (SACAT NO 2) BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:36): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill will make a number of miscellaneous amendments to legislation used by the South Australian Civil and Administrative Tribunal (SACAT) to improve the efficiency with which SACAT is able to deal with certain matters and address the anomalous application of some provisions.

The Bill also makes amendments required to confer 'stage 3' jurisdictions on SACAT, which include various administrative and review functions currently exercised by the Administrative and Disciplinary Division of the District Court, the Magistrates Court and Supreme Court, selected according to subject matter.

In addition, the opportunity is also being taken to implement recommendations for legislative change contained in the SACAT Statutory Review Report completed in August 2017 by the Honourable David Bleby QC.

I seek leave to have the remainder of the explanation inserted into Hansard without my reading it.

In November 2013, Parliament passed the *South Australian Civil and Administrative Tribunal Act 2013* (SACAT Act), to establish the South Australian Civil and Administrative Tribunal (SACAT). The objectives of SACAT include providing a single, low-cost, easy-to-use, easy-to find forum for administrative reviews and decisions and to promote consistency and quality of administrative decision-making in this State.

The SACAT Act sets out the structure, membership, constitution and other provisions that are required to facilitate the establishment of the Tribunal, but does not confer any jurisdiction. The task of conferring jurisdiction upon the Tribunal is a significant undertaking, occurring over a series of stages.

The *Statutes Amendment (SACAT) Act 2014,* which received assent on 11 December 2014, conferred stage one jurisdictions on SACAT and on 30 March 2015 SACAT commenced operation with these foundation jurisdictions of the former Residential Tenancies Tribunal, the former Guardianship Board and the former Housing Appeal Panel, in addition to land valuation objections under the *Valuation of Land Act 1971* and *Local Government Act 1999.*

Upon commencement of the relevant provisions in December 2016, the *Statutes Amendment (SACAT) Act 2014* also conferred further 'stage two' jurisdictions on SACAT, of reviews under the *Freedom of Information Act 1991* and *First Home and Housing Construction Grants Act 2000.*

This Bill comprises stage three of the conferral of jurisdiction upon SACAT, conferring various administrative and review functions currently exercised by the Administrative and Disciplinary Division of the District Court, the Magistrates Court and Supreme Court, selected according to subject matter. Stage three comprises generally reviews and decisions within the subject matters of local government, land and housing, taxation and superannuation, environment and farming, energy and resources, food safety and regulation and other 'community stream' legislation including adoption and births, deaths and marriages.

To confer stage three jurisdiction, the following Acts are amended by the Bill:

- Adoption Act 1988
- Agricultural and Veterinary Products Act (Control of Use) Act 2002
- Animal Welfare Act 1985
- Aquaculture Act 2001
- Associations Incorporation Act 1985
- Births, Deaths and Marriages Registration Act 1996
- Conveyancers Act 1994
- Co-operatives National Law (South Australia) Act 2013
- Crown Land Management Act 2009
- Electricity Act 1996
- Emergency Services Funding Act 1998
- Environment Protection Act 1993
- Environment Protection (Sea Dumping) Act 1984
- Essential Services Commission Act 2002
- Fisheries Management Act 2007
- Food Act 2001
- Gas Act 1997
- Harbors and Navigation Act 1993
- Historic Shipwrecks Act 1981
- Land Acquisition Act 1969
- Land Agents Act 1994

- Land Valuers Act 1994
- Livestock Act 1997
- Local Government Act 1999
- Mines and Works Inspection Act 1920
- National Parks and Wildlife Act 1972
- Partnership Act 1891
- Pastoral Land Management and Conservation Act 1989
- Petroleum and Geothermal Energy Act 2000
- Petroleum Products Regulation Act 1995
- Plant Health Act 2009
- Police Superannuation Act 1990
- Primary Industry Funding Schemes Act 1998
- Primary Produce (Food Safety Schemes) Act 2004
- Public Corporations Act 1993
- Safe Drinking Water Act 2011
- Southern State Superannuation Act 2009
- Superannuation Act 1988
- Supported Residential Facilities Act 1992
- Survey Act 1992
- Tobacco Products Regulation Act 1997
- Water Industry Act 2012

The Bill will also make a number of miscellaneous amendments to legislation used by SACAT to improve the efficacy and efficiency of certain matters dealt with by SACAT, address the anomalous application of some provisions and fix a couple of previous drafting errors. These changes include:

- repeal s.37 of the *Residential Tenancies Act 1995* (RTA) (application to vary or set aside order) as this section is being abused and leading to hundreds of applications in circumstances where there are alternative existing provisions in the SACAT Act that provide for orders to be revisited where this is appropriate, or reviewed. This will be supplemented by an amendment to s. 85 of the SACAT Act to ensure that orders made at conciliation conferences by a dispute resolution officer when one party fails to attend are able to be varied under that section, which would otherwise have been precluded by the repeal of s.37. This was the only circumstance in which an alternative, more appropriate provision to revisit an order was not already available in the SACAT Act;
- make an equivalent amendment to s. 41 of the *Housing Improvement Act 2016*, which is worded in the same terms as s. 37 of the RTA for consistency and efficiency;
- amend s. 47 of the *South Australian Civil and Administrative Tribunal Act 2013* (SACAT Act) to allow a Registrar (including a Deputy Registrar) authorised in writing by the President to dismiss or strike out proceedings for want of prosecution without this needing to be heard by a Tribunal member;
- amend *Guardianship and Administration Act 1993* ss. 33, 37 to require non-parties to obtain leave and demonstrate a change in circumstances to make an application to SACAT to vary or revoke a guardianship order or administration order. This is to enable SACAT to filter out inappropriate applications for variation or revocation (for example, repeated applications from disgruntled relatives or friends who disagree with an order/appointment, applying for variation or revocation shortly after an order has been made);
- amend the *Guardianship and Administration Act* to remove the requirement for financial reports to be sent to the Tribunal by an appointed administrator of a protected person under s.44(1), however retain a power for SACAT to require financial reports to be sent to the Tribunal (for example for circumstances where an administrator claims to have sent reports to the Public Trustee but Public Trustee has no record of receiving them). This change is to remove unnecessary duplication whereby such reports are currently provided to both SACAT and the Public Trustee, notwithstanding that it is the Public Trustee's role to examine and report to SACAT on their adequacy and only the Public Trustee has this expertise;

- amend the *Guardianship and Administration Act* to make provision for the appointment of an alternative guardian at the same time as a guardian to avoid the need for an urgent appointment if an appointee dies. This is based on equivalent provisions in other jurisdictions, including Victoria and Western Australia;

- amend the *Mental Health Act 2009* to remove the requirements in ss 11, 22 and 26 for the Office of the Chief Psychiatrist (OCP) to send SACAT copies of all mental health notices relating to short term treatment orders by health professionals. Instead, the Act should only require OCP to send SACAT copies of notices relating to orders reviewable by SACAT under s79; as well as copy notices—upon request by SACAT—for orders in relation to which a review application has been made to SACAT under s.81. This will remove duplication of the record-keeping function already performed by the OCP;

- amend the *Mental Health Act* to provide for automatic expiry of a Level 1 Community Treatment Order (CTO) when SACAT makes a Level 2 CTO (s.16), and the automatic expiry of a Level 1 or 2 Inpatient Treatment Order (ITO) when SACAT makes a Level 3 ITO (s.29) to remove the uncertainty of different level orders potentially operating concurrently;

- amend the *Advance Care Directives Act 2013* s.43(d) definition of 'eligible person' for the purposes of who may make an application to SACAT in relation to an Advance Care Directive (under s. 48) to include, additionally, a person who satisfies the Tribunal that they have a proper interest; and

- amend s.51(1) of the *Advance Care Directives Act* to broaden SACAT's powers to remove a Substitute Decision Maker (SDM), including on its own initiative, by including additional grounds for removal of a SDM who is in such default in the exercise of their powers that the person is unfit to continue as SDM. These amendments to *Advance Care Directives Act* sections 43 and 51 are in response to concerns expressed by SACAT about its limited powers to remove unsuitable substitute decision makers where evidence of such unsuitability is apparent to SACAT. This has led to overly protracted and complicated hearings to achieve a just result and presents a potential risk to vulnerable people.

The Bill includes amendments to the Advance Care Directives Act and Guardianship and *Administration Act* to correct a drafting error identified in the *Statutes Amendment (SACAT) Act 2014,* whereby the provision for making short-term orders of up to 14 days under s.32(1) of the *Guardianship and Administration Act* (order to place or detain protected person) without notifying other parties (old s.14(7)) was inadvertently inserted in s.54 of the *Advance Care Directives Act.* A minor drafting error to a consequential provision in *Guardianship and Administration Act* s.64(i) is also corrected.

To implement recommendations for legislative change contained in the SACAT Statutory Review Report, the Bill: amends sections 70, 73 and 94 of the SACAT Act to improve the Tribunal's operations in relation to internal reviews; amends section 75 of the SACAT Act to extend the administrative powers of the Registrar and inserts new section 93B into the SACAT Act as recommended to support measures to increase the rigour of the fee waiver process in SACAT. Another Review recommendation relating to previous suggestions made by SACAT is implemented by amending section 39 of the *Guardianship and Administration Act* to allow measures for greater oversight by SACAT of private administrators to be introduced by regulation.

Further 'housekeeping' amendments are also made to the SACAT Act to address anomalous application of existing legislation in use by SACAT, namely to:

- clarify the decision-making role of assessors in SACAT (which will be the same as currently in the Administrative and Disciplinary Division of the District Court: *District Court Act 1991* s.20);

- address the situation where the person who is the decision maker for the purposes of ss34 and 35 for reviews by SACAT might not be the person that ought to be subject to those obligations. For example, under the *Pastoral Land Management and Conservation Act 1989* where the decision maker is actually a private land valuer and the *Supported Residential Facilities Act 1992* where the decision maker is the authorised officer rather than the relevant licensing authority. This issue arises also under the *Statutes Amendment (Electricity and Gas) Bill 2015* where the decision-maker is an authorised officer not the ESCOSA, Minister or Technical Regulator. The SACAT Rules will be able to make the relevant Ministers, Valuer-General, licensing authority, ESCOSA, Technical Regulator (as the case may be) the party to the SACAT proceedings and the person to whom the s35 disclosure requirements attach, not the actual decision-maker. In some cases they require a power and obligation to get hold of the documents of the decision maker in order to perform their s35 duties; and

- address an unintended consequence of s. 56 regarding legal representation before SACAT. Section 56(3) prohibits non-lawyers from acting for parties for fee or reward. The intention was to prevent unsuitable persons from setting up businesses as lay advocates in SACAT matters. However, it has been identified that this may have the unforeseen consequence of precluding public servants representing their Departments before SACAT. To address this without also precluding genuine advocacy services such as the Tenants Advisory Service from representing parties before SACAT, s. 56(3) is deleted and reliance placed on the requirement in s56(1)(c) for non-lawyers to obtain leave to appear for parties.

The Bill provides for the Pastoral Land Appeals Tribunal (the PLAT) under the *Pastoral Land Management and Conservation Act 1989* to be dissolved later by proclamation. The PLAT also sits within the District Court and is presided over by a District Court judge sitting with two panel experts.

Although there is provision in the *Mines and Works Inspection Act 1920* for establishment of the Mines and Works Appeal Board, this body was to date never established, although its proposed functions will be able to be exercised by SACAT if and when required.

In addition, consistent with previous jurisdiction transfers to SACAT, various panels of experts or other panel members established to sit on a sessional basis with District Court judges to assist with appeals in the Administrative and Disciplinary Division of the District Court will be abolished pursuant to the Bill, with reliance instead on the ability for the Governor to appoint assessors to SACAT under section 22 of the SACAT Act.

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 *Adoption Act 1988*

4—Amendment of section 42—Regulations

This amendment allows for the regulations to provide for SACAT to be vested with jurisdiction to review decisions of the Chief Executive.

5—Transitional Provisions

This clause provides for the continuation and completion of any review of a decision of the Chief Executive already initiated under the current scheme before the commencement of the amendments to this Act.

Part 3—Amendment of *Advance Care Directives Act 2013*

6—Amendment of section 43—Interpretation

This clause amends the definition of *eligible person* to also mean a person who satisfies the Tribunal that the person has a proper interest in a particular matter relating to the advance care directive.

7—Amendment of section 51—Orders of Tribunal in relation to substitute decision-makers

This clause amends section 51 to provide for the ability of the Tribunal to make an order in relation to a substitute decision-maker under an advance care directive of its own motion (in addition to making an order on the application of an eligible person). It also extends the grounds on which an order may be made under the section to include where the Tribunal is satisfied that a substitute decision-maker is in such default in the exercise of the person's powers under the advance care directive, that the person is not fit to continue as a substitute decision-maker.

8—Amendment of section 54—Tribunal must give notice of proceedings

This clause corrects a minor drafting error made in amendments to this Act by the *Statutes Amendment (SACAT) Act 2014* by deleting section 54(2)(b)(i), which incorrectly refers to section 32(1) of the Act.

Part 4—Amendment of *Agricultural and Veterinary Products (Control of Use) Act 2002*

9—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

10—Amendment of section 21—Compensation if insufficient grounds for order

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Minister to refuse to pay compensation, or as to the amount of compensation. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court. The application for review must be made within 28 days.

11—Amendment of section 30—Compliance orders

This clause is related to the amendments effected by clause 10.

12—Amendment of section 31—Review

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a compliance order, or variation of a compliance order, made by the Minister. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court. The application for review must be made within 28 days.

13—Amendment of section 43—Regulations

This amendment is consequential.

14—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the Administrative and Disciplinary Division of the District Court to SACAT. Any proceedings already commenced before the District Court may continue before that Court. However, any right of appeal that existed before the commencement of the amendments in this Part but not exercised before that commencement may now be exercised before SACAT rather than the District Court.

Part 5—Amendment of *Animal Welfare Act 1985*

15—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

16—Substitution of heading to Part 4 Division 3

This amendment changes the terminology in the Act from 'Appeals' to 'Reviews' and is consequential.

Division 3—Reviews

17—Substitution of section 26

This amendment substitutes section 26 with the following:

26—Reviews of decisions of animal ethics committees

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of an animal ethics committee. The right of appeal was previously to the Minister.

18—Amendment of section 27—Reviews of decisions of Minister

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Minister under Part 4 of the Act. This jurisdiction was previously exercised by the Supreme Court.

19—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the Minister or the Supreme Court to SACAT. Any proceedings already commenced before the Minister or the Supreme Court may continue before the Minister or Supreme Court. However, any right of appeal that existed before the commencement of the amendments in this Part but not exercised before that commencement may now be exercised before SACAT instead.

Part 6—Amendment of *Aquaculture Act 2001*

20—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

21—Substitution of Part 9

This clause substitutes Part 9 (section 60) which currently provides a right of appeal against certain decisions of the Minister to the Administrative and Disciplinary Division of the District Court.

Part 9—Reviews

60—Reviews

This proposed new section provides a right of review to SACAT of certain decisions of the Minister.

22—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT.

Part 7—Amendment of *Associations Incorporation Act 1985*

23—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

24—Amendment of section 17—Secrecy

This clause extends the operation of this section to allow for a person to produce certain documents or divulge certain information in the course of proceedings before the Tribunal.

25—Amendment of section 50—Reviews

This clause provides that a person aggrieved by a decision of the Commission under this Act (other than a decision under section 41) may apply to SACAT for a review of the decision. It further provides that section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* (which provides for Supreme Court Appeals of SACAT decisions) does not apply.

26—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT.

Part 8—Amendment of *Births, Deaths and Marriages Registration Act 1996*

27—Amendment of section 4—Definitions

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal, and deletes the definition of *Court*, which is no longer required.

28—Amendment of section 10—Execution of documents

This amendment extends the evidentiary presumption that a document bearing the signature or seal of the Registrar of Births, Deaths and Marriages was properly issued with the Registrar's authority to any such documents produced to SACAT.

29—Amendment of section 22—Dispute about child's name

This amendment is consequential on the transfer of jurisdiction from the Magistrates Court to SACAT, and provides that SACAT may resolve disputes between parents about a child's name.

30—Amendment of section 25—Application to register change of child's name

These amendments are consequential on the transfer of jurisdiction from the Magistrates Court to SACAT, and provides that SACAT may approve the change of a child's name.

31—Amendment of section 27—Registration of change of name

This amendment allows for the Registrar to register a change of name by order of a tribunal (and thus SACAT) and not just by order of a court.

32—Amendment of section 33—Deaths to be registered under this Act

This amendment extends the operation of this section to a tribunal and not just a court, to allow a tribunal (and thus SACAT) to direct the registration of a person's death under this Act.

33—Amendment of heading to Part 6 Division 2

This is a consequential amendment.

34—Amendment of section 34—Application to Tribunal

This amendment is consequential on the transfer of jurisdiction from the Magistrates Court to SACAT, and provides that SACAT may, on application or on its own initiative, order the registration of a death or the inclusion or correction of registrable information about a death in the Register.

35—Amendment of section 35—Power to direct registration of death etc

This amendment extends the operation of this section to a tribunal and not just a court or a coroner, to allow a tribunal (and thus SACAT) to direct the registration of a death or the inclusion or correction of information in the Register under this Act or a corresponding law.

36—Substitution of section 50

This amendment substitutes proposed new section 50.

50—Review

This proposed new section provides that a person dissatisfied with a decision of the Registrar may apply for a review of the decision by SACAT (rather than the Magistrates Court).

37—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the Magistrates Court to SACAT. The effect of the provisions is that any proceedings already commenced before the Magistrates Court will continue before that Court. However, any right to make an application or seek an appeal to the Magistrates Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT (in relation to those areas of jurisdiction being transferred to the Tribunal).

Part 9—Amendment of *Conveyancers Act 1994*

38—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

39—Substitution of section 7A

This clause substitutes section 7A.

7A—Reviews

This section enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Commissioner to refuse an application for registration. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

40—Amendment of section 9AA—Commissioner may cancel, suspend or impose conditions on registration

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Commissioner to cancel or suspend a registration or impose conditions on a registration. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

41—Amendment of section 16—Withdrawal of money from trust account

42—Amendment of section 21—Term of appointment of administrator or temporary manager

These amendments are consequential.

43—Amendment of section 22—Review of appointment of administrator or temporary manager

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the appointment of an administrator or temporary manager. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

44—Amendment of section 33—Limitation of claims

This amendment is consequential.

45—Amendment of section 37—Review of Commissioner's determination

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a determination of the Commissioner in relation to a fiduciary default. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

46—Amendment of section 46—Complaints

47—Amendment of section 47—Hearing by Tribunal

These amendments are consequential.

48—Substitution of section 48

This clause substitutes section 48 with the following:

48—Participation of assessors in disciplinary proceedings

Provision is made in relation to the establishment of panels of assessors for the purposes of reviews before SACAT and for the President of SACAT to determine whether or not SACAT will sit with assessors.

49—Amendment of section 49—Disciplinary action

50—Amendment of section 50—Contravention of orders

These amendments are consequential.

51—Amendment of section 55—Commissioner and proceedings before Tribunal

The amendment in subclause (1) is consequential.

Subclause (2) clarifies that subsection (1) applies in addition to section 53 of the *South Australian Civil and Administrative Tribunal Act 2013*.

52—Repeal of Schedule 1

This clause repeals Schedule 1 which dealt with the appointment and selection of assessors for the District Court. Those provisions will be superseded by proposed section 48.

53—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to, or lodge a complaint with, the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead. Panel members under Schedule 1 cease to hold office on the commencement of the amendments.

Part 10—Amendment of *Co-operatives National Law (South Australia) Act 2013*

54—Amendment of section 9—Designated authority, designated instrument and designated tribunal (Co-operatives National Law section 4)

This amendment provides that, for the purposes of appeals and reviews under Chapter 7 Part 3 of the National Law, SACAT is the designated tribunal. Furthermore, a reference to making an appeal in Chapter 7 Part 3 will be taken to be a reference to applying to SACAT for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.

55—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to seek an appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT.

Part 11—Amendment of *Crown Land Management Act 2009*

56—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal, and makes consequential amendments to the definition of *Court*, to reflect SACAT's jurisdiction under this Act.

57—Substitution of heading to Part 5 Division 2

58—Insertion of heading to Part 5 Division 2A

These amendments are consequential.

59—Amendment of section 67—Valuation reviews

These amendments to section 67 provide that a lessee may apply to SACAT for a review of a determination on a review under sections 65(1)(a) and 66 of the Act. The Tribunal may, on a review, make a variation that consists of increasing or decreasing a valuation. The amendments also re-word the current provisions of subsection (3) to apply to the Tribunal so that an order for costs cannot be made against an applicant for a review unless the Tribunal is satisfied that the applicant's conduct was frivolous, vexatious or calculated to cause delay.

60—Repeal of heading to Part 5 Division 3

This amendment is consequential.

61—Substitution of section 68

This clause provides for a new proposed section 68.

68—Other reviews

The proposed new section provides that a person who has applied for a review under section 65 of the Act (other than under section 65(1)(a)) may, if dissatisfied with the determination made on the review, seek a review of the Minister's determination by SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*. The proposed section sets out the time limits for making such an application and provides for the provision of reasons by the Minister. An order for costs may not be made against an applicant for a review unless the Tribunal is satisfied that section 48 of the *South Australian Civil and Administrative Tribunal Act 2013* applies.

62—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT from the Land and Valuation Court and the District Court. The effect of the provisions is that any proceedings already commenced before the Land and Valuation Court or the District Court will continue before those Courts. However, any right of appeal to either the Land and Valuation Court under section 67 or the District Court under section 68 that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT.

Part 12—Amendment of *Electricity Act 1996*

63—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

64—Amendment of section 35A—Price regulation by Commission

This amendment is consequential on the amendments to the *Essential Services Commission Act 2002*.

65—Amendment of heading to Part 8

This amendment is consequential.

66—Substitution of section 76

The substitution of section 76 enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of certain decisions.

67—Amendment of section 77—Minister's power to intervene

68—Repeal of Schedule 1A

These amendments are consequential.

69—Transitional provisions

This clause contains transitional provisions for the purposes of the measure.

Part 13—Amendment of *Emergency Services Funding Act 1998*

70—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

71—Amendment of section 5A—Application for aggregation of non contiguous land

The amendments to this section provide that a person may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Commissioner to refuse an application for the aggregation of non contiguous land. This jurisdiction was previously exercised by the District Court. The application for review must be made within 28 days of service of the notice of the decision of the Commissioner on the applicant.

72—Amendment of section 9—Objection to attribution of use to land

This clause provides that an objector who is dissatisfied with a decision of the Minister in relation to an objection to the attribution of a particular use to the land, may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the Minister's decision. An application for review must be made within 21 days after notification of the Minister's decision to the objector.

73—Amendment of section 13—Alterations to assessment book

This clause amends section 13 to provide that the Commissioner must notify an applicant who has applied for an alteration of the assessment book of the Commissioner's decision in writing and if the application is refused, the notice must include the Commissioner's reasons for the refusal. An applicant who is dissatisfied with the decision of the Commissioner may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision. The application for review must be made within 21 days of the Commissioner's notification.

74—Amendment of section 21—Recovery of levy not affected by objection or review

The amendments to this section are consequential on the change of terminology from referring to 'appeals' to referring to 'reviews'.

75—Amendment of section 26—Objection to classification of vehicle

This amendment provides that an objector who is dissatisfied with a decision of the Minister in relation to the classification of a vehicle in respect of which the person is liable to pay a levy, may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the Minister's decision. An application for review must be made within 21 days of the Minister's decision.

76—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT from the Supreme Court, Land and Valuation Court and District Court. The effect of the provisions is that any proceedings already commenced before the Supreme Court, Land and Valuation Court or District Court will continue before those respective Courts. However, any right of appeal or review under section 5A, 9, 13 or 26 of the Act that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT rather than to the relevant Court.

Part 14—Amendment of *Environment Protection Act 1993*

77—Amendment of section 103V—Accreditation of site contamination auditors

This clause clarifies that regulations providing for appeals against decisions of the Authority relating to accreditation will now refer to the Tribunal rather than the Administrative and Disciplinary Division of the District Court.

Part 15—Amendment of *Environment Protection (Sea Dumping) Act 1984*

78—Amendment of section 16—Suspension and revocation of permits

This clause makes a consequential amendment.

79—Substitution of section 27

This clause substitutes section 27 with the following:

27—Review of decision to refuse permit

This section enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Minister to refuse a permit under the Act or to vary, suspend or revoke a permit under the Act. This jurisdiction was previously exercised by the Supreme Court.

80—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the Supreme Court to SACAT. Any proceedings already commenced before the Supreme Court may continue before the Supreme Court. However, any right of appeal that existed before the commencement of the amendments in this Part but not exercised before that commencement may now be exercised before SACAT instead.

Part 16—Amendment of *Essential Services Commission Act 2002*

81—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

82—Amendment of heading to Part 6

This clause amends the heading to Part 6.

83—Amendment of section 32—Review by Tribunal

This clause amends section 32 to effect the transfer of jurisdiction to SACAT in relation to decisions of the Commission made on a review under section 31. Provision is made relating to the establishment of a panel of assessors for the purposes of reviews before SACAT and for the President of SACAT to determine whether or not SACAT will sit with assessors.

Other amendments consequential on or related to the transfer of jurisdiction are made.

84—Repeal of Schedule 1

This amendment is consequential on the proposed inclusion of provisions in relation to assessors in section 32.

85—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT. Further provision is made in relation to members of a panel established under Schedule 1 of the Act ceasing to hold office on the transfer of jurisdiction.

Part 17—Amendment of *Fisheries Management Act 2007*

86—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

87—Amendment of section 111—Review of certain decisions of Minister

This clause makes it clear that a review of a Ministerial decision under section 111 is an internal review (as distinguished from an external review by SACAT under the substituted Part 9 Division 2).

88—Substitution of heading to Part 9 Division 2

This clause substitutes a new heading to Part 9 Division 2 which is currently headed 'Appeals.'

Division 2—External review

89—Substitution of section 112

This clause substitutes section 112 which currently provides for appeals to the Administrative and Disciplinary Division of the District Court from internal reviews by the Minister of decisions made by the Minister.

112—External review

This proposed section provides that an applicant for internal review who is not satisfied with the outcome of an internal review by the Minister of a decision by the Minister may apply to SACAT for a review of the decision of the Minister on the internal review.

90—Amendment of section 124—Confidentiality

This clause expands the operation of section 124(4) so that the Minister, the Director or any other person to whom a return is provided under the Act by the holder of a fishery licence or other authority cannot be required by subpoena or otherwise to produce to SACAT any information contained in such a return.

91—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT.

Part 18—Amendment of *Food Act 2001*

92—Amendment of section 4—Definitions

This clause inserts a new definition of *Tribunal* which means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013* and makes a consequential amendment to delete the definition of *appropriate review body*.

93—Amendment of section 35—Review of order

This clause amends section 35(5) so that a person may apply for a review of a compensation determination made under the section to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*. Currently these applications are to be made to the Administrative and Disciplinary Division of the District Court.

94—Amendment of section 51—Review of decision to refuse certificate of clearance

This clause amends section 51 so that a person aggrieved by a decision of a relevant authority or person to refuse to give a certificate of clearance under the Part may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision. Currently these applications are to be made to the Administrative and Disciplinary Division of the District Court.

95—Amendment of section 52—Review of order

This clause amends section 52 so that an applicant for the payment of compensation under the section, who is dissatisfied with a determination under section 52(3) about compensation, may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision. Currently these applications are to be made to the Administrative and Disciplinary Division of the District Court.

96—Amendment of section 65—Review of decisions relating to approval

This clause amends section 65 so that a person aggrieved by a decision of the relevant authority relating to approval may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision. Currently these applications are to be made to the Administrative and Disciplinary Division of the District Court.

97—Amendment of section 71—Review of decisions relating to approval

This clause amends section 71 so that a person aggrieved by a decision of the relevant authority relating to approval may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*

for a review of the decision. Currently these applications are to be made to the Administrative and Disciplinary Division of the District Court.

98—Amendment of section 77—Review of decisions relating to approvals

This clause amends section 77 so that a person aggrieved by a decision of the relevant authority relating to approval may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the decision. Currently these applications are to be made to the Administrative and Disciplinary Division of the District Court.

99—Transitional provisions

This clause contains a transitional provision which provides that a right of review under section 35, 51, 52, 65, 71 or 77 of the *Food Act 2001* in existence before the day on which this Part comes into operation (but not exercised before that day) will be exercised as if this Part had been in operation before that right arose, so that the relevant proceedings may be commenced before the South Australian Civil and Administrative Tribunal rather than the District Court. Any proceedings before the District Court commenced before the day on which this Part comes into operation are unaffected.

Part 19—Amendment of *Gas Act 1997*

100—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

101—Amendment of section 33—Price regulation by determination of Commission

This amendment is consequential on the amendments to the *Essential Services Commission Act 2002*.

102—Amendment of heading to Part 7

This amendment is consequential.

103—Substitution of section 72

The substitution of section 72 enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of certain decisions.

104—Amendment of section 73—Minister's power to intervene

105—Repeal of Schedule 3

These amendments are consequential.

106—Transitional provisions

This clause contains transitional provisions for the purposes of the measure.

Part 20—Amendment of *Guardianship and Administration Act 1993*

107—Amendment of section 29—Guardianship orders

The addition of subsection (2a) provides for the appointment (in advance) by the Tribunal of an alternative guardian who may act event of the death, absence or incapacity of a particular guardian (the *original guardian*'. This represents one of the efficiency reforms in this measure.

108—Insertion of section 31B

Section 31B clarifies the effect of an alternative guardian's powers being triggered (ie on the death, absence or incapacity of the original guardian), namely, that they take over the original guardian's powers without further proceedings. The alternative guardian must notify the Tribunal of that fact in writing.

109—Amendment of section 33—Applications under this Division

This clause introduces efficiency reforms in the Tribunal's processes by sifting out inappropriate applicants from the pool under section 33 of the principal Act. Those persons cannot apply for orders under section 30 or section 32(1) without first satisfying the Tribunal of certain matters.

110—Amendment of section 37—Applications under this Division

In a similar way to the previous clause, this clause introduces efficiency reforms in the Tribunal's processes by sifting out inappropriate applicants from the pool under section 37 of the principal Act. Those persons cannot apply for orders under section 36 without first satisfying the Tribunal of certain matters.

111—Amendment of section 39—Powers and duties of administrator

Subsection (3a) is inserted, providing for a regulation-making power to require the exercise of powers or duties of an administrator to be in accordance with the regulations or subject to the prior approval of the Tribunal.

112—Amendment of section 44—Reporting requirements for private administrators

This clause introduces efficiency reforms in the Tribunal's processes under section 44 of the principal Act.

113—Amendment of section 64—Reviews and appeals

This amendment corrects a minor drafting error in relation to amendments made to this Act by the *Statutes Amendment (SACAT) Act 2014*.

Part 21—Amendment of *Harbors and Navigation Act 1993*

114—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

115—Amendment of section 28F—Power to deal with non-compliance

This clause replaces the right to appeal to the Court of Marine Enquiry against a decision of the Minister to take disciplinary action against a port operator with a right to apply to SACAT for a review of such a decision.

116—Amendment of section 80—Review of administrative decisions

The amendment replaces the right to apply to the Court of Marine Enquiry for a review of a decision made by the original decision-maker on a review with a right to apply to SACAT for a review of such a decision.

117—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the Court of Marine Enquiry to SACAT. The effect of the provisions is that any proceedings already commenced before the Court will continue before the Court. However, any right to appeal to the Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT.

Part 22—Amendment of *Historic Shipwrecks Act 1981*

118—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

119—Amendment of section 11—Power of Minister to give directions in relation to custody of historic shipwrecks and relics

This clause replaces the right to appeal to the Administrative and Disciplinary Division of the District Court against a decision of the Minister to give a notice with a right to apply to SACAT for a review of such a decision.

120—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the Court will continue before the Court. However, any right to appeal to the Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT.

Part 23—Amendment of *Housing Improvement Act 2016*

121—Repeal of section 41

This clause repeals section 41 of the Act which provides for applications to the Tribunal to vary or set aside an order. This provision is not required as the provisions of the SACAT Act are intended to be relied upon instead.

Part 24—Amendment of *Land Acquisition Act 1969*

122—Substitution of section 12A

This amendment substitutes a new proposed section 12A.

12A—Right of review

The proposed section provides that a person who makes a request under section 12 of the Act in relation to a proposed acquisition which is refused by the Authority under that section may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the Authority's decision. The application for review must be made within 7 days of service on the person of the notice of the refusal of the Authority. Further, the Tribunal must complete its proceedings within 14 days of the application being made by the person. The merits of the undertaking to which the proposed acquisition relates can not be called into question in the review by SACAT. It further provides that section 71 of the *South Australian Civil and Administrative Tribunal Act 2013* (which provides for Supreme Court Appeals of SACAT decisions) does not apply.

123—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that any proceedings arising from an application made under section 12A of the Act as in force before its amendment by these provisions will not be affected by these amendments. However, a right of review under section 12A in existence before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT rather than by making an application to the Minister under that section.

Part 25—Amendment of *Land Agents Act 1994*

124—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

125—Substitution of section 8D

This clause substitutes section 8D with the following:

8D—Reviews

This section enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Commissioner to refuse an application for registration. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

126—Amendment of section 11C—Commissioner may cancel, suspend or impose conditions on registration

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a decision of the Commissioner to cancel or suspend a registration or impose conditions on a registration. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

127—Amendment of section 14—Withdrawal of money from trust account

128—Amendment of section 19—Term of appointment of administrator or temporary manager

These amendments are consequential.

129—Amendment of section 20—Review of appointment of administrator or temporary manager

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the appointment of an administrator or temporary manager. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

130—Amendment of section 31—Limitation of claims

This amendment is consequential.

131—Amendment of section 35—Review of Commissioner's determination

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a determination of the Commissioner in relation to a fiduciary default. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

132—Amendment of section 44—Complaints

133—Amendment of section 45—Hearing by Tribunal

These amendments are consequential.

134—Substitution of section 46

This clause substitutes section 46 with the following:

46—Participation of assessors in disciplinary proceedings

Provision is made in relation to the establishment of panels of assessors for the purposes of reviews before SACAT and for the President of SACAT to determine whether or not SACAT will sit with assessors.

135—Amendment of section 47—Disciplinary action

136—Amendment of section 48—Contravention of orders

These amendments are consequential.

137—Amendment of section 53—Commissioner and proceedings before Tribunal

The amendment in subclause (1) is consequential.

Subclause (2) clarifies that subsection (1) applies in addition to section 53 of the *South Australian Civil and Administrative Tribunal Act 2013*.

138—Repeal of Schedule 1

This clause repeals Schedule 1 which dealt with the appointment and selection of assessors for the District Court. Those provisions will be superseded by proposed section 46.

139—Amendment of Schedule 2A—Special provisions relating to G.C. Growden Pty Ltd

These amendments are consequential.

140—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to, or lodge a complaint with, the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead. Panel members under Schedule 1 cease to hold office on the commencement of the amendments.

Part 26—Amendment of *Land Valuers Act 1994*

141—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

142—Amendment of section 8—Complaints

143—Amendment of section 9—Hearing by Tribunal

These amendments are consequential.

144—Substitution of section 10

This clause substitutes section 10 with the following:

10—Participation of assessors in disciplinary proceedings

Provision is made in relation to the establishment of panels of assessors for the purposes of reviews before SACAT and for the President of SACAT to determine whether or not SACAT will sit with assessors.

145—Amendment of section 11—Disciplinary action

146—Amendment of section 12—Contravention of orders

These amendments are consequential.

147—Amendment of section 14—Commissioner and proceedings before Tribunal

The amendment in subclause (1) is consequential.

Subclause (2) clarifies that subsection (1) applies in addition to section 53 of the *South Australian Civil and Administrative Tribunal Act 2013*.

148—Repeal of Schedule 1

This clause repeals Schedule 1 which dealt with the appointment and selection of assessors for the District Court. Those provisions will be superseded by proposed section 10.

149—Amendment of Schedule 2—Transitional provisions

This provision continues orders that had effect as if they were orders of the Administrative and Disciplinary Division of the District Court under Schedule 2 subclause (1), as if they were orders of the Tribunal.

150—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to lodge a complaint with the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead. Panel members under Schedule 1 cease to hold office on the commencement of the amendments.

Part 27—Amendment of *Livestock Act 1997*

151—Amendment of section 3—Interpretation—general

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

152—Substitution of section 51

This clause substitutes a proposed new section 51.

51—Review of Chief Inspector's determination of claim

The proposed section provides that a person who has made a claim for compensation may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the Chief Inspector's determination of the amount of compensation payable for particular livestock or property. Such an application cannot be made in relation to a determination that no compensation, or a reduced amount of compensation, is payable as a result of a conviction for an offence. An application for review must be made within 21 days' notice of the Chief Inspector's determination. The clause also provides that 2 panels of persons must be set up under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* for the purpose of the SACAT proceedings. One panel must include persons who have experience or qualifications in valuing livestock or property and the other must include persons who have experience or qualifications relevant to managing or dealing with the outbreak, or suspected outbreak, of exotic diseases. The President of the Tribunal may determine that the Tribunal sit with assessors selected by the Minister.

153—Amendment of section 72—Compliance notices

This amendment substitutes a reference to the Administrative and Disciplinary Division of the District Court with a reference to SACAT in relation to seeking a review of a compliance notice under section 72 of the Act.

154—Substitution of heading to Part 9

This is a consequential amendment.

Part 9—Reviews

155—Amendment of section 73—Reviews

The amendments to this clause substitutes the reference to the Administrative and Disciplinary Division of the District Court with a reference to SACAT to provide for review of various decisions of the Chief Inspector in relation to registration under Parts 3 and 7 of the Act.

156—Amendment of section 88—Regulations

This amendment provides the ability for the regulations to confer jurisdiction on SACAT to review any determination made under the regulations.

157—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that any proceedings arising from an application made under section 51 of the Act as in force before its amendment by these provisions will not be affected by these amendments. However, a right of appeal under section 51 in existence before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application to SACAT rather than by making an application to the Minister under that section. Further, a right of appeal under section 73 in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by making an application to SACAT rather than the District Court. However, District Court proceedings commenced before the commencement of these amendments will not be affected by these amendments.

Part 28—Amendment of *Local Government Act 1999*

158—Amendment of section 4—Interpretation

This amendment deletes the definition of *District Court*.

159—Amendment of section 54—Casual vacancies

This amendment substitutes the reference to the 'District Court' with a reference to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

160—Amendment of section 83—Notice of ordinary or special meetings

This amendment substitutes the reference to the 'District Court' with a reference to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

161—Amendment of section 87—Calling and timing of committee meetings

This amendment substitutes the reference to the 'District Court' with a reference to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

162—Amendment of section 156—Basis of differential rates

This amendment provides for reviews against a council's decision on an objection to be heard by SACAT instead of the Land and Valuation Court.

163—Amendment of section 173—Alterations to assessment record

This amendment effects the transfer of jurisdiction from the District Court to SACAT in relation to reviews under section 173.

164—Amendment of section 186—Recovery of rates not affected by an objection or review

These amendments are consequential.

165—Amendment of section 256—Rights of review

This amendment effects the transfer of jurisdiction from the District Court to SACAT in relation to reviews under section 256.

166—Amendment of section 263B—Outcome of Ombudsman investigation

This amendment substitutes references to the 'District Court' with references to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

167—Amendment of section 264—Complaint lodged with SACAT

The first amendment substitutes the reference to the 'District Court' with a reference to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT. The other amendment is consequential.

168—Amendment of section 265—Hearing by SACAT

Two of these amendments substitute references to the 'District Court' with references to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT. The other amendment is consequential.

169—Substitution of section 266

This clause substitutes section 266:

266—Constitution of SACAT

Provision is made in relation to the establishment of panels of assessors for the purposes of reviews before SACAT and for the President of SACAT to determine whether or not SACAT will sit with assessors.

170—Amendment of section 267—Outcome of proceedings

This amendment substitutes the reference to the 'District Court' with a reference to 'SACAT' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

171—Repeal of Schedule 7

This amendment is consequential on the proposed inclusion of provisions in relation to assessors.

172—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court and Land and Valuation Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court or Land and Valuation Court will continue before the relevant Court. However, any right to appeal to the District Court or Land and Valuation Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT. Further provision is made in relation to members of a panel established under Schedule 1 of the Act ceasing to hold office on the transfer of jurisdiction.

Part 29—Amendment of *Mental Health Act 2009*

173—Amendment of section 11—Chief Psychiatrist to be notified of level 1 orders or their variation or revocation

This clause is consequential on efficiency reforms in the Tribunal's processes introduced by this measure.

174—Amendment of section 16—Level 2 community treatment orders

This amendment clarifies that a level 1 community treatment order applying in relation to a person is taken to be revoked on the making of a level 2 community treatment order in relation to the person.

175—Amendment of section 22—Chief Psychiatrist to be notified of level 1 orders or their revocation

This amendment is consequential on the efficiency reforms introduced by this measure and also clarifies that if a level 1 order is made within 7 days after the expiry or revocation of a previous inpatient treatment order applying to the same person, the Chief Psychiatrist must ensure that the Tribunal is given a copy of the notice referred to in subsection (1) within 1 business day of the making of the order.

176—Amendment of section 26—Notices and reports relating to level 2 orders

This amendment is consequential on the efficiency reforms introduced by this measure and also clarifies that if a level 2 order extends an inpatient treatment order, the Chief Psychiatrist must ensure that the Tribunal is given a copy of the notice referred to in subsection (1) within 1 business day of the making of the order.

177—Amendment of section 29—Level 3 inpatient treatment orders

This amendment clarifies that a level 1 or 2 inpatient treatment order applying in relation to a person is taken to be revoked on the making of a level 3 inpatient treatment order in relation to the person.

178—Amendment of section 81—Reviews of orders (other than Tribunal orders)

This amendment inserts new provisions into section 81 of the principal Act requiring the Chief Psychiatrist to provide the Tribunal with copies of section 11, 22 or 26 notices within 1 business day of the Tribunal requesting them.

Part 30—Amendment of *Mines and Works Inspection Act 1920*

179—Amendment of section 4—Interpretation

This clause deletes the definition of *appeal board*.

180—Substitution of sections 10A to 10C

This amendment effects the transfer of jurisdiction from the Mines and Works Appeal Board to SACAT.

11—Reviews—amenity issues

The proposed new section provides that a person who is required to comply with an order or direction under section 10(1)(e) may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the order or direction. An application must be made within 1 month. The clause also provides that 2 panels of persons must be set up under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* for the purpose of the SACAT proceedings. One panel must include persons who have experience in the conduct of mining operations and the other must include persons who have experience in assessing the aesthetic effect of mining operations and practices on the environment. The President of the Tribunal may determine that the Tribunal sit with assessors selected by the President.

181—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of appeal under section 10A of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by making an application to SACAT rather than the appeal board or the Minister. Proceedings already commenced before the commencement of these amendments will not be affected. Further, the office held by a member of the Mines and Works Appeal Board before the commencement of these amendments will cease on that commencement.

Part 31—Amendment of *National Parks and Wildlife Act 1972*

182—Substitution of section 53A

This amendment substitutes a new proposed section 53A in relation to the transfer of jurisdiction to SACAT.

53A—Review by Tribunal

The proposed section provides that a person who has applied for a permit under section 53 of the Act may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of certain decisions of the Minister in relation to the permit. An application must be made within 2 months of notice of the Minister's decision or the receipt of written reasons for the Minister's decision if requested by the applicant. The clause also provides that a panel of persons must be established under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* that consists of persons with extensive experience in the conservation of animals, plants and ecosystems, management of natural resources, primary production and relevant fields of the biological sciences. In any proceedings the President of the Tribunal may determine that the Tribunal will sit with 1 or more assessors selected by the President from the panel.

183—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of review by the Parks and Wilderness Council under section 53A of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing the relevant proceedings before SACAT instead of the Council. However, nothing affects proceedings before the Council commenced before the commencement of these amendments.

Part 32—Amendment of *Partnership Act 1891*

184—Amendment of section 74—Certain convicted offenders not to carry on business as general partners

The amendments to this clause substitute references to the District Court with references to the Tribunal in relation to applications to obtain permission for certain persons to carry on business as a general partner within 5 years of specified convictions. Such an application would fall within SACAT's original jurisdiction.

185—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that proceedings before the District Court commenced before the commencement of these amendments will not be affected by the amendments. Further, a notice given under section 74(2) of the Act before the commencement of these amendments will be taken to be a notice under section 74(2) as in force after the commencement of these amendments.

Part 33—Amendment of *Pastoral Land Management and Conservation Act 1989*

186—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

187—Amendment of section 32—Resumption of land

The amendment of this clause makes clear that an application to vary a condition of a lease under section 32(5)(b)(ii) of the Act will fall within SACAT's original jurisdiction.

188—Substitution of Part 7

This amendment substitutes a new Part 7 as a result of the transfer of jurisdiction from the Pastoral Land Appeal Tribunal to SACAT.

Part 7—Reviews

Division 1—Reviews by Tribunal

50—Jurisdiction of Tribunal

The proposed section provides that a lessee who is dissatisfied with various decisions in relation to a pastoral lease may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the decision. An application must be made within 3 months of notice of the decision. The clause also provides that a panel of persons must be established under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* that consists of persons with expertise that would, in the opinion of the Governor, be of value to the Tribunal in exercising its jurisdiction under this Part. If the President of the Tribunal so determines, the Tribunal may sit with 1 or more assessors selected by the President.

51—Operation of certain decisions pending review

This proposed section provides that a decision that may be the subject of a review by the Tribunal continues to operate despite the right to make an application for review or the commencement of review proceedings. However, a decision to cancel a pastoral lease or impose a fine on a lessee for breach of conditions cannot be implemented or enforced until the period for commencing proceedings for a review has elapsed, or any Tribunal proceedings commenced have been finalised.

52—Related provisions

This proposed section provides that the Tribunal may not allow non-party intervention in proceedings under this Division. Further, the Tribunal must require the parties to proceedings (but not Counsel for the parties) to attend a compulsory conference under section 50 of the *South Australian Civil and Administrative Tribunal Act 2013*.

Division 2—Review of valuation and review by Tribunal

53—Valuations—right of review

The proposed section provides that a lessee who is dissatisfied with a determination of the Valuer-General of the annual rent for a pastoral lease may apply to either the Valuer-General or SACAT for a review of the determination within 3 months. The Valuer-General must, on the written request of the lessee, endeavour to resolve the matter informally by conferring with the lessee, whether or not an application for review has been lodged. If the application for review has been made to the Valuer-General, the application must be made and dealt with in accordance with the *Valuation of Land Act 1971*, as if it were an application for review of a valuation under that Act. Either the Valuer-General or a lessee who is dissatisfied with a decision of a land valuer under that Act may apply to SACAT for a review of the decision. In exercising its jurisdiction, SACAT is to consider the matter *de novo*.

189—Amendment of section 68—Evidentiary provision

This amendment is consequential.

190—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that any proceedings before the Pastoral Land Appeal Tribunal (PLAT) or the Land and Valuation Court commenced before the commencement of these amendments are not affected by the amendments. A right to appeal to PLAT under Part 7 Division 2 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before SACAT rather than PLAT. Further, a right to appeal to the Land and Valuation Court under Part 7 Division 3 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before SACAT rather than the Court. The Governor may dissolve PLAT by proclamation when he or she thinks it appropriate to do so. At that time, any member of PLAT or member of a panel constituted for the purposes of PLAT holding office will cease to do so. Any contract of employment, agreement or arrangement relating to the office will also be terminated at that time.

Part 34—Amendment of *Petroleum and Geothermal Energy Act 2000*

191—Substitution of heading to Part 15

This is a consequential amendment.

Part 15—Reconsideration and reviews

192—Substitution of Part 15 Division 3

This amendment substitutes a proposed new Division as a consequence of the transfer of jurisdiction from the District Court to SACAT.

Division 3—Reviews

128—Reviews

The proposed section 128 of the Act provides that an applicant who is dissatisfied with a decision of the Minister on an application for reconsideration may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the Minister's decision, within 1 month of receiving notice of the decision.

193—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of appeal under section 128 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before SACAT rather than the District Court. These amendments do not affect any proceedings before the District Court commenced before the commencement of these amendments.

Part 35—Amendment of *Petroleum Products Regulation Act 1995*

194—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

195—Substitution of Part 9

This clause substitutes Part 9 of the Act which provides a right of appeal to the Administrative and Disciplinary Division of the District Court against certain decisions of the Minister.

Part 9—Reviews

47—Reviews

This proposed section provides for a right to apply to SACAT for review of certain decisions of the Minister.

196—Amendment of section 56—Confidentiality

This clause amends section 56 to ensure that SACAT does not have power to require a disclosure of information contrary to that section.

197—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the Court will continue before the Court. However, any right to appeal to the Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT.

Part 36—Amendment of *Plant Health Act 2009*

198—Substitution of heading to Part 4 Division 5

This is a consequential amendment.

Division 5—Reviews

199—Substitution of section 36

This amendment substitutes a new proposed section 36 as a consequence of the transfer of jurisdiction from the District Court to SACAT.

36—Review by Tribunal

Proposed section 36 provides that an applicant for a review by the Minister who is dissatisfied with the decision of the Minister on review may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the Minister's decision. The application must be made within 28 days of the Minister's decision, or if a request for written reasons has been made, within 28 days of receiving those reasons.

200—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of appeal under section 36 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before SACAT rather than the District Court. However, proceedings before the District Court commenced before these amendments come into operation are not affected by the amendments.

Part 37—Amendment of *Police Superannuation Act 1990*

201—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

202—Amendment of section 4A—Putative spouses

203—Amendment of section 4B—Restriction on publication of proceedings

These amendments are consequential.

204—Amendment of section 39—Review of Board's decisions

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* (as well as to the Board, as is currently the case) for a review of a decision of the Board. The jurisdiction to be vested in the Tribunal was previously exercised by the Administrative and Disciplinary Division of the District Court.

205—Amendment of section 49—Confidentiality

This amendment is consequential.

206—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. Any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead.

Part 38—Amendment of *Primary Industry Funding Schemes Act 1998*

207—Amendment of section 16—Regulations

This amendment provides the ability for the regulations to confer jurisdiction on SACAT to review any determination made under the regulations.

208—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that any objection being considered by the Minister under a regulation immediately before the commencement of these amendments will be dealt with as if the amendments had not been made.

Part 39—Amendment of *Primary Produce (Food Safety Schemes) Act 2004*

209—Substitution of heading to Part 5

This is a consequential amendment.

Part 5—Reviews

210—Substitution of section 34

This amendment substitutes a new proposed section 36 as a consequence of the transfer of jurisdiction from the District Court to SACAT.

34—Review by Tribunal

Proposed section 34 provides that an applicant for a review by the Minister who is dissatisfied with the decision of the Minister on review may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of the Minister's decision. The application must be made within 28 days of the Minister's decision, or if a request for written reasons has been made, within 28 days of receiving those reasons.

211—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of appeal under section 34 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before SACAT rather than the District Court. However, proceedings before the District Court commenced before these amendments come into operation are not affected by the amendments.

Part 40—Amendment of *Public Corporations Act 1993*

212—Amendment of section 24—Formation of subsidiary by regulation

This amendment provides the ability for the regulations establishing a subsidiary of a public corporation to confer jurisdiction on a tribunal (and thus SACAT) to review decisions or activities of that body.

Part 41—Amendment of *Residential Tenancies Act 1995*

213—Repeal of section 37

This clause repeals section 37 of the Act which provides for applications to the Tribunal to vary or set aside an order. This provision is not required as the provisions of the SACAT Act are intended to be relied upon instead.

Part 42—Amendment of *Safe Drinking Water Act 2011*

214—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

215—Substitution of section 10

This clause substitutes section 10 with the following:

10—Reviews

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a range of decisions of the Minister. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

216—Amendment of section 14—Related matters

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a requirement of the Minister to make an alteration to the person's monitoring program or incident identification and notification protocol. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

217—Amendment of section 38—Notices

These amendments are consequential.

218—Amendment of section 42—Reviews

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of a notice under the section. This jurisdiction was previously exercised by the Administrative and Disciplinary Division of the District Court.

219—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead.

Part 43—Amendment of *South Australian Civil and Administrative Tribunal Act 2013*

220—Amendment of section 25—Decision if 2 or more members constitute Tribunal

This amendment makes clear that if a Tribunal is constituted by 2 or more members that includes 1 or more assessors, then questions of law or procedure are to be determined by the presiding member.

221—Amendment of section 34—Decisions within review jurisdiction

This amendment provides that the Tribunal rules may provide that the decision-maker for a reviewable decision will, instead of being the person or body that made the decision, be a person or body that is assigned by the rules as a suitable entity to act as the decision-maker for the purposes of the Act (or specified provision of the Act). The rules may also provide that a reference to the decision-maker for a reviewable decision will be taken to include a reference to a person or body that is designated by the rules as being a suitable entity to act jointly with the person or body that made the decision for the purposes of the Act (or specified provision of the Act).

222—Amendment of section 47—Dismissing proceedings on withdrawal or for want of prosecution

This amendment to section 47(5) extends who is able to make orders dismissing or striking out all or a part of any proceedings for want of prosecution. Currently, these orders may only be made by legally qualified members of the Tribunal. The amendment enables the President to authorise the Registrar or a Deputy Registrar to make such orders generally, or in relation to particular classes of matters or otherwise.

223—Amendment of section 56—Representation

This amendment removes section 56(3) of the Act which prevents a person who is not a legal practitioner from acting for fee or reward in relation to proceedings before the Tribunal.

224—Amendment of section 70—Internal reviews

This amendment requires all applications for review under section 70 of the principal Act (and not just those referred to in section 70(1)(b)) to be by leave of the Presidential member.

225—Amendment of section 73—Effect of review or appeal on decision

A legally qualified member of the Tribunal (not just a Presidential member) now has power to act under section 73(2).

226—Amendment of section 75—Functions of registrars

This amendment will enable the Registrar to act on behalf of the President of the Tribunal in the administration of the Tribunal.

227—Amendment of section 85—Tribunal may review its decision if person was absent

Currently, compulsory conferences are excluded from the operation of this section which provides for the review of a decision made in the absence of a person who did not appear or was not represented. This amendment extends section 85 to decisions made at compulsory conferences.

228—Insertion of section 93B

Section 93B (False or misleading statements) is inserted with the effect that a person who knowingly makes a false or misleading statement for the purposes of, or in connection with, consideration by the registrar or the Tribunal (including the Tribunal as constituted of a registrar or other member of staff of the Tribunal) as to whether to waive, remit or make such other provision in relation to the payment of fees in respect of proceedings before the Tribunal, is guilty of an offence.

229—Amendment of section 94—Rules

This amendment enables rules of the Tribunal to be made providing for the provision of written statements of reasons for decisions of the Tribunal at first instance for the purposes of an internal review of the decision by the Tribunal under section 70 of the principal Act.

Part 44—Amendment of *Southern State Superannuation Act 2009*

230—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

231—Amendment of section 7—Putative spouses

232—Amendment of section 8—Restriction on publication of proceedings

These amendments are consequential.

233—Amendment of section 25—Review of Board's decisions

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* (as well as to the Board, as is currently the case) for a review of a decision of the Board. The jurisdiction to be vested in the Tribunal was previously exercised by the Administrative and Disciplinary Division of the District Court.

234—Amendment of section 28—Confidentiality

This amendment is consequential.

235—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. Any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead.

Part 45—Amendment of *Superannuation Act 1988*

236—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

237—Amendment of section 4A—Putative spouses

238—Amendment of section 4B—Restriction on publication of proceedings

These amendments are consequential.

239—Amendment of section 44—Review of Board's decisions

This clause enables a person to apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* (as well as to the Board, as is currently the case) for a review of a decision of the Board. The jurisdiction to be vested in the Tribunal was previously exercised by the Administrative and Disciplinary Division of the District Court.

240—Amendment of section 55—Confidentiality

This amendment is consequential.

241—Transitional provisions

This clause sets out transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. Any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, may now be exercised before SACAT instead.

Part 46—Amendment of *Supported Residential Facilities Act 1992*

242—Amendment of section 3—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal and makes a consequential amendment to delete the definition of District Court.

243—Substitution of heading to Part 3 Division 3

This is a consequential amendment.

244—Insertion of section 19

This amendment inserts a new provision.

19—Tribunal to sit with assessors

The proposed section provides that a panel of persons must be established under section 22 of the *South Australian Civil and Administrative Tribunal Act 2013* that consists of persons with extensive experience in the provision or supervision of personal care services, or in acting as advocates for the elderly, disabled or intellectually impaired or in developing or implementing policies that relate to the control or development of supported residential facilities or the monitoring or inspecting of such facilities. In any proceedings the President of the Tribunal may determine that the Tribunal will sit with 1 or more assessors selected by the President from the panel.

245—Substitution of section 20

This amendment substitutes proposed section 20.

20—Reasons for decision

The proposed section provides that the Tribunal must provide reasons for its decision if requested to do so at the conclusion of proceedings under this Act.

246—Amendment of section 24—Application for licence

This amendment changes the reference to 'appeal rights' to a reference to 'rights of review'.

247—Amendment of section 27—Application for renewal of licence

This amendment changes the reference to 'appeal rights' to a reference to 'rights of review'.

248—Amendment of section 31—Cancellation of licences

This amendment is consequential on the transfer of jurisdiction from the District Court to SACAT and makes clear that an application under section 31(6)(i) will come within the Tribunal's original jurisdiction.

249—Amendment of heading to Part 4 Division 2

This is a consequential amendment.

250—Substitution of section 32

This amendment substitutes a new proposed section 32.

32—Review of decision or order

The proposed section provides that a person may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of any decision or order of a licensing authority under Part 4. An application must be made within 28 days of receiving notice of the decision or order. If the application is in respect of a decision regarding the renewal of a licence, the Tribunal may order that the licence remain in force until the determination of the review (subject to any specified provisions). Contravention of any such conditions is an offence.

251—Substitution of section 44

This amendment substitutes proposed section 44.

44—Right of review

The proposed section provides that a resident or proprietor who is dissatisfied with a decision or order of a licensing authority under section 43 may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for a review of any decision or order. An application must be made within 28 days of receiving notice of the decision or order. The clause also provides that the decision or order is suspended until the determination of the review unless otherwise determined by the Tribunal.

252—Amendment of section 54—Default notices

These amendments provide that a person who is issued a default notice under section 54 may apply to the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the notice within 14 days of receiving the notice. Unless otherwise determined by the Tribunal, the operation of the notice is suspended until the determination of the review.

253—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of appeal under sections 32, 44 and 54 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before SACAT rather than the District Court. The right to make an application under section 31(6)(i) of the Act in relation to a matter in existence before the commencement of these amendments will be exercised by commencing proceedings before the Tribunal rather than the District Court. However, proceedings before the District Court commenced before the commencement of these amendments are not affected by these amendments.

Part 47—Amendment of *Survey Act 1992*

254—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

255—Amendment of section 37—Consequence of investigation by Institution of Surveyors

These amendments substitute the references to a 'Court' with references to the 'Tribunal' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

256—Amendment of section 38—Disciplinary powers of Tribunal

These amendments substitute the references to a 'Court' with references to the 'Tribunal' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

257—Substitution of section 38A

This amendment substitutes proposed section 38A.

38A—Participation of assessors in disciplinary proceedings

The proposed section provides that for the purposes of section 22 of the *South Australian Civil and Administrative Tribunal Act 2013*, that there will be a panel of assessors consisting of persons who are representative of surveyors and persons who are representative of members of the public who deal with surveyors. In proceedings before the Tribunal the President of the Tribunal may determine that the Tribunal will sit with 1 or more assessors selected by the President.

258—Amendment of section 39—Return of licence or certificate of registration

This amendment substitutes the reference to a 'Court' with a reference to the 'Tribunal' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

259—Amendment of section 40—Restrictions on disqualified persons

These amendments substitute the references to a 'Court' with references to the 'Tribunal' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

260—Amendment of section 41—Consequences of action against surveyor in other jurisdictions

These amendments substitute the references to a 'Court' with references to the 'Tribunal' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

261—Substitution of heading to Part 3 Division 5

This is a consequential amendment.

262—Amendment of section 42—Reviews by Tribunal

This amendment provides that an application for review by the Tribunal may be made under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of certain decisions of the Institution of Surveyors in relation to the grant or renewal of a licence or registration or a decision to reprimand a person. The Institute of Surveyors or the Tribunal may extend the period of licence or registration until the determination of a review, subject to any conditions it thinks fit.

263—Amendment of section 59A—Parties to proceedings before Tribunal

This clause substitutes the reference to a 'Court' with a reference to the 'Tribunal' as a consequence of the transfer of jurisdiction from the District Court to SACAT.

264—Repeal of Schedule 1

This amendment is consequential on the inclusion of provisions in relation to assessors in proposed new section 38A.

265—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right to lodge a complaint under Part 3 Division 4, or a right of appeal under Part 3 Division 5 of the Act in relation to a matter in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing the relevant proceedings before SACAT rather than the District Court. However, these amendments do not affect any proceedings commenced before the District Court before the commencement of these amendments. Further, a member of a panel of persons established under Schedule 1 of the Act who held office immediately before the commencement of these amendments ceases to hold office on that commencement and any contract of employment, agreement or arrangement relating to that office is also terminated at that time.

Part 48—Amendment of *Tobacco Products Regulation Act 1997*

266—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal.

267—Substitution of section 13

This amendment substitutes proposed section 13.

13—Review

This proposed section provides that a person who is dissatisfied with a decision taken by the Minister on a review may apply to SACAT under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* for review of the Minister's decision. An application must be made within 1 month of receiving notice of the Minister's decision.

268—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction to SACAT. The effect of the provisions is that a right of appeal under section 13 of the Act in existence before the commencement of these amendments, but not exercised before that commencement, will be exercised by commencing proceedings before

SACAT rather than the District Court. However, these amendments do not affect any proceedings in the District Court commenced before these amendments.

Part 49—Amendment of *Water Industry Act 2012*

269—Amendment of section 4—Interpretation

This clause inserts a definition of *Tribunal* to mean the South Australian Civil and Administrative Tribunal (and consequentially deletes the definition of *District Court*).

270—Amendment of section 35—Price regulation

This amendment is consequential.

271—Amendment of section 80—Enforcement notices

This amendment is consequential.

272—Amendment of section 83—Injunctions

This amendment is consequential on the deletion of the definition of *District Court*.

273—Amendment of heading to Part 9

This clause amends the heading to Part 9.

274—Amendment of section 85—Review by Tribunal

This clause amends section 85 to effect the transfer of jurisdiction to SACAT in relation to decisions of the Commission or Technical Regulator made on a review under section 84 and relating to enforcement notices issued under Part 8 Division 4. Provision is made in relation to the establishment of a panel of assessors for the purposes of reviews before SACAT and for the President of SACAT to determine whether or not SACAT will sit with assessors.

Other amendments consequential on or related to the transfer of jurisdiction are made.

275—Amendment of section 86—Minister's power to intervene

This amendment is consequential.

276—Repeal of Schedule 1

This amendment is consequential on the proposed inclusion of provisions in relation to assessors in section 85.

277—Transitional provisions

This clause sets out the transitional provisions in relation to the transfer of jurisdiction from the District Court to SACAT. The effect of the provisions is that any proceedings already commenced before the District Court will continue before that Court. However, any right to appeal to the District Court that existed before the commencement of these amendments, but not exercised before that commencement, will now be exercised by making an application for review to SACAT. Further provision is made in relation to members of a panel established under Schedule 1 of the Act ceasing to hold office on the transfer of jurisdiction.

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

STATUTES AMENDMENT (COURT FEES) BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:36): I move:

That this bill be now read a second time.

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

Leave granted.

This Bill amends the *Magistrates Court Act 1991* to allow court fees to be based on the value of the amount claimed or on any other basis, whether or not the fee exceeds the actual administrative cost incurred.

The Bill also makes equivalent amendments to the *Supreme Court Act 1935*, *District Court Act 1991* and *Sheriffs Act 1978* to allow for tiered fees to be introduced under those Acts in the future, should this be deemed feasible and appropriate.

I seek leave to have the remainder of the explanation inserted into Hansard without my reading it.

The State Courts Administration Council has undertaken a review of civil court fees. That review identified several options for the restructuring of court fees and to improve the efficiency of civil court matters, including, relevantly, to move to tiered civil claim lodgement fees in the Magistrates Court that vary depending on the amount claimed.

To support the introduction of tiered civil lodgement fees, which will be fixed by regulation, amendment is first required to the *Magistrates Court Act 1991* to allow court fees to be based on the value of the amount claimed or on any other basis, whether or not the fee exceeds the actual administrative cost incurred. The amendments have been drafted based on the equivalent fee regulation-making powers in the Victorian *Magistrates Court Act 1989 (Vic)*.

The Bill also makes equivalent amendments to the *Supreme Court Act 1935*, *District Court Act 1991* and *Sheriffs Act 1978* to allow for fees to be tiered under those Acts in the future, should this be deemed feasible and appropriate.

The new regulation-making powers will also support proposed regulations to provide for courts to require a deposit as security for payment of trial fees in appropriate circumstances. This is to assist with a significant problem with unpaid District and Supreme Court civil trial fees.

Upon the changes in this Bill taking effect, it is intended to introduce by regulation a series of tiered lodgement fees in the Magistrates Court civil jurisdiction. The fees will aim to maintain access to justice by having low lodgement fees for minor civil claims, with a progressively tiered increase to higher lodgement fees for general civil claims and corporations. The aim is to reduce the gap between District Court and Magistrates Court lodgement fees, bearing in mind that the *Statutes Amendment (Courts Efficiency Reforms) Act 2012* ('the CER Act') significantly increased the jurisdictional limit of the Magistrates Court and led to more matters being lodged in the Magistrates Court with its lower application fees, which previously would have been lodged in the higher fee District Court. The proposed lodgement fees for general claims over $40,000 would still be less than before the CER Act changes, when those claims had to be lodged in the District Court.

With the exception of New South Wales and Tasmania, all other States and Territories already have tiered civil lodgement fees in their equivalent courts. This proposal will align South Australia with the majority of Australian States and Territories.

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 *District Court Act 1991*

4—Amendment of section 53—Court fees

Section 53 of the *District Court Act 1991* provides for the making of regulations to prescribe and provide for the payment of fees in relation to proceedings in the District Court and for the remission or reduction of fees in certain circumstances. The proposed amendments to section 53 would allow the regulations to provide for any or all of the following matters in relation to proceedings, or any step in such proceedings, in the Court:

- specific fees;
- maximum fees;
- minimum fees;
- fees that vary according to value, time, class of matter, or on any other basis;
- fees that differ for different classes of proceedings, different classes of party or different jurisdictions of the Court;
- the manner of payment of fees;
- the time or times at which fees are to be paid;

and clarify that it is not necessary for a fee to be related to the actual administrative cost incurred.

The regulations may—

- be of general or limited application; and

- make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- provide in a specified case or class of case for the exemption of any proceeding, person or thing, or a class of proceeding, person or thing, from any of the provisions of the regulations, whether—
  - (i) unconditionally or on specified conditions; and
  - (ii) either wholly or to such an extent as is specified; and
- provide for the payment in advance of a fee or part of a fee prescribed under the regulations; and
- provide for the reduction, waiver, postponement, remission or refund, in whole or in part, of a fee prescribed under the regulations; and
- provide, in specified circumstances, for the reinstatement or payment, in whole or in part, of a fee prescribed under the regulations which was reduced, waived, postponed, remitted or refunded under the regulations; and
- confer a discretionary authority or impose a duty on the Court, a member of the Court's judiciary or the Registrar of the Court.

Part 3—Amendment of *Magistrates Court Act 1991*

5—Amendment of section 50—Court fees

The amendments proposed to section 50 of the *Magistrates Court Act 1991* mirror those proposed in relation to fees in the District Court.

Part 4—Amendment of *Sheriff's Act 1978*

6—Amendment of section 16—Regulations

The amendments proposed to section 16 of the *Sheriff's Act 1978* have a similar effect as the amendments proposed to each of the other Acts included in this measure and will allow the regulations to make provision for differential fees according to different factors.

Part 5—Amendment of *Supreme Court Act 1935*

7—Amendment of section 130—Court fees

The amendments proposed to section 130 of the *Supreme Court Act 1935* mirror those proposed in relation to fees in both the District Court and the Magistrates Court. In addition, current subsection (3) of section 130 is to be repealed as it would become redundant on the enactment of this Part of this measure.

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

LABOUR HIRE LICENSING BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:37): I move:

That this bill be now read a second time.

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

Leave granted.

On 10 July 2017, the Government announced it was drafting a Bill to introduce a state-based licensing scheme for labour hire providers.

The Labour Hire Licensing Bill 2017 seeks to establish a scheme that will make it unlawful to operate as a labour hire provider without a licence and for employers that engage labour hire workers to use an unlicensed operator.

On 4 May 2015, the ABC Four Corners program aired an investigative report regarding the alleged exploitation and underpayment of migrant workers employed at various companies in Australia, including two in South Australia. The principal focus of the Four Corners story was labour hire companies exploiting migrant workers on farms and in the food processing industry.

In response to the Four Corners program, the Premier announced that he had asked the Parliamentary Economic and Finance Committee to look into the labour hire industry, including underpayment of wages, harassment and mistreatment of workers.

The Economic and Finance Committee handed down its report (the Report) on 18 October 2016.

A total of 13 submissions were received by the Committee from various parties, including government departments, industry groups and unions. In addition, witnesses representing different organisations. Written requests were made by the Committee to three Commonwealth departments and agencies. The Committee also held a public hearing in the Riverland region and visited several companies who engage labour hire workers.

At the public hearings the Committee heard from three private citizens with first-hand experience of exploitation in the labour hire sector. They relayed to the Committee their experiences of being underpaid wages, receiving no superannuation and the troubles they faced trying to recover their entitlements with the individuals that operated the labour hire services dissolving the entity they were employed by and starting up new entities and continuing to operate.

The Report made seven recommendations, including that, in the absence of the Federal Government establishing a national licensing scheme, the South Australian Government institute a State-based licensing scheme.

Inquiries into the labour hire industry were also completed by Queensland, Victoria and the Commonwealth. Each of those inquiries recommended some form of licensing or registration scheme for labour hire providers.

The Commonwealth Government's current policy is focussed on compliance and enforcement, as opposed to the introduction of a licensing requirement.

In the absence of the Commonwealth Government having the courage, through a national licensing scheme, to stand up to protect the rights of labour hire workers, many of whom are the most vulnerable in our community, this Weatherill Labor Government has drafted the Labour Hire Licensing Bill.

The objectives of this Bill are to protect workers from exploitation, to protect licensed labour hire businesses from predatory business practices that may be engaged in by persons unsuitable to be licensed to provide labour hire services and in achieving this it will improve the integrity of the labour hire industry.

Rogue operators are underpaying workers, failing to ensure proper safety standards and abuse worker visas. These actions undermine minimum standards of employment for workers and undercut those businesses doing the right thing.

Every inquiry in this area has highlighted the issue of 'phoenixing'. This is where people avoid legal obligations such as wages, superannuation, tax, workers' compensation and the most basic of working conditions by winding up dodgy companies and re-incorporating them under a new name.

It is critical that we crack down on dodgy operators exploiting workers and driving honest employers to the wall. That is why we must establish this scheme, because not only will it protect labour hire workers and the labour hire industry by keeping rogue operators from entering the market but it will also aid regulators with their compliance activities.

The Bill provides for two key elements. First, labour hire providers must be licensed in order to operate and supply labour in South Australia. To be licensed, a labour hire provider will be required to establish that they are a fit and proper person to run a labour hire business.

Second, persons who engage labour hire providers must only engage a licensed labour hire provider. Users of labour hire will be able to check an online register to help them identify and use legitimate labour hire providers.

Importantly, workers will be able to check if a labour hire company is legitimate and law abiding before accepting work.

The scope of the bill is deliberately wide both in terms of the industries that are covered and the types of labour hire arrangements. The licensing scheme is not industry or sector specific and will apply to any labour hire arrangements in South Australia.

This deliberately broad approach keeps in scope a range of arrangements which people might enter into which would be considered labour hire by a reasonable person.

In Australia, the typical labour hire employment arrangement is a triangular relationship between the worker, provider, and the client that a worker is supplied to, as well as variations on this model which can be used to disguise labour hire arrangements. The arrangement generally involves a labour hire company providing a worker to a host employer under the following conditions:

- The worker performs duties at the host employer's premises or worksite under the practical day-to-day direction of the host employer;
- The worker uses the host employer's tools and equipment and in many cases wears the host employer's uniform;
- The worker is paid by the labour hire company and has a direct employment or contractual relationship with the labour hire company;
- The host employer pays a contract fee to the labour hire company for the provision of the worker's labour and, accordingly, the host employer has a contractual relationship with the labour hire company.

The definition in the Bill is designed to capture the triangular labour hire relationship between the worker provider and the end user or client that a worker is supplied to, as well as variations on this model which can be used to disguise labour hire arrangements.

To make it clear, businesses that undertake recruitment leading to direct employment or permanent job placement, genuine independent contracting arrangements and workforce consulting services are not in the scope of the bill, neither is work experience or student practical placements organised by an educational institution as part of a course.

The bill includes a regulation-making provision that can deal with other arrangements which are genuinely not within the scope of labour hire. In this way the bill provides avenues for the scheme to respond to other scenarios where necessary, to provide further clarification on the scope of the scheme.

The reputation of good, law-abiding labour hire companies is being tarnished by those dodgy companies that continue to exploit their workers and undercut reputable businesses.

A broad scope and a definition of labour hire is necessary and appropriate to achieve the purpose of the scheme. Once you narrow the scope of the scheme, you simply create loopholes for unscrupulous labour hire operators to avoid coverage, and that is not an outcome that we are prepared to accept.

There is a need for increased cooperation between State and Federal Governments. We will continue to push for a national licensing scheme.

However, in the meantime, and in the absence of any meaningful action by the Federal Government, South Australia along with other States will introduce a complementary licensing scheme.

I commend the Bill to members.

Explanation of Clauses

Part 1—Preliminary

Division 1—Preliminary

1—Short title

This clause provides the short title.

2—Commencement

This clause provides for commencement to be fixed by proclamation.

Division 2—Objects and application of Act

3—Objects of Act

This clause provides for the objects of the measure which will be achieved primarily by establishing a licensing scheme to regulate the provision of labour hire services. The objects of the measure are to—

(a) protect workers from exploitation by providers of labour hire services; and

(b) protect licensed labour hire businesses from predatory business practices that may be engaged in by persons unsuitable to be licensed to provide labour hire services; and

(c) promote the integrity of the labour hire industry.

4—Extraterritorial application

This clause indicates that the measure is intended to have extraterritorial application to the extent that the legislative powers of the State permit.

Part 2—Interpretation

5—Interpretation

This clause provides defined terms for the purposes of the measure.

6—Meaning of labour hire services

This clause provides for a definition of *labour hire services*, whereby a person provides *labour hire services* if, in the course of carrying on a business, the person supplies, to another person, a worker to do work. Worker is defined in clause 7.

7—Meaning of worker

This clause provides for a definition of *worker*, whereby an individual is a *worker* for a person if the individual enters into an arrangement with the person under which—

(a) the person may supply, to another person, the individual to do work; and

(b) the person is obliged to pay the individual, in whole or part, for the work.

8—When a worker is supplied

For purposes of the measure, the supply of a worker to do work for a person commences when the worker first starts to do work for the person in relation to the supply.

9—Fit and proper person

This clause makes provision in relation to determining whether a person is a fit and proper person for the purposes of the measure.

Subclause (1) lists a number of matters that may be relevant in determining whether a person is a fit and proper person to be the holder of a licence or a fit and proper person to be the director of a body corporate that is the holder of a licence, such as the reputation, honesty and integrity of the person or demonstrated compliance by the person with relevant laws.

Subclauses (2) and (3) list the circumstances in which a person will be taken to not be a fit and proper person to be the holder of a licence or a fit and proper person to be the director of a body corporate that is the holder of a licence. Examples include if a person has been found guilty or convicted of an offence prescribed by the regulations or if a person is a member of, or a participant in, a prescribed organisation.

Part 3—Prohibited conduct

10—Licence required to provide labour hire services

This clause provides that a person must not provide labour hire services except as authorised by a licence.

This clause also provides that a person must not advertise, or in any way hold out, that the person provides, is entitled to provide or is willing to provide labour hire services unless authorised to provide labour hire services by a licence.

11—Person must not enter into arrangements with unlicensed providers

This clause provides that a person must not, without a reasonable excuse, enter into an arrangement with another person for the provision of labour hire services to the person unless the other person is authorised to provide labour hire services by a licence.

12—Person must not enter into avoidance arrangements

This clause provides that a person must not enter into an arrangement designed to circumvent or avoid an obligation imposed by the measure (an *avoidance arrangement*).

13—Persons must report avoidance arrangements

This clause provides that if a person to whom another person has supplied, or intends to supply, a worker becomes aware, or ought reasonably to have become aware, that the arrangement for the supply of the worker is an avoidance arrangement, the person must notify the Commissioner in writing of the name of the non-complying person along with a brief description of the avoidance arrangement.

Part 4—Licences

Division 1—Application and grant

14—Application for licence

This clause provides for applications to the Commissioner for a licence authorising the provision of labour hire services which must—

(a) be in a form approved by the Commissioner; and

(b) specify the names of the person or persons nominated to be responsible persons for the purposes of the licence; and

(c) include the information required by the Commissioner to determine the application; and

(d) be accompanied by the prescribed fee.

Notice of each application for a licence under the clause must be published by the Commissioner on a website determined by the Commissioner.

The clause further provides that—

(a) a person who has applied for and been refused a licence may not apply for a period of 3 months from the date of notice of the refusal or the date on which an appeal against the refusal was finally determined; and

(b) a person who has previously held a licence that has been cancelled may not apply for a period of 2 years from the date of the cancellation,

unless the person is a body corporate and, since the time of the refusal of the licence or the cancellation, no person who held shares, a beneficial interest or was in a position to control or influence the affairs of the body corporate at that time holds shares or a beneficial interest or is in a position to control or influence the affairs of the body corporate at the time of a new application for a licence.

15—Objection to application

This clause provides that a designated entity may, by notice in writing, lodge with the Commissioner an objection to an application for a licence on the grounds that the applicant is not a fit and proper person to be the holder of a licence or, in the case of a body corporate, that 1 or more directors of the body corporate are not fit and proper persons to be directors of a body corporate that is the holder of a licence. The Commissioner is required to notify the applicant of a notice of objection and must, before granting a licence, consider both the objection and any response of the applicant.

In this clause—

designated entity means any of the following entities:(a)an industrial association (within the meaning of the Return to Work Act 2014);(b)an agency or instrumentality of this State or of the Commonwealth, another State or a Territory of the Commonwealth;(c)a council (within the meaning of the Local Government Act 1999).

16—Grant of licence

This clause provides that the Commissioner may grant a licence to an applicant if satisfied that—

(a) in the case of an applicant who is a natural person, the applicant—

(i) is a fit and proper person to be the holder of the licence; and

(ii) has sufficient financial resources for the purpose of properly carrying on business under the licence; or

(b) in the case of an applicant that is a body corporate—

(i) the body corporate is a fit and proper person to be the holder of the licence; and

(ii) each director of the body corporate is a fit and proper person to be the director of a body corporate that is the holder of a licence; and

(iii) the body corporate has sufficient financial resources for the purpose of properly carrying on business under the licence; and

(c) each person to be specified as a responsible person is a fit and proper person to be a responsible person.

17—Conditions of licence

This clause provides that a licence may be subject to such conditions as the Commissioner thinks fit and that such conditions may be imposed, varied or revoked by the Commissioner at any time after the grant of a licence.

Division 2—Duration of licences and reporting

18—Duration of licence, periodic fee and return

This clause provides that a licence remains in force until the licence is surrendered or cancelled or the licence holder dies or, in the case of a licensed body corporate, is dissolved.

The clause also provides that the holder of a licence must, after each reporting period for the licence (every 12 months)—

(a) pay to the Commissioner the fee prescribed by regulation; and

(b) lodge with the Commissioner a report in the form approved by the Commissioner containing the prescribed information as defined in the clause.

If the fee or the information return are not provided to the Commissioner, the Commissioner may require the person to make good the default. If, after 28 days of the notice to make good the default, the person has still not complied, the licence is automatically cancelled.

19—Notification of certain changes in circumstances

This clause provides that the holder of a licence must give the Commissioner notice of a change in respect of a prescribed matter relating to the licence within 14 days after the change. There is a proposed penalty of $4,000.

For the purposes of the clause, a prescribed matter, relating to a licence, is defined to mean a matter prescribed by regulation relating to—

(a) whether a person is a fit and proper person to be the holder of a licence; or

(b) whether a person is a fit and proper person to be a director of a body corporate that is the holder of a licence; or

(c) details about the licence shown on the register; or

(d) activities undertaken under or relating to the licence (such as, without limitation, accommodation provided by the holder of the licence for workers supplied to another person).

20—Provision of information

This clause provides that the Commissioner may require the holder of a licence to provide information to the Commissioner as the Commissioner requires relating to—

(a) the provision of labour hire services by the licence holder; and

(b) whether the holder of the licence is a fit and proper person to be the holder of a licence; and

(c) whether the licensee's business has sufficient financial resources for the purpose of properly carrying on business under the licence; and

(d) any other matters relating to the objects of this Act.

If the required information is not provided to the Commissioner, the Commissioner may require the person to make good the default. If, after 28 days of the notice to make good the default, the person has still not complied, the licence is automatically cancelled.

Division 3—Suspension, cancellation and surrender

21—Suspension and cancellation

This clause provides that the Commissioner may suspend or cancel a licence by notice in writing to the holder of the licence if the Commissioner is satisfied that—

(a) the licence was obtained because of materially incorrect or misleading information; or

(b) the holder of the licence has given materially incorrect or misleading information in a report under clause 18, 19 or 20; or

(c) the holder of the licence, or an employee or representative of the holder of the licence, has contravened a condition of the licence; or

(d) the holder of the licence, or an employee or representative of the holder of the licence, has failed to comply with, or has contravened or is contravening, a provision of the measure or the regulations; or

(e) the holder of the licence, or an employee or representative of the holder of the licence, has contravened or is contravening a relevant law; or

(f) the holder of the licence is no longer a fit and proper person to be the holder of a licence; or

(g) if the holder of the licence is a body corporate—

(i) 1 or more directors of the body corporate are no longer fit and proper persons to be directors of a body corporate that is the holder of a licence; or

(ii) the holder of the licence has been wound up or deregistered under the *Corporations Act 2001* of the Commonwealth; or

(h) the business to which the licence relates no longer has sufficient financial resources for the purpose of properly carrying on business under the licence; or

(i) for any other reason, the licence should be suspended or cancelled.

22—Return of evidence of suspended or cancelled licence

This clause provides that, on the suspension or cancellation of a licence, the Commissioner may require the holder of the licence to return any evidence of the licence issued to the person within 14 days after receiving notice of the suspension or cancellation.

23—Surrender

This clause provides that the holder of a licence may surrender the licence by notice in writing to the Commissioner. The Commissioner may then require a person giving notice of surrender to return any evidence of the licence issued to the person within 14 days.

Division 4—Responsible persons

24—Requirements for responsible persons

This clause provides that a business conducted under a licence must, at all times during business hours, be personally supervised and managed by a natural person (a *responsible person*) who is responsible for the day-to-day management and operation of the business to which the licence relates.

A responsible person, for a licence, must—

(a) be a fit and proper person to be a responsible person; and

(b) satisfy any other requirements prescribed by regulation.

25—Responsible person must be reasonably available

This clause provides that the holder of a licence must ensure that each responsible person for the licence is reasonably available to be contacted by the Commissioner, an authorised officer or a member of the public during business hours. A maximum penalty of $4,000 applies in the case of non-compliance with this requirement.

26—Application to change responsible person

This clause provides for the responsible person under a licence to be changed on application to the Commissioner who may approve the change if satisfied that the proposed responsible person is a fit and proper person for that role.

27—Substitution of responsible person for limited period

This clause provides for the temporary appointment of a person to be a responsible officer in the absence of the designated responsible officer. Notice of such an appointment must be given to the Commissioner who may cancel the appointment if satisfied that the person is not a fit and proper person to be a responsible person.

Part 5—Monitoring and enforcement

Division 1—Referral to Commissioner of Police

28—Commissioner may refer matters to Commissioner of Police

This clause provides that the Commissioner may refer certain matters to the Commissioner of Police who must provide information of criminal convictions relevant to a matter and may provide other information relevant to the referred matter (such as whether an application should be granted or a person is a fit and proper person).

29—Criminal intelligence

This clause provides for the protection and confidentiality of information provided to the Commissioner by the Commissioner of Police that is classified by the Commissioner of Police as criminal intelligence.

Division 2—Authorised officers

30—Authorised officers

This clause provides for the appointment of authorised officers by the Commissioner.

31—Obtaining information

This clause provides that an authorised officer may require a person—

(a) to answer any questions, orally or in writing; or

(b) to produce books or documents.

For such purposes, an authorised officer may require a person to attend at a specified time and place.

32—Entry and inspection

This clause provides for authorised officers to have certain powers of entry and inspection.

33—Use and inspection of books or documents produced or seized

This clause provides that a book or document seized by an authorised officer may be retained for the purpose of enabling the book or document to be inspected and enabling copies of, or extracts or notes from, the book or document to be made or taken by or on behalf of the Commissioner.

34—Hindering an authorised officer

This clause provides that a person who hinders an authorised officer acting in the exercise of powers conferred by or under the measure is guilty of an offence for which a maximum penalty of $10,000 applies.

35—Offence relating to intimidation

This clause provides that a person must not persuade or attempt to persuade by threat or intimidation another person to fail to comply with certain requirements of an authorised officer. A maximum penalty of $10,000 applies.

36—Impersonating an authorised officer

This clause provides that a person who falsely represents, by words or conduct, that the person is an authorised officer is guilty of an offence for which a maximum penalty of $10,000 applies.

Part 6—Proceedings, review and appeal

37—Evidentiary provisions

This clause provides certain evidentiary provisions for the purposes of proceedings under the measure.

38—Appeal to District Court

This clause provides for appeals to the Administrative and Disciplinary Division of the District Court against certain decisions made under the measure.

Part 7—Miscellaneous

39—The register

This clause provides that the Commissioner must maintain a register of licences granted under the measure. The clause specifies the matters that must be included on the register.

40—Delegations

This clause provides for the Commissioner to be able to delegate any of the Commissioner's functions or powers under the measure to—

(a) a person employed in the Public Service; or

(b) the person for the time being holding a specified position in the Public Service.

41—Commissioner may rely on licence, approval etc under prescribed law

This clause provides that the Commissioner may, if satisfied that a person is the holder of a licence, or is otherwise accredited or approved (however described), under a prescribed law, dispense with a requirement to provide certain information to the Commissioner under the measure and may act on the basis of that other licence, approval or accreditation to determine, without any further consideration, that the person is a fit and proper person or has sufficient financial resources for the purpose of properly carrying on business under a licence.

42—Exemptions

This clause provides for the Commissioner to grant exemptions to a specified person or person of a specified class.

43—False or misleading information

This clause provides an offence of making a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under the measure.

44—Vicarious liability

This clause provides for vicarious liability for the principal of a business, or the directors of a body corporate, where an offence is committed by an employee or agent of the business or by the body corporate. This vicarious liability also extends, where an offence is committed against the measure in relation to the formation of a contract, to a person who has derived or would, if the contract were carried out, expect to derive a direct or indirect pecuniary benefit from the contract.

45—Defences

This clause provides defences of reasonable mistake and reasonable reliance on information supplied by another person. A further defence is where a contravention is due to the act or default of another person, to an accident or to some other cause beyond the defendant's control and the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

46—Confidentiality of information

This clause provides for the confidentiality of information obtained in exercising a power or function under the measure.

47—Service

This clause provides for service of a notice or document required or authorised to be given to a person for the purposes of the measure, which may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person at the person's last known residential, business or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known residential, business or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

Also, this clause provides that a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of the measure may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

48—Regulations

This clause provides that the Governor may make such regulations as are contemplated by the measure or as are necessary or expedient for the purposes of the measure.

Schedule 1—Repeal and transitional provisions

1—Transitional provision

This clause provides a transitional period of 6 months for persons providing labour hire services at the commencement of the Act.

2—Transitional regulations

This clause provides that the Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of the measure.

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

FINES ENFORCEMENT AND DEBT RECOVERY BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:37): I move:

That this bill be now read a second time.

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

Leave granted.

Today I introduce the Fines Enforcement and Debt Recovery Bill 2017 (the Bill).

The Bill's primary purpose is to consolidate and refine the provisions for enforcing and recovering fines and expiation fees that are currently located in the *Criminal Law (Sentencing) Act 1988* and the *Expiation of Offences Act 1996*. A major innovation is that the Bill also enables the Fines Enforcement and Recovery Officer (FERO) (whose title will be changed to 'Chief Recovery Officer' (CRO)) to recover civil debt owed to the Government.

The *Statutes Amendment (Fines Enforcement and Recovery) Act 2013* and the new Fines Enforcement and Recovery Unit (Fines Unit) of the Attorney-General's Department commenced operation on 3 February 2014. In the period since commencement of the Fines Unit, a number of operational difficulties have arisen, and omissions and other issues have been identified, in respect of the legislation as it was amended. As a result, a number of proposals have been made for improving the legislative regime for fines enforcement and recovery, including suggestions from the FERO, SAPOL and the Magistrates Court.

Following the introduction of the Bill in the House of Assembly, the Government undertook an extensive consultation program on the Bill. The feedback received during consultation is under consideration. Should any changes be needed to the Bill as a result of the consultation, I will move such amendments as may be necessary in this House as soon as possible.

Most of the numerous proposed amendments in the Bill are technical and operational in nature and duplicate provisions already in the two existing Acts. Consequential amendments to other legislation are also proposed.

There are several amendments of a more substantive nature that recognise the vulnerable position of some debtors or, in other cases, strengthen the CRO's ability to recover debt.

In cases of financial hardship, debtors will (in appropriate cases) be able to enter into voluntary agreements with the CRO to offset their outstanding debts by performing community service or attending intervention or treatment programs for behavioural problems, problem gambling, substance abuse or mental impairment. However, the CRO will also have a new power to terminate any payment arrangement where satisfied that the debtor now has a greater capacity to pay the amount outstanding without the debtor or the debtor's dependants suffering hardship.

The Magistrates and Youth Courts will have new powers in cases of financial hardship to order debtors to attend intervention programs. They can currently order debtors to perform community service. The Courts' powers in this regard are exercisable on application by the CRO when the CRO's efforts to enforce and recover the debt have failed. The regulations will prescribe the manner in which attendance at an intervention program will reduce the amount of the outstanding debt. The Bill also removes the current upper limit of 500 hours of community service that can be ordered by the Courts so that, potentially, the whole of a person's debt could be dealt with by a single order for community service made by the Court. This will avoid the need for the CRO to make multiple applications to the Court for successive orders for community service.

Issuing authorities will be able to withdraw expiation notices if the alleged offender has a cognitive impairment or an intellectual disability. This measure implements one of the aims of the Government's Disability Justice Plan.

Provisions are included in the Bill in respect of people who persistently drive unlicensed, and incur fines or expiation fees for that offending, to provide incentives for them to break the cycle of offending. A person who shows that they have obtained a driver's licence since commission of the alleged offence may be able to enter into voluntary payment arrangements with the CRO or have the whole or part of their debt waived.

Compensation and restitution payments will now have priority ahead of the Victims of Crime levy when payment is made on an outstanding debt. This will ensure that victims have quicker access to compensation and restitution payments than is presently the case.

A new enforcement power will enable the seizure of a person's number plates, e.g. if it is not economical to seize or clamp the vehicle itself. Also, as an additional enforcement measure, a provision is included in the Bill that would permit the CRO to suspend the operation of the visiting motorist rights conferred under section 97A of the *Motor Vehicles Act 1959* where an interstate driver has unpaid fines or expiation fees in this State. Such a person will not be able to drive in this State on an interstate driver's licence until the CRO cancels the suspension.

The offences in the existing legislation regarding interference with a clamped vehicle or with the clamp itself are not consistent. The Bill remedies that situation.

The Bill also refines the provisions for revocation of an enforcement determination for an expiation notice and for appeals from those decisions. The new provisions make it clear that a person cannot apply to revoke an enforcement determination, or appeal the CRO's refusal to revoke an enforcement determination, if they have previously had reasonable opportunity to exercise their rights to elect to be prosecuted for the alleged offence or to apply for a review of the expiation notice by the issuing authority on the grounds that the alleged offence is trifling. One of the other grounds for applying to the CRO to revoke an enforcement determination is amended to make clear that failure to receive a notice means failure to receive both the relevant expiation notice and the subsequent expiation reminder notice sent to the person.

Given the prevalence of email communications in the community, the Bill will allow the CRO to give a document to a person by means of an email address provided to the CRO by the person.

Other new provisions will allow the Minister to enter into an agreement with other Australian jurisdictions to establish and implement processes and procedures for the enforcement in other jurisdictions of expiation notices given in this State and the enforcement in this State of the equivalent of expiation notices given in other jurisdictions.

The Bill carries forward existing provisions to the effect that the costs of taking enforcement action are added to and form part of the monetary amount owed by the debtor. However, it is convenient to prescribe in regulations the fee payable for action to suspend a driver's licence or restrict transactions with the Registrar of Motor Vehicles. These are among the most common enforcement actions taken by the Fines Unit and a prescribed fee would relieve the administrative burden of having to calculate the costs of taking such action on each individual case.

Part 8 of the Bill confers on the CRO the power to enforce civil debt owed to the Government. The Government considers that the CRO is best placed to consolidate whole-of-Government debt recovery efforts. The CRO will be able to collect civil debt owed to the Government that is referred to the CRO for collection by public authorities. This might include, for example, debts owed to SA Water, SA Health, the SA Ambulance Service, Housing SA, TAFE SA and the Department for Education and Child Development and other bodies meeting the definition of public authority in the Bill. The CRO would only be able to exercise his or her powers in respect of debts that are within the monetary jurisdictional limits of the Magistrates Court, currently $100,000 or less.

It will not be necessary for a debt owed to the Government to be first proved by way of a judgment in a civil debt action. Civil debt actions currently taken by Government to obtain a judgment are generally not defended. In a recent 12-month period, only 1.5% of such judgments were defended. The need to obtain a judgment in every case is therefore unwarranted, and unnecessarily costly and time-consuming. These actions would currently be pursued in the Magistrates Court (up to $100,000 in value) or in the District Court.

A person who disputes that they owe the relevant debt will be able to make an application the Magistrates Court for determination of the matter. Appellants suffering financial hardship are able to have application fees waived or reduced by the Court.

The CRO will be able to exercise powers that are the same as the powers currently available to a court in respect of monetary judgments under the *Enforcement of Judgments Act 1991*, namely investigation of a debtor's

financial position and means to satisfy the debt, payment by instalments, garnishment, seizure and sale of property (excluding property that could not be taken in bankruptcy proceedings) and taking a charge over property. The CRO will also be able to enter into voluntary payment arrangements with civil debtors in appropriate cases. The CRO will however not be able to exercise the powers in the *Enforcement of Judgments Act 1991* to issue a warrant for the arrest of any person, or to commit a debtor to prison for non-payment of the debt, or to appoint a receiver. The CRO will need to apply to the Magistrates Court for the exercise by the Court of these excluded powers.

A debtor will have a right to seek an internal review of a decision by the CRO to exercise particular enforcement powers, and ultimately will have a right of review by the Magistrates Court. This review right is necessary because currently, under the *Enforcement of Judgments Act 1991*, a debtor would have the opportunity to make submissions to the Court in response to the creditor's application for enforcement powers. Internal review rights are also given to garnishees.

The Government expects that the positive impacts that will arise as a result of the civil debt recovery provisions in the Bill include achieving efficiencies by centralising the work currently undertaken in multiple agencies to recover debts owed to Government and achieving economies of scale in contractual arrangements with commercial debt collectors. These changes will also enable a holistic approach to be taken to individual debtors as persons in hardship often owe substantial debt across multiple Government agencies.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

Operation of the measure is to commence on a day to be fixed by proclamation.

3—Interpretation

This clause sets out definitions of various terms used in the measure.

Part 2—Chief Recovery Officer

4—Chief Recovery Officer

This clause provides for the office of Fines Enforcement and Recovery Officer (established under the *Criminal Law (Sentencing) Act 1988*) to continue as the Chief Recovery Officer. The Chief Recovery Officer is to carry out functions under the Act in addition to carrying out other functions assigned by or under another Act or law or by the Minister.

5—Delegation

The Chief Recovery Officer is authorised under this clause to delegate powers or functions to a person, a committee or a person for the time being performing particular duties or holding or acting in a particular position. The clause specifies that the person to whom a power or function is delegated may be a body corporate.

6—Certain determinations may be made by automated process

This clause authorises the Chief Recovery Officer to determine that a class of determinations that he or she is required to make is of such a nature that they could appropriately be made by means of an automated process. A determination made by an automated process in accordance with the clause will be taken in any proceedings to be a determination of the Chief Recovery Officer.

7—Annual report

This clause requires the Chief Executive of the relevant administrative unit to submit an annual report to the Minister. The report is to include information prescribed by the regulations or required by the Minister. A copy of the report is to be laid before each House of Parliament.

Part 3—Enforcement of pecuniary sums

Division 1—Preliminary

8—Pecuniary sum is debt

This clause provides that a pecuniary sum due and payable is a debt due to the Crown. As such, it is recoverable by the Chief Recovery Officer by action in a court of competent jurisdiction or as otherwise set out in the measure.

9—Amounts due under expiation notices may be treated as part of pecuniary sum

The Chief Recovery Officer can make an aggregation determination under this clause in relation to a person who owes a pecuniary sum in addition to having an amount due under an expiation notice. The effect of the determination is as follows:

- the expiation amount will be taken to be part of the pecuniary sum owed by the debtor;
- the debtor will, for the purposes of an Act or law other than this Act or the *Expiation of Offences Act 1996*, be taken to have expiated the offence or offences to which the determination relates (unless the debtor is already taken to have expiated the offence under clause 20(21) or 22 (but this provision operates subject to the regulations);
- any enforcement determination made in relation to the expiation amount is suspended.

An aggregation determination may only be made if the debtor has requested it or an enforcement determination has been made in relation to the expiation amount under clause 22.

If an amount due under an expiation notice is included in an aggregation determination and the expiation notice is withdrawn, the expiation amount is to be deducted from the amount due under the aggregation determination. An aggregation determination may be revoked at any time by the Chief Recovery Officer. If an aggregation determination is revoked, the following provisions apply:

- the remaining expiation amount is to be determined by the Chief Recovery Officer, taking into account any necessary deductions or additions;
- the expiation amount determined by the Chief Recovery Officer will no longer be taken to be part of the pecuniary sum;
- if an enforcement determination had been made prior to the making of the aggregation determination, the enforcement determination will come back into force;
- otherwise, the Chief Recovery Officer may make an enforcement determination in relation to the remaining expiation amount under clause 22.

10—Enforcement against youths

The measure applies to a debtor who is a youth. However, the youth or the Chief Recovery Officer may apply, at any time, to the Youth Court for the making of a community service order in respect of the youth (as if clause 46 applied in respect of the pecuniary sum). A youth is a person who was under the age of 18 years at the time when the offence in respect of which the pecuniary sum was imposed was committed.

Division 2—Payment of pecuniary sums

11—Pecuniary sum is payable within 28 days

A pecuniary sum imposed by order of a court is payable within 28 days from (and including) the day on which the order was made. However, this operates subject to any arrangement under clause 15, which provides for the making of arrangements as to the manner and time of payment of pecuniary sums.

12—Payment of pecuniary sum to Chief Recovery Officer

A pecuniary sum is payable to the Chief Recovery Officer or an agent appointed by the Chief Recovery Officer. An amount of a pecuniary sum received by the Chief Recovery Officer is to be dealt with as follows;

- firstly, if the sentencing court has ordered the defendant to pay any amount by way of compensation or restitution to a particular person, payment is to be made to that person in satisfaction of the amount;
- secondly, if a VIC levy is payable by the defendant, payment is to be made into the Victims of Crime Fund in satisfaction of that levy;
- thirdly, if any costs are payable to a party to the proceedings, payment is to be made in satisfaction of those costs;
- fourthly, if any other money is payable under the order of the court to the informant, payment is to be made to the informant;
- fifthly, according to the directions of any other Act or, if no other Act contains directions as to payment, payment is to be made to Treasury.

13—Payment by credit card etc

This clause provides that a pecuniary sum may be paid by using a credit card, charge card or debit card if facilities for their use are available in relation to the payment to be made.

14—Amounts unpaid or unrecovered for more than certain period

If a part of a pecuniary sum is unpaid or unrecovered on the expiration of the 28 day period referred to in clause 11, an amount prescribed by the regulations is to be added to and form part of the pecuniary sum. If a part of a pecuniary sum is unpaid or unrecovered on the expiration of the 30 day period commencing immediately after the initial 28 day period, a further prescribed amount is to be added to and form part of the pecuniary sum payable by the debtor.

15—Arrangements as to manner and time of payment

This clause authorises the Chief Recovery Officer to enter into arrangements with debtors for the payment of pecuniary sums by instalments over a period of up to 12 months determined by the Chief Recovery Officer. Other types of arrangements are also authorised under the clause, such as:

- payment by instalments (including instalments paid over a period exceeding 12 months);
- an extension of time to pay;
- the taking of a charge over land;
- the surrender of property to the Chief Recovery Officer;
- payment of any amount, including by direct credit, by or through some other person or agency (eg deductions from an ADI account or wages);
- requirements for the performance of community service by the debtor (in accordance with a scheme prescribed by the regulations);
- an arrangement for the debtor to complete an intervention program;
- any other form of arrangement agreed by the Chief Recovery Officer and the debtor.

If the Chief Recovery Officer is satisfied that a debtor who has entered into an arrangement has the capacity to pay any outstanding amount of the pecuniary sum without the debtor or the debtor's dependants suffering hardship, the Officer may terminate the arrangement. If a debtor fails to comply with an arrangement and the failure has endured for 28 days, the arrangement terminates. An arrangement that has terminated may be reinstated by the Chief Recovery Officer. If the Chief Recovery Officer is satisfied that a debtor has completed, or substantially completed, an intervention program pursuant to an arrangement, the Officer must waive payment of the whole or part of the amount payable by the debtor in accordance with the arrangement.

16—Arrangement or waiver for debtor who has persistently driven unlicensed

Under this clause, the Chief Recovery Officer may either enter into an arrangement with a debtor under clause 15 or waive payment of a pecuniary sum or any part of a sum if satisfied that—

- the pecuniary sum payable is by the debtor because of the commission of an offence against section 74 of the *Motor Vehicles Act 1959*; and
- the debtor has been found guilty of, or has expiated, the same offence on more than two occasions; and
- the debtor has obtained a driver's licence.

17—Publication of names of debtors who cannot be found

This clause provides that, if the whereabouts of a debtor cannot be ascertained (after reasonable enquiries), the Chief Recovery Officer may cause a notice to be published on a website determined by the Chief Recovery Officer, and in such other manner (if any) as the Chief Recovery Officer thinks fit, seeking information as to the debtor's whereabouts.

18—Reminder notice

This clause requires the Chief Recovery Officer to give a reminder notice to a debtor if the debtor has not paid a pecuniary sum or entered into an arrangement in respect of the sum at the end of the 28 day period from the making of an order imposing a pecuniary sum. A prescribed reminder notice fee is to be added to and form part of the pecuniary sum unless the Chief Recovery Officer determines to waive the fee.

19—Enforcement action

The Chief Recovery Officer may take enforcement action under this clause if a debtor has not paid a pecuniary sum within 14 days after receiving a reminder notice or if an arrangement has not been entered into under clause 15. Enforcement action may also be taken if such an arrangement has terminated. In taking enforcement action, the Chief Recovery Officer may determine to enter into an arrangement with the debtor under clause 15, exercise a power under Part 7 or waive payment of the pecuniary sum or part of the pecuniary sum. The Chief Recovery Officer may also write off the pecuniary sum if satisfied there is no reasonable prospect of recovering the sum or the costs of recovery are likely to exceed the amount to be recovered.

Part 4—Payment of expiation fees

20—Arrangements as to manner and time of payment

This clause authorises the Chief Recovery Officer to enter into payment or other arrangements with alleged offenders who have been given expiation notices. An arrangement may be for payment of the amount due under an expiation notice to be paid by direct debit instalments. The clause also sets out other kinds of arrangements, as follows:

- payment by instalments (including instalments paid over a period exceeding 12 months);
- an extension of time to pay;
- the taking of a charge over land;
- the surrender of property to the Chief Recovery Officer;
- payment of any amount, including by direct credit, by or through some other person or agency (eg deductions from an ADI account or wages);
- requirements for the performance of community service by the alleged offender (in accordance with a scheme prescribed by the regulations);
- an arrangement for the alleged offender to complete an intervention program;
- any other form of arrangement agreed by the Chief Recovery Officer and the alleged offender.

If the Chief Recovery Officer is satisfied that an alleged offender who has entered into an arrangement has the means to pay an enforcement amount without the alleged offender or the alleged offender's dependants suffering hardship, the Officer may terminate the arrangement. If an alleged offender fails to comply with an arrangement and the failure has endured for 28 days, the arrangement terminates. An arrangement that has terminated may be reinstated by the Chief Recovery Officer. If the Chief Recovery Officer is satisfied that an alleged offender has completed, or substantially completed, an intervention program pursuant to an arrangement, the Officer must waive payment of the whole or part of the amount payable by the alleged offender in accordance with the arrangement. If an alleged offender complies with an arrangement requiring the performance of community service, the amount outstanding is to be reduced in accordance with a method prescribed by the regulations.

An alleged offender who enters into an arrangement will be taken to expiate the offence or offences to which the arrangement relates on the day on which the arrangement is entered into (unless the alleged offender is already taken to have expiated the offence in accordance with another clause). This applies subject to the regulations but irrespective of whether the arrangement is subsequently discharged or terminates before being discharged.

21—Arrangement or waiver for alleged offender who has persistently driven unlicensed

Under this clause, the Chief Recovery Officer may either enter into an arrangement with a debtor under clause 20 or waive payment of an amount due or any part of an amount due if satisfied that—

- the amount due under the expiation notice is payable by the alleged offender because of the commission of an offence against section 74 of the *Motor Vehicles Act 1959*; and
- the alleged offender has been found guilty of, or has expiated, the same offence on more than two occasions; and
- the alleged offender has obtained a driver's licence.

22—Enforcement determinations

This clause provides that an expiation notice may be enforced against an alleged offender by the issuing authority providing to the Chief Recovery Officer certain particulars relating to the alleged offender, the offence or offences, the amount due and the authority's compliance with relevant legislation. The Chief Recovery Officer may make an enforcement determination in relation to an expiation notice if the following has occurred within the relevant period:

- the Chief Recovery Officer has received the necessary particulars from the issuing authority;
- 14 clear business days have elapsed from the date on which a reminder notice or enforcement warning notice relating to the expiation notice was given to the alleged offender under the *Expiation of Offences Act 1996*.

The relevant period is the period ending 90 days after the end of the expiation period or such longer period as the Chief Recovery Officer allows.

An enforcement notice may also be made by the Chief Recovery Officer if an arrangement under clause 20 relating to the notice has terminated and the Chief Recovery Officer has received the necessary particulars within the period of 30 days after the day on which the arrangement terminated.

The alleged offender will, on the making of an enforcement determination, be taken to have expiated the offence or offences to which the enforcement determination relates (unless the alleged offender is already taken to have expiated the offence in accordance with another clause). (This operates subject to the regulations.)

An enforcement determination may be varied or revoked by the Chief Recovery Officer. Revocation may occur on application made within 30 days of notice of an enforcement determination being given, sent or published as required under the section or on the Chief Recovery Officer's own initiative. There are limited grounds on which an application for revocation of an enforcement determination may be made, as follows:

- the expiation notice to which the determination relates should not have been given to the applicant in the first instance (other than because the alleged offender did not commit, or has a defence against, the alleged offence);
- the alleged offender did not have a reasonable opportunity to elect under section 8 of the *Expiation of Offences Act 1996* to be prosecuted for any offence to which the expiation notice relates;
- the alleged offender did not have a reasonable opportunity to apply for review of the expiation notice to which the determination relates under section 8A of the *Expiation of Offences Act 1996*;
- the procedural requirements of the Act or any other Act were not complied with;
- the applicant failed to receive an expiation notice and an expiation reminder notice as required;
- the issuing authority failed to receive—
  - a notice sent to the authority by the applicant electing to be prosecuted for the offence; or
  - a statutory declaration or other document sent to the authority by the applicant in accordance with a notice required by law to accompany the expiation notice or expiation reminder notice; or
- the applicant has expiated the offence, or offences, under the notice.

There is no requirement for the Chief Recovery Officer to conduct a hearing for the purposes of making, varying or revoking an enforcement determination.

23—Review by Court of refusal to revoke enforcement determination

This clause provides for review by the Court (ie, the Magistrates Court or Youth Court) of a decision of the Chief Recovery Officer to refuse an application for revocation of an enforcement determination where the ground of the application was that the alleged offender did not have a reasonable opportunity to elect to be prosecuted for the relevant offence or to apply for review of the expiation notice to which the determination relates. If the Court reverses the decision to refuse the application, the enforcement determination will be taken to be void and of no effect and any subsequent enforcement action will be taken to have been revoked. The Chief Recovery Officer may make a further enforcement determination if the alleged offender does not elect to be prosecuted or apply for review of the expiation notice within 14 days of being informed of the Court's determination.

24—Expiation fee is debt

This clause provides that an amount due under an expiation notice where an enforcement determination has been made by the Chief Recovery Officer is (if the enforcement determination has not been revoked) a debt due to the Crown and is recoverable by the Chief Recovery Officer by action in any court of competent jurisdiction or as otherwise set out in the Act.

25—Enforcement actions by Chief Recovery Officer

If an enforcement determination has been made by the Chief Recovery Officer, the Chief Recovery Officer may—

- enter into an arrangement, or further arrangement, with the alleged offender under clause 20; or
- register a charge on land under Part 6; or
- exercise a power under Part 7; or
- waive payment of the amount due or any part of the amount due.

26—Amounts unpaid or unrecovered for more than certain period

This clause provides for a prescribed amount to be added to the amount due under an expiation notice if the Chief Recovery Officer makes an enforcement determination in relation to the notice. A further amount is added to the amount due if any part of it remains unpaid by, or unrecovered from, the alleged offender, at the end of 30 days (but payment of either of these amounts may be waived by the Chief Recovery Officer).

27—Writing off bad debts

The Chief Recovery Officer is authorised under this clause to write off an amount payable under an expiation notice if there is no reasonable prospect of recovering the amount or the costs of recovery are likely to equal or exceed the amount to be recovered.

28—Enforcement of expiation notices in other jurisdictions

This clause authorises the Chief Recovery Officer to enter into multi-jurisdictional agreements with one or more other jurisdictions to establish and implement processes and procedures for the enforcement in other jurisdictions of expiation notices given in South Australia and the enforcement in South Australia of expiation notices given in other jurisdictions.

Part 5—Investigation powers

29—Personal details and investigation of financial position

This clause authorises the Chief Recovery Officer to—

- require a debtor or alleged offender to provide personal details;
- require another person to provide the personal details of a debtor or alleged offender;
- investigate the means of a debtor or alleged offender (including by requiring the debtor or alleged offender to provide relevant documents or other materials).

30—Power to require information

A public sector agency or credit reporting body may be required under this clause to provide the Chief Recovery Officer with the contact details of a debtor or alleged offender. A public sector agency may also be required to produce documents or other material or information to the Chief Recovery Officer. Particular public sector agencies may be excluded from the application of the clause by the regulations.

31—Power to require identification

If an authorised officer has reasonable cause to suspect that a person may be a debtor or alleged offender, the person may be required under this clause to produce evidence of the person's identity.

32—Disclosure of information to prescribed interstate authority

This clause authorises the Chief Recovery Officer to disclose prescribed particulars of a debtor or alleged offender to a prescribed interstate authority.

Part 6—Charge on land

33—Charge on land

The Chief Recovery Officer may, under this clause, apply to the Registrar-General to register a charge over land owned by a debtor. The Chief Recovery Officer may also apply for a registration of a charge owned by an alleged offender if an enforcement determination has been made in relation to the relevant expiation notice.

The effect of a charge is as follows:

- the Registrar-General must not register an instrument affecting the land over which the charge exists unless—
  - the instrument—
    - was executed before the entry was made; or
    - has been executed under or pursuant to an agreement entered into before the entry was made; or
    - relates to an instrument registered before the entry was made; or
  - the instrument is an instrument of a prescribed class; or
  - the instrument is expressed to be subject to the operation of the charge; or
  - the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made;
- the Chief Recovery Officer (on behalf of the Crown) has the same powers in respect of the land over which the charge exists as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

Part 7—Enforcement

Division 1—Enforcement action

34—Interpretation

This clause includes definitions of terms required for the purposes of Part 7.

35—Aggregation of monetary amounts for the purposes of enforcement

This clause provides for the aggregation of monetary amounts for the purposes of exercising powers under Part 7.

36—Seizure and sale of assets

This clause authorises the Chief Recovery Officer to make a written determination to sell land or personal property of a debtor or alleged offender to satisfy the monetary amount owed.

A determination of the Chief Recovery Officer under the clause authorises the Chief Recovery Officer to—

- enter any land (using such force as may be necessary) on which the Chief Recovery Officer reasonably suspects personal property of the debtor or alleged offender is situated; and
- seize and remove personal property found on the land that apparently belongs (wholly or partly) to the debtor or alleged offender; and
- affix clamps or any other locking device to any vehicle that is to be seized and removed from the land in order to secure the vehicle until it can be so seized and removed; and
- seize and remove any documents evidencing the title of the debtor or alleged offender to any real or personal property; and
- place and keep any such personal property or documents in safe custody until completion of sale; and
- sell real or personal property owned (whether solely or as a co-owner) by the debtor or alleged offender.

There are some limitations on the Chief Recovery Officer's powers, as follows:

- the powers may not be exercised in relation to personal property, or property of a class, prescribed by the regulations;
- this clause does not authorise the sale of land unless the monetary amount exceeds $10,000;
- any amount realised from the sale of the personal property of the debtor or alleged offender in excess of the monetary amount owed by a debtor or alleged offender must be paid to the debtor or alleged offender by the Chief Recovery Officer;
- the Chief Recovery Officer (on behalf of the Crown) has the same powers in respect of land the Officer determines to sell as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

37—Garnishment

The Chief Recovery Officer may, under this clause, determine that money owing or accruing to a debtor or alleged offender from a third person, or money of a debtor or alleged offender in the hands of a third person, is to be attached to satisfy a monetary amount owed by the debtor or alleged offender.

38—Suspension of driver's licence

The Chief Recovery Officer may, under this clause, suspend the driver's licence (including a learner's permit) held by a debtor or alleged offender. Notice of a written determination to suspend a driver's licence must be given to the debtor or alleged offender. The Registrar of Motor Vehicles is also to be given notice of the determination. A licence suspension takes effect 14 days from (and including) the day on which the determination was given to the debtor or alleged offender and may be cancelled by the Chief Recovery Officer by written determination. The Chief Recovery Officer must cancel a licence suspension if all monetary amounts owed by the debtor or alleged offender are paid in full.

39—Restriction on transacting business with Registrar of Motor Vehicles

This clause provides that the Chief Recovery Officer may, by written determination, impose a prohibition on a debtor or alleged offender transacting any business with the Registrar of Motor Vehicles. Notice of a prohibition must be given to the debtor or alleged offender. A prohibition takes effect on the Registrar of Motor Vehicles being notified as required and may be cancelled by the Chief Recovery Officer by written determination. The Chief Recovery Officer must cancel a prohibition if all monetary amounts owed by the debtor or alleged offender are paid in full. While a prohibition under the clause continues in operation, the Registrar of Motor Vehicles will not process any application made by or on behalf of the debtor or alleged offender, whether the application was made before or after the prohibition took effect.

40—Suspension of section 97A of *Motor Vehicles Act 1959*

This clause provides that the Chief Recovery Officer may suspend the operation of section 97A of the *Motor Vehicles Act 1959* insofar as it applies to a debtor or alleged offender specified in the notice. Section 97A authorises certain drivers visiting South Australia to drive in the State without holding a local licence. Notice of the Chief Recovery Officer's written determination to suspend the operation of section 97A must be given to the debtor or alleged offender. The suspension takes effect 14 days from (and including) the day on which the notification is given to the debtor or alleged offender. The Registrar of Motor Vehicles is also to be notified of the suspension. The suspension must be cancelled by the Chief Recovery Officer if all monetary amounts owed by the debtor or alleged offender are paid in full.

41—Clamping or impounding of vehicle

This clause provides for the clamping and impounding of vehicles owned by debtors and alleged offenders. The Chief Recovery Officer may determine to clamp or impound a vehicle that a debtor or alleged offender owns or is accustomed to drive or that was used in the commission of an offence or alleged offence. The period of clamping or impounding may be specified in the determination or may be until the Chief Recovery Officer determines to end the clamping or impounding.

42—Power to dispose of uncollected seized vehicles

This clause sets out procedures for disposal of a vehicle that apply when the vehicle ceases to be liable to be clamped or impounded but no person who is entitled to custody of the vehicle applies for release of the vehicle.

43—Seizure of number plates of vehicle

The Chief Recovery Officer is authorised under this clause to seize the number plates of a vehicle that a debtor or alleged offender owns or is accustomed to drive or that was used in the commission of an offence or alleged offence. Notice of the written determination to seize the number plates must be given to the debtor or alleged offender and each registered owner of the vehicle. The Chief Recovery Officer may not seize the number plates of a vehicle if the vehicle is situated in a public place or seizure of the number plates would cause undue inconvenience to a person other than the debtor or alleged offender. If all pecuniary sums owed by the debtor or alleged offender are not paid within 28 days of the day on which the vehicle's number plates are seized, the Chief Recovery Officer may dispose of the number plates by forwarding them to the Registrar of Motor Vehicles.

44—Publication of names of debtors and alleged offenders subject to enforcement action

This clause provides that the Chief Recovery Officer may cause a notice identifying a debtor or alleged offender who is subject to enforcement action to be published on a website determined by the Chief Recovery Officer and in some other manner determined by the Chief Recovery Officer.

45—Costs

If the Chief Recovery Officer incurs costs in relation to the exercise of enforcement powers and functions, the costs are added to and form part of the monetary amount owed by the debtor or alleged offender.

Division 2—Failure of enforcement process

46—Community service orders

This clause provides for the making of community service orders and orders requiring a debtor or alleged offender to complete an intervention program. The order can be made by the Court on application by the Chief Recovery Officer where the Court is satisfied that the debtor or alleged offender does not have, and is not likely within a reasonable time to have, the means to satisfy a monetary amount owed by the debtor or alleged offender without the debtor or alleged offender, or the dependants of the debtor or alleged offender, suffering hardship.

47—Community service and intervention program orders may be enforced by imprisonment

This clause provides for the enforcement by imprisonment of an order under clause 46 requiring community service or the completion of an intervention program. The clause authorises the court to issue a warrant of commitment but provides that the court may refrain from doing so if satisfied that a person's failure to comply with an order was trivial or that there are proper grounds on which the failure should be excused.

Part 8—Civil debt recovery

Division 1—Preliminary

48—Interpretation

This clause provides definitions for a number of terms used in Part 8.

Division 2—Recovery of civil debt

49—Notification of debt

This clause provides that a public authority may notify the Chief Recovery Officer of a debt owed to the authority by a debtor. The Chief Recovery Officer may then make a civil debt determination in relation to the debt. The Chief Recovery Officer must give written notification of the civil debt determination to the debtor and inform the debtor

of the powers that can be used to recover the debt. The debtor must also be invited by the Chief Recovery Officer to enter into an arrangement for payment of the debt (such as an arrangement for payment of the debt by instalments). A civil debt determination may not be made by the Chief Recovery Officer if the Magistrates Court would not have jurisdiction to hear and determine a claim for the debt.

50—Application to Court in relation to debt

This clause provides a debtor who has received a civil debt determination with a right to apply to the Magistrates Court for revocation or variation of the determination. The public authority to which the debt is owed is the respondent to the application. The determination may be affirmed, varied or revoked by the Court.

51—Enforcement action

The Chief Recovery Officer may exercise the powers set out under Division 5 in relation to a debtor who has been notified of a civil debt determination if the debtor has not applied for the determination to be varied or revoked or entered into an arrangement as to the time and manner of payment of the debt (or such an arrangement has terminated) or if the determination has been confirmed or varied by the Court. However, the Chief Recovery is required to notify the debtor of a determination to exercise the power before it can be exercised. The power cannot be exercised if it is revoked.

52—Internal review of decision to take enforcement action

A debtor who has received an enforcement notice can apply for an internal review of the determination to which the notice relates. The Chief Recovery Officer may, on a review, make a decision confirming, varying or revoking the determination.

53—Review of decision to take enforcement action

If a decision to take enforcement action is confirmed or varied on an internal review, the debtor may apply to the Magistrates Court for review of the decision.

54—Effect of review proceedings on decision being reviewed

This clause provides that the commencement of an internal review, or proceedings for a review by the Court, does not affect the operation of the determination that is the subject of the review unless the reviewer makes an order staying or varying the operation of the determination.

55—Costs

This clause provides that costs incurred by the Chief Recovery Officer in relation to the exercise of powers and functions under Part 8 are added to and form part of the debt owed by the debtor.

56—Interest on debts

A debt that is the subject of a civil debt determination bears interest at the rate prescribed under the rules of the Magistrates Court for the purposes of section 35(1) of the *Magistrates Court Act 1991* .

Division 3—Payment by instalments

57—Voluntary arrangement as to time and manner of payment

Under this clause, a debtor may, at any time, if the debtor pays, or agrees to pay, the prescribed fee, enter into an arrangement with the Chief Recovery Officer—

- for payment of the debt by instalments over a period determined by the Chief Recovery Officer (being not more than 12 months from the date on which the arrangement is entered into); or
- for the taking of a charge over land; or
- for the surrender of property to the Chief Recovery Officer.

Division 4—Investigation powers

58—Investigation of debtor's financial position

This clause provides the Chief Recovery Officer with a power to require a debtor to provide the Chief Recovery Officer with the debtor's personal details. The Chief Recovery Officer may also require a person who the Chief Recovery Officer has reasonable cause to believe that a person has knowledge of personal details of a debtor to provide personal details of the debtor that are known to the person. Furthermore, the Chief Recovery Officer may, for the purposes of determining a debtor's means of satisfying the debt, require the debtor, or another person who may be able to assist with the investigation, to appear for examination before the Chief Recovery Officer or to produce documents relevant to the investigation to the Chief Recovery Officer.

59—Power to require information

A public sector agency or credit reporting body may be required under this clause to provide the Chief Recovery Officer with the contact details of a debtor. A public sector agency may also be required to produce

documents or other material or information to the Chief Recovery Officer. Particular public sector agencies may be excluded from the application of the clause by the regulations.

Division 5—Enforcement action

Subdivision 1—Preliminary

60—Aggregation of debts for the purposes of enforcement

Any number of debts owed by a debtor that are the subject of a civil debt determination may be aggregated for the purposes of exercising powers under Division 5.

Subdivision 2—Action requiring formal determination

61—Requirement for payment of instalments etc

The Chief Recovery Officer may determine under this clause that a debtor is to pay instalments towards the satisfaction of a debt owed by the debtor. The relevant enforcement notice must specify the amount and regularity of the instalments. If the debtor is a natural person, the Chief Recovery Officer must conduct an investigation into the debtor's means of satisfying the debt unless the Chief Recovery Officer is satisfied that there are, in the circumstances of the case, proper reasons for dispensing with such an investigation. In determining whether a debtor who is a natural person should be required to pay instalments towards the satisfaction of the debt, the Chief Recovery Officer should have due regard to evidence placed before the Officer as to—

- the debtor's means of satisfying the debt; and
- the necessary living expenses of the debtor and the debtor's dependants; and
- other liabilities of the debtor.

62—Garnishment

The Chief Recovery Officer may determine under this clause that money owing or accruing to a debtor from a third person, or money of a debtor in the hands of a third person, is to be attached to satisfy a debt owed by the debtor. If the Chief Recovery Officer makes or varies a determination under this clause, the garnishee may seek internal review of the determination or the decision to vary the determination.

63—Seizure and sale of property

The Chief Recovery Officer may make a determination under this clause to sell land or personal property of a debtor to satisfy the debt owed by the debtor. The Chief Recovery Officer may, pursuant to a determination under this clause—

- enter the land (using such force as may be necessary for the purpose) on which property to which the determination relates, or documents evidencing title to such property, are situated; and
- seize and remove any such property or documents; and
- place and keep any such property or documents in safe custody until completion of the sale; and
- sell any property to which the determination relates (whether or not the Chief Recovery Officer has first taken steps to obtain possession of the property).

64—Charge on land

The Chief Recovery Officer may, under this clause, determine that real property of a debtor is to be charged with some or all of the debt owed by the debtor. If such a determination is made, the Chief Recovery Officer may apply to the Registrar-General to register a charge over land owned by a debtor.

The effect of a charge is as follows:

- the Registrar-General must not register an instrument affecting the land over which the charge exists unless—
    - the instrument—
        - was executed before the entry was made; or
        - has been executed under or pursuant to an agreement entered into before the entry was made; or
        - relates to an instrument registered before the entry was made; or
    - the instrument is an instrument of a prescribed class; or
    - the instrument is expressed to be subject to the operation of the charge; or

- the instrument is a duly stamped conveyance that results from the exercise of a power of sale under a mortgage, charge or encumbrance registered before the entry was made;

- the Chief Recovery Officer (on behalf of the public authority to whom the debt is owed) has the same powers in respect of the land over which the charge exists as are given by the *Real Property Act 1886* to a mortgagee under a mortgage in respect of which default has been made in payment of money secured by the mortgage.

65—Charge over other property

This clause provides that the Chief Recovery Officer may determine that property of a debtor is to be charged with part or all of the debt owed by the debtor. If such a determination is made, the Chief Recovery Officer may—

- do anything necessary to ensure that the charge is registered; or
- make any necessary consequential determination (which will have effect according to its terms) prohibiting or restricting dealings with the property subject to the charge; or
- take any other action authorised by regulations.

Subdivision 3—Appointment of receiver

66—Appointment of receiver

The Chief Recovery Officer may apply to the Magistrates Court for the appointment of a receiver for the purpose of recovering a debt. If a receiver is appointed, the Court may make orders—

- conferring on the receiver powers—
  - to take charge of property of the debtor;
  - to dispose of property of the debtor;
  - to divert income (other than income from employment or a pension) towards satisfaction of the debt;
  - to take charge of, and carry on, a business of the debtor and apply proceeds from the business towards satisfaction of the debt;
  - to do anything reasonably necessary for, incidental to, or consequential on, the above; or
- providing for accounts to be rendered by the receiver; or
- providing for the remuneration of the receiver; or
- relating to any other incidental or consequential matter.

Part 9—Authorised officers

67—Authorised officers

The Minister is authorised under this clause to appoint authorised officers for the purposes of the enforcement of the measure. An appointment may be made subject to conditions limiting the powers exercisable by the authorised officer. A condition of an appointment may be varied or revoked, and an appointment may be revoked.

68—Identification of authorised officers

This clause requires that authorised officers be issued with identity cards. An authorised officer must produce the officer's identity card for inspection at the request of a person in relation to whom the officer plans to exercise powers.

69—Hindering authorised officer or assistant

This clause makes it an offence for a person to hinder an authorised officer, or a person assisting an authorised officer, in the exercise of powers under the Act.

Part 10—Miscellaneous

70—Minister may declare amnesty from payment of costs, fees and charges

This clause authorises the Minister to declare an amnesty from the payment of the whole or any part of costs, fees and other charges under the measure or the repealed *Criminal Law (Sentencing) Act 1988*. An amnesty must be declared by notice in the Gazette and applies to a debtor or class of debtors, and to an extent, specified in the notice.

71—Power of delegation—intervention program manager

This clause authorises intervention program managers to delegate powers or functions under the Act.

72—Liability

This clause provides that no civil liability is incurred by the Crown, the Chief Recovery Officer or a public sector employee in respect of the exercise, or purported exercise, of powers or functions under the Act.

73—Chief Recovery Officer may be assisted by others

This clause provides that the Chief Recovery Officer or an authorised officer may, in the exercise of powers or functions under the Act, be assisted by other persons (including a police officer).

74—Notice of determination

Where the Chief Recovery Officer is required to give notice of an arrangement or determination to a person, the notice must be in writing and specify reasons for the arrangement or determination.

75—Service of notices etc

This clause sets out service requirements. A notice, determination or other document may be given or served personally, by post or by email transmission. If the Chief Recovery Officer is required to give or serve a notice, determination or other document on a person but the whereabouts of the person cannot be ascertained, the following requirements apply:

- the Chief Recovery Officer must publish details of the notice, determination or other document on a website determined by the Chief Recovery Officer (and on publishing such details the Chief Recovery Officer will, for the purposes of the Act, be taken to have given the person, or served the person with, the notice, determination or document);
- however, if the person is a youth, is subject to a suppression order or is a protected person, the requirement to give the person, or serve the person with, the notice, determination or other document does not apply but—
  - the Chief Recovery Officer may cause details of the notice, determination or other document to be provided to the person by any other means reasonably available that do not involve public disclosure of the name of the person; and
  - on providing such details the Chief Recovery Officer will, for the purposes of this Act, be taken to have given the person, or served the person with, the notice, determination or document.

76—Regulations

The regulation making power authorises the Governor to make regulations contemplated by, or necessary or expedient for the purposes of, the Act. The regulations may—

- be of general or limited application; and
- make different provision according to the persons, things or circumstances to which they are expressed to apply; and
- provide that a specified provision of the Act does not apply, or applies with prescribed variations, to a specified person, circumstance or situation (or person, circumstance or situation of a prescribed class), subject to any condition to which the regulations are expressed to be subject; and
- provide that any matter or thing is to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Chief Recovery Officer or another prescribed person.

The clause authorises the making of regulations of a savings or transitional nature consequent on the commencement of any provisions of the Act.

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Cross-border Justice Act 2009*

2—Amendment of section 7—Interpretation

3—Amendment of section 68—Proceedings that may be heard in another participating jurisdiction

4—Amendment of section 120—Terms used in this Part

5—Amendment of section 121—Request to enforce fine in another participating jurisdiction

6—Amendment of section 122—Effect of making request

7—Amendment of section 125—Resumption of enforcement by Fines Director

8—Amendment of section 127—Effect of registration

9—Amendment of section 129—Receipt of money by Fines Director

10—Amendment of section 130—Request to cease enforcement of fine

These clauses make amendments consequential on the enactment of this measure and the *Sentencing Act 2017*.

Part 3—Amendment of *Expiation of Offences Act 1996*

11—Amendment of section 4—Interpretation

This clause amends the interpretation section of the *Expiation of Offences Act 1996* to insert a definition of *Chief Recovery Officer* and makes other consequential amendments.

12—Amendment of section 8—Alleged offender may elect to be prosecuted etc

This clause makes consequential amendments to section 8. An additional amendment provides that where an enforcement determination made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* is revoked on the ground that the alleged offender had not had a reasonable opportunity to elect to be prosecuted for an offence, the alleged offender may make an election to be prosecuted for the offence within 14 days of being notified of the revocation.

13—Amendment of section 8A—Review of notices on ground that offence is trifling

This clause makes consequential amendments to section 8A. An additional amendment provides that where an enforcement determination made under section 22 of the *Fines Enforcement and Debt Recovery Act 2017* is revoked on the ground that the alleged offender had not had a reasonable opportunity to apply for review of the notice, the alleged offender may make an election to be prosecuted for the offence within 14 days of being notified of the revocation.

14—Repeal of section 9

15—Amendment of section 11—Expiation reminder notices

16—Amendment of section 11A—Expiation enforcement warning notices

17—Amendment of section 12—Late payment

18—Repeal of sections 13 to 14B

The amendments made by these clauses are consequential.

19—Amendment of section 16—Withdrawal of expiation notices

Section 16 is amended by this clause by the addition of a new ground on which an issuing authority may withdraw an expiation notice so that a notice may be withdrawn if the authority is of the opinion that the alleged offender is suffering from a cognitive impairment. *Cognitive impairment* is defined to include the following:

- a developmental disability (including, for example, an intellectual disability, Down syndrome, cerebral palsy or an autistic spectrum disorder);
- an acquired disability as a result of illness or injury (including, for example, dementia, a traumatic brain injury or a neurological disorder);
- a mental illness.

20—Amendment of section 18—Provision of information

21—Repeal of sections 18B to 18E

The amendments made by clauses 20 and 21 are consequential.

22—Insertion of section 19A

Proposed section 19A provides that a notice, determination or other document required or authorised to be given or served under the Act may be given or served personally, by post or by transmitting it by email to an email address provided by the intended recipient (in which case the notice, determination or document will be taken to have been given or served at the time of transmission).

23—Amendment of section 20—Regulations

This amendment is consequential.

Part 4—Amendment of *Magistrates Court Act 1991*

24—Amendment of section 7A—Constitution of Court

25—Amendment of section 9A—Petty Sessions Division

The amendments made by clauses 24 and 25 to the *Magistrates Court Act 1991* are consequential.

Part 5—Amendment of *Motor Vehicles Act 1959*

26—Insertion of section 61A

Proposed section 61A relates to clause 43 of the measure. The Chief Recovery Officer may, under that clause, forward seized number plates to the Registrar. If that occurs, the Registrar may cancel the registration of the vehicle and must then make the required refund of the registration fee (or part of the registration fee).

27—Amendment of section 93—Notice to be given to Registrar

The amendments made by this clause are consequential.

28—Amendment of section 97A—Visiting motorists

The amendment to section 97A made by this clause relates to clause 40 of the measure. The Chief Recovery Officer may, under that clause, determine that the operation of section 41 of the *Motor Vehicles Act 1959* is suspended insofar as it applies to a specified person. Proposed subsection (2c) of section 97A provides that subsection (1) of that section does not apply to the person while the Chief Recovery Officer's determination is in force.

29—Amendment of section 139D—Confidentiality

The amendment made by this clause is consequential.

Part 6—Amendment of *Summary Procedure Act 1921*

30—Amendment of section 52—Limitation on time in which proceedings may be commenced

This amendment is consequential on the insertion of section 19A into the *Expiation of Offences Act 1996* by clause 22.

Part 7—Amendment of *Victims of Crime Act 2001*

31—Amendment of section 28—Right of Attorney-General to recover money paid out from offender etc

The amendments made by this clause are consequential.

32—Amendment of section 32—Imposition of levy

This clause amends section 32 to make it clear that the Chief Recovery Officer or an issuing authority may recover a levy before it becomes payable under the section.

Part 8—Transitional provisions

33—Transitional provisions

This clause makes provision for transitional arrangements consequential on the enactment of this measure.

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

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) (NO 2) BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:37): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment (Attorney-General's Portfolio) Bill 2017* makes amendments to various Acts to rectify minor errors and deficiencies that have been identified in legislation. In administering legislation, it is common to have agencies and interested parties raise administrative and legal issues that they have encountered. It is more efficient to deal with routine issues in a single omnibus Bill than in separate Bills for each Act.

Specifically, the Bill makes the following amendments:

Cross-border Justice Act 2009

The cross-border justice scheme provides for a coordinated approach to criminal justice in the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) lands, allowing each participating jurisdiction to extend the geographical area in

which its laws can operate. Under this scheme, correctional facilities and youth training centres are regulated according to the laws that apply in the state in which the facility is located. This prevents the facilities from having to apply a different set of rules to each person who is detained depending on where he or she committed the offence, was arrested, or ordinarily resides.

The *Youth Justice Administration Act 2016*, which provides mechanisms for the establishment and proper administration of youth training centres in this State, commenced on 1 December 2016.

The Bill makes a consequential amendment to the *Cross-border Justice Act 2009* as a result of the commencement of the *Youth Justice Administration Act*. The amendment provides that the *Youth Justice Administration Act* applies to youths detained in South Australia but does not apply to youths detained in other participating jurisdictions.

Justices of the Peace (Miscellaneous) Amendment Act 2016

The Bill makes minor amendments to the *Justices of the Peace (Miscellaneous) Amendment Act 2016*, which has received Royal Assent by His Excellency the Governor but has not commenced.

The *Judicial Conduct Commissioner Act 2015* established a comprehensive system for dealing with complaints against judicial officers. It amended the *Justices of the Peace Act* in relation to the suspension and removal of special justices, who hold judicial office. As a result, section 10A of the *Justices of the Peace Act* empowers the Governor to suspend or remove special justices from office and section 11, which makes provision for taking disciplinary action against justices of the peace, no longer applies. The *Judicial Conduct Commissioner Act* commenced on 5 December 2016.

On 21 September 2016 the Parliament passed separate amendments to the Justices of the Peace Act through the Justices of the Peace (Miscellaneous) Amendment Act. The Justices of the Peace (Miscellaneous) Amendment Act transfers the power to take disciplinary action against a justice of the peace, other than a special justice, from His Excellency the Governor to the Attorney-General. An inconsistency occurred because when the Justices of the Peace (Miscellaneous) Amendment Act was passed by the Parliament it did not take into account amendments made to section 11 by the Judicial Conduct Commissioner Act that, at the time, were yet to commence.

The Bill will correct any inconsistencies to enable the *Justices of the Peace Act* to operate as was intended by the Parliament.

Real Property Act 1886

The *Aboriginal Land Trusts Act 2013* amended section 6 of the *Real Property Act 1886* to update and clarify its wording. It is possible that this amendment had unintended consequences for the priority of interests in land. Therefore, the Bill amends the *Real Property Act* to return section 6 to the form in which it was originally enacted and to clarify that it should be taken to have never been amended.

Surveillance Devices Act 2016

The *Surveillance Devices Act 2016* currently prescribes the Police Ombudsman as the review agency for SA Police. The review agency has functions under the Act to inspect the records of investigating agencies, in this case the records of SA Police.

The *Police Complaints and Discipline Act 2016* created a new complaints scheme that resulted in the closure of the Police Ombudsman from 4 September 2017. The *Police Complaints and Discipline Act* made consequential amendments to a number of statutes to transfer the functions and powers of the Police Ombudsman to other agencies, however a consequential amendment to the *Surveillance Devices Act* was overlooked.

The Bill removes the Police Ombudsman as the review agency for SA Police and replaces it with 'the reviewer under Schedule 4 of the *Independent Commissioner Against Corruption Act 2012*'. This is consistent with the review agency for SA Police under the *Listening and Surveillance Devices Act 1972*, which the *Surveillance Devices Act* will replace.

The Honourable Kevin Duggan AM, QC has been appointed as the reviewer under Schedule 4 of the *Independent Commissioner Against Corruption Act* until 4 March 2020.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Cross-border Justice Act 2009*

3—Insertion of section 108A

Section 108A (Application of Youth Justice Administration Act 2016) is inserted with the effect that the *Youth Justice Administration Act 2016* does not apply to persons detained in a detention centre in another participating jurisdiction.

4—Insertion of section 117A

Section 117A (Application of Youth Justice Administration Act 2016) is inserted with the effect that the *Youth Justice Administration Act 2016* does apply to persons detained in a detention centre in the State under the Division.

Part 3—Amendment of *Justices of the Peace (Miscellaneous) Amendment Act 2016*

5—Substitution of section 8

This clause amends an amending Act: the *Justices of the Peace (Miscellaneous) Amendment Act 2016*. Section 8 of the amending Act (Amendment of section 11—Disciplinary action, suspension and removal of justices from office) is amended, clarifying that section 11 of the *Justices of the Peace Act 2005* does not apply to special justices and reflecting that action is to be taken under that section by the Attorney-General rather than the Governor.

Part 4—Amendment of *Real Property Act 1886*

6—Substitution of section 6

Section 6 is substituted with section 6 (Laws inconsistent not to apply) and section 6A (Effect of section 6). New section 6 is in fact a reinstatement of a version of section 6 that existed immediately before the commencement of the *Aboriginal Lands Trust Act 2013*. New section 6A clarifies that section 6 has effect as if Schedule 1 Part 4 of the *Aboriginal Lands Trust Act 2013* had never come into operation.

Part 5—Amendment of *Surveillance Devices Act 2016*

7—Amendment of section 3—Interpretation

This clause updates the definition of *review agency*, in the case of SA Police, as meaning the reviewer under Schedule 4 of the *Independent Commissioner Against Corruption Act 2012*.

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

STATUTES AMENDMENT (TERROR SUSPECT DETENTION) BILL

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:38): I move:

That this bill be now read a second time.

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

Leave granted.

The Government is moving swiftly to address concerns raised by the Commonwealth Government about state laws regarding parole and bail, and how these laws apply to people who have demonstrated support for, or links to, terrorist activities. The Statutes Amendment (Terror Suspect Detention) Bill 2017, for introduction today, is squarely aimed at addressing these concerns.

It was on Friday 9 June 2017 that the Council of Australian Governments (COAG) met, with leaders focussed on ensuring the safety of all Australians and agreeing to further strengthen collaboration to prevent and respond to terrorism and other threats to public safety, underpinned by strong justice and national security systems.

At COAG, first ministers agreed to ensure there will be a presumption that neither bail nor parole will be granted to those persons who have demonstrated support for, or have links to, terrorist activity. This is reflected in the Bill.

COAG also agreed that there will be integration of security-cleared state and territory corrections staff with the state and territory police, the Australian Federal Police (AFP) and the Australian Security Intelligence Organisation (ASIO) Joint Counter-Terrorism Team in each jurisdiction to improve information sharing. The Bill builds upon this agreement, but also provides an active role for prescribed agencies.

On Tuesday 13 June 2017 the Premier of South Australia announced this reform.

We are moving with speed to implement the COAG agreement due to the seriousness of this issue. Given the importance of this reform and the need for a coordinated approach involving multiple agencies and jurisdictions, following introduction of the Bill in the House of Assembly, the Government consulted further with other jurisdictions and across relevant agencies and subsequently moved a number of amendments to the Bill in that House. Those amendments are reflected in the Bill I introduce today. The Government anticipates a possible further set of

amendments to the Bill, particularly following the special COAG meeting on counter-terrorism to be held in early October 2017.

The Bill amends four Acts to create new regimes across the criminal justice system that apply to terror suspects.

Central to the scheme are the amendments to the *Police Act 1998 (SA)* (the Police Act). A new section is inserted into the Police Act to create a scheme whereby Australian jurisdictions can enter into agreement for the provision of terrorism notifications to be made by a prescribed terrorism intelligence authorities. These terrorism notifications are designed to ensure that relevant agencies in South Australia are alerted when other jurisdictions (including the Commonwealth) become aware that a person is suspected of terrorist offences, or of supporting or otherwise being involved in terrorist offences, or of associating or being affiliated with such persons.

Regulations will be drafted in close consultation with other jurisdictions, and with South Australia Police (SAPOL), to prescribe the appropriate law enforcement and intelligence authorities as terrorism intelligence authorities, thereby enabling them to make terrorism notifications.

Administrative arrangements will be put in place to enable the appropriate agencies in South Australia to record, and where necessary, act upon these terrorism notifications.

The Bill also permits SAPOL itself to make a terrorism notification under the Police Act.

The Bill ensures that any terrorism intelligence used as part of a terrorism notification is protected within the criminal justice system in the same way as criminal intelligence. These provisions are also contained in the amendments to the Police Act. A definition of 'terrorism intelligence' is included in the Bill to enable a court to objectively review the classification of information as terrorism intelligence, and not only procedural compliance with the Regulations.

Once a person becomes the subject of a terrorism notification, then special provisions apply to them under amendments to the *Bail Act 1985* (SA) (the Bail Act), the *Correctional Services Act 1982* (SA) (the Correctional Services Act), and the *Criminal Law (High Risk Offenders) Act 2015* (SA) (the High Risk Offenders Act).

Firstly to bail. Under the Bail Act, in most cases there is a presumption in favour of bail, meaning that the bail authority should release the applicant on bail unless, taking into account certain factors, the bail authority considers that the applicant should not be released on bail.

The current Bail Act provides for a list of prescribed applicants, whereby the prescribed applicant has a presumption against bail.

The Bill adds to the current list of prescribed applicants so that any person who is terror suspect cannot be granted bail unless they establish the existence of special circumstances justifying their release.

In addition, the amendments also require the bail application to be heard by a court, not determined by South Australia Police, allowing the court to consider any terrorism intelligence and to hear directly from the terrorism intelligence authority.

Under amendments to the Bail Act, a person is a terror suspect for the purposes of a bail application or bail agreement if:

- the bail application or bail agreement does not relate to a terrorist offence; but
- the person:
- has previously been charged with, or convicted of, a terrorist offence; or
- is the subject of a terrorism notification.

The presumption against bail applies to a person who has a history of being charged or convicted of a terrorist offence, regardless of the offence they are seeking bail in regard to.

This definition of terror suspect reflects the fact that anyone seeking bail for having actually been charged with a Commonwealth terrorist offence is not dealt with under the Bail Act, but rather their bail is considered in accordance with section 15AA of the Commonwealth *Crimes Act 1914*, which already provides for a presumption against bail for in relation to people who are currently charged with or convicted of certain terrorist offences.

If, at the time of commencement of these laws, a person who is currently released into the community, subject to a bail agreement, becomes a terror suspect, then their bail agreement is revoked, they may be arrested without warrant and their bail agreement will need to return to the court for consideration under this new regime.

Now to parole. The regime that provides for the release of a prisoner into the community on parole by the Parole Board of South Australia (the Board) is contained in the Correctional Services Act. The Bill amends the Correctional Services Act to create a presumption against parole being granted to a person who is a terror suspect. Whilst some prisoners are released automatically into the community at the expiry of their non-parole period (persons sentenced to a total term of imprisonment of less than five years who have not committed a sexual offence, arson, a

serious firearms offence or an offence of personal violence or breached parole) other must apply to the Board for release. Prisoners released on parole are subjected to conditions and they are supervised.

The Bill ensures that a prisoner who is a terror suspect cannot be released automatically into the community, even if their total term of imprisonment is less than five years

The paramount consideration of the Board when determining an application for the release of a prisoner on parole must be the safety of the community and there is a list of matters that the Board must take into account.

The Bill amends this process for terror suspects.

Under the amendments to the Correctional Services Act, a person is a terror suspect if:

- the person is charged with a terrorist offence;
- the person has ever been convicted of a terrorist offence; or
- the person is the subject of a terrorism notification.

As with the amendments to the Bail Act, if a person is serving a term of imprisonment for having committed a Commonwealth terrorist offence, then their application for parole is not considered by the Board, but rather is dealt with under Commonwealth laws.

However, these new provisions contained in the Bill will apply to any terror suspect who is serving a term of imprisonment for a state offence and who is seeking to be released parole.

Under the Bill, a special procedure is established for terror suspects, so that any decision of the Board concerning a terror suspect has no effect unless it is confirmed by the presiding member of the Board in accordance with new provisions. These provisions require that the presiding member of the Board must not confirm a decision to release to terror suspect unless there are special circumstances justifying their release.

Before making their decision, the presiding member is required to invite any terrorism intelligence authority to make submissions about the release (or not) of the terror suspect on parole. The presiding member can also take into account terrorism intelligence, which is protected.

Where the presiding member is absent, a deputy presiding member of the Parole Board will be able to act in the presiding member's place.

Upon commencement of the Bill, any person who is a terror suspect, or becomes a terror suspect, whilst on parole, will have their release on parole reviewed in accordance with these new special procedures.

Lastly, I turn to amendments to the High Risk Offenders Act.

Some prisoners choose to serve their entire head sentence in prison and be released unconditionally and unsupervised, rather than apply for parole. This is where the High Risk Offenders Act steps in.

The High Risk Offenders Act creates in South Australia a regime that provides for the supervision and possible detention of an offender who has served their total sentence of imprisonment.

The High Risk Offenders Act is designed to address concerns that some offenders who are about to leave prison or about to complete their parole, remain a risk to the community, by creating two types of orders: an extended supervision order and a continuing detention order.

The Attorney-General is able to apply to the Supreme Court for an extended supervision order to be made so that a high risk offender may be supervised and subject to strict conditions at the end of their sentence.

This application is made in the last 12 months of the person's total sentence (which they could be serving in prison or on parole) and the paramount consideration of the Supreme Court in determining an extended supervision order must be the safety of the community.

The Bill makes amendments so that either the State or the Commonwealth Attorney-General can make an application to the Supreme Court for an extended supervision order to be made against any terror suspect who is serving a term of imprisonment in South Australia, regardless of the offences they have committed. Under the Bill, the only criteria needed to trigger the application of the High Risk Offenders Act to a terror suspect is that they are a terror suspect and they are serving a term of imprisonment in South Australia.

The Bill inserts a definition of terror suspect into the High Risk Offenders Act so that a person is a terror suspect for the purposes of this Act if:

- the person is charged with a terrorist offence; or
- the person has ever been convicted of a terrorist offence; or
- the person is the subject of a terrorism notification.

However, a person will not be a terror suspect for the purposes of these provisions of the High Risk Offenders Act if the person is a terrorist offender within the meaning of subsection 105A.3(1) of the Commonwealth Criminal

Code (Code). Such persons will instead be subject to similar provisions in that Code and this 'carve out' is intended to avoid constitutional inconsistency between the new provisions of the High Risk Offenders Act and the relevant provisions of the Code.

In considering whether to make an extended supervision order, the courts needs to take into account an assessment of, and consider, the likelihood of the terror suspect committing a terrorist offence, or otherwise being involved in a terrorist act, or committing a serious offence of violence.

The term terrorist act is defined in the Bill to have the same meaning as in Part 5.3 of the Commonwealth Criminal Code and is consistent with the *Terrorism (Preventative Detention) Act 2005* (SA).

In considering the application for an extended supervision order, the State or Commonwealth Attorney-General may be represented in the proceedings by a terrorism intelligence authority and a terrorism intelligence authority has a right to appear and be heard in the proceedings. Any terrorism intelligence considered by the court is protected.

Under the High Risk Offenders Act, if a person breaches an extended supervision order, they will be detained in custody and brought before the Board within 12 hours. As with reform to parole, special procedures will apply when the Board considers a breach of an extended supervision order by a terror suspect.

Whilst the Board will then determine whether the terror suspect should remain at liberty on the extended supervision order or whether they should be detained in custody and brought before the Supreme Court, for a terror suspect the decision of the Board needs to be confirmed by the presiding member of the Board (or a deputy presiding member in his or her absence), who must firstly invite submissions from a terrorism intelligence authority and must only confirm the decision of the Board if satisfied that it is appropriate in all circumstances.

If the Board refers the matter to the Supreme Court, the court then has the power to then either order the terror suspect be released again on the extended supervision order or be detained for the remaining part of that order, or part of it, under a continuing detention order.

The paramount consideration of the Supreme Court in determining whether to make a continuing detention order must be the safety of the community. In considering the application for a continuing supervision order, the State or Commonwealth Attorney-General may be represented in the proceedings by a terrorism intelligence authority and a terrorism intelligence authority has a right to appear and be heard in the proceedings. Any terrorism intelligence considered by the court is protected.

The High Risk Offenders Act does not currently apply to children and young people under 18 years of age. The Bill amends this Act so that the new provisions will apply to 16 and 17 year old persons who are terror suspects. This recognises the possibility that young persons of that age may become radicalised and engage in terrorist-related activities, as has recently been reported in Australia and overseas.

The Bill provides that, for the purposes of the definition of terror suspect in the Bail Act, Correctional Services Act and High Risk Offenders Act, a person is only taken to have been charged with an offence if an information or other initiating process charging the person with the offence has been filed in the court.

Throughout the Bill the term terrorist offence is consistently defined to mirror the yet to commence Commonwealth legislation that provides for the making of continuing detention orders against terrorist offenders (the *Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016* (Cth)).

As such, in the amendments to the Bail Act, the Correctional Services Act and the High Risk Offenders Act, the term terrorist offence is defined to mean:

- an offence against Division 72 Subdivision A of the Commonwealth Criminal Code (international terrorist activities using explosive or lethal devices); or
- a terrorism offence against Part 5.3 of the Commonwealth Criminal Code where the maximum penalty is 7 or more years imprisonment; or
- an offence against Part 5.5 of the Commonwealth Criminal Code (foreign incursions and recruitment), except an offence against subsection 119.7(2) or (3) (publishing recruitment advertisements); or
- an offence against the repealed *Crimes (Foreign Incursions and Recruitment) Act 1978* of the Commonwealth, except an offence against paragraph 9(1)(b) or (c) of that Act (publishing recruitment advertisements); or
- an offence of a kind prescribed by the regulations for the purposes of this definition.

This Bill has been drafted to create a mechanism by which information sharing can enhance community safety.

This reform is designed to ensure that South Australian laws pertaining to bail, parole and post-sentence supervision and detention, are adapted to meet the risk posed to our community by terrorist offenders, as well as persons who have demonstrated support for, or links to, terrorist activity.

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 *Bail Act 1985*

4—Amendment of section 3—Interpretation

This clause inserts definitions in the *Bail Act 1985* for the purposes of the measure.

5—Insertion of section 3B

This clause defines a terror suspect.

6—Amendment of section 4—Eligibility for bail

This clause ensures that a person who has been granted bail but who subsequently becomes a terror suspect (and is arrested without warrant in accordance with proposed section 19B) may reapply for bail (which would then be determined in accordance with the provisions applying to terror suspects). The clause also allows a person who has ceased to be a terror suspect to apply for bail or for a replacement bail agreement.

7—Amendment of section 5—Bail authorities

This clause ensures that only a court can be a bail authority for a terror suspect and allows a terrorism intelligence authority (designated under the *Police Act 1998*) to be heard in relation to a bail application by a terror suspect. Provisions are also being inserted in the *Police Act 1998* relating to the manner in which a court must deal with information properly classified as terrorism intelligence.

8—Amendment of section 10A—Presumption against bail in certain cases

This clause provides a presumption against bail for a terror suspect.

9—Insertion of section 19B

Proposed new section 19B provides for cancellation of bail and arrest without warrant where a person released on bail subsequently becomes a terror suspect.

10—Transitional provision

The amendments apply to a person who applies for bail on or after commencement of the amendments as well as to a person who is, on that commencement, subject to a bail agreement. If a person subject to a bail agreement on commencement of the amendments falls within the definition of 'terror suspect', new section 19B will apply to the person (because they will be a person who has become a terror suspect while on bail).

Part 3—Amendment of *Correctional Services Act 1982*

11—Amendment of section 4—Interpretation

This clause inserts definitions in the *Correctional Services Act 1982* for the purposes of the measure.

12—Amendment of section 59—Deputies

This clause deals with what happens if the presiding member of the Board is for any reason absent or unable to act for the purpose of section 74B or 77AA. The provision allows the first or second deputy presiding member of the Parole Board to act in certain circumstances.

13—Amendment of section 66—Automatic release on parole for certain prisoners

This clause ensures that there is no automatic parole for a terror suspect.

14—Insertion of section 74B

Proposed new section 74B provides for suspension of parole if a person becomes a terror suspect while on parole. A warrant must be issued for the arrest of the person and the presiding member of the Parole Board must determine (after hearing from a terrorism intelligence authority) whether or not the person's parole should be cancelled or whether special circumstances exist for it to continue. Information classified as terrorism intelligence must not be disclosed (except to a court, the Attorney-General or to a person to whom a terrorism intelligence authority authorises its disclosure) by the presiding member. The presiding member is also not required to provide the person with reasons for the determination (to ensure the confidentiality of terrorism intelligence information).

15—Amendment of section 77—Proceedings before Board

This clause requires a terrorism intelligence authority to be notified if an application for parole is made by a terror suspect.

16—Insertion of section 77AA

This clause sets out a special procedure in relation to Parole Board proceedings involving a terror suspect. In such a case, a decision of the Parole Board is of no effect unless it is confirmed by the presiding member of the Board after hearing from a terrorism intelligence authority. In particular, a decision to release a terror suspect on parole must not be confirmed unless the presiding member determines that there are special circumstances justifying the prisoner's release on parole. The presiding member may confirm a decision, reject a decision or refer a matter back to the Board with recommendations for its further decision. Information classified as terrorism intelligence must not be disclosed (except to a court, the Attorney-General or to a person to whom a terrorism intelligence authority authorises its disclosure) by the presiding member. The presiding member is also not required to provide the person with reasons for the determination (to ensure the confidentiality of terrorism intelligence information).

17—Transitional provision

The amendments apply to a person who is serving a sentence of imprisonment or who is on parole on or after commencement of the amendments. If a person on parole on commencement of the amendments falls within the definition of 'terror suspect', new section 74B will apply to the person (because they will be a person who has become a terror suspect while on parole).

Part 4—Amendment of *Criminal Law (High Risk Offenders) Act 2015*

18—Amendment of section 4—Interpretation

This clause inserts definitions in the *Criminal Law (High Risk Offenders) Act 2015* for the purposes of the measure.

19—Amendment of section 5—Meaning of high risk offender

This clause includes terror suspects who are serving a sentence of imprisonment in the definition of *high risk offender*.

20—Insertion of section 5A

This clause defines a terror suspect for the purposes of the *Criminal Law (High Risk Offenders) Act 2015*.

21—Amendment of section 6—Application of Act

This clause allows the Act to apply to a youth of or above the age of 16 who is a terror suspect.

22—Amendment of section 7—Proceedings

This clause makes provision in relation to proceedings for an extended supervision order relating to a high risk offender who is a terror suspect.

23—Amendment of section 8—Parties

This clause allows a terrorism intelligence authority to appear, or act as a party to, proceedings for an extended supervision order relating to a terror suspect.

24—Amendment of section 18—Continuing detention orders

This clause allows a terrorism intelligence authority to appear, or act as a party to, proceedings for a continuing detention order relating to a terror suspect.

25—Insertion of section 19A

This clause sets out a special procedure in relation to Parole Board proceedings involving a terror suspect. In such a case, a decision of the Parole Board is of no effect unless it is confirmed by the presiding member of the Board after hearing from a terrorism intelligence authority. The presiding member may confirm a decision, reject a decision or refer a matter back to the Board with recommendations for its further decision. Information classified as terrorism intelligence must not be disclosed (except to a court, the Attorney-General or to a person to whom a terrorism intelligence authority authorises its disclosure) by the presiding member. The presiding member is also not required to provide the person with reasons for the determination (to ensure the confidentiality of terrorism intelligence information).

26—Transitional provision

The amendments will apply in relation to a person serving a sentence of imprisonment on or after the commencement of the amendments (regardless of when the relevant offence was committed).

Part 5—Amendment of *Police Act 1998*

27—Insertion of section 74B

Proposed section 74B provides:

- that the regulations may designate a law enforcement authority, or any other authority, as a *terrorism intelligence authority*; and
- that information relating to actual or suspected terrorist acts (whether in this State or elsewhere) the disclosure of which could reasonably be expected to prejudice investigations into such acts, to enable the discovery of the existence or identity of a confidential source of information or to endanger a person's life or physical safety may be classified by a terrorism intelligence authority as *terrorism intelligence* in accordance with procedures prescribed by the regulations; and
- for duties of a court in dealing with information properly classified by the authority as terrorism intelligence (similar to the duties that apply in relation to criminal intelligence); and
- that a Minister may enter into an intergovernmental agreement for the provision, by a terrorism intelligence authority, of terrorism notifications relating to persons suspected of terrorist offences or of supporting or otherwise being involved in terrorist offences, or of associating or being affiliated with such persons and in that case the Minister must ensure that information relating to the agreement is provided, as soon as practicable, to the Crime and Public Integrity Policy Committee of the Parliament; and
- that a police officer of or above the rank of inspector may, in accordance with guidelines issued by the Commissioner, provide a terrorism notification relating to persons suspected of terrorist offences, or of supporting or otherwise being involved in terrorist offences, or of associating or being affiliated with such persons and if the Commissioner issues any such guidelines the Commissioner must ensure that information relating to them is provided, as soon as practicable, to the Crime and Public Integrity Policy Committee of the Parliament; and
- an evidentiary provision relating to proof of a terrorism notification; and
- regulation making power to deal with other necessary or expedient matters.

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

STATUTES AMENDMENT (RECIDIVIST AND REPEAT OFFENDERS) BILL

Introduction and First Reading

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

At 17:40 the council adjourned until Tuesday 17 October 2017 at 14:15.