LEGISLATIVE COUNCIL

Thursday, 19 October 2017

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

The PRESIDENT: We acknowledge Aboriginal and Torres Strait Islander peoples as the traditional owners of this country throughout Australia, and their connection to the land and 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) (11:33): 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

SITTINGS AND BUSINESS

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (11:34): I move:

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

Motion carried.

Bills

ENVIRONMENT PROTECTION (WASTE REFORM) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 9 August 2017.)

The Hon. J.M.A. LENSINK (11:34): I rise to make some comments in support of this piece of legislation, which has had quite a significant period of gestation, arising out of concerns within the EPA and the waste sector about clamping down on certain practices which have helped certain operators to avoid paying waste levies, and there are a number of other measures within the bill to tighten up other areas of compliance. I will talk briefly about some of the history of this.

Parliamentary Procedure

VISITORS

The PRESIDENT: The Hon. Ms Lensink, I am sorry to interrupt but I have just noticed the Hon. Mr Kandelaars and his wife Glenys. I would like to acknowledge their presence and it is good to see, Glenys, that you are looking quite well and going well. That is great.

Honourable members: Hear, hear!

Bills

ENVIRONMENT PROTECTION (WASTE REFORM) AMENDMENT BILL

Second Reading

Debate resumed.

The Hon. J.M.A. LENSINK (11:36): In 2015, there had been yet another fire at one of the facilities at Wingfield. Details are yet to be confirmed, because I think at some stage these matters were before the courts, but it has certainly been our understanding that that arose because there were certain materials being stockpiled. Some of these materials, particularly when they are in large quantities, can be quite combustible and allegations have certainly been made that materials were stockpiled at certain facilities because that was a way to avoid paying waste levies.

For those who do not necessarily understand how the current system works, the various operators who collect materials which are meant to be recycled—turned into other materials and then find other markets—are brought to particular facilities in regional areas. Those are transfer stations, and they pay a levy, from what I understand, once the materials leave those particular facilities. There is obviously a gate fee that people pay to drop off the materials, so some of the operators have been collecting handsome gate fees, then never having to pay fees to the EPA because they basically leave them on site, which is clearly subverting the intention of this legislation.

So, following the fire at Wingfield in 2015, the Liberal Party said it would refer this matter to a parliamentary committee. We deemed that the Environment, Resources and Development Committee was the correct committee, so that did a short examination, but I will give credit where credit is due: the EPA conducted its own quite extensive consultation, including summits and the production of at least one extensive consultation paper, and so here we have the legislation before us.

At times, the waste industry can be more divided than *The Real Housewives of New Jersey*, but I have not had any complaints on this particular piece of legislation, so I am satisfied that, by and large, the industry is in furious agreement that it should proceed. The amendments will better regulate, simply speaking—a lot of the EPA legislation is quite technical—the flow of material through various operations. There is a concept of approved recovery resources, which is very important to that. There are also further penalties for illegal dumping.

The other key reforms target unauthorised stockpiling. I think those are the key concepts that are contained within the legislation. With those comments, I do have a couple of specific questions that I will raise at clause 1. I look forward to the debate on the bill.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (11:40): I rise to close the debate at the second reading stage. I would like to thank the Hon. Michelle Lensink for her contribution, and the Liberal Party's indication of support for the legislation. I would also like to thank those who have not made a contribution but have been engaging with the bill through briefings with my office and the EPA, and also for their indication of support for the legislation.

As the Hon. Michelle Lensink mentioned, this bill has been developed collaboratively with industry over the last two years. It contains numerous important reforms that will provide the necessary underpinning to enable the EPA to implement important waste reforms, as well as providing improved tools for dealing with excessive stockpiling, waste levy avoidance, illegal dumping and contraventions of the Environment Protection Act.

The bill supports the economic and environmental health benefits that we want for our state. The state government wants to unlock future potential and drive innovation in the waste management and resource recovery sector that is already a billion dollar industry for our state, employing nearly 5,000 people. We seek to continue to lead the way in demonstrating that we can both protect our environment, but support businesses and jobs growth at the same time. In fact, they go hand in hand.

I thank the waste and resource recovery sector—the industry is a very strong industry, it works proactively together, particularly engaging with government and local government—for their strong support for this bill and other reforms that are being pursued. These reforms will support the

South Australian government in continuing to lead the way in waste management and resource recovery. The state has a very proud record in this regard, and we think we can go to further strengths. I commend the bill to the chamber, and look forward to the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. J.M.A. LENSINK: Could the minister outline how the alterations to measuring and applying the levy to volumes of waste will take place in practice compared to what it does now? I understand that under the present situation, the levy is applied when the volumes leave a particular facility, but I understand that one of the significant changes is that it will be when they enter that particular facility. So, could the minister outline how the operational changes will alter?

The Hon. I.K. HUNTER: Essentially, the honourable member's grasp of it is right. The levy applies when waste is disposed of, at the point of disposal and not previously. This is partly the problem we are trying to address, because that means if people do not dispose of the waste they do not pay a levy, which means they may be induced to stockpile inappropriately. The real raison d'etre for this bill is to actually increase the flow of material through the system, either to recycling or to landfill, whatever the end result is, in a faster way.

In terms of the detail, I have some advice that I will put on the record for the honourable member and those she talks to. As I said, the clause will assist in better managing stockpiling and complements other work that has been done in sections 3 and 10 of the act. Stockpiling materials obviously creates several problems. One is the distortion of competition in the markets, and this is one that is not often grappled with. This distortion occurs where a business can legally stockpile significantly more material than a competitor, thereby being able to defer costs and gain a commercial advantage. This is one of the major complaints that industry has brought to the government and why we are addressing it through this process.

Another is the legal accumulation of a very large volume of stockpiled material that can involve large clean-up costs later on if the site is, for example, abandoned, or if a business goes into liquidation. Eventually the taxpayer is effectively left with the clean-up process. The EPA currently has limited opportunities to uniformly impose limits on the amount of material that can be stockpiled, and can only impose limits where materials pose a clear environmental harm or risk. That does not take into consideration those other things I have just mentioned.

Limits can usually only be imposed when a business is seeking to renew their licence or environment authorisations. That can build in some significant delays, and the EPA is restrained from acting quickly. For example, if the EPA determined that it would be inappropriate to store more than a certain amount of material, currently the only way this limit could be imposed on businesses storing that material is when the licences come up for renewal, and for some licences that could be as long as four and a half or five years.

We argue that the EPA is currently restrained from acting quickly and can apply these new limitations only when those licences come up for the renewal process. This bill allows them to act more quickly. This means that some businesses would have this limit imposed sooner while others would not need to comply until their licences were renewed, and then you fast come to the problem of not having a level playing field for industry. As I said, this could mean a difference of up to 5 years.

To address this issue the government, through this amendment, is proposing to provide the EPA with the ability to impose conditions across all licence holders, regardless of when the licence is due for renewal. This will support the fairness and certainty we have been asked to provide to the industry. If adopted, this clause—we are talking about clause 17, which amends section 45—Conditions—will allow the EPA to make changes to impose or vary existing maximum stockpiling limits. The EPA would only be able to exercise this ability if it considered the measure necessary to help promote better material flow through the waste management process.

Again, this allows the EPA some flexibility to better respond to changing market conditions. For example, if the price of metals dropped significantly the EPA could respond by increasing the amount of scrap metal such businesses could store. Of course, they would have to take into regard any environmental considerations. That recognises the value of helping minimise cost pressures during difficult trading periods, and is the flexibility the industry has asked us to provide. The EPA will consult with stakeholders and the community when reviewing the setting of the circumstances under which the EPA will amend licence conditions, and will also seek to work with industry when it is identified that current stockpiles are excessive.

The amendments we are proposing with this legislation also finetune the penalty system for breaching licence or environmental authorisation conditions. They involve the introduction of expiation fees and default penalties, which are slightly different from the current situation. These amendments also reflect the proposed abandonment of divisional penalties under the act and the resumption of monetary penalties. Expiation fees will be set by regulation and applied to particular conditions. Where breaches of condition, other than reporting deadline conditions, do not have an expiation fee set, the fee will be $1,000.

These amendments, which are changes to the current day-to-day operation, are essentially about giving the EPA flexibility to respond to industry's requests and providing a level playing field, as well as giving it the ability to impose limitations more quickly than it otherwise could. At the moment it can do that only when licences are renewed.

The Hon. J.M.A. LENSINK: I thank the minister for that explanation. The flip side to this is that, while the amendments to section 45 are welcomed, there may be some unintended consequences. One of the other complaints that we have not really talked about as yet in relation to the legislation is that we get complaints from operators who think the EPA can at times be too heavy-handed, or be using its discretion, perhaps, to make an example of a particular operation. Can the minister provide some details as to how the EPA will come up with some guidelines that will perhaps guide industry, which I think he touched on in his last response, in particular for the protection of smaller operators?

The Hon. I.K. HUNTER: My advice is that we will approach this in a concerted effort to consult with industry and stakeholders. We will be publishing compliance and performance approaches so that everybody understands we are all coming from the same place. A right of appeal to the ERD Court will be built in for all licence holders. Essentially, to answer those two questions, I will advise the chamber that we will develop these guidelines as we do the regulations, which will drive the outcomes we are seeking, in accordance with our established policies of talking to the industry and consulting.

There are a couple of issues here that we need to talk about. In terms of the small operator, they will be impacted, I suppose, at the highest level in terms of the financial assurances the EPA might put in place around stockpiling conditions. We expect—and this will need to be tested on the basis of the data we have before us about the volume of waste that is dealt with by small operators—that they will not be impacted. Because of the small amounts, they will be relatively irrelevant for small operations or readily able to be avoided by proper site management. Again, that is to get a better outcome.

As a further safeguard, as I said, licence holders have a right of appeal to the ERD Court against any proposed licence condition, so that only reasonable and practical solutions are going to be pursued. However, we would rather front-end that and work with industry to make sure that we get reasonable and practical solutions, rather than wait for an appeals process. The EPA has a good track record of consulting with stakeholders in regard to developing workable regulations.

In terms of the issues around stockpiling conditions, the act already allows the EPA to require financial assurances, so that is not new but it pertains to where environmental harm risks justify it. The waste reform bill before us proposes to expand the circumstances in which these conditions can be required to also cater for, as I mentioned in my closing speech, abandonment or liquidation of a company and abandonment of a site, leaving a large and expensive clean-up operation for the state or local government.

It is also around material flow risks that can pose burdens on our community; for example, fire risks, as we saw a few months ago at a facility in Victoria. Irrespective of what the material type is and where abandoned materials may not pose a direct safety risk, it can cost many hundreds of thousands of dollars for the community to accept responsibility due to high waste volume. So, managing stockpile volumes is of critical importance, not just for day-to-day operations but also future risk to the community.

Circumstances in which a financial assurance or a stockpiling condition would be imposed in any of the cases I briefly touched on would be pursued in accordance with the EPA policies as they currently exist, or as they will exist with this bill passing. These policies have yet to be developed, and they can only be developed with the industry because they are the ones that will be able to give us advice about whether the policies are practical and whether they will work and get the outcomes that we seek with this legislation.

I am advised that financial assurances are only imposed by the EPA where they are justified. Currently, it is by environmental risk, but if this bill is successful it will also add to that abandonment issues—sites being abandoned by companies or companies going into liquidation—or the material flow risks of that site. Of course, it must be proportional to the risk, otherwise the ERD Court would have something to say about it.

Those are the safeguards built-in in terms of increasing the remit away from just environmental health issues towards those further two issues that I talked about, as well as the right of appeal to the ERD Court should a small operator be caught by this. However, our expectation is, looking at the data we have on the operations of small operators, that they would not be impacted in a negative way by this legislation.

The Hon. J.M.A. LENSINK: In relation to the financial assurances, can the minister give us some idea of what is the order of magnitude of those at the moment and whether, following the passage of legislation, that is likely to change?

The Hon. I.K. HUNTER: The types of assurances that are in play at the moment—and the honourable member may remember that I just said that in fact the act already gives the EPA an ability to do this—I am advised all relate to landfill currently. They are in place to provide for their ultimate safe closure.

You can imagine a landfill site operated as a private enterprise closing down, not having provided for safe closure, leaving and exposing the community to risk. The financial assurances are in place to provide for that. They range from about $50,000 to just over $1 million, I imagine, depending on the size and the relative risk associated with the landfill.

What we propose to do, though, is to emulate the situation in New South Wales and Victoria where they have a published policy about what that range of assurances will be, who would pay for them, why they would pay for them and what the risk profiles are. We will be developing a document to make available to the industry so they understand what the assurances are meant to do, what the range would be and what the risk parameters are.

The Hon. J.M.A. LENSINK: I thank the minister for that response. In relation to proposed new section 88A, which relates to authorised officers investigating illegal dumping, we do see from time to time these stories in the media about various acts of illegal dumping of asbestos and other fairly undesirable materials. Are these amendments envisaged to tackle those sorts of incidents, or are there other specific issues, other than roadsides, that these powers are aimed at?

The Hon. I.K. HUNTER: I thank the honourable member for the further question about the authorised officers and their additional powers. Yes, asbestos is clearly one of those issues but not the only one. The honourable member will recall that we have now taken the levy off of asbestos. So, what might have been a small discouragement to proper disposal has been removed. The large cost of dealing with asbestos is to have qualified asbestos removalists remove the asbestos from a property, wrap it up appropriately and take it to an authorised dump.

We have done what we could in terms of removing the levy on asbestos. In terms of the further powers, really what we are trying to tackle here is illegal dumping. It gives our officers an ability, where they suspect there is a risk—they may go to past practices, past legal cases or indeed

to the type of waste we are talking about; that is a matter for officers to determine based on their data and records—they have the power to enter a site and leave some special high-tech equipment around the material that will be dumped, which could be later traced. We are talking about microdots or something like that—the sort of things that are sprayed underneath the chassis of high-end cars; that sort of thing.

The reason we are doing this, of course, is that there are a lot of difficulties in actually completing a legal case against suspected dumpers. The points of law that are taken sometimes do not enable us—or there may be insufficient witness evidence, for example—to complete an investigation through the process to a final court outcome that we would like to see. We are trying to give some powers to the authority, or the authorised officers, I should say, that will allow us to address these issues.

The reforms are essentially these. Firstly, the bill seeks to clarify that an offence of illegal dumping includes disposal of waste. You might think that is common sense, but our lawyers advise us that we need to put that word in. Secondly, the reforms will hold a registered owner of a vehicle responsible for illegal dumping from the vehicle in a similar way that speeding offences caught on camera hold the vehicle owner responsible unless the owner provides a statutory declaration to the contrary nominating the person who is responsible. This also replicates provisions in the Local Nuisance and Litter Control Act, which we passed last year.

Thirdly, the bill seeks to increase the powers of authorised officers to enter premises to mark waste, as in the situation that I just outlined. Finally, the reforms will empower the EPA to use a tracking device to track waste if suspected illegal dumping of that waste may occur.

Clause passed.

Remaining clauses (2 to 32), 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) (12:02): I move:

That this bill be now read a third time.

Bill read a third time and passed.

PREVENTION AND EARLY INTERVENTION FOR THE DEVELOPMENT AND WELLBEING OF CHILDREN AND YOUNG PEOPLE BILL

Introduction and First Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (12:02): Obtained leave and introduced a bill for an act to provide a framework for improving the wellbeing and development of children and young people; to recognise the primacy of prevention and early intervention in improving outcomes for children and young people; to provide for a whole of state strategy for furthering the purposes of this act; to recognise the importance of strengthening families and communities in improving outcomes for children and young people; to ensure that, where intervention in the lives of children and young people is necessary, that intervention occurs at the earliest opportunity; and for other purposes. Read a first time.

Second Reading

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (12:04): I move:

That this bill be now read a second time.

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

Leave granted.

The South Australian government in its response to the recommendations of the Child Protection Systems Royal Commission has sought to look beyond statutory child protection measures to develop a system of broader child development, one that begins before birth and continues until adulthood, to promote the health, safety and wellbeing of all children and young people in this State.

The government recognises that to provide every child and young person with the best start in life, it is necessary to support families and intervene early where necessary to assist vulnerable children. To achieve this, the government recognises that policies, services and programs should be evidence-based and targeted to the particular needs of children, young people and their families.

In establishing a system that looks beyond statutory child protection responses, the Government has established and continues to develop:

- Our long standing Children's Centres for Early Childhood Development and Parenting which provide services that reflect community needs, bringing together care, learning, family support, community development and health services for families with children from birth to 8 years.
- Child wellbeing practitioners who work across metropolitan and country public schools to identify children and families at risk and connect them to appropriate support as an early intervention measure before situations escalate to a potential child protection response; and
- Child and family assessment and referral networks which are integrated into Children's Centres for Early Childhood Development and Parenting and collaborate with other providers in local regions to deliver new referral pathways and services, tailored to the individual needs of children and families.

In response to the Child Protection Systems Royal Commission, the South Australian Parliament has recognised the need for significant improvements to legislation for children and young people in South Australia through the *Children and Young People (Oversight and Advocacy Bodies) Act 2016,* the *Child Safety (Prohibited Persons) Act 2016*, and the *Children and Young People (Safety) Act 2017*.

The *Prevention and Early Intervention for the Development and Wellbeing of Children and Young People Bill 2017* represents the next step in recognising South Australia's commitment to leading the nation in prevention and early intervention services through a legislative framework to ensure that both universal and targeted measures are developed and in place.

The object of the Bill is to improve outcomes for all children and young people. This will be achieved by establishing a legislative framework to ensure that reasonable, practicable and evidence based measures are taken to build the capacity and strengthen families and communities, and facilitate improvements in the wellbeing and development of children and young people. In particular, these measures will be supported by targeted assistance to vulnerable children, young people and their families.

The object of the Bill will also be achieved by:

- ensuring government and non-government service providers work with families and communities to provide services that are timely and referral pathways are needs based, local and integrated;
- establishing collaborative partnerships between government and non-government organisations and communities; and
- by recognising the interests and aspirations of Aboriginal and Torres Strait Islander families and communities and their ability to make a significant contribution in partnership to furthering the purposes of this Act.

As set out in the principles of the Bill, parents, guardians and carers have the primary role in the wellbeing and development of children and young people in their care; whilst individuals, community groups and government have a shared responsibility to ensure every child and young person is supported to grow happy and cared for, be kept safe from harm, and be supported to participate in society and fulfil their potential.

A significant amount of consultation on the objects and principles has occurred with government and non-government stakeholders. Over 100 stakeholders attended workshops on 21 and 22 August 2017 together with broader community consultation via YourSAy. Further targeted consultation has also occurred with stakeholders. This bill has been significantly strengthened as a result of seeking, and listening to, the views and ideas of stakeholders on how to best legislate the importance of prevention and early intervention for the wellbeing and development of children, young people and their families. I thank all the stakeholders who contributed to this process.

The Bill is intended to achieve lasting outcomes in strengthening families and communities to improve the wellbeing and development of children and young people in this state. It establishes appropriate functions for the Minister to achieve this intention, most notably, the functions of:

- preparing and maintaining a Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their families.

- promoting a partnership approach between the state, local government and non-government agencies, families and communities in the planning and delivery of prevention and early intervention services ; and
- ensuring evidence-based measures are taken in the design and delivery of services to build capacity and strengthen families and communities.

In requiring the Minister to prepare a State Strategy, the Bill provides that the Strategy must set out:

- the priorities that the Minister will pursue in order to further the purposes of this Act;
- the strategies that the Minister intends to adopt to meet those priorities; and
- intended outcomes and the measures to be used in relation to those outcomes.

In the development of the State Strategy, the Bill requires the Minister to undertake consultation with community and peak bodies as set out in regulations, and the Commissioner for Children and Young People. There is a requirement for the Minister to seek submissions from the Child Development Council.

The Minister must, at least once in each 5 year period, cause the State Strategy to be reviewed.

In recognising the important role that government and non-government services providers play in promoting the wellbeing of children and young people, the Bill sets out that prescribed service providers must have regard to, act consistently with, and seek to further the purposes of the Bill and, to the extent that it is reasonably practicable, to implement the State Strategy. These prescribed service providers will include relevant government departments and local government.

We know that ensuring improvement in the outcomes of children and young people requires accountability and this is best promoted through measuring and reporting on programs and services and their impact on the wellbeing and development of children and young people. To promote accountability, the Bill provides that the Minister must, each year, report to Parliament on the operation of this Act during the previous financial year.

Families, communities and government all have a role in the wellbeing and development of children and young people.

This Bill sets out legislation we need to achieve this; it will ensure we have the modern framework to support prevention and early intervention in South Australia.

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—Meaning of rights, wellbeing and development

This clause defines the relevant terms.

5—Meaning of prevention and early intervention

This clause defines the relevant terms.

6—Interaction with other Acts

This clause clarifies the relationship between this proposed measure and other Acts.

Part 2—Purposes of this Act

7—Effect of Part

This clause explains the various components of the proposed Part which, collectively, constitute the purposes of the proposed Act.

8—Commitment to the United Nations Convention on the Rights of the Child

This clause sets out Parliament's recognition of the *United Nations Convention on the Rights of the Child* and its intention that prescribed service providers will seek to give effect to the rights set out from time to time in the convention.

9—Objects of Act

This clause sets out the objects of the measure.

10—Principles

This clause sets out principles to be taken into account in the administration and operation of the measure.

11—Recognition of the importance of involving children and young people and families in decisions and inclusion

This clause sees Parliament recognise a number of important factors relevant to the operation of the measure.

Part 3—Administration

12—Administration of Act to further purposes of Act

This clause requires the Minister, the Chief Executive and any other person or body involved in the administration of this proposed Act, and any person or body required to consider the operation or application of this proposed Act (whether acting under this Act or another Act), to act consistently with, and seek to further, the purposes of this measure.

13—Prescribed service providers to further purposes of Act

This clause requires prescribed service providers, as defined, to act consistently with, and seek to further, the purposes of this measure along with the State Strategy, except where the provider is acting in accordance with another Act.

14—Functions and powers of Minister

This clause sets out the functions and powers of the Minister under the measure.

15—Delegation

This clause is a standard power of delegation.

Part 4—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

Division 1—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

16—Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families

This clause requires that there be an instrument (the *Whole of State Strategy for Prevention and Early Intervention for Children and Young People and their Families*) setting out strategies intended to further the purposes of the measure. The clause also requires the State Strategy to provide for its implementation, and to set out related priorities, strategies, outcomes and measures.

17—Preparation of State Strategy

This clause makes procedural provision setting out the steps to be taken by the Minister in the course of preparing or varying the State Strategy.

18—Periodic review of State Strategy

This clause requires the Minister, at least once in each 5 year period, to cause the State Strategy to be reviewed. The clause makes procedural provision in relation to such reviews. A report of the review is to be provided to the Parliament.

19—Publication of State Strategy etc

This clause requires the Minister to publish a current version of the State Strategy on a website, and to make hard copies available for inspection by members of the public.

Division 2—Consultation and public engagement

20—Consultation and engagement with peak bodies

This clause sets out how the Minister is to undertake consultation with the specified peak bodies under the measure.

21—Community consultation and engagement

This clause sets out how the Minister is to undertake community consultation and engagement under the measure.

Part 5—Accountability

22—Minister to report annually to Parliament on operation of Act

This clause requires the Minister to report on an annual basis to the Parliament on the operation of the proposed Act, with the report to contain the specified information.

23—Review of Act

This clause requires the Minister to cause a review of the operation of the proposed Act to be conducted, and a report prepared, before the fifth anniversary of the commencement of this measure. The report must be laid before Parliament.

Part 6—Miscellaneous

24—Limitation of liability

This clause limits liability relating to things done, or required to be done, under the Act and in good faith.

25—Confidentiality

This clause is a standard offence relating to the disclosure of confidential information.

26—Regulations

This clause is a standard regulation making power.

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

APPROPRIATION BILL 2017

Second Reading

Adjourned debate on second reading.

(Continued from 18 October 2017.)

The Hon. T.J. STEPHENS (12:05): I rise to speak on the Appropriation Bill 2017. When this budget was handed down by the Treasurer in the other place, it faced immediate scrutiny and justifiable criticism, ably articulated by our leader, Steven Marshall (member for Dunstan), but equally vocal have been our constituents and South Australian businesses.

South Australians are rightfully doubtful about the ability of this government to properly address the alarming economic situation this state finds itself in after 16 years of an incompetent Labor government. This budget presents more of the same Labor tactics that we have become familiar with, so I find it disappointing that my colleagues and I have had to repeatedly address the same issues year after year. Issues including poor economic growth, unemployment and rising costs of living, far from being resolved are in fact becoming worse under this tired government.

Labor's high taxes and overspending has not and will not work. It is ordinary South Australians who are suffering and will continue to suffer. This is the third consecutive jobs budget—and I say, so-called jobs budget—that we have seen from Labor, yet little improvement to economic growth or employment has been achieved. We need drastic change to pull this state out of the economic decline that Labor has created with years of poor management. This state has the potential for prosperity. South Australians should not have to put up with more Labor excuses. There is no reason why our state cannot thrive with economic activity, innovation and industry.

This state has endured such low economic growth over the past few years that the government continually reduces growth targets, and yet we still cannot meet them. We continue to fall behind. South Australia's economic growth over the past five years has averaged less than half of the national figure. Forecasts predict growth at only a third of the national rate for 2017-18.

South Australia's export performance currently sits at $11.6 billion, well below the government's target of $18 billion that was set in 2014. The government refuses to take responsibility for South Australia's poor economic situation, failing to deliver the strong economic leadership our state so desperately needs.

The government has presented $2 billion of new spending in this budget over the next four years but has introduced no new savings measures to counter this spending. The Treasurer's surplus has suffered because of the government's nonsensical commitment to investing in short-term solutions and inefficient spending. This is simply bad government.

The budget raises nearly $420 million worth of new taxes. A complete structural change to the budget is needed. Sustained reductions in government spending and an adherence to efficient, smarter spending is what our state requires. With controlled government spending, taxes can be

reduced and vital, productive projects funded. This will address our poor economic growth and unemployment.

It is extremely disappointing to see the disastrous impact that Labor's failed economic strategy has had on our state. We have experienced a huge population exodus of 7,000 people in the past year to other states. These figures have prompted the government to abandon yet another of its targets: to increase South Australia's population to two million by 2027. It is no wonder we are losing so many people interstate when job prospects in our state are so dismal. It is obvious from the fact that we will soon have our lowest level of federal representation since 1954 that South Australia is going backwards. Sadly, this government's so-called jobs budget does little to fix the problems they have created.

Earlier this month, the government was quick to congratulate itself on our unemployment figures, but in reality these numbers were in part due to the uptake of the government's latest wage subsidy program. The government cannot continue to subsidise jobs in the private sector in order to create these misleading employment figures.

Short-sighted grants and schemes will do little in the long term to build our economy. Conveniently, the government failed to address the decline in the participation rate or the fact that for the 33rd month in a row South Australia has the highest trend unemployment. I am particularly concerned with our appalling rate of youth unemployment, which is at 15.8 per cent. With these figures, more and more of our home-grown talent, entrepreneurs and bright young minds will be forced to leave the state for work.

The government needs to realise that economic growth, and hence new jobs, will only come with substantial tax relief for all businesses. With lower taxes South Australian businesses would be able to employ more people and our economy would grow. Real jobs growth will flow from a flourishing private sector. The most important thing the government can do is facilitate the right economic environment for business. This brings me to the issue of our budget's payroll tax cuts for small business, just another inadequate plan of the government to try to create jobs.

I do support taxation relief for South Australians, but these cuts are simply not sufficient to address the issues that this state is facing. Over the next four years, the revenue the government expects to receive from payroll tax is almost $5 billion. Business creates jobs and payroll tax is just another way in which this government is hindering job creation. Using the revenue from payroll tax to create a $200 million future jobs fund makes little sense. Instead, we should be cutting payroll tax for businesses of all sizes as well as reducing unnecessary red tape and regulation, which would create jobs and increase productivity.

We need efficient taxes in this state, something the government has given up trying to achieve. Payroll tax is simply not efficient and does more harm in stifling job creation than good in generating revenue for the government. We need to raise revenue at the lowest cost to the economy and an aggressive payroll tax is not the way to do this. The government's answer to everything is to increase taxes, but in this budget they went even further.

The proposed bank tax is another unnecessary and inequitable tax which has been widely condemned by experts and major industry groups, feedback that this arrogant Labor government is intent on blindly disregarding. The government failed to even consult with their own Investment Attraction agency. Approximately 145,000 South Australians own bank shares. It is naïve of the government to expect that this tax will have no negative repercussions for the people of South Australia. This tax will harm employment and economic growth at a time when we must do everything in our power to attract investment in our state.

The reality is that South Australians cannot afford to pay another Labor tax. The government expects that it will collect $370 million of revenue from this bank tax, money that the government could have easily generated from other sources had it managed to control its own spending. South Australians do not deserve to have another tax imposed on them due to this government's irresponsibility and carelessness when it comes to managing its budget. Our state needs stability and strength in its economy to attract investment, and a random and thoughtless tax like this one will only deter it.

As the government introduces a new cash grab in its bank tax, it is appalling to see just how irresponsibly the government is spending its money. The budget has seen a huge increase in money spent by the government, but not in places where it is really needed. The pork-barrelling we observe from this government is disgraceful and shows how Labor has lost touch with reality and the community. Our regions have been severely neglected in this budget.

Regions make up almost a third of our state's population and contribute over $25 billion to our GSP, yet the government ignores their desperate need for investment in health and road infrastructure. Less than 11 per cent of budget spending on new operating initiatives is being invested in regional South Australia. Our regions are facing serious issues of unemployment and population loss, yet the government is apathetic, focusing on metropolitan areas to satisfy their political agenda. We must provide access to safe roads and decent health care for all, not just those in marginal seats. It is disgraceful that Labor has chosen to ignore our regional areas when many of the issues they face are the product of the government's failed policies, which are only getting worse.

I cannot conclude without highlighting one of the government's most costly failures: its management of our health system. Transforming Health is just another example of how much wastage the government has created when it comes to public spending. The new RAH is costing taxpayers over $1 million a day, yet our hospital system remains in crisis, with ramping and overcrowding. EPAS is overdue, overbudget and consistently failing. It is, at best, counterintuitive and, at worst, putting patient safety at risk. It is understandable why South Australians are fed up. Even the government is trying to belatedly distance itself from Transforming Health, acknowledging how disastrous it has been.

Anyone can tell from this budget that an election is looming next year. The government is clearly distracted and negligent about the issues that matter to our state. We need to prioritise lower taxes to drive investment and jobs growth. The only way for South Australians to achieve the prosperity it deserves is to elect a Liberal government in March next year.

The Hon. T.A. FRANKS (12:15): I rise as a Greens member in this place to speak to the Appropriation Bill. It will come as no surprise that the Greens will be supporting the bank levy—we are not afraid of calling it a bank tax—indeed, taxes and levies are the same thing when you boil it down. They are the way that we pay for the things that we need. The Greens know that the economy must work for the benefit of society and not the other way around. This is the hallmark of a progressive taxation system.

We are now in the middle of Anti-Poverty Week, a week that we should not have to mark each year, but the growing inequality in Australia and the growing levels of poverty are, to all of our shame in parliament, happening across this country. This is a time when we should be envisaging a society that is free of poverty and, preferably, free of greed, and working for the benefit of all, not the benefit of the few, where poverty has been eradicated and where a level playing field and opportunities exist.

The work of this parliament is crucial in removing poverty and hardship and it is our job to show leadership. Supporting a levy or a tax on the banks is the right thing to do. The Greens are a party that will stand up for what matters in the face of even the extensive public campaign being waged by the Australian Bankers' Association in opposition to this tax. Supporting a tax on the banks is the right thing to do and that is what we will do.

Everyone should contribute and those who can afford to pay should pay, raising revenue for where it is needed: health, education and, of course, our future. Australia's banking sector is amongst the most concentrated in the world. Our big banks are the most profitable in the world. Meanwhile, state governments in particular struggle to raise revenue; money that is needed for the public good. The Greens have called for a tax on the banks at a federal level for many years and so, of course, welcome this policy at a state level.

Since the global financial crisis, the big four banks have benefited from an implicit, too-big-to-fail policy, as the IMF has made clear. Other industries would love the luxury of being underwritten in the same fashion as the banks are by the federal government. Benefiting from this leg-up, the banks then go on to post record profits, with the big banks, of course, dominating the market. In fact, earlier this year, *The Sydney Morning Herald* reported that half-year profits of the big

four banks combined were likely to exceed $15 billion and, indeed, that they are undertaxed by $4 billion. It is therefore not unreasonable to expect the banks to be paying their fair share.

I note that the original figure cited was some $370 million and that that has risen slightly since the Treasurer introduced this legislation. Imagine what we could do with that money. If this bill fails, if it is defeated and this money is not there, imagine what we will have to choose not to do with this money. Budget documents and appropriations are choices that we make. Politics is about opportunities, challenges and choices.

This week we will see a 50-year history of automotive manufacturing close a chapter in the story of our state. That should not be the end of the story. We should go on to do better and look to the future. My sympathies are with those Holden workers and the on-flow that will come with the loss of the Holden factory and, of course, all of the flow-on. However, here in this place we should be looking to the future and creating a future. We should be seeing the challenges of a crumbling manufacturing base and grasping the opportunities.

Senator Nick Xenophon, throwing his hat into the ring for this parliament, just a few short weeks ago stated that we are at a crossroads. That was where I agreed with Senator Xenophon's statement that day when he declared that he will be coming and contesting the seat of Hartley. What I do not agree with is the choices he intends to make. Senator Xenophon, of course, has indicated that he opposes this bank tax. Well, I think Senator Xenophon then needs to indicate which services he wishes to cut, which opportunities he does not wish to see in this state.

I want to go through and make note of a few key points of this budget. The Gonski money in this state Appropriation Bill is guaranteed, despite the federal cuts. The Greens support that; we stand by the full and original Gonski. We believe our schools should be funded to need, not greed. We believe that our kids deserve the best education in this country that we can provide for them, and we should be making sure that we do that by providing the funding that is needed.

The government has also indicated here, on a much smaller level, that there is a Fund My Community project, where neighbours and communities can identify good projects that should be funded, and there will be a voting system. I believe the acting president may well have already had his vote on the interweb, casting his support for his particular favoured communities, but I urge the Weatherill government to reflect on the fact that in June 2013 the Premier provided formal notice to the Adelaide city council that the Adelaide city skate park was to be closed. It is now four years and four months since that notice was given.

For a year the skate park lived in limbo, and that is a project that I considered putting forward to Fund My Community: it is because this Weatherill government has left that particular project languishing for four years and four months. Of course, the skate park had to go at the time. We have seen the building of the cancer research centre and that whole health and biomedical precinct established on North Terrace. It is a fine thing, it is a wonderful thing: I welcome that initiative. What I do not welcome is the complete absence of care for, particularly, the kids who used that skate park and certainly the community that used that skate park. They are still limping along with a second-rate solution, down in the East Parklands, of a temporary space that is not fit for purpose, that creates more problems than it sought to solve, and that shows that there was no care for that particular part of our community.

In the state election in 2014, the candidate for Labor, David O'Loughlin, promised that only Labor would fund a new skate park. Unfortunately, his promise has not come to fruition. I urge the Labor Party to get their skates on and to ensure that we fund that skating community and honour the promise the Premier made, when he launched the biomedical precinct build, that it would be replaced and it would be replaced with a permanent skate park. It is a very small matter, but if you cannot get the small things right that is an indication that your care for community is perhaps lacking, and all the polls and internet surveys in the world will not fix that particular motivational problem.

So, this bill is about those challenges, those opportunities, and the choices we make. We are, of course, at the end of the line in this state when it comes to our water, to the Murray-Darling Basin. We are, of course, at the end of the line when it comes to our power supply, and we are often ridiculed when it comes to our Prime Minister.

A question in the parliament by the member for Mayo about power outages in her electorate resulted in the Prime Minister dubbing us a socialist paradise—an odd response from a Prime Minister to what was an emergency situation, a situation where one would think statesman-like attitudes should be shown rather than political pointscoring.

When this state faced that major statewide blackout and the lights went out, just over a year ago, on 28 September—which was not the subject of the member for Mayo's question by the way—at that time, our state pulled together. At that time, we had a statewide crisis. That night, the community came to the fore. That night, not a single person died as a result of that emergency situation. I think that is to be commended. It shows the spirit of South Australians, that when we are faced with challenges we will rise to them.

I note that on that night, with the power out, it took a few hours for most people to get home on their commute from their workplaces or places of education. I would note that that is pretty much the regular commute for most people living in either the outer suburbs or the regional areas of Melbourne and Sydney. So, for one night we sucked that particular aspect up, but what we will not stomach is the attitude of a federal Liberal government that blames us for situations that have been created, not through our choices here in South Australia but, indeed, through choices made at a federal level of contempt for our state.

We have a challenge here in terms of creating new industries, and that challenge means that we have to recognise that many of the blue-collar jobs that we once were very proud to have here need to become new-colour jobs. We need to look to the future, we need to retool and we need to reimagine what it is that our employment will look like in this state. One opportunity the Greens have certainly been very strongly in support of is medicinal cannabis and industrial hemp, and I welcome the office that is charged with responsibilities for those two portfolios and simply remark yet again that there is a great financial opportunity, a great employment opportunity here for South Australia.

In the US, if a Hershey's chocolate factory can be retooled to become a medicinal cannabis manufacturing plant, then surely we can do similar work in South Australia—and I cannot help but remark that, of course, I think we should keep the chocolate factories as well. Indeed, over in the US there is what they are calling the green rush—not the goldrush, but the green rush. With medicinal cannabis and industrial hemp, there is a great economic opportunity here for South Australia, and we should be seizing it.

Even if we just look to our health budget and savings, and if we look to the area of pain and palliative care, health economist Professor Simon Eckermann has shown that in the first year alone we would save $730 million a year on pain and palliative care costs alone, with that figure quickly rising into the billions in the next few years. Yet, when we talk about pain and palliative care in this place, we do not talk about that unless the topic of voluntary euthanasia comes before this place. That is a choice we have seen made too many times in this place. The Greens flag that we will be putting the issues of pain and palliative care onto the state election agenda, and we welcome all parties to work with us in addressing that.

The final area of health that I wish to address is again a matter of choice. This week, I attended an art auction at Tarnanthi. That auction raised almost $170,000 to kickstart Western Desert Dialysis providing on-community dialysis in the Pukatja community. It will start on 1 July next year. It will start without a single cent being allocated in this Appropriation Bill towards that. I hope that in future appropriation bills to see the state government come to the party and to support those people who need dialysis, to stay on their homelands in their country, with their community, and not to have to make an awful choice of whether to die without health treatment, or to die alone in Adelaide or Alice Springs.

With those few words, I say that we have some choices to make here. The Greens have clearly shown what our choices will be. We will put community first, we will fight against inequality, we will support community wherever we can, and we will stand up against the bullies. The Australian Bankers' Association have certainly declared a major campaign to defeat this tax.

They have picked their preferred Premier, with the poll that the Australian Bankers Association commissioned that was released yesterday—in fact, I heard it was leaked but if that is a leak then we are all in *Yes, Prime Minister* territory right now. The Australian Bankers Association

own-commissioned poll said that Nick Xenophon is the preferred premier at 41 per cent; coincidentally, Nick Xenophon also supports opposition to the bank tax that will pay for the services we need, so it is no surprise who they have picked to be their winner come March next year.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (12:30): I rise to speak to the Appropriation Bill 2017. I will start my remarks with a quote from Raymond Spencer, the chair of the Economic Development Board. I put on the record that I know Raymond quite well; our sons are together at school and I have had a quite extensive interaction with Raymond over the years. I think it is important to look at a speech he made about three and half years ago. He said:

> I believe that South Australia is at a pivotal time in its history. This is the decade when it will be decided whether it's a new dawn or approaching dusk, whether South Australia continues to be a glowing example of one of the world's greatest places to live or a 2030 Harvard case study entitled 'Lost Opportunity'.

it is three and half years later, and when we look back I think we have lost a fair opportunity in those three and half years. Other members of the Economic Development Board I have spoken to—not Raymond, other members—have been frustrated, and I know that Steven Marshall and our team have also been quite frustrated. You have a high-quality bunch of people providing good advice to the government but our economic standing in the community is sliding, with higher unemployment, lower productivity, lower exports. Look at all the indicators. Exports are dropping, even our tourism numbers—although our tourism minister would claim we are growing, we are actually shrinking in the national pie.

I said to one of the members of the Economic Development Board, 'Either you guys are giving them really bad advice or they're not listening.' His response was that he could not quite work it out but it was either that they had an incompetent bureaucracy or an incompetent government that does not listen. These people are frustrated. They have been providing high level advice on how they think we can get this state back on track, yet on every indicator the state's economy is declining.

The government's response to most of its crises is to tax more. We have the state bank tax that members have been addressing—I heard the previous speaker speak a little about the state bank tax—and the removal of the emergency services remissions, which is really just another tax on property owners, and there is the car park tax that was defeated after the last election. Again, just another tax is the solution. There are the NRM levies and a whole range of other levies, which are effectively taxes on people, especially our primary producers. We have seen this over the last nearly 16 years now.

We had a River Murray levy earlier in the piece. The solution to any problem is that they will just tax it. Well, as you know, Mr President, you cannot tax yourself back into recovery. If you look at Raymond Spencer's words regarding a new dawn or an approaching dusk, this is an approaching dusk that has pretty much been led by a very incompetent government whose only solution is to tax more.

It beggars belief some of things they have been spending money on. We have seen a massive increase in government advertising, we have seen a massive increase in waste. In passing you meet various people who work in different government agencies, and they comment on the waste they see in their particular areas. It is a common thread, the waste of money and resources. It will be an interesting journey for whoever wins the next election, because we will either go down a path of 20 years of this incompetent mismanagement or we will have the potential, as Raymond Spencer says, for a new dawn and an opportunity to reset the state's economy.

You only have to look at the biggest issue that is facing South Australians, namely, electricity. The Hon. Gail Gago, the Hon. Tom Koutsantonis and I were on the ERD committee some 15 years ago when we were warned by Lew Owens that if you had too much renewable energy you could risk your network security and drive the cost of electricity up. It is interesting to note some facts the Treasurer put on the table. This is in response to a Dorothy Dixer question in the House of Assembly on Tuesday 14 February. I think the question was from Mr Eddie Hughes:

> My question is to the Minister for Mineral Resources and Energy. Minister, can you explain to the house the operation of the state-based renewable energy target and its commonwealth equivalent?

So, that was the nature of the question. In his answer he talked about renewable energy and said:

> …this government set South Australia's renewable energy target at 50 per cent of power generation by 2025, subject to the commonwealth government retaining its renewable energy policy.

He then went on to say, and I think this is one of the most important facts I have yet seen in this whole debate:

> More than $7 billion—

that is $7,000 million—

> has been invested in renewable energy projects in South Australia, with about 41 per cent of that in regional South Australia.

That is from renewable energy: wind and solar. In the last 10 to 12 years, we have had $7 billion invested in renewable energy in South Australia, yet we have one of the world's most unreliable networks, as we saw with the events that unfolded last year, and one of the most expensive. This is all at a time when we have had this $7 billion—not necessarily of government money but from superannuation funds and private companies—and mums and dads putting solar panels on their roof because they thought it was a good thing to do. We now have this $7 billion investment. You would assume that with a $7 billion investment you would get a good outcome, not one where prices are going up and the security is unreliable.

Of course, we have seen the government allow the Northern power station to be bulldozed. I always have a simple view of these things: if you own South Australia or if you were a responsible government trying to make sure that their flock of 1.7 million people was going to be well catered for and not put at risk, and if you were going to take a big part of the energy supply out of the equation, you would make sure that you had a guarantee that it was there somewhere else. However, with this government we have seen that it is not. After $7 billion of private investment in the renewable energy sector over the last decade, or a bit more, we still have an insecure and unreliable system.

There are now two different options on the table. We have the Liberals' option for energy security. The three things that are most important to the Liberal Party are to make electricity affordable, reliable and secure. That is why one of the major planks of our policy will be a $200 million interconnection fund to provide for an interconnector to New South Wales.

It is interesting that, when you look around the world, every country that has a large amount of renewable energy and a large penetration of renewable energy is interconnected. There are some examples in Europe where parts of some countries have 120 or 130 per cent of their actual daily use available from renewable sources. However, when the wind does not blow or the sun does not shine, they are 100 per cent interconnected to another country that has either a nuclear power station or a coal power station.

So, the only way that really works is to have high-level interconnectivity, yet we have seen this government saying, 'No, we want to go it alone and build our own power station.' If you actually look at some of the facts, it is expected to operate in a one in 10-year event by 2019-20. It is a huge investment in something that we may never use. It is a bit like the desal plant: we have to have it because we need to be secure. We needed a 50-gigalitre plant; we did not need a 100-gigalitre plant for water, and exactly the same could be said.

We needed to keep the Northern power station open until we had a better, more sensible, secure supply of energy. We have $500 million being spent by both political parties in response to the fact that we no longer have a Northern power station. For $24 million, you could have kept it open for another three years, and you may well have been able to keep it open for a year or two longer if you had needed to, but you could have had a proper exit strategy for that power station to not leave the 1.7 million people, the flock of South Australians, exposed.

From a farming analogy, if you had a flock of 1.7 million sheep and you wanted to make sure that you could provide water for them and you had an old coal-fired pump that was pumping water and you had a whole bunch of new windmills, you would not bulldoze the coal-fired pump just on the view that you thought the windmills would be pumping water. You would not ever take the risk that you would leave your flock, the people of South Australia, exposed and at risk, which this government has done.

Of course, you see the exposure as mums and dads are paying much more for their electricity. Earlier this week we saw in the newspaper 102,000 people getting food because they cannot afford to pay their food bills and their electricity; elderly people not being able to pay their electricity bills; businesses having to shut on a regular basis because they simply cannot afford their energy bills. Only a couple of days ago I was talking to one brand-new small business that said their electricity bills had gone up. They budgeted on $30,000 a year, which I thought was excessive. It is now well over $50,000 a year and they are not sure if they can keep the doors open.

For many of the small businesses around the state that the government has given money to, whether it is regional development fund money or some of the other grant programs, I wonder whether there is a clawback provision if they shut their doors. Maybe that is a question for question time and not the budget speech, because I doubt whether the minister will have it. But I am aware that for some of these grants you actually have to commit to milestones and you get funding as you employ people. I am told that if you do not complete what you say or you shut your doors, you have to pay the money back. If you have had to shut the doors because electricity is too high so you cannot afford to pay that bill, is the government clawing back money from those small businesses? That is maybe a question for another day.

Mr Acting President, I am aware of the time. I have quite a significant amount more to go. I am just wondering whether I can seek leave to conclude.

The Hon. K.J. Maher: How much more?

The Hon. D.W. RIDGWAY: I did want to speak a lot more, but I am aware of the time. I will just make a couple more quick comments then, Mr Acting President, on a couple of the areas that I am responsible for.

I am the shadow minister for tourism, agriculture and regional development. On tourism, it is interesting that minister Bignell and the government claim they are getting growing numbers. We are growing but at a much lower rate than the rest of the nation. Last December, China Southern Airlines announced three flights a week to Adelaide. In the same week, they announced three flights a day to Melbourne and Sydney. So, while we have some growth, we do not have enough growth.

We have just seen the opening of the Convention Centre. It is a wonderful, wonderful facility. That is why the opposition was very happy to commit $40 million over the next four years to the events and convention bid fund to attract more people to Adelaide and to the Convention Centre. Again, I come back to the simple view that, if you owned it and it was your own private investment—the Convention Centre is probably worth $1 billion now with the last $300-odd million that has been spent—you would actually be out there marketing and selling it.

We had the International Astronautical Congress here with a bit over 4,000 delegates. You almost want one of them a month. You want that place humming every month of the year. It was a great event. My understanding is an approach was made nine years ago and then the last four years have been the build-up to have that here.

These things do not happen overnight. You have to have money and effort in the marketplace to go out and promote them. That is why we were very happy to commit to a $40 million fund to attract conventions and events to South Australia. We are very surprised that that is some $19.5 million more than the government; it is almost double. I find it almost unbelievable that the government would do that after investing that money. Only Labor would spend all that money and then not go out and market it. It is a bit like the field of dreams: build it and they will come. Well, it is a very competitive marketplace.

New South Wales is out of the market, with building Barangaroo. Sydney is out of the space a bit at the moment, so there is a little bit of a vacuum that we could try to fill, but sadly, that has not happened. I do hope that the government come to their senses during the election campaign and up that offering, because whoever wins the next election, the taxpayers of South Australia need that Convention Centre full every day of the year, if it can be. We know the impact of jobs in our hotels and restaurants, the benefit of having tourists here and growing that market. There are some wonderful opportunities.

Just quickly, in agriculture, I think we have a wonderful opportunity to grow that sector. The government largely relies on what drops out of the sky, and if we have a good year they go out and brag about the great season we have had, when Mr Bignell and his team have had absolutely nothing to do with it.

We see what is happening with the Northern Adelaide Irrigation Scheme. They are putting water on the market that is more expensive than the existing system and they wonder why there is no uptake from farmers. It does not make sense that you would try to almost gouge farmers, and I am told that was just SA Water's initial offer. They are the only supplier of water. Why would they go out with an initial offer and then go and negotiate it back? Why would they not just come up with a price that is fair and equitable?

These farmers are going to compete against other farmers in other parts of the nation, in Werribee and other parts. You have to compare apples with apples. They are using recycled effluent. We have to make sure we are competitive, but this government does not understand that. It beggars belief that SA Water would say, 'Oh well, we will go back and make another offer.' I cannot believe that minister Hunter would actually think that was a sensible way to do it, except that, as I said at the start of my comments about taxing, it is just another way of grabbing revenue out of hardworking Australians, especially that group, where we have huge opportunities to expand our horticultural sector.

We have seen some of the things that Sundrop is doing up in Port Augusta and D'VineRipe in Virginia. I am not sure when they are going to make the formal announcement, but I know that Sundrop is about to start the construction of the strawberry and blueberry operation in Millicent at the back of Kimberly-Clark, using the effluent water from Kimberly-Clark. That is a really great thing to do, to take that effluent water and turn it into strawberries and blueberries.

If you think about it, you have tomatoes and high-value products being grown at Port Augusta right the way down across our climate zone, right to Mount Gambier and almost to Millicent. The opportunities are immense if we get the right settings there. That is one of the reasons we have proposed the Globe Link proposal, and in the long term an international freight airport, because we cannot just flood the market and drive the price down locally. We have to make sure that if we have this produce we have an access to market.

I will conclude my remarks by repeating Raymond Spencer's words, that I think at this next election we are either going to have a new dawn or we are going to stay in the same dark, dusky old place that South Australia is in. South Australians will have a clear choice next election: if they want change and they want a new dawn, they should vote for a Marshall Liberal government.

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) (12:48): I thank honourable members for their contributions on this bill. I also want to acknowledge that the Hon. Rob Lucas, as he said, is always helpful. They are his words, not mine. We were going to respond to some questions he raised when we were doing the Budget Measures Bill, but I have a couple of very quick responses. It will take about two minutes to respond to his questions now. His first question was: can we table the capital works program for the government in its entirety for the forward estimates? I seek leave to table the table that the Hon. Rob Lucas requested.

Leave granted.

The Hon. K.J. MAHER: The Hon. Rob Lucas asked how many public servants had actually been terminated as a result of Determination 7. My advice is the Commissioner for Public Sector Employment has advised that no employees have been declared excess pursuant to Commissioner's Determination 7: Management of Excess Employees—Redeployment, Retraining and Redundancy.

The third question asked for details of consultancies from the EY post-implementation review of RISTEC and capability review of DTF. I have been advised that, in relation to RISTEC, this is a lessons learnt review to ensure good processes in any future projects. The report is not yet complete. In relation to the capability review, this review considered the leadership, strategy and delivery of DTF. The EY review found DTF was well placed on all measures except shared commitment to sound delivery, where some improvements could be made.

Question 4 was: since July of this year, have ministerial staff been provided with any pay rise? My advice is that there has been no general pay rise approved for executives or ministerial contract staff since 1 July 2017.

Question 5 was in relation to budget funding for advertising the JOBEX program. My advice is that the planned marketing communications investment for JOBEX, South Australia's largest free employment and careers exhibition, is currently $840,000. This investment includes the associated costs of developing the marketing communications campaign. All advertising was approved, and the individual media rates are commercial in confidence.

Finally, the Hon. Rob Lucas asked for the position on amending the Public Finance and Audit Act to empower the Auditor-General to publish reports independently of the parliamentary sitting calendar. My advice is that the government has initiated work to update the Treasurer's Instructions under the Public Finance and Audit Act. That work has identified that a need may exist to also update the Public Finance and Audit Act. Any changes to the Auditor-General's reporting requirements would be considered in the context of this broader work. With that, I commend this bill to the chamber.

Bill read a second time.

Committee Stage

Bill taken through committee without amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (12:53): I move:

That this bill be now read a third time.

Bill read a third time and passed.

Sitting suspended from 12:54 to 14:17.

Condolence

LEWIS, HON. I.P.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:17): By leave, I move:

That the Legislative Council expresses its deep regret at the recent death of the Hon. Ivan Peter Lewis, former Speaker and member of the House of Assembly, and places on record its appreciation of his distinguished public service, and that as a mark of respect to his memory the sitting of the council be suspended until the ringing of the bells.

Peter Lewis's service as a member in the other place spanned more than a quarter of a century and outlasted a number of boundary redistributions that even took him towards Bordertown, as I understand. From 1979 until 2006, Mr Lewis served as the member for Mallee, Murray-Mallee, Ridley and, finally, Hammond. Many remember him as a committed and effective local member. He certainly held firm and determined views about the ways in which he could assist the local community and he achieved many good things for his electorate over a number of decades of service.

Some of his best remembered efforts relate to the improvement of regional roads and the winding back of commercial fishing in the Murray, in which he was quite successful. He was also concerned throughout his parliamentary career with ensuring that elected representatives are responsive to public opinion. He demonstrated that commitment in a number of ways, memorably in his later years through his efforts to enshrine citizen-initiated referenda in the state constitution.

He was in life, as he is in death, often characterised as controversial and a maverick. He was consistently described by his friends and foes alike as colourful, chiefly because of his habit of speaking his mind without particular regard to whether people might react poorly to what he said. Whether or not everyone admired Mr Lewis, we would all have to agree that he was an effective

Speaker in the other place who carried out his duties capably and with character. He is often remembered as intelligent, articulate and sharp-witted.

I think we must also agree that he demonstrated a remarkable degree of self-confidence in his determination to stick to his beliefs, no matter how far out on a limb he had to go to prosecute them. Many in this place will remember Mr Lewis for his support of the Mike Rann-led Labor Party in 2002 to form a minority government.

I will make two brief points in relation to that. Mr Lewis was not the only Independent member of parliament who served in the Rann government, or for that matter the Weatherill government. In his own words, Mr Lewis made the decision to support Labor on the basis that he believed it would deliver the stability in government that South Australians deserved. Mr Lewis was a person who knew his own mind. No doubt, he was occasionally a polarising figure in South Australian politics whose influence was applauded by many but not always by all.

We must not forget that behind every politician is also a private citizen with a private life. Mr Lewis leaves behind his bereaved family and friends. On behalf of the state government, I convey condolences to all those who loved and cherished Mr Lewis in life, and I trust that they will ensure he is fondly remembered for his personal qualities as readily as he is remembered as a politician.

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:21): I rise to second the remarks made by the Leader of the Government, and to endorse them. The Hon. Ivan Peter Lewis, as the Leader of the Government explained, was a colourful character in South Australian politics. As always, you learn a little bit more about people, things that you did not really know all that well, when you do a bit of research into their history when, sadly, we come to a condolence motion.

I did not realise that the Hon. Mr Lewis was one of 10 children—I think he was number six in the line—and was born on the Eyre Peninsula. He moved across, I think to the Adelaide Hills, at an early stage of his life. He was quite well educated, going to the local primary school, Urrbrae High School and then to the University of Adelaide to do an MBA, and the Roseworthy Agricultural College. It was probably fitting that he ended up being a member of parliament representing a country seat.

As the minister said, he represented what is now the seat of Hammond but, of course, it was called Murray-Mallee and Mallee for a number of years. As members may know, I am originally from Bordertown, and the boundary was shifted down between Keith and Bordertown, the boundary between Mallee and what was probably Victoria back in those days, or Murray-Mallee in Victoria, so I could well have been one of Peter Lewis's constituents—but I wasn't.

He was outspoken and controversial during much of his political career. My interaction certainly came after I was elected in 2002. Of course, as the Leader of the Government indicated, one of the things he will be remembered for most was in helping to form a government with the minority Labor government led by Mike Rann. Afterwards, some years later, Peter Lewis said to people whom I know that he regretted doing that but, nonetheless, he was the man who helped to form the Labor government.

One of the things that he looked at doing was a compact for good government. A couple of things were quite strange: removing a ban on fishing out of the River Murray. I remember that the net fishers were here for some days on end, waiting for the final sword to fall on their particular industry; and the eradication of branched broomrape, which was never achieved. There was a significant amount of money spent in the electorate but branched broomrape (a parasitic weed) is still quite widespread in Hammond.

After his career as Speaker, in 2006 he tried to move from the House of Assembly to the Legislative Council but he was not successful. I guess we can say that the Hon. Peter Ivan Lewis made an interesting contribution to politics.

Motion carried by members standing in their places in silence.

Sitting suspended from 14:25 to 14:36.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

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

West Beach Trust—Annual Report, 2016-17
Regulations under the following Acts—
Electoral Act 1985—Disclosure of Donations
Electricity Act 1996—
Miscellaneous
Principles of Vegetation Clearance
Maritime Services (Access Act 2000—Extension of Part 3 of the Act

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

Regulations under the following Acts—
Aboriginal Heritage Act 1988—General

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

Annual Reports, 2016-17—
Health and Community Services Complaints Commissioner
Witness Protection Act 1996

Parliamentary Procedure

SUPPLEMENTARY QUESTIONS

The PRESIDENT (14:38): There has been quite an extraordinary number of supplementary questions, which I believe everyone has a right to ask, but it does have an impact on the crossbenchers, who are getting fewer opportunities to ask their questions. I will be trying to ensure that there be at least a minimum number of questions that the crossbench get during question time.

Question Time

GM HOLDEN WORKERS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:38): I seek leave to make an explanation before asking the Minister for Automotive Transformation a question about the imminent closure of Holden's Elizabeth plant.

Leave granted.

The Hon. D.W. RIDGWAY: Tomorrow marks the end of a significant period of manufacture in our state's history: the closure of Holden heralds the end of car manufacturing, not just in this state but in this country. At its peak in the 1960s Holden employed some 24,000 Australians across seven facilities, and was exporting cars to Africa, the Middle East, South-East Asia, the Pacific Islands and the Caribbean.

We all know the history of Holden and the slow demise of the car industry since the early 2000s. Despite the political football that the closure of the car manufacturer has turned into in recent years, it is important we recognise the many thousands of people, often generations within families, who have worked for, with and alongside one of the country's biggest employers throughout its long history. I sincerely hope those employees have received the help they need to transition to the next role, and will leave tomorrow knowing their contribution to Australia's manufacturing history will be not forgotten.

Regarding recent experiences in car manufacturing interstate, the union estimates that the recent closure of Toyota's plant in Altona placed the figure of the workforce who had already found full-time employment at 5 per cent. Recent survey data from the closure of Ford's Australian

manufacturing operation has shown that about 50 per cent of Ford workers made redundant have found full-time employment in the year since it ceased operations. Compounding this figure, 100 per cent of the workforce still looking for employment are concerned about their chances of finding full-time employment. My questions to the minister are:

1. Can the minister provide figures on the number of ex-Holden employees, and soon to be ex-employees, who have found permanent full-time positions—and I reiterate, permanent full-time positions?

2. Can you provide figures of those still searching for full-time employment, or are currently underemployed?

3. What point of difference does Holden's closure have to allay its employees from the concerns facing ex-Ford and Toyota employees in terms of job security?

4. Finally, what outlook in terms of full-time employment can these workers finishing up on Friday expect to have over the next 12 months?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:40): I thank the honourable member for his question. It is very tempting and it would be very easy to reiterate some of the points I have made about how we got to where we are today and just how it didn't need to be this way.

An honourable member interjecting:

The Hon. K.J. MAHER: But he has asked some serious questions in terms of employment outcomes for those who have been involved in the automotive industry. Over the last, approximately, two years, Holden has about halved its workforce. There are about 950 who will finish up tomorrow as the last car rolls off the plant at Elizabeth. Of the about 1,000 who have left Holden over the last two years—and I don't have the figure in front of me, but off the top of my head I think it's about 83 per cent. It's certainly somewhere between 80 and 85 per cent that Holden estimate, from their research, have had employment outcomes. As I understand it, that is either in work or in full-time training.

That figure is a measurement that Holden use with their workers, so this isn't a government figure. We certainly know that Holden has been doing quite an extraordinary job in terms of working with their staff, with their workers, to transition. Holden has had, for quite some time, a transition centre that I have visited on numerous occasions, set up within the administration area at the Elizabeth plant. We have been doing very similar work in the south and in the north with the auto supply chain workers.

In terms of the supply chain, about two years ago it was estimated from the work that the automotive transformation team had done that less than a third of supply chain companies were intending to be around once Holden had closed. That figure is now up to about three-quarters who are surviving, who are transitioning once Holden have closed. There are workers going to a whole range of different areas. There are many who are continuing on in the manufacturing industries.

One of the best visual demonstrations that I have seen is, at the Holden transition centre there are a couple of really big whiteboards where once people have left Holden they put on the whiteboard their name and where they are going, and it includes quite a lot of manufacturers. You have small manufacturers up to bigger food manufacturers, such as Spring Gully or RM Williams. We are finding that once a different manufacturing company employs an auto worker, it is very, very frequent that they employ more and then more.

Micro-X at Tonsley is a great example of that. It is a world-breaking first new development in portable X-ray machines that is now, I think, up to the eighth ex-Holden worker being employed there. The advanced manufacturing skills that so many in the auto industry have gained during their working lifetime have made them extremely attractive in other manufacturing areas and, once a manufacturer has employed someone from the auto industry, it is quite often that further people are employed, but there are people going into a whole different range of areas.

On Wednesday, I spent some time with Steve Kovac, who worked at Toyoda Gosei, who has now opened his own small business at the Aberfoyle Hub Shopping Centre—Aberfoyle Fine Foods, a cafe. There are people who have gone into areas, when you read the names on the transition board at Holden, such as aged care, Correctional Services—a whole range of different areas. In terms of the employment outcomes, the figures that Holden use—and I have absolutely no reason to doubt their figures—are that somewhere between 80 and 85 per cent have an outcome post working at Holden.

GM HOLDEN WORKERS

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:44): Supplementary, if I may: can the minister indicate whether low-skilled or high-skilled ex-Holden employees have been more successful? Is there any difference between higher-skilled or lower-skilled people in getting new employment?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:44): I thank the honourable member for his question. As I said, these are Holden's figures. I don't have the breakdown and I am not sure if Holden has the breakdown in terms of different segmentations of their workforce and employment outcomes. However, and as I said in the chamber earlier this week, I think, we are looking at doing everything we can to support workers, as Holden has with their workers and we have in the supply chain.

Just on the weekend we announced that the state government and Holden were joining forces, allowing workers from both the supply chain and Holden to access the physical locations and services that each provide, recognising that Holden wants to leave a positive legacy in this state and the government wants to make sure it gives every possible worker every possible chance.

INKERMAN LANDFILL FACILITY

The Hon. J.M.A. LENSINK (14:45): I seek leave to make an explanation before directing a question to the Minister for Environment on the subject of the Inkerman waste disposal site.

Leave granted.

The Hon. J.M.A. LENSINK: In July 2017, the EPA received an application from Cleanaway, Redox and the Metropolitan Fire Service to safely dispose of the chemical sodium ethyl xanthate at the Inkerman landfill facility. The product was to be transported to the Inkerman facility under the escort of the MFS. A number of members of the community have raised serious concerns regarding the transport and also how the disposal process would be managed.

On 28 September, a meeting was held in the local area involving the proponents, the CFS, Wakefield Regional Council and some members of the local community. The expectation, following the meeting, was that all questions raised would be responded to in order to address the concerns; however, community members have been disappointed that they received a one-page fact sheet which did not address the concerns.

On 16 October, my colleague in another place, the member for Goyder, wrote to the minister expressing his concerns over the lack of communication and consultation. As far as I am aware he has not received a response. Yesterday, the EPA approved the application. My questions are:

1. Why was the community provided with so little information and a complete lack of involvement before this decision was made to approve the application?

2. Can the minister commit to responding to the community concerns immediately, before any disposal of xanthate occurs at Inkerman?

3. Following the commitment from this government and the EPA in 2015, after Clovelly Park, that it would drastically improve community consultation and communication, can the minister explain why communities are still experiencing a lack of transparency?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:47): I thank the

honourable member for her important question—somewhat delayed, but nonetheless it is good to have one—on this very important subject. I will answer some of the latter questions now.

I believe I have responded to the member for Goyder, unlike the questioner's assertion, although she may not be aware of that, of course. I also understand that the EPA fully briefed the member for Goyder in relation to this matter, so it is not as if he has been kept in the dark at all, nor has the local community, as far as I am advised. Of course, there are some members of the community who have raised some concerns.

I am advised that, in July 2017, the EPA received a proposal from the Metropolitan Fire Service, Redox and Cleanaway seeking to complete combustion of the chemical sodium ethyl xanthate and then dispose of the ash at the Inkerman landfill facility. I am informed that xanthate is a chemical distributed by Redox Pty Ltd, located at Dry Creek, and is used as a flotation agent for the separation of ores in the mining industry.

I am also advised by the EPA that approximately 850 kilograms of material was partially burnt as result of a small incident at the Dry Creek facility. Redox and the MFS subsequently undertook a controlled combustion at the Redox facility in July 2017, and the partial combustion resulted in residual material being left, which required disposal. That brings us to the point of that disposal at a suitable landfill site.

Subsequent to the combustion event, I understand the EPA received a proposal. I am advised that the proposal seeks to amend the EPA licence conditions at the landfill in order to combust up to 850 kilograms of xanthate at the Inkerman facility in a controlled manner. The proposal includes that this will occur in the presence of CFS officers and the MFS. I am further advised that this occurring on site means that the residual ash from the combustion can then be directly disposed into the engineered low-level contaminated waste cell at the Inkerman landfill site. This is to occur after it has cooled, of course, from its combustion event and has then been fixed in concrete as an additional precautionary measure.

In considering the proposal, the EPA sought community feedback as part of the notifications process. Cleanaway also engaged with the local council and the landfill community consultative committee members. That is my advice. I have been further advised that the EPA's community consultation period closed on 25 September 2017. I am told that Cleanaway held a further meeting on Thursday 28 September for the members of the landfill community consultative committee to provide additional information about the Inkerman site's proposed activities. The EPA, MFS, CFS and Redox were also in attendance, I am advised.

It is important that members of the council understand that in these matters the EPA is independent. It is an independent regulator, and the decision on the proposal is for them alone, as is appropriate, given the legislation that we in this place have supported. I am advised that after careful consideration the EPA approved the proposal to dispose of the combusted and then fixed product into the low-level contaminated waste cell at Inkerman. I am also informed that a date for the burn has not yet been set by the MFS, but that it will be planned for a day when suitable weather conditions are forecast.

The EPA has advised that the community and council will be informed prior to the burn date. If weather conditions on the day are not as forecast, the burn will be rescheduled—as you would think would be an appropriate decision to be made by officers on the ground—taking into consideration local conditions at that time. It is important to understand that the community has been taken into a consultation process, not just by the EPA but also by the proponents, which is, of course, what the legislation provides for. I recall signing correspondence to the local member, and I am advised that the EPA has fully briefed him, so I reject any assertion that anyone is being kept in the dark whatsoever.

As in relation to all of these things, the EPA is performing its duties as outlined in its legislation. It is their responsibility to do so, and they are not at my direction in these matters, as you would expect from an independent organisation such as the EPA.

INKERMAN LANDFILL FACILITY

The Hon. J.M.A. LENSINK (14:52): Supplementary question: assuming that local residents are still aggrieved, what is the course of advice the minister has for them to feel that they can make representations?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:53): As I said, I am advised that the EPA's community consultation period closed on 25 September. That doesn't mean that any members of the community who are still aggrieved can't take up further communication with the EPA. The period that they set for the community consultation has closed, but I would be very surprised if the EPA turned away any community member or any further correspondence on that matter. As I have said, the EPA has determined, in accordance with the licensing conditions, the approval for the combustion event in the presence of the CFS and the MFS, but a date has not yet been set for that. Of course, that date would then need to be approved as being appropriate for the weather conditions at the time.

OLDER PERSONS MENTAL HEALTH SERVICE

The Hon. S.G. WADE (14:53): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse questions in relation to the older persons mental health service.

Leave granted.

The Hon. S.G. WADE: On last Tuesday 10 October, the minister issued a press release that announced that the Oakden Response Models of Care Project consultation document was released that day for consultation. Feedback on the draft model of care was due to close two days later, by close of business on last Thursday 12 October. My questions to the minister are:

1. Is the minister serious about engaging the views of older people with mental health issues and their families when he only gives two days for responses on such important issues?

2. How many responses were received?

3. How long does the minister anticipate it will take the government to analyse the responses and issue a final strategy?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:54): Let me thank the honourable member for his question. Post the Oakden report being handed down by the Chief Psychiatrist, the government has been hard at work trying to establish its response to the recommendations that came out of the Oakden report. I am very grateful for the services of Dr Tom Stubbs, who is assisting the government in regard to the Oakden report.

There are a number of recommendations that are of particular significance. One of the significant ones of course is making sure that we come up with a model of care that not only will give the community confidence generally that there is an appropriate response in place following Oakden, but more importantly will ensure that we are actually delivering a standard of care for older people suffering mental health issues generally. That process is in train and the honourable member is right to refer to the fact that we have engaged in a public consultation process regarding the proposed model of care.

I am more than happy to take on notice the question regarding how many responses we have had to the public consultation. I do not have that information at hand, but I am more than happy to seek that information and take that question on notice.

OLDER PERSONS MENTAL HEALTH SERVICE

The Hon. S.G. WADE (14:56): Is the minister expecting any responses, considering he gave people only two days to respond?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:56): My advice is that there has been a substantial effort undertaken to establish the model of care and a large number of people have been spoken to. There have been

responses from the sector that have informed the model of care that we are seeking to arrive at. We would welcome any public responses that are made during the public consultation process.

AUTOMOTIVE INDUSTRY

The Hon. T.T. NGO (14:57): My question is to the Minister for Automotive Transformation. Can the minister tell the chamber how the automotive industry is transitioning?

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (14:57): I thank the honourable member for his question and his interest in this matter. It builds on some of the comments that I was able to make in relation to the question from the Leader of the Opposition in this place.

Tomorrow will be an emotional day as the last car rolls of the production line at GM's Elizabeth plant and whole car manufacturing in South Australia and this nation ceases. Our thoughts are first and foremost with the South Australians who are directly impacted by this closure. This is a significant loss for the northern community, with the end of more than half a century of vehicle manufacturing by GM Holden at Elizabeth. It is difficult to think that after Friday, Australia will no longer sit with the 12 other countries that can build a car all the way through from sketchpad to showroom.

We know that the closure of whole vehicle manufacturing did not need to happen, but it is happening and we are doing what we can as a South Australian government to deal with the consequences. Over the last year I visited many automotive companies and witnessed firsthand the significant contributions and outstanding achievements that both the companies and their employees have made to the automotive industry and to manufacturing in this state.

All generations of South Australians who have worked within the automotive industry should feel incredibly proud of their achievements. Speaking with many of the employees at both Holden and the auto supply chain just reinforced how proud they are of what they have done. We understand that the skills and know-how born from our automotive industry will continue to be strong assets as other industries transform in this state.

We know that we need to play a strong role in supporting the automotive industry with a range of initiatives to help both workers and the supply change secure their future in the wake of Holden's closure. The immediate objectives are to help displaced workers find new employment, ensuring all workers are supported in transitioning to the next stage of life, whether it is in a new career, study or into retirement.

One of the misconceptions that occasionally arises is that manufacturing in this state is dying along with the closure of Holden. It is just not the case. In fact, data released by the ABS in June this year showed manufacturing in South Australia in terms of employment increased 4.1 per cent to May 2017 over the year to 75,000 jobs. This constitutes a bit under 10 per cent of total state employment. So, while we will no longer be producing whole cars, we will continue to make things and we will continue to make things well in this state. This is because the story of Holden is very much the story of South Australia.

Holden has employed thousands, on estimates tens of thousands, of South Australians over the last 50 years. Very few people would not have a family member or someone they know in Adelaide who has been employed by Holden or worked in the automotive supply chain. It is our high-tech and advanced industries of the future that will stand on the shoulders of the achievements of the automotive sector, sectors like defence, mining, medical devices, and food and beverage. The skills and knowledge of Holden automotive workers have made, and will continue to make, significant contributions in these areas and new emerging areas like renewable energy.

In terms of the Holden site, it was announced on 5 October that a preferred purchaser for the Elizabeth site had been selected, following an extensive worldwide six-month expression of interest program by Holden. Contracts are currently being finalised for the preferred purchaser to turn the site into a master-planned innovative business park, with GM Holden retaining a presence by establishing a spare parts operation on the site.

It is pleasing that the announcement by Holden of a preferred purchaser closely aligns with the government's vision for this site. Things like renewable energy and other industries such as resources, engineering and construction have been identified. It is also the case that while whole car automotive manufacturing will cease as of tomorrow, there will still be an automotive manufacturing industry in some form in this state.

South Australia is well placed, with our advanced manufacturing capabilities, to remain involved in the car industry in the future. Of course, we will remain making things for aftermarket and for spare parts. I know companies like Trident Plastics and SMR have signed contracts to supply spare parts for over a decade for Holden, and companies will also continue to supply accessories and parts for other car manufacturers.

As I mentioned before, when Holden first announced that they were going, many companies in the supply chain did not think that they were going to survive the closure. Many companies, particularly the smaller ones, were family-owned companies who had been doing things—particularly in the steel, the fabrication, the engineering and the injection moulding and blown plastics industries—for Holden for a very long time and thought that their business was going to end when Holden closed. From less than a third of companies thinking a couple of years ago that they would survive post Holden's closure, now about three-quarters of companies are continuing after whole car manufacturing ends this week.

As a state government, we pay tribute to the efforts of those tens of thousands of South Australians who have proudly made cars in this state. It has meant that we are where we are now and we can take advantage of the many opportunities that will come in the future.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGICAL SERVICES

The Hon. R.L. BROKENSHIRE (15:03): I seek leave to make a brief explanation before asking the Minister for Health a question about the new RAH.

Leave granted.

The Hon. R.L. BROKENSHIRE: I have received correspondence and have been in discussion with a highly respected professor of medicine regarding an issue at the new RAH, which I did raise with the council on 6 October, requesting that questions be put to an officer of the health department. I want to place on the record in my question and for background to the minister the following from the email:

> There is no provision for treating patients with common gynaecological problems at the new RAH. This is a major deficiency and must be rectified. A case presenting to the hospital a few nights ago highlights how dangerous this can be. A woman was seen in the RAH ED with an acute gynaecological problem. She needed surgery but this was not possible at the RAH because of a lack of suitable instruments and medications. The Women's and Children's Hospital was full, so the RAH staff rang the duty doctor at the Flinders Medical Centre who agreed to accept the admission. An ambulance was ordered by the RAH intensive care unit at 3am. At around 4am, the Flinders Medical Centre doctor rang the new RAH to say the patient hadn't arrived.
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> The patient finally arrived by ambulance at the Flinders Medical Centre at 6.40am, a delay of three hours and 40 minutes. After being admitted and assessed, the patient was taken to theatres to have the gynaecological procedure performed. The delay in this patient receiving appropriate treatment for an acute condition was at least five hours.
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> SA Health have told the media now on two occasions that this story is untrue. Either the spokesperson has been misinformed or was telling a deliberate untruth. I took great pains in verifying the facts of this case by contacting the doctors at FMC who were involved in the patient's care. It was one of these doctors who arranged the admission and treated the patient when she arrived at Flinders Medical Centre.
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> There are two important issues here. One is the inability of the RAH to treat an acute but common condition or indeed to manage any general gynaecological conditions. The second is the attempt to cover up by SA Health of the serious deficiencies in this patient's care.
>
> Warren Jones
>
> Professor of Medicine

My questions therefore to the minister, from this highly respected professor, are:

1. Is there an inability of the RAH to treat an acute but common condition or indeed manage any general gynaecological conditions?

2. Given that the select committee and the parliament gave your public servant, minister, over a week's notice before the questioning occurred on 6 October, why did the public servant then say that they had to take it on notice and investigate? We had given that public servant plenty of time to investigate, so my second question to the minister is: is there an attempted cover-up here regarding serious deficiencies in this patient's care?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:07): Let me thank the Hon. Mr Brokenshire for his important question. I am sure the honourable member will appreciate that I am not in a position or at liberty to go into specific patient matters due to appropriate confidentiality and also arrangements that are necessary to maintain a patient's privacy. However, I am able to hopefully address the more general components of the honourable member's question regarding gynaecological services in and around the RAH.

My advice is that inpatient, general gynaecological services are mainly provided at The Queen Elizabeth Hospital, and that inpatient gynaecological oncology services are to be provided at the Royal Adelaide Hospital. Both emergency and elective services are provided in line with the above allocation.

Emergency gynaecological cases presenting to the RAH, where not life-threatening, are routinely transferred to The Queen Elizabeth Hospital for care. A consultative gynaecological service is available to all Central Adelaide Local Health Network patients and clinical units as required, and outreach services are also provided at key regional centres.

Outpatient services, I am advised, for gynaecological services are provided across both The QEH and the RAH, and the gynaecological service is accredited as a training facility by the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. I appreciate that the honourable member has raised his question in the context of a report regarding a specific case. I am not in a position to be able to comment on that, as I am sure the honourable member will appreciate.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGICAL SERVICES

The Hon. R.L. BROKENSHIRE (15:09): A supplementary based on the minister's answer: is the minister saying and confirming that there is a reduction in the capability and quality of gynaecological care at the new RAH as against what was available at the old RAH? That is my first supplementary question.

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:09): No, my remarks were not seeking to imply that.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGICAL SERVICES

The Hon. R.L. BROKENSHIRE (15:09): A further supplementary then: I take the minister at face value that there is no reduction in quality and capability of gynaecological services at the new RAH as against the old RAH. Why then was this patient, an acute care patient in a serious condition, transferred to the Flinders Medical Centre, or is he saying that his department hasn't even advised him, without giving away any confidentiality? We are not about breaching confidentiality here. We are about getting to the bottom of the truth on this. Has he been advised by his department that they did have this patient transferred to the FMC?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:10): Just to be clear regarding the first supplementary that the honourable member asked, what I am saying is that my original answer was not intended to, nor did it, provide an analysis on the existing gynaecological services that are being provided at both The QEH and the NRAH in comparison to what was the case at the old RAH. That wasn't my intention, and that was not what I was saying. Again, I am not able to go into the details of specific cases.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGICAL SERVICES

The Hon. R.L. BROKENSHIRE (15:11): Supplementary: will the minister agree to bring back a response to the house at the next appropriate opportunity, that is the next Tuesday of sitting, given that I think it is fair and reasonable that the house does get a response as to whether this

patient was transferred? We don't want the name of the patient, and if the patient was transferred and it is confirmed, then an explanation as to why different information has been given to the media by SA Health.

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:11): What I am able to do is commit to the honourable member that if he would like to provide what information he has available to him directly to my office, we will make some inquiries and, if it is appropriate for us to be able to share information with him to further enlighten him in a way that doesn't compromise patient confidentiality, then we will gladly consider that.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGICAL SERVICES

The Hon. S.G. WADE (15:11): A supplementary question: can the minister assure the council that SA Health did not tell the media, and therefore the public, that facts asserted were untrue when in fact they were true?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:12): I am just not in a position to be able to provide a commentary in respect of the specific comments to which the honourable member refers. What I have stated previously, and I am happy to repeat, is that if the Hon. Mr Brokenshire has a particular inquiry regarding a particular matter, is that if he provides that information to us, provided he indeed is not breaching confidentiality in undertaking that himself, then we can conduct an analysis from my ministerial office. If there is information that we are able to share with both him and the Hon. Mr Wade, since he has now expressed an interest, then we will gladly consider it.

ROYAL ADELAIDE HOSPITAL GYNAECOLOGICAL SERVICES

The Hon. S.G. WADE (15:12): This is a supplementary which I don't expect an answer to: I just want to clarify that I am only interested in the consistency of SA Health's statements with the facts. I presume they did not reveal anything that was confidential to the patient.

PRESCRIBED BURNS

The Hon. T.J. STEPHENS (15:13): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation questions about DEWNR's prescribed burns program.

Leave granted.

The Hon. T.J. STEPHENS: During the minister's appearance at estimates this year, he stated that DEWNR had a strategic risk-based three-year rolling prescribed burning program in which burns that are not completed in the program time are moved to another season or year. My questions to the minister are:

1. Does the minister have concerns that the three-year rolling program creates a greater vulnerability due to backlogs being created when burns are delayed?

2. Will the minister outline exactly what efforts DEWNR undertakes to properly manage high-risk burn areas that do not get their prescribed burn?

3. When were prescribed burn-offs last completed in the Belair National Park? What percentage of the park was completed?

4. What consultation has the minister had with the Sturt CFS group in relation to fuel loads within the Belair National Park?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:14): I thank the honourable member for his most important question and for the opportunity to again explain to the chamber how the prescribed burning program has been put in place, what we are doing this season and, of course, to note that in fact there was no prescribed burning program before this government came into office.

It is a matter of great pride for us that we have put together such a substantial firefighting force in the Department of Environment, Water and Natural Resources, to the extent that they form the largest CFS brigade and are used by the CFS in some major roles in controlling fires, in particular, but in terms of other natural disasters as well. I am thinking there about flooding, for example.

The prescribed burning capabilities of the agency are, as I said, incredibly great. They have a program, which the honourable member referred to, in terms of our prescribed burning three-year rolling program. It is carried out by our highly trained professionals, with great management and expertise which is often utilised, as I said, by the CFS but also, indeed, other fire agencies around the country and sometimes across the world.

The DEWNR group is a registered group of the South Australian CFS with 531 brigade members, including 363 firefighters who can be called on at any time to attend bushfire incidents both on and off public land, as well as delivering a prescribed burn program. The remaining 168 brigade members are available for operational support roles.

The budget for 2017-18 is about $13.7 million; this includes an additional $4.2 million that the government made available as part of our increased funding of $16.2 million over four years to increase DEWNR's bushfire mitigation capabilities. An additional $4.2 million will continue to go towards an increased program of prescribed burning to include private lands as well as increase mapping support capabilities, an emergency services map book review, and an additional seasonal firefighter crew that will improve DEWNR's capacity to support the CFS in bushfire suppression activities.

I am advised that the 2017-18 budget employs 140 specialist fire management staff, including 71 seasonal project firefighters who are employed for nine months of the year over the fire danger season, to assist with prescribed burning and bushfire response activities. DEWNR also manages a fleet of fire management vehicles, including 59 quick response four-wheel drive vehicles with a 400 to 600-litre capacity, 30 large trucks with 1,000 to 3,500-litre capacity, 13 bulk water carriers, and 40 support vehicles—for example, command cars.

Under the state government's interagency agreements with SA Water, DEWNR plays a lead role in supporting and delivering fire management activities on SA Water lands, including prescribed burning and bushfire response. This arrangement has been in place since 2005. As part of its memorandum of understanding, an additional budget of approximately $1 million is allocated from SA Water to DEWNR to employ a further 22 seasonal firefighters and provide six additional firefighting appliances.

The collaborative and cooperative spirit that has been embraced by these agencies demonstrates the state's commitment to meeting the challenges of an increasing bushfire threat through the effective and efficient use of resources. DEWNR's prescribed burn program is meticulously planned and always includes a thorough assessment of the environment and any associated risk factors, such as proximity of assets, wind, temperature, dryness of vegetation and, of course, the typography and geography of the site.

DEWNR has developed and employs the latest technology and science available for the design and implementation of the program. For example, DEWNR has developed a burn risk assessment tool to assess the various risk elements and provide an overall risk rating for each burn being conducted. They have adapted a fire spread modelling tool called Phoenix Rapid Fire to the South Australian environment to predict fire behaviour and rates of spread to ensure that appropriate resources are allocated and that warnings can be delivered to communities.

They have also developed aerial ignition capabilities which enables them to burn larger areas in a safer and more cost-effective manner, as well as access areas where terrain is inaccessible to ground crews. It is clear that we take every precaution to not only ensure that prescribed burns are carried out with the utmost care, but only when it is safe to do so, because that is the best way to ensure the safety of residents and firefighters.

Alongside these technological developments, I suppose, DEWNR has also committed to engaging with local communities throughout the planning and implementation of prescribed burns. DEWNR has increased its community engagement capacity in relation to fire management, on parks

and reserves in particular, and DEWNR has developed and planned an engagement strategy and a schedule of engagement activities which target relevant stakeholders and groups in South Australia.

As I have said many times, prescribed burns can only take place when weather conditions are deemed suitable for the planned activity being conducted safely and effectively. This means that whilst burning is mostly conducted during the spring and autumn seasons, and we have a different range of areas that we burn at different times when conditions are likely to be favourable, the number of burns actually completed is dependent on the seasonal conditions.

I think I have said in this place before that our spring burns are usually our more targeted smaller burns in high-risk areas, and our autumn burns are much more the landscape scale of burning, but we mix it up according to the weather conditions and what we can burn in different parts of the state, again depending on fuel load, the dryness of the fuel, and approaching fronts and weather conditions. If it is too hot or too windy then we won't go ahead with a prescribed burn planned for a particular site, but we might move that to another part of the state where the conditions are more amenable to a prescribed burn at that time.

The spring burn program generally commences in late September to early October—more often than not these days it is October—when the fuel is dried so that it will burn and weather conditions are not yet hot enough to produce dangerous fire behaviour. Until the fuels in each region are dry enough or are cured, conducting successful prescribed burns can't really occur.

DEWNR has a three-year rolling burn program, as the honourable member said in his explanation, which allows us the flexibility to move our burns to another season or year or, indeed, to another site in the state, ensuring the burns are appropriately managed and have met their objective. The 2017-18 prescribed burn program has been finalised for spring. There are 49 burns across about 2,600 hectares, and another 49 proposed for autumn across about 9,000 hectares.

Across the state for the 2017-18 season, 98 burns are proposed, in total treating approximately just under 12,000 hectares of land. This includes six burns on behalf of SA Water, seven burns on behalf of ForestrySA, and 12 burns as part of the burning on private lands program, which honourable members will recall we initiated last year and has met with quite a deal of success and is being embraced by members of the community.

With wetter conditions now subsiding, fuel is starting to dry out and DEWNR has now commenced its spring burning program—it did so a couple of weeks ago. I am advised that, as at Monday 16 October, DEWNR has successfully completed six prescribed burns, treating approximately six to seven hectares of land across the state.

In terms of the specific questions about, I think it was Belair, I remember having correspondence from a local MP about Belair in the last few weeks, so it won't be very difficult for me to get out that correspondence and prepare a response for the honourable member and bring back more detail about Belair.

PRESCRIBED BURNS

The Hon. T.J. STEPHENS (15:22): Supplementary question: while you are touching on Belair, minister, was Belair National Park included in the 20 delayed burns that have been scheduled for autumn this year, and when is the next burn-off scheduled for Belair National Park? Is it scheduled for completion in spring 2017 or in autumn 2018? If you could bring that back that would be great.

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:22): I will be very pleased to do so, but I will say, for the understanding of the house and the honourable member, that we burn in Belair almost every year, when conditions permit. Being such a large site, we burn sections of Belair every year so that we have a continual downward pressure on the fuel load in the park. We don't burn the whole park in one year, but actually do small sections of it on a continuous basis, essentially.

I come back to the situation that Belair, being one of our high-risk areas so close to built-up areas, is an area where we take a lot of time to get the planning right. We will only burn when the weather conditions are right, so it will be as less a risk to the population as possible. We have to

balance up the desirability of reducing fuel loads in preparation for summer bushfire seasons, which will always happen, with the risk associated with getting an escape from a burn. Sometimes escapes can mean that we get a much bigger burn in the park, but that is not desirable either because we want to be able to control those burns to a very fine level.

Belair is burnt on a regular basis throughout the cycle, and we do small sections every year, every season, weather conditions permitting. But, I will bring back the history of the burns in Belair for perhaps the last five years or so, for the honourable member, and our projections over the next 12 months.

CLIMATE CHANGE

The Hon. J.E. HANSON (15:24): My question is to the Minister for Climate Change. How does South Australia compare when it comes to tackling climate change and reducing emissions?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:24): I thank the honourable member for his most important question—

The Hon. S.G. Wade: One of the highest recycling rates of questions in the world!

The Hon. I.K. HUNTER: Oh, well done. The Hon. Mr Wade notes that South Australia has the highest recycling rate in the country.

The Hon. S.G. Wade: For questions.

The PRESIDENT: Will the honourable minister just take a seat. The Hon. Mr Hanson, if you would like to ask Mr Wade the question he might be able to answer it for us.

The Hon. S.G. Wade: It's clearly a recycled question.

The PRESIDENT: Minister.

The Hon. I.K. HUNTER: Before I embark on an answer for the Hon. Mr Hanson, perhaps I can just give the Hon. Mr Stephens an answer about Belair. The last prescribed burn conducted in Belair National Park was in autumn of 2016, which treated an area of 14 hectares. During the last five years, the total area treated by prescribed burning in Belair was 94 hectares, which equates to 11 per cent of the total area of the reserve. During the last 10 years, the total area treated in Belair was 179 hectares, which equates to 21 per cent of the reserve. The next prescribed burn scheduled for Belair National Park is in the spring of 2017 to treat an area of 11 hectares, and another two prescribed burns are scheduled for autumn 2018.

DEWNR provides information about its annual prescribed burning program and its website, including details of upcoming burns at www.environmentsa.gov.au/managingnatural resources/firemanagement/upcomingprescribedburns. Also, a complete fire history, which includes both bushfires and prescribed burns, zoning and other spatial information is available at a similar website www.environmentsa.gov.au/naturalresources/firemanagement/bushfireriskandrecovery/fire management/maps.

What an excellent question from the honourable member. Last Friday, I jointly hosted a forum as part of the Bridgestone World Solar Challenge: From Innovation to Commercialisation with Her Excellency, Erica Schouten, from the Netherlands. The solar challenge started 30 years ago, and the Dutch team has consistently been one of the teams that we need to beat. I think they have won seven of these challenges now. For South Australia, though, three decades have seen an awful lot of changes.

We have cut carbon emissions by over 8 per cent on 1990 levels whilst our economy has grown over 60 per cent and, as shown in the recent report from the Climate Council's Renewables Ready: States Leading the Charge, released in August, shows that South Australia leads the nation in renewable technologies. Our state is no longer powered by coal directly—an ambition that is shared by the Dutch government on having announced plans to close all their coal-fired power plants by 2030. You can compare that announcement to what happened in Australia this week.

Instead of embracing clean energy through clean energy targets, which the federal government commissioned a report from the Chief Scientist on, the federal Liberal government has

opted for a coal energy target instead. We know that the Liberal Party in this state have outsourced their energy policy to the federal Liberals. I note this week that the Leader of the Opposition, the member for Dunstan, has already zealously signed up to the Prime Minister's—

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: He is very zealous.

The Hon. R.I. Lucas: He's jealous.

The Hon. I.K. HUNTER: Well, you might think he's jealous of the Prime Minister. The Hon. Mr Lucas says Steven Marshall is jealous of the federal Liberals, but he is fired up and backed in behind the Prime Minister's energy policy with absolutely no understanding of what it means, because there has been no modelling done, no evidence has been provided to the states that it will actually do what it has claimed to do, in fact people are saying that it won't even deliver any change in terms of cost of electricity to people and, if it does, it may only be 50¢.

The Hon. R.I. Lucas interjecting:

The Hon. I.K. HUNTER: Exactly right. The Hon. Mr Lucas says, 'Show us your modelling.' That's what he should have said to the Prime Minister before his leader signed up to the plan. 'Show us your modelling.' The Hon. Mr Lucas is now lamenting the fact that Steven Marshall, the member for Dunstan, the Leader of the Opposition, has signed up to this federal Liberal plan without asking for the modelling to be shown to them.

The Hon. D.W. Ridgway: Unbelievable.

The Hon. I.K. HUNTER: It is quite amazing. It is quite amazing—but there you go. The Liberals in this state have outsourced all responsibility for energy policy to the member for Sturt and the Prime Minister in Canberra. That shows you their level of ambition for South Australia, doesn't it? 'We are going to sell out to the commonwealth. Whatever the commonwealth says, we will go along with,' and they don't even have to prove to us that it works. That's what the member for Dunstan, Mr Stephen Marshall, the Leader of the Opposition, has signed up to in his article—

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: Now the Hon. David Ridgway says, 'Show us your modelling.' Well, why didn't he ask that of the Prime Minister? Why didn't he ask that of the Prime Minister? Happily, happily going along, this conga line of suckholes that we have from the Liberal Party, saying, 'Federal government, whatever you want mate we will sign up to it. Don't bother proving to us your claims. Don't show us your modelling; we don't care about it. We'll just do whatever you like,' and that's what we have from the Liberals in this state. The Liberals want to take us back to 1836. We know that the future of this state lies with renewables, the people of South Australia know that the future lies with renewables, even the majority of Liberal Party voters knows that the future lies with renewables.

The future of our energy system relies on renewables. This is the course that states and territories have been charting, including the Liberal-led government in New South Wales. The Liberal-led government in New South Wales has not been so quick to line up with the federal government's proposition but Steven Marshall, member for Dunstan and Leader of the Opposition in this state, just gets in line and says, 'Yep, right. We're with you guys. Don't bother telling us how it's going to work, we just trust you.' Not even the Liberal government of New South Wales has done that.

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: The Climate Council's report—

The Hon. D.W. Ridgway: Where's your modelling?

The PRESIDENT: The minister will take a seat for a minute. The Hon. Mr Ridgway, I don't want to hear you interject again. Let the minister finish his answer so that we can get onto the next question. Minister.

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: The Climate Council's report highlights that this government's leadership and decisive action is paying off. Other states and territories are looking to South Australia's successes and moving into and adapting to a low carbon economy. The other states are following suit.

The report shows that South Australia has the highest capacity for renewable energy, excluding large hydro, of 1,625 megawatts, the highest capacity of new renewable energy per person, excluding large hydro. The report also shows that South Australians are embracing renewable energy at an incredible rate, with 30.5 per cent of South Australian households having rooftop solar PV, the second highest proportion after Queensland, which has come racing up. As I said, other states are catching up fast, and Queensland has now pipped us at the post to take out the highest level, but we are only just behind them.

Notably, two postcodes—5171 and 5157—have 50 per cent or more capacity from rooftop solar PV, based on residential uptake for suburbs with more than 1,000 dwellings. These postcodes cover the suburbs of Blewitt Springs, McLaren Flat, McLaren Vale, Pedler Creek, Tatachilla, Ashbourne, Bull Creek, Cherry Gardens, Clarendon, Coromandel East, Dorset Vale and Kangarilla.

The government is also backing what South Australians are backing, and that is a renewable future. Our $550 million energy plan not only takes back charge of our energy future, it also takes back charge of our energy future for South Australians, and it backs in behind renewable energy. We are building the world's largest lithium iron battery storage facility, the world's largest here in South Australia. We are investing $150 million in a renewable technology fund and building a solar thermal plant at Port Augusta. Our approach is delivering results.

My last advice is that we are close to achieving the government's target of $10 billion in renewable energy investment. We set ourselves a target for 2025 and we will get there. This is important, because this is a sector that doesn't just deliver reliable and environmentally sound energy to our communities, it also delivers jobs in our cities and in our towns. More importantly, it can help underpin rural economies, because renewable energy is important not just to address issues of climate change but also to employ people to attend to these renewable energy projects.

As honourable members will probably be aware, if we are to meet our Paris commitments, commitments that the Turnbull government has signed Australia up to, then we are going to have to reduce emissions in our electricity sector—although according to the federal government's plan now, they are going to shift the requirements to reduce emissions away from the electricity sector into other sectors. They are not saying which sectors. Is it the agricultural sector that is going to have to do the heavy lifting? Is it the transport sector that is going to have to do the heavy lifting? They will not say, but they are shifting responsibility away from a sector that already has the technological ability to do this heavy lifting to other sectors of the economy. They are not going to tell them who is going to bear that burden. The Liberal government in Canberra are saying, 'We're not going to make this easy for people, we're not going to make this easy for Australia, we're not going to make the energy sector'—

The PRESIDENT: Please wind up. There are a couple of other people who want questions.

The Hon. I.K. HUNTER: —'that has the technological abilities to do this very simply and cheaply. We are going to shift that off to another segment of the economy, and we're not telling people who that is going to be.' That's what the Liberal government is doing. That's despite the fact that the electricity sector is the biggest source of emissions in the country.

Members interjecting:

The PRESIDENT: Order! Let the minister finish this in silence.

The Hon. I.K. HUNTER: It accounts for one-third of the nation's emissions. The electricity sector is also important in helping to reduce emissions in the transport sector—another 16 per cent of national emissions. Indeed, instead of looking to decarbonise to provide the certainty that businesses want and have been calling out for—the action on climate change that they want—the federal government's activity is to move away from renewable technologies and back in behind coal.

As a state, we have an incredibly strong plan for the future that will ensure that South Australia remains a leader in renewable energy and achieves our goal of zero net emissions by 2050. The Liberals, on the other hand, have a plan to outsource all responsibility for energy to the federal government, and the federal government's new plan is: let's back in coal.

TORRENS ISLAND QUARANTINE STATION

The Hon. M.C. PARNELL (15:36): I seek leave to make a brief explanation before asking the Minister for Sustainability, Conservation and the Environment a question regarding the Torrens Island Quarantine Station.

Leave granted.

The Hon. M.C. PARNELL: The last time the issue of the state heritage-listed Torrens Island Quarantine Station was debated in this place was over seven years ago, and there were proposals then to rezone and subdivide the land for industrial redevelopment. There was public opposition at that time and, thankfully, the government adopted an alternative course that involved an addition of 24 hectares of land to the Torrens Island Conservation Park and the transfer of the quarantine station heritage precinct to the Department of Planning, Transport and Infrastructure (DPTI). DPTI have since engaged the services of Richard Woods of Habitable Places Architects to draw up a comprehensive conservation management plan. DPTI went on to carry out urgently needed conservation works to weatherproof the heritage-listed buildings.

The Maritime Museum now conducts regular and popular tours of the Torrens Island Quarantine Station, and the Friends of Torrens Island, under a licence agreement with DPTI, play an active role in improving the amenity and appearance of the precinct. My questions to the minister are:

1. Given its strategic location within the Adelaide Dolphin Sanctuary and close proximity to the Adelaide International Bird Sanctuary, has the minister considered how the Torrens Island Quarantine Station can be better used for its ecotourism potential?

2. As the jetty is the key access point from the river for tourists to access the site, can the minister advise whether the jetty is going to be restored, because currently it is unsafe and unusable?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:37): I thank the honourable member for his most important question. Indeed, the Hon. Mr Parnell would be able to tell you, unlike the members opposite, that his constituents will tell him that the South Australian government is doing fantastic things in renewable energy as well, in addition to heritage issues.

The honourable member is asking me to make some comments about a plan in terms of heritage tourism or other parts of our tourism plan. Members will remember that, just recently, the Hon. Leon Bignell and I released a document about how we can approach the private sector to come to us with ideas, and certain iconic sites, about a proposal to run a private sector business in conjunction with some of our iconic natural resource sites, be they national parks, conservation parks, other places of great natural heritage importance or places associated with them nearby. I think this is an opportunity in a similar vein, and we would be very open to that.

I think I said in this place that the list that we put out there is to stimulate discussion. It consists of places that we thought would be obvious jumping-off points for people to consider, but it wasn't limited to those. There may be some good suggestions about how we can incorporate some of the natural heritage down there, particularly around the quarantine station and that long history. I suppose it might also be of interest to those people interested in energy solutions and how advanced we are in this state regarding the energy solutions of the future being renewable and what potential the site might have to assist us with some of that as well.

The options are open. The government is very pleased to take those suggestions that come from the private sector and put a ruler over them and see if we can actually do some work together to come up with something that's of mutual benefit, not just to the community but also to support the natural resource values of a park, of a heritage site or indeed in relation to future heritage when future

generations will look back at this time as a turning point in our history of this state being proud enough of its own abilities to make determinations about its energy future, whereas the Liberal opposition in this place want to outsource those sorts of decisions to its federal counterpart party. I don't even know why you would bother having a state Liberal Party anymore.

The Hon. D.W. Ridgway: Show us your modelling, minister.

The Hon. I.K. HUNTER: The Hon. David Ridgway again says, 'Why don't we get the modelling? Why have we bought into a federal plan on energy with no modelling whatsoever?' That is what the Hon. David Ridgway is asking for. Why didn't they ask for that before Steven Marshall, the member for Dunstan and Leader of the Opposition, signed themselves up to a plan and they didn't even see the detail of it.

ROYAL ADELAIDE HOSPITAL

The Hon. J.A. DARLEY (15:40): My question is to the Minister for Health. I understand the pains unit and the chest clinic and some administrative staff are still located at or adjacent to the old RAH? Can the minister advise if and when these units will be relocated to the new Royal Adelaide Hospital or adjacent to it?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:41): I thank the honourable member for his question. This issue that the honourable member raises has been the subject of some public interest for some time. That is understandable. The whole health sector has been busy trying to make sure that the move to the new Royal Adelaide Hospital has been as smooth as possible. By and large, I think that is something that has been achieved and a lot of people within the health sector can be incredibly proud.

Of course, the issue regarding the chest clinic remains an ongoing issue. We have stated already publicly—

Members interjecting:

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

The Hon. P. MALINAUSKAS: We have already stated publicly that we are engaging in a process to ensure that the chest clinic services can be delivered in a location ideally that is located very close to the new Royal Adelaide Hospital. It is unfortunate that this issue remains unresolved, but there are a number of people—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. MALINAUSKAS: —who are working incredibly hard to resolve this. Ms Jenny Richter, CEO of the Central Adelaide Local Health Network, is meeting almost on a weekly basis, I am advised, with the relevant clinicians to try to establish a revised location so these important services can be maintained and delivered in a location that is close to the new RAH.

The PRESIDENT: Obviously, the Hon. Mr Dawkins is upset that he did not get the final question. I gave it to the Hon. Mr Darley. I did make it quite clear at the beginning that I expect the crossbench to get a minimum of questions. They had three today. The opposition had four. The fact is, though, that the minister may take a bit of time to answer his question, but I am sure he would have answered his question a lot quicker if there wasn't the interjections from the opposition.

Bills

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) (NO 2) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 28 September 2017.)

The Hon. A.L. McLACHLAN (15:44): I rise to speak to the Statutes Amendment (Attorney-General's Portfolio) (No. 2) Bill. I am speaking on behalf of my Liberal colleagues and indicate that the opposition is supporting the second reading of the bill. This is an omnibus bill but it also has

somewhat controversial amendments which have made the front page of *The Advertiser*. For the benefit of members, I might go through the less debatable amendments, if I could put it that way, and then address some of the amendments that relate to changing the nature of criminal sexual offences.

The bill itself, without amendment, corrects minor errors and deficiencies that have been identified in various pieces of legislation within the ambit of the Attorney-General's portfolio. The amendments are relatively minor in nature, and I am excluding, of course, the substantive amendments that have been tabled and subsequently filed in this chamber.

Firstly, the bill amends the Cross-border Justice Act 2009, which governs the approach to criminal justice on the NPY lands. The NPY lands is an area that spans the central desert region of South Australia, Western Australia and the Northern Territory. The extant legislation enables correctional facilities and youth training centres to be regulated according to the state in which that particular centre is located. The relevance of this is that each centre can apply the same set of rules to all inmates, regardless of where the particular inmate might have committed an offence, been arrested or usually lives.

This bill contains amendments that are consequential to the passing of the Youth Justice Administration Act, to specify that it will only apply to youths detained in South Australia but not the other participating jurisdictions in the cross-border scheme. The amendment is straightforward and the Liberal opposition supports the same.

The bill also amends the Justices of the Peace (Miscellaneous) Amendment Act 2016, which has been assented to but has not yet commenced. The government has advised that when the act was passed in 2016, it failed to take into account the changes made to section 11 by the Judicial Conduct Commissioner Act, which at the time had not yet commenced operation. Section 11 confers the power to take disciplinary action against a justice of the peace from the Governor to the Attorney-General. The bill corrects any inconsistencies in section 11 to ensure that it operates as was intended.

The bill also amends the Real Property Act to remove any potential unintended consequences following the passing of the Aboriginal Lands Trust Act 2013. Finally, an amendment to this bill was moved by the government in the other place and passed with Liberal Party support. This amendment resolved a technical issue identified within the Surveillance Devices Act. The act prescribed the Police Ombudsman as the relevant review agency for South Australia Police. However, in September of this year, the Ombudsman was dissolved following the passing of the Police Complaints and Discipline Bill. The amendment replaces it with the reviewer under schedule 4 of the Independent Commissioner Against Corruption Act 2012, and we are advised that the Hon. Kevin Duggan AM QC has been appointed as a reviewer until 4 March 2020.

The bill in its raw form is one that requires, I would suggest, little debate. Subsequently, the government has, under the cloak or justification of urgency, filed further amendments, which relate to persistent sexual exploitation of a child. These amendments involve complex law, and it is the Liberal Party's view that these amendments require proper debate. This has been debated in the public forum ahead of today's debate, but it was the Liberal Party's view that proper debate would better test this bill to ensure that we do not have the situation we are now facing, where there needs be further amendment with retrospect provisions providing for retrospective application.

The justification for the amendments were the result of a High Court case, in shortened title of Chiro. The effect of that case was to say that because there was no special verdict—which means that there was a course of behaviour that the individual was found guilty of, but no special verdict on the particular aspects of the offending was taken from the jury—in the sentencing the most minor of the range of offending had to be taken into account and not the other, perhaps more serious, aspects of the case.

In essence, the bill seeks to rectify that and adopt a model clause that was articulated in the criminal justice report of the Royal Commission into Institutional Responses to Child Sexual Abuse. That report was released prior to the High Court delivering its judgement in Chiro. There was another associated case called Hamra, but the main focus seems to be on the case of Chiro in briefings, I understand. These provisions before us, I understand, relate to implementing that model, and I would

like to explore the aspects of that model when we enter into the committee stage immediately after the second reading.

I understand there has been limited community consultation, but I am appreciative of the South Australian Bar Association managing to provide a letter by email. Because we are dealing with this bill with some urgency, I intend to read it out. Members will be relieved that it is only two pages. It begins with the usual salutations. The letter is addressed to myself by email and dated 19 October 2017. I sought their views. The signature block is from Ian Robertson SC, the President of the South Australian Bar Association:

I refer to the letter from the Attorney General to you dated 17 October 2017 and to the Statutes Amendment (Attorney-General's Portfolio) (No 2) Bill 2017...

I observe that the Bill was not provided to this Association for comment by the Government. In the plethora of Bills provided to the Association in the last month, this Bill and the Statutes Amendment (Recidivist and Repeat Offenders) Bill 2017 were notable omissions.

This Bill was forwarded to the Criminal Law Committee of the Association for comment. In the little time available to consider this Bill, the Criminal Law Committee have formed the view that the proposed amendments it sets out to make appear to be largely a knee jerk response to defects in legislation which is arguably flawed to begin with.

With respect, the Attorney General's position misses the point highlighted in Chiro. Chiro was a case about an unfair and lazy use of s 50 of the Criminal Law Consolidation Act 1935 by the prosecution. The type of charge which is permitted by s 50 was never intended to become a run of the mill offence to be commonly utilised in prosecutions relating to sexual misconduct against children. It was intended to be a charge of last resort only, and then, primarily in regard to young children who could not particularise the offending conduct in the usual way. It seems that the section is routinely used in most child sex cases, including cases where the complainant is not a young child and is capable of properly particularising the instances of offending conduct in the usual way.

Encouraging charges relying on s 50 tends to encourage lazy and, we would argue, unfair prosecutorial tactics. Indeed, this was highlighted as a problem in Chiro.

The offence created by s 50 is a significant compromise on the usual common law principle requiring the prosecution to properly particularise the case that the accused has to meet at trial. There is perhaps a justification in appropriate cases for resort to be had to s 50, for example, where a child cannot distinguish one occasion of offending from another. The need to modify the common law was based on resolving the practical difficulty (in some cases, the impossibility) of the victim being able to remember material particulars, or to provide the dates or the exact detail or circumstances of an alleged offence. Justice Kirby has observed in KRM (2001) 206 CLR 221 (at [80]) that the offence is a modification of the requirements of the common law which insisted upon a high degree of specificity in the proof of criminal offences, generally.

So, in Chiro, where persistent sexual abuse in breach of s 50 was charged, the acts alleged by the prosecution hugely varied. They ranged from kissing to unlawful sexual intercourse. If a single verdict of guilty was returned, as it was in that case, for what misconduct was the accused convicted? The High Court held the sentencing judge could not guess. Hence, the need to sentence the accused on the basis most favourable to him.

The proposed amendment will, we contend, relieve the prosecution of thinking about what is the appropriate charge. It will encourage inexactness and promote laziness. If passed, that amendment would enable the prosecution simply to allege a range of unlawful sexual acts (ranging from the minor to the egregious) and the accused will have no way of knowing what conduct the jury has relied upon to convict. A long, unwarranted and unjust sentence may result, even though the jury may have convicted on the basis of the least serious offending conduct.

Further, the amendments appear to permit that the jury is no longer required to be satisfied beyond reasonable doubt of both unlawful sexual acts in the event of more than two acts being alleged.

The association contends that any amendment to these provisions should commence from the standpoint that the intention for the charging of offences of this type is a circumstance of last resort, namely where the complainant cannot give appropriate particulars. These amendments are self-styled by the Attorney's letter to you as proceeding on quite a different, and we, argue, misconceived basis.

This Bill will be conducive of laziness in prosecutorial practices and inevitably will lead to serious unfairness and miscarriages of justice.

The Association recommends that consideration of this Bill is deferred so that its ramifications can be determined, including its effect, if any, on the ratio of Chiro. That case is scheduled for further consideration by the Court of Criminal Appeal on Friday 20 October 2017, the contemporariness of which cannot help but be remarked upon.

I thank the Bar Association for providing me with that submission under difficult circumstances. I was going to ask the minister for a couple of topics to be addressed in his second reading summing-up,

but it would probably be more appropriate at clause 1 since he will have the opportunity for an adviser to sit alongside him.

I would like the minister, who has tabled his second reading speech, at clause 1 to set out formally for the benefit of the *Hansard* the reason for the urgency; the extent of consultation, particularly after the royal commission report, because the royal commission report is providing the model for which these legislative changes are based; and whatever cases are being impacted, which I know has been the subject of the some of the briefs to the Liberal Party.

I would like to put to honourable members that the Attorney-General on many occasions has expressed his particular dislike of the Legislative Council chamber. I would like to point out to the Attorney-General in the other place that on many occasions this chamber corrects errors that have appeared in bills and more often than not improves them, and that is why this chamber exists, not only to have its own legislative initiatives but also to review the work of the House of Assembly.

The shadow attorney-general has asked the Attorney-General on a number of occasions to debate this bill in the House of Assembly first. This has been rebuffed. The Attorney-General's new tack is to try to reduce this chamber to a rubber stamp, using urgency to justify limited examination and consultation. What concerns me is that we may end up in the same set of circumstances as we find ourselves now with ill-considered law and having to then legislate for retrospective provisions, which anyone should feel distinctly uncomfortable about, and we will get to those in the committee stage.

What I find a little galling is that the Attorney-General in the other place expects us to fall on our knees in awe of his demands for urgency when he got it wrong in the first place. How can we trust that this version is any better? I reiterate, poor law comes from a limited opportunity to debate.

I was going to attempt to move an adjournment but I know that I do not have the numbers so I am not going to proceed down that path. My final comment is to reiterate that the Liberal Party is genuinely concerned that the urgency of the passage of this bill through the two chambers will impact on the quality of the legislation and undermine the aspects of the bill which provide for community safety. The Liberal Party does not have an issue with the policy objective but it does have concerns that the urgency may well result in unintended consequences.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:00): I thank all those who have contributed to the second reading of this bill. As honourable members know, the government is going to move amendments relating to the offence of persistent exploitation of a child and to address the impact of a recent High Court ruling in Chiro v The Queen. I will provide some background on these amendments and might be able to answer some of the questions that the Hon. Andrew McLachlan has raised.

In South Australia the offence of persistent sexual exploitation of a child is prescribed by section 50 of the Criminal Law Consolidation Act 1935. The High Court recently delivered judgements in two appeals, Hamra v The Queen (the Hamra case) and Chiro v The Queen (the Chiro case), dealing with the existing South Australian offence of persistent exploitation of a child. The Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse recently recommended changes to the offence of persistent exploitation of a child—recommendations 21 and 22 of the report.

It was recommended that each state and territory should introduce legislation to amend its persistent sexual abuse of a child offence in accordance with the recommended draft provision, the model provision, which was itself based on a similar provision in the Queensland Criminal Code. These amendments substantially implement recommendations 21 and 22 of the Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse and also address some of the problems created, bearing in mind the majority High Court decision in the Chiro case.

The offence of persistent exploitation of a child creates an offence where an adult commits more than one act of sexual exploitation of a child over a period of not less than three days. An act

of sexual exploitation of a child is an act of a kind that could be the subject of a charge of a sexual offence if it were able to be properly particularised. The offence is designed to overcome the problem whereby children or adults recounting historical allegations from when they were children are unable to particularise the alleged offending sufficiently to enable the alleged acts to be separately charged. This may be because they are unable to provide specific dates, times or places that the alleged offences took place. It may also be due to the repeated nature of the offending resulting in an inability to delineate two specific offences to provide the degree of specificity required to differentiate repeated individual acts from each other.

The offence of persistent sexual exploitation of a child is, therefore, designed so that an offender can be found guilty as long as the jury or other trier of fact is satisfied that more than one sexual act was committed against the child over a period of not less than three days. Until the recent decision in Chiro, upon the finding of guilt by the jury or the trier of fact, the sentencing judge sentenced taking into account all the sexual acts that the judge found were proven beyond a reasonable doubt.

In Chiro a majority of the High Court has said that upon a finding of guilt by the jury, the jury should be asked by the judge which of the sexual acts they find proven beyond a reasonable doubt and then the judge has to sentence, taking into account only these acts. If the jury is not asked the question, the judge must sentence on the version of facts most favourable to the offender; that is, only taking into account the two least serious acts, regardless of whether the judge has formed the view that other more serious acts were proven beyond a reasonable doubt.

In relation to trials in the future, the requirement to ask questions of the jury may create difficulties as to how the questions are framed, as well as creating difficulties for prosecutors when framing the charge at the outset. In particular, the jury's answers to questions may differ, depending on whether more than four hours have elapsed, when they can return a verdict by statutory majority. They may be unanimous as to some acts, and only have a statutory majority as to others.

The answers to the questions will differ only on account of the time elapsed, but a proper and less consequential verdict could still be returned within four hours. The jury might simply not attempt to reach a verdict on the more serious acts once they reach a unanimous view on the two less serious acts. Answers to serious questions will likely, in many cases, provoke more questions, leading to a complex and unworkable sentencing process, and there would be a stark inconsistency between the approach of sentencing following a trial on the one hand and a plea of guilty on the other, where the necessary fact finding is the province of the sentencing judge.

Under the current offence provision, any charge must cover all alleged acts in respect of the relevant period. It is common for acts of different degrees of seriousness to be alleged during the charged period, as is often the case when offenders groom their victims by beginning with less serious acts of abuse and progressing to what can be regarded as much more serious acts.

The effect of the decision in Chiro is that it will now be difficult to avoid the risk that the accused will only be held accountable for the less serious acts, and will ultimately not be held accountable for the more serious acts. This result can be avoided by substantially adopting the model provisions recommended by the royal commission.

The model provisions provide that the actus reus of the offence is the maintaining of an unlawful sexual relationship—the unlawful sexual relationship established by more than one unlawful sexual act. The trier of fact must be satisfied beyond a reasonable doubt that the unlawful sexual relationship existed. If the trier of fact is a jury, the members of the jury are not required to agree on which unlawful sexual act constitutes the unlawful sexual relationship.

The provision is retrospective, but only in relation to sexual acts which were already unlawful at the time they were committed. This is not creating an offence that was not an offence at the time it was committed. In that respect it is not doing something that you fit retrospectively to people's behaviour in the past. It is only retrospective in relation to sexual acts that were unlawful at the time that they were committed.

On sentencing, regard is to be had to the relevant lower statutory maximum penalties if the offence is charged within that retrospective application. Accordingly, the amendment deletes the existing offence of sexual exploitation of a child (prescribed by section 50 of the Criminal Law

Consolidation Act), and adopts all but the last of these aspects of the model provision. In respect of that last aspect, the royal commission recommends making the persistent sexual abuse offence retrospective, but acknowledges that doing so may have the effect of exposing the offender to a much higher maximum penalty than applied to the individual acts of abuse at the time they were committed.

To address this concern, the model provisions firstly suggest that, where a predecessor offence was in force at the time of the unlawful sexual relationship, the maximum penalty that applied to the predecessor offence should be taken into account. This concept is in South Australia as the predecessor offence is contained in section 50 of the Criminal Law Consolidation Act, and attracts a maximum penalty of life imprisonment.

The model provisions go on to provide that, for offending that took place before the predecessor offence was in place, the court should take into account the maximum penalty then applicable for the unlawful sexual acts upon which the unlawful sexual relationship is alleged to have involved.

At this point it should also be noted that the recommendations were made before the High Court delivered the judgement in the Chiro case. The very mischief the relationship offence seeks to address is to remove the requirement to prove particular offences to found the offence. This is achieved by making the maintaining of an unlawful relationship, rather than the particular unlawful sexual acts underlying it, the actus reus of the offence. It also clearly removes the requirement for extended jury unanimity as to the underlying sexual acts.

Given this, it is counterproductive then to bring the penalty back to the individual acts in historical cases. It carries the risk that, notwithstanding no longer requiring that extended unanimous verdict, the court may be required for sentencing purposes to inquire of the jury which acts the finding of guilt was based upon. In the context of an offence where the jury is not required to be unanimous in those acts, this becomes an unworkable task.

Further, tying the sentence to the unlawful acts proven may be impossible under the model provisions given that they remove the requirement for the extended jury unanimity. That is, in a case where multiple acts on multiple occasions are alleged, it is difficult to see how it could ever be possible to apply the maximum penalty for the unlawful sexual acts that are alleged to have been involved in the situation where the jury is not required to be satisfied of the same acts to make out the offence. For example, some jurors may have been satisfied of underlying acts attracting life imprisonment, while others may only have been satisfied of underlying acts attracting a seven-year maximum, and some jurors may have been satisfied of both. It is not clear how a court should sentence in that scenario, under the model provisions.

Accordingly, instead of following the model provisions in this respect, proposed subsection 50(11) provides that, in sentencing, the court must sentence consistently with the verdict of the trier of fact, but having regard to the general nature or character of the unlawful sexual acts determined by the sentencing court to have been proven beyond reasonable doubt. There is no need to ask any questions of the jury for that purpose.

In relation to clause 2G, sentencing for offences under previous law, the decision in Chiro potentially impacts on sentences passed prior to that decision. That is, where an offender has been found guilty of the existing offence of unlawful sexual exploitation of a child before the decision was handed down, no questions were asked of the jury as to the factual basis for their verdict and the court proceeded to sentence on the then accepted basis, taking into account all the sexual acts that the judge found were proven beyond a reasonable doubt, rather than on the basis most favourable to the offender.

Subclause 2G(1) declares that such sentence imposed before the commencement of the section is taken to be and to always have been not affected by error, or otherwise manifestly excessive, merely because the jury was not asked the questions by the trial judge and sentenced on that then accepted basis. In addition, subclause 2G(2) makes provision for the situation where a person is to be sentenced for an offence against the existing section 50 offence after the commencement of the provision. For example, where a jury verdict of guilty has been returned prior to the commencement of the provision, but where the offender has not yet been sentenced.

It will also apply to any matters where existing charges under the existing provision proceed after the commencement of the amendment. It makes clear the guilty verdict is a verdict of guilt for acts of sexual exploitation comprising the course of the conduct alleged. It also makes clear that on sentencing it is for the sentencing court to determine which alleged acts are proven beyond a reasonable doubt, and that the sentencing court is not required to ask questions of the jury nor is it required to sentence on the basis most favourable to the offender unless it has determined that due to the acts it is satisfied to have been proven beyond a reasonable doubt that it is appropriate to do it in that case.

The Hon. Andrew McLachlan asked a number of questions, and I think they can be summarised as follows: why the urgency, and what consultation was undertaken? This is urgent because there are matters before the court at the moment. The situations I referred to are particularly in relation to where a jury has returned a verdict of guilt but the offender has not yet been sentenced. It means that someone who would have otherwise come under what had been the accepted practice by all involved in the legal process, may well now only be sentenced on the basis of the facts most favourable to them. It means that everyone involved in the process, and expecting to get a very strict sentence, may get a very, very light one now; and I certainly cannot, and I think many in here cannot, in good conscience allow that to happen.

There are currently at least three matters before the courts where an offender has been found guilty of persistent sexual exploitation of a child, but has not yet been sentenced. In each of these cases, in accordance with what has been the accepted practice, the jury was not asked which acts of sexual exploitation of a child it had found proven beyond a reasonable doubt.

Allowing this situation to continue while there are these live legal proceedings is completely unacceptable. Any delay in passing this legislation and the amendments could lead to very serious offenders receiving a far weaker punishment than they deserve and that was expected by all at the time of the trial. It is the government's very strong view that we must address the impact of this High Court ruling today. Failure to do so would, I think, be a failure to meet all realistic community expectations of what an offender should receive for these types of offences.

In relation to consultation, it was necessarily limited as these matters have been impacted upon only by a very recent High Court judgement. As I said, I understand that there are matters due before the court next week and again early next month that, if we delay this any further, will be sentenced on the basis of those facts most favourable to the offender, not on the basis of what all participants in proceedings at trial had reasonably expected they would be sentenced upon.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. M.C. PARNELL: I did not make a contribution on the second reading because I thought I would put some remarks in relation to this bill on the record at clause 1. At the outset I am going to say that I am unhappy with how this bill and a number of others have been dealt with. They are complicated bills but we get amendments late in the piece, and it seems now that invariably key stakeholders have not been consulted. It is a really poor way to legislate.

The Hon. Andrew McLachlan read onto the record some observations of the Bar Association, and they were talking about lazy prosecutors using this section 50 when, according to the Bar Association, they should have more rigorously used individual, specified offences rather than, if you like, a pattern-of-behaviour type of offence. However, I do not want to let the government off the hook with this approach, and I think this is probably the third criminal justice bill we have had where, for whatever reason—and I will explore these reasons later—the government comes in like Chicken Little saying, 'The sky is falling, the sky is falling,' and blackmails the Legislative Council, saying, 'If you don't support these amendments today this bad thing will happen in the future.' It is a poor way to legislate, and it treats the Legislative Council very poorly.

However, then we have to reflect and ask, 'Did the government have no choice? Was there nothing they could have done about it?' That is when we start doing the old, 'What did they know,

when did they know it, and what did they do about it?' As we saw the day before yesterday, when we were debating the fate of a 17-year-old boy, we discovered that no-one was consulted, that the submissions came in late. Then, part of my questioning of the government in relation to that is to put them to the test: do we really need to do this now? Is there a plan B? Is there an alternative way of approaching it that allows the parliament to do its job properly and to properly consider the legislation? Is there a plan B?

I was very grateful this morning to spend half an hour with the Director of Public Prosecutions, Mr Adam Kimber. I talked this issue through with him, and my first question was about a plan B. He pointed out, as the minister has, that there are three pending cases, all of which could be resolved in a potentially unsatisfactory manner if the government's second set of amendments are not passed. So, my question to the DPP was, 'If the first of these is next week on 24 October, can't you just put that off?

Probably within a few seconds of asking the question I think I knew the answer: that it is not really appropriate for the Director of Public Prosecutions to be going to a judge and saying, 'Judge, just hold this, will you, because we think the Legislative Council is about to change the law that's going to ensure a harsher penalty on this defendant.' It would probably be challenged successfully by the defence if they were to try to do that. The next question was, 'Okay, that's one. What about the other two?' We discovered that they are listed for mid-October, so there would be a possibility for us to have a bit more time to scrutinise this bill properly here, from stakeholders.

However, then, as the DPP points out, if you were a defence counsel for one of these mid-November cases, you would be seeking to bring them forward to make sure that they were dealt with before the parliament messed with—to use the vernacular—the sentencing rules. So, that puts us in a difficult position, and we have to weigh up the criticisms that I and the Hon. Andrew McLachlan have delivered about the process. I will point out that this Chiro case was apparently some six weeks ago. Six weeks is a reasonable amount of time. I understand that it can take time for a Solicitor-General or whoever else to give advice. We know the wheels move slowly, but at the tail end of this process is the poor old Legislative Council that gets one or two days to think about the implications, when other organs of government have a month and a half to deal with it.

I come back to the question of whether we allow our disappointment—our outrage, if you like, at the poor process—to prevail over what the minister has put to us, which is whether we can, in good conscience, risk the outcome of potentially outrageously low sentences for serious offending. So, those are the two things we have to weigh up. The material that the minister read onto the record is incredibly complicated; it is detailed. As a lawyer, I pretty well understand most of it: that in the criminal law system you normally say, 'This person did this on this event in this way,' and you have these very specific offences.

However, you do not have to think too hard: we are talking about children and people who are traumatised beyond what many of us can imagine, and often the detail just is not there. It would not just be young children: I think the Bar Association suggested that mainly young children is why you have this offence of persistent sexual abuse of a child. I would not think that it is limited to young children; I think all children suffering the sort of abuse we are talking about would struggle to identify days and times and which bad thing happened on which day.

I understand that the previous or current version of section 50 makes sense. Whether the Bar Association is correct in that it is now the offence of choice, and that, as the Bar suggests, it is laziness on the part of the prosecutors, I do not know. I still think that, if you can, the best way to proceed is with highly identifiable offences.

As the minister has pointed out, if the offence that the person has been convicted of is one of persistent sexual abuse of a child and if the jury has not been asked—and I get why they would not be asked, because they have not needed to be asked until the Chiro case; now it appears they have to be asked—'Jury, which bits of this have you relied on to convict? Was it kissing, was it touching or was it something far more awful?' Not that they are not bad—they are bad, they are illegal. As we have all accepted, there is a gradation of seriousness of these offences.

For me, the idea that, if the judge has not asked the jury that question, and the High Court has now suggested they should have, it is too late to bring the jury back; you cannot do that.

Ultimately, I think this idea of sentencing the defendant in the best possible light might mean that some pretty, whilst still illegal, minor conduct results in a very light sentence when in fact there is some awful conduct, which in fact the jury may have relied on, which deserves a far more significant sentence.

The next line of inquiry—and I explored this with the DPP—is, in the criminal justice system, we tend to differentiate the finder of fact and then there is the finder of law and the sentencing body. But it would be wrong to suggest that judges do not do both jobs—they do. Not every case has a jury. Judges find facts as well as apply the law. I do not think the judges are incapable of determining which elements of behaviour should be taken into account in terms of the sentence.

They have been in the same court as the jurors. They have heard all the same evidence. Whilst they do not necessarily need to second-guess the jury and the judge saying, 'I reckon the jury decided that it wasn't the kissing, it wasn't this, it was something else,' they do not necessarily need to do that, but I am happy that the judge has heard all the evidence, the judge knows what the serious allegations were and what weight might be appropriate to attach to those.

When we put all that into the mix, whilst I am still very unhappy with the way the government has gone about this and the fact that it has happened to us three times now in two weeks with different bills, whilst I am unhappy with what they have done, the conscience that the minister urged us to rely on does prevail in this case for me.

It is a very longwinded way of saying that the Greens, whilst we are reluctant to curtail proper democratic processes and proper consultation with stakeholders, these are very serious matters. I would struggle if we stood on principle, insisted on proper process and a bad outcome resulted in these three cases. That is my way of informing the chamber that we will be supporting the government amendments, but we are not happy about the circumstances in which we are being asked to do it.

The Hon. K.J. MAHER: I thank the honourable member for his contribution. I take on board the process comments that are made. I can assure the honourable member it does not give me a lot of joy to come into this chamber and know I am bringing in something that will elicit such comments about, 'We didn't have time' and 'Process hasn't been followed.' It is not something I love to do either, but on this case, I could not in good conscience not have asked the chamber to pass this as soon as possible.

In terms of the time frames, I think it was 13 September—so almost five weeks ago to the day—that the High Court handed down the judgement in the Chiro case. I am advised that in the five weeks it was acting on the advice of the Solicitor-General to get this as correct as possible, which is why it has taken that time frame. In my legal experience, if it is five weeks to do something that is reasonably complicated, I do not think anyone has been dragging the chain on doing this.

I am advised it was about 4 October that it was realised that there was one of these cases in November that a verdict has been returned but sentencing had not taken place. I am advised it was only on Monday of this week that it was understood that there was a case coming up next week. So this is not a fake call for urgency. When the government became aware of the facts, we acted as quickly as possible, I am advised, to bring this to the chamber, as we knew the facts and became aware.

Again, I thank the honourable member for his contribution. This is not some esoteric debate, where we can stand up and talk about process and how the wrong thing has been done. This has a real-life impact. I agree with the honourable member. With a clear conscience, I do not think we could sit here and allow someone to face a relatively minor sentence when, at the time of trial, all involved in that trial understood how they thought this would play out, to allow them to receive a much lesser sentence than everyone understood at the trial for the mere fact that in the intervening period there has been a High Court decision that has meant a judge, on the view of the High Court, ought to have asked questions of the jury that they did not ask—but they did not know that they ought to have asked that—to allow what would be probably considered by all at the time a reasonable sentence to be imposed.

The Hon. K.L. VINCENT: I just wanted to place on the record that the Dignity Party also agrees that this is not an ideal situation to be in. Usually, we adhere to process in this place, and

ultimately that is because adhering to process helps us to get the best outcome for everybody in the state. Usually, we take time to pass bills, because it takes time to consider them and to consult with people, and to reach the right verdict considering everyone's perspectives, but in this case we do not have that luxury. Ultimately, although the reason that we are here might not be perfect and it might not be preferable, I think the best outcome we can achieve would be to pass this legislation quickly to ensure that we do get the appropriate action for these very serious offenders and we do not have more children at risk.

Having said that, though, I would like to place on the record that I do take umbrage at comments that were made by the Attorney-General in the other place on ABC radio this morning. I am paraphrasing him, so I hope I am not doing him any great injustice. They were along the lines of, 'You know, we'd like to pass this bill as soon as possible, but gosh only knows what will happen in the Legislative Council. I can't control what happens there,' more or less implying that it is the Legislative Council, and only the Legislative Council, that ever holds up legislation. I think those comments are particularly offensive, given that in recent times we have passed three bills and in fact, this will be the second one this week, by my count, that we have agreed to pass expeditiously to ensure the best outcome for the state.

As I have said, given that the procedures are there and the usual processes are there to allow us to reach the best outcome, in this case, in this situation, as imperfect as it may be, the right thing to do and the best outcome to reach is for this legislation to pass, to make sure that offenders do not get away or do not have a lesser offence for their very serious crimes, and that the children and young people are sent a very serious message, and a very genuine message, that we are willing to do all we can in this place to keep them safe. We support the speedy passage of this bill.

The Hon. A.L. McLACHLAN: I might just make a couple of comments on the delay, and then we will move on to the bill, probably to the relief of the minister. The delay issue will probably be circulated more in the other chamber, between the Attorney and the shadow attorney. I am not questioning the minister's assertions, but five weeks for the Solicitor-General I think personally is a tad long, given that it has been a model that we are adopting from the criminal justice report of the royal commission. I will leave it there, and those issues have been articulated in the media, anyway, at length.

I thank the minister for his second reading summing-up. There is a lot of information there. For the benefit of *Hansard*, I want to break down a little of that. Obviously, we are not seeking to amend this bill, so it is not for the purposes of justifying any form of amendment. Let's put the retrospective provisions aside for a moment. Can we just go through again a case where there is a series of allegations to which a jury has made a finding of guilt. This is how it would operate, as enacted, with the new law applying.

The Hon. K.J. Maher interjecting:

The Hon. A.L. McLACHLAN: This is the law applying as if we passed the amendments in this bill.

The Hon. K.J. MAHER: Pre Chiro?

The Hon. A.L. McLACHLAN: No, not pre: on the passage of this bill. I am just trying to tease out how it operates in practice. We have a series of events. The charge has been proved. Some events are less serious; some are in the higher range. As I understand, it is a conviction for the one offence. What then happens during the sentencing process? This is not under the retrospective amendments. The jury does not have to agree on which ones they accept brings them to the finding of guilt. How does the judge then decide which ones have been proven, or does the judge not have to and just sentences on the collective?

The Hon. K.J. MAHER: I am sure, as I am speaking, if I am getting this at all wrong, I will get a tug on my jacket to tell me. As I am advised, it is the one offence the trial of fact finds the accused guilty on, but I think the question is in terms of what part or what particular acts you are to be sentenced on. As I am advised, that part remains the same as, effectively, the pre Chiro situation. What this bill seeks to do is keep that situation; that is, it is up to the sentencing judge, who has heard all the facts and all the evidence, to make a decision as to which of the particular acts, in the

sentencing judge's view, has been proved beyond reasonable doubt to then form the basis for sentencing.

The Hon. A.L. McLACHLAN: I have a couple of questions. Rather than trawl through the bill, we may as well deal with them as general issues. That is what I thought my understanding was. I hope the minister appreciates that I have had an equally limited amount of time to consume the technicalities of this bill. So, once the verdict of guilty has come in, the judge then, according to what the minister has said, contemplates, post the verdict of guilt, the allegations of the particular incidences—I am just asking for a correction on this—then makes a personal finding as to which ones have been proved beyond reasonable doubt and sentences accordingly.

The Hon. K.J. MAHER: That is correct. That is how it is intended to operate under what we are being asked to pass today. That is how it operated and how everyone has understood it to operate pre the Chiro High Court decision, yes.

The Hon. A.L. McLACHLAN: So, the government's justification for the bill, which I am not challenging, is that, in effect, it is clarifying and crystallising best practice, which would have occurred by asking for specialist verdicts. In effect, it is providing a framework for a process that the government previously thought was being carried out; is that fair?

The Hon. K.J. MAHER: I will give the answer, and that might reflect whether I understood the question properly. I think it is the case that this regularises what everyone—I think all participants in proceedings—had understood the way the legislation had previously worked before. In that respect, in terms of what the judge sentences upon, it reverts back to the understanding all participants in proceedings would have had before the Chiro High Court case.

The Hon. A.L. McLACHLAN: It clarifies and provides a framework, in my reading, of how it was expected to be done and, therefore, that is the justification the government gives for the retrospective provisions because, as I understand from the summing up of your second reading, that is the justification. I am not challenging it. I am just trying to draw it out onto *Hansard*.

The Hon. K.J. MAHER: Often the quite reasonable objection to retrospectivity in relation to criminal law is that humans base their behaviour on how they understand the law operates and what the punishment for behaviours will be, whereas this in that sense is applying how everybody thought the law operated before the High Court case. So, in that respect, it is not retrospectively fitting what people would have had no way of knowing were penalties for behaviour, which is most commonly the basis for objection to this type of retrospectivity, particularly when it comes to what the potential punishments for offences are.

The Hon. A.L. McLACHLAN: Can I move on to a slightly different topic? The minister mentioned in his second reading summing-up—and there was a lot of information there, so I just want to go back to it. If I understood correctly, and I am now on the retrospective provisions, if they apply to you, there was some protection on penalty or there was some trade-off on penalty on the maximums or minimums. Did I completely misunderstand that, or does it just operate as normal? There was some commentary.

The Hon. K.J. MAHER: I think this is the question. The royal commission recommended 25 years as a maximum penalty. The maximum penalty under the existing legislation was life imprisonment, so we have not downgraded that one in effect to what the royal commission's recommendations were. We have left the maximum penalty at life imprisonment.

The Hon. A.L. McLACHLAN: As to the person who is awaiting sentence and to whom the retrospective provision applies, will they face the same sentence as they would have otherwise?

The Hon. K.J. MAHER: Yes, my advice is that if we take it pre Chiro—so, what operated for this offence prior to that—if this bill passes, the maximum penalty going forward will not change. My advice is that there is not a greater penalty for this bill now than there was to what everyone thought was the case before this. Again, I think that goes to what I talked about: the biggest objection usually to anything that is seen as retrospective is that it is not a different punishment for what was the same set of behaviours in the past.

The Hon. A.L. McLACHLAN: I thank the minister. There was a lot of information in his second reading and it was not entirely clear to me. I would like to go through for the sake of

completeness just to tease out why not all aspects of the royal commission's recommendations were adopted. There is a paragraph at the end of the Attorney's letter to me, dated 17 October, at the end of page 2:

> Finally, not all aspects of the Royal Commission recommendations have been adopted. There are minor deviations from the recommended model provisions, aimed at preserving the existing South Australian provisions where it makes sense to do so.

I would like to understand the concept of 'makes sense to do so'. And:

> These deviations include retaining the existing South Australian maximum penalty for the offence—

which the minister has already addressed—

> retaining 'under 17' in the definition of 'child'…, and retaining several definitions used to establish a 'position of authority offence'.

That does not sound significant but I just want to be assured that that is really the use of a drafting technique and fitting it into the existing legislation rather than a new policy endeavour.

The Hon. K.J. MAHER: I thank the honourable member for his questions. As he said, not all aspects of the royal commission recommendations have been adopted exactly. It will not take long to briefly explain the four areas where there are slight deviations. The first one we have covered in terms of the maximum penalty. The maximum penalty recommended by the royal commission recommendations was 25 years. Ours, as it previously applied, was life imprisonment and that will continue, so we have not adopted that particular measure that would have, in effect, downgraded our charge.

The model provisions define a child as a person under the age of 16; the current SA position is under the age of 17. We are retaining that higher age of 17, so in effect, again, we are not downgrading it from what is already there in line with what would be effectively downgrading it by adopting the model provisions. The model provisions suggest that jurisdictions should define sexual offences by reference to their own existing offences. The existing definition in section 50 is appropriate and has been retained.

Finally, the model provisions refer to 'special care' whereas the existing South Australian terminology refers to 'positions of authority'. That existing South Australian terminology of positions of authority is retained. There are also differences in the context of the definitions of the roles or relationships that comprise a person who holds a position of authority. In essence, where the model provisions are broader they have been adopted but where the model provisions are narrower or weaken or downgrade what the existing provisions are, we have preferred those and have retained them.

The Hon. A.L. McLACHLAN: I do not have any further questions, and I am not seeking to amend any other part of the bill during the committee stage.

Clause passed.

Clause 2 passed.

New clauses 2A, 2B, 2C, 2D, 2E, 2F, 2G.

The Hon. K.J. MAHER: I move:

Amendment No 1 [Employment–2]—

Page 2, after line 8—After clause 2 insert:

Part 1A—Amendment of Child Sex Offenders Registration Act 2006

2A—Amendment of Schedule 1—Class 1 and 2 offences

Schedule 1, clause 2(ea)—delete paragraph (ea) and substitute:

(ea) an offence against section 50 of the *Criminal Law Consolidation Act 1935* (persistent sexual abuse of a child);

(eab) an offence of persistent sexual exploitation of a child (see section 50 of the *Criminal Law Consolidation Act 1935* as in force before the commencement of Part 1C of the *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017*);

Part 1B—Amendment of Correctional Services Act 1982

2B—Amendment of section 4—Interpretation

(1) Section 4(1), definition of *child sexual offence*, (ba)—delete paragraph (ba) and substitute:

(ba) persistent sexual abuse of a child;

(2) Section 4(1), definition of *sexual offence*, (ba)—delete paragraph (ba) and substitute:

(ba) persistent sexual abuse of a child;

Part 1C—Amendment of Criminal Law Consolidation Act 1935

2C—Amendment of section 49—Unlawful sexual intercourse

(1) Section 49(5a)—delete subsection (5a)

(2) Section 49—after subsection (8) insert:

(9) For the purposes of this section, a person is in *a position of authority* in relation to a person under the age of 18 years (the *child*) if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

2D—Substitution of section 50

Section 50—delete the section and substitute:

50—Persistent sexual abuse of child

(1) An adult who maintains an unlawful sexual relationship with a child is guilty of an offence.

Maximum penalty: Imprisonment for life.

(2) An *unlawful sexual relationship* is a relationship in which an adult engages in 2 or more unlawful sexual acts with or towards a child over any period.

(3) For an adult to be convicted of an unlawful sexual relationship offence, the trier of fact must be satisfied beyond reasonable doubt that the evidence establishes that an unlawful sexual relationship existed.

(4) However—

(a) the prosecution is not required to allege the particulars of any unlawful sexual act that would be necessary if the act were charged as a separate offence; and

(b) the trier of fact is not required to be satisfied of the particulars of any unlawful sexual act that it would have to be satisfied of if the act were charged as a separate offence, but must be satisfied as to the general nature or character of those acts; and

(c) if the trier of fact is a jury, the members of the jury are not required to agree on which unlawful sexual acts constitute the unlawful sexual relationship.

(5) The prosecution is required to allege the particulars of the period of time over which the unlawful sexual relationship existed.

(6) This section extends to a relationship that existed wholly or partly before the commencement of this section and to unlawful sexual acts that occurred before the commencement of this section.

(7) A person may be charged on a single indictment with, and convicted of and punished for, both—

(a) an offence of maintaining an unlawful sexual relationship with a child; and

(b) 1 or more sexual offences committed by the person against the same child during the alleged period of the unlawful sexual relationship.

(8) Except as provided by subsection (7)—

(a) a person who has been convicted or acquitted of an unlawful sexual relationship offence in relation to a child cannot be convicted of a sexual offence in relation to the same child if the occasion on which the sexual offence is alleged to have occurred is during the period over which the person was alleged to have committed the unlawful sexual relationship offence; and

(b) a person who has been convicted or acquitted of a sexual offence in relation to a child cannot be convicted of an unlawful sexual relationship offence in relation to the same child if the sexual offence of which the person has been convicted or acquitted is one of the unlawful sexual acts that are alleged to constitute the unlawful sexual relationship.

(9) A person who has been convicted or acquitted of a predecessor offence in relation to a child cannot be convicted of an unlawful sexual relationship offence in relation to the same child if the period of the alleged unlawful sexual relationship includes any part of the period during which the person was alleged to have committed the predecessor offence.

(10) For the purposes of this section, a person ceases to be regarded as having been convicted for an offence if the conviction is quashed or set aside.

(11) A court sentencing a person for an offence against this section is to sentence the person consistently with the verdict of the trier of fact but having regard to the general nature or character of the unlawful sexual acts determined by the sentencing court to have been proved beyond a reasonable doubt (and, for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining the general nature or character of the unlawful sexual acts determined by the trier of fact found to be proved beyond a reasonable doubt).

(12) In this section—

adult means a person of or over the age of 18 years;

child means—

(a) a person who is under 17 years of age; or

(b) a person who is under 18 years of age if, during the period of the relationship that is the subject of the alleged unlawful sexual relationship offence, the adult in the relationship is in a position of authority in relation to the person who is under 18 years of age;

predecessor offence means an offence of persistent sexual exploitation of a child, or of persistent sexual abuse of a child, as in force under a previous enactment;

unlawful sexual act means any act that constitutes, or would constitute (if particulars of the time and place at which the act took place were sufficiently particularised), a sexual offence;

sexual offence means—

(a) an offence against Division 11 (other than sections 59 and 61) or sections 63B, 66, 69 or 72; or

(b) an attempt to commit, or assault with intent to commit, any of those offences; or

(c) a substantially similar offence against a previous enactment;

unlawful sexual relationship offence means an offence against subsection (1).

(13) For the purposes of this section, a person is in *a position of authority* in relation to a child if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

2E—Amendment of section 57—Consent no defence in certain cases

Section 57(4)—delete subsection (4) and substitute:

(4) For the purposes of subsection (1), a person is in *a position of authority* in relation to a person under the age of 18 years (the *child*) if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

2F—Amendment of section 63B—Procuring child to commit indecent act etc

Section 63B(6)—delete subsection (6) and substitute:

(6) For the purposes of this section, a person is in *a position of authority* in relation to a child if—

(a) the person is a teacher and the child is a pupil of the teacher or of a school at which the teacher works; or

(b) the person is a parent, step-parent, guardian or foster parent of the child or the de facto partner or domestic partner of a parent, step-parent, guardian or foster parent of the child; or

(c) the person provides religious, sporting, musical or other instruction to the child; or

(d) the person is a religious official or spiritual leader (however described and including lay members and whether paid or unpaid) in a religious or spiritual group attended by the child; or

(e) the person is a health professional or social worker providing professional services to the child; or

(f) the person is responsible for the care of the child and the child has a cognitive impairment; or

(g) the person is employed or providing services in a correctional institution (within the meaning of the *Correctional Services Act 1982*) or a training centre (within the meaning of the *Young Offenders Act 1993*), or is a person engaged in the administration of those Acts, acting in the course of the person's duties in relation to the child; or

(h) the person is an employer of the child or other person who has the authority to determine significant aspects of the child's terms and conditions of employment or to terminate the child's employment (whether the child is being paid in respect of that employment or is working in a voluntary capacity).

2G—Sentencing for offences under previous law

(1) A sentence imposed on a person, before the commencement of this section, in respect of an offence against section 50 of the *Criminal Law Consolidation Act 1935* (as in force before the commencement of section 2D of this Act) is taken to be, and always to have been, not affected by error or otherwise manifestly excessive merely because—

(a) the trial judge did not ask any question of the trier of fact directed to ascertaining which acts of sexual exploitation, or which particulars of the offence as alleged, the trier of fact found to have been proved beyond a reasonable doubt and the person was not sentenced on the view of the facts most favourable to the person; and

(b) the sentencing court sentenced the person consistently with the verdict of the trier of fact but having regard to the acts of sexual exploitation determined by the sentencing court to have been proved beyond a reasonable doubt.

(2) Where, after the commencement of this section, a person is to be sentenced for an offence against section 50 of the *Criminal Law Consolidation Act 1935* (as in force before the commencement of section 2D of this Act) the following provisions apply:

(a) a verdict of guilt handed down by the trier of fact in relation to the offence is taken to be, and always to have been, a finding by the trier of fact that the person is guilty of the acts of sexual exploitation comprising the course of conduct alleged by the information;

(b) notwithstanding paragraph (a), in sentencing the person for the offence, the sentencing court may determine which alleged acts of sexual exploitation the sentencing court finds proved beyond a reasonable doubt and may disregard any acts of sexual exploitation that the sentencing court is not satisfied were proved beyond a reasonable doubt;

(c) for the avoidance of doubt, the sentencing court need not ask any question of the trier of fact directed to ascertaining which acts of sexual exploitation, or which particulars of the offence as alleged, the trier of fact found to have been proved beyond a reasonable doubt and, unless it has so determined in accordance with paragraph (b), need not sentence the person on the view of the facts most favourable to the person.

(3) This section does not apply in relation to the particular matter that was the subject of the determination in Chiro v The Queen [2017] HCA 37 (13 September 2017).

Note—

Except as provided in subsection (3), this section negates the effect of the determination of the High Court in Chiro v The Queen [2017] HCA 37 (13 September 2017).

I will not speak at length to them. I think we have agitated quite thoroughly the issues in those amendments already in the committee stage.

New clauses inserted.

Clauses 3 to 6 passed.

Clause 7.

The Hon. K.J. MAHER: I move:

Amendment No 2 [Employment–2]—

Page 4, lines 1 to 6—Delete Part 5 and substitute:

Part 5—Amendment of Summary Procedure Act 1921

7—Amendment of section 4—Interpretation Section 4(1), definition of *sexual offence*, (ba)—after 'child' insert: 'or persistent sexual abuse of a child'

7A—Amendment of section 99AAC—Child protection restraining orders

Section 99AAC(8), definition of *child sexual offence*—after paragraph (d) insert:

(daa) an offence of persistent sexual abuse of a child under section 50 of the *Criminal Law Consolidation Act 1935*;

Part 6—Amendment of Surveillance Devices Act 2016

7B—Amendment of section 3—Interpretation

Section 3(1), definition of *review agency*, (a)—delete 'the Police Ombudsman' and substitute:

the reviewer under Schedule 4 of the Independent Commissioner Against Corruption Act 2012

Amendment carried; clause 7 as amended passed; new clauses 7A and 7B inserted.

Title.

The Hon. K.J. MAHER: I move:

Amendment No 3 [Employment–2]—

Page 1—Delete 'various Acts within the portfolio of the Attorney-General' and substitute:

the *Child Sex Offenders Registration Act 2006*; the *Correctional Services Act 1982*; the *Criminal Law Consolidation Act 1935*; the *Cross-border Justice Act 2009*; the *Justices of the Peace (Miscellaneous) Amendment Act 2016*; the *Real Property Act 1886*; the *South Australian Employment Tribunal Act 2014*; the *Summary Procedure Act 1921*; and the *Surveillance Devices Act 2016*

Amendment carried; title as amended passed.

Bill reported with amendment.

Third Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (16:51): I move:

That this bill be now read a third time.

Bill read a third time and passed.

BUDGET MEASURES BILL 2017

Second Reading

Adjourned debate on second reading.

(Continued from 26 September 2017.)

The Hon. J.A. DARLEY (16:52): The government is extending the grants from previous years for off-the-plan apartments. A $10,000 grant is available to certain eligible transactions for off-the-plan apartments. A stamp duty concession is also available to these transactions.

From the information provided by the Valuer-General's office, 22 per cent of apartments that have been bought and resold in the past five years have sold at a loss. The data provided showed that those who made money did not make a large profit from the resale of their property. However, those who did suffer a loss tended to incur a significant loss. The banks are generally reluctant to loan on single-bedroom apartments that are less than 60 square metres in area, and any apartment that does not have a car park allocated is difficult to sell.

This indicates that apartments are not the best choice for a property purchase when accounting for resale value and equity. As such, Advance SA believes it would be beneficial to extend the stamp duty concession and the $10,000 grant to all new house and land packages in the state to help stimulate the building and retail sectors associated with this area. I understand that with each new house and land package there is a significant multiplier effect with regard to associated industries.

Further to stamp duty concessions, as part of the 2015-16 budget the government progressively abolished stamp duty on the transfer of business premises. I recently encountered an issue with a constituent who purchased a property zoned commercial; however, it was being used as a residential property by the previous owner. I understand that, prior to historical rezoning, the entire area was residential, and that the previous owner had lived in the property prior to the commercial evolution of the area. That is to say that the previous owner had been there for many years, and over an extended period of time the use of neighbouring properties changed from residential to commercial to a point where the entire area was rezoned.

My constituent intended and, indeed, now has converted the property for commercial use, however is ineligible for the stamp duty concession as the use at the time of the settlement transfer was residential. The government should give consideration to providing a stamp duty concession in these circumstances by way of application if the property owner can demonstrate within a specified time frame that they are using the property for business purposes.

For those who have purchased an off-the-plan apartment, and have been eligible for the stamp duty concession, the government will also give them an exemption for land tax for the first five years. Whilst on paper this looks positive, it should be noted that most of the apartments purchased would be exempt in any case because the site value would be under the threshold where land tax is payable. Further to this, apartments that are purchased and used as a person's principal place of residence would also be exempt. The government advised during my briefing that they expect to forfeit $100,000 per year by providing this exemption—this really is an insignificant amount when compared to the government's total budget.

The government intends to introduce a surcharge on residential properties that are purchased by foreigners. I understand that most other states have already introduced similar measures; however, I find it curious that this surcharge is limited only to residential properties. I understand there is concern in the general public about foreigners purchasing land in Australia, and this may lead to an increase in housing prices. However, I understand there is concern about foreign ownership of Australian companies and particularly farming land. It will be interesting to see if the government will react to these community concerns in the future.

Finally, the government's bank tax. I believe that introducing this tax will impact on the cost of doing business or housing, as bank loans will be affected. Retirees, pensioners and others who rely on bank profits will also be affected. It will put South Australia into reverse gear, and that is the

last thing we want. By introducing this tax, the government has sent a clear message to businesses that they may wake up one day and be faced with an additional arbitrary tax at the whim of the government.

Just because a business is successful does not mean they should be the government's cash cow. While it is only the banks that the government currently have in their sights, we do not know who could be next. It might be Coopers, Vilis, Rossi Boots or even the Shahins. I have never supported the bank tax, and I want to put on the record that Advance SA does not support it either, even though my former colleague, Senator Nick Xenophon, did support it until I convinced him to do otherwise. As it stands, I will not be supporting this bill.

The Hon. R.I. LUCAS (16:57): I rise to address some comments to the Budget Measures Bill and, given the lateness of the hour, I indicate that the reason why I asked the Hon. Mr Darley to speak before me is that I intend to seek leave to conclude my remarks. At the outset, I want to place on the record an advice for the benefit, in particular, of the Treasury officers who, over the years, will be familiar with advice I have sought from one of the leading tax lawyers in the state in relation to the budget measures bills. I intend to read his advice, comments and questions onto the record, as I have done for the last few years.

On at least two occasions, RevenueSA, in particular, has taken on board some of the issues this leading tax lawyer has raised and certainly in the last two years the government, as a result of the advice on one occasion, did introduce significant amendments to the equivalent to the Budget Measures Bill, taking on board the advice from this senior tax lawyer. The reason I want to read it onto the record now is that, given that we will not be sitting next week, it will give RevenueSA officers, in particular, a chance to consider the detailed forensic advice of the senior tax lawyer and respond at the end of the second reading to the questions and concerns.

I intend to read this advice and, for the benefit of Hansard, I do have a neatly typed copy of the 14 pages or so of tax advice, so they can put up their feet and rest. It is headed 'Some Comments on the Budget Measures Bill 2017.' It reads:

Clause 5.

1. Clause 5 requires the Commissioner to determine the Gross State Product (GSP) percentage for each financial year and publish the percentage so determined on website determined. Historically, such matters have usually been published in the *Government Gazette* and usually also the subject of a circular or other information guide or page on the RevenueSA website.

2. The proposal to simply publish such item on a website chosen by the Commissioner appears to be a departure from the long-established and recognised practice of publishing such items of significance in the *Government Gazette*.

Clause 11.

3. Clause 11 requires a taxpayer to provide a return or other document in a form determined or approved by the Commissioner. In T&S Liapis v Commissioner of State Taxation [2015] SASC 63 [134]-[136] there was an issue before the Supreme Court as to whether the form of assessment used indeed constituted a form approved by the Commissioner. The court inferred in the circumstances that the Commissioner approved the form and spreadsheet. In this situation, as the taxpayer will be required to complete such forms and returns. They must be clearly approved and prescribed for the particular purposes.

Clause 13.

4. Clause 13 provides that the State major bank levy payable by an ADI under this Act cannot be directly recovered from customers of the ADI and must be paid out of profits or other funds of the ADI. Such provisions usually raise a number of queries.

5. The major bank levy is payable in respect of liabilities. Whilst the imposition of a surcharge on customers borrowing funds from the ADI in the State would infringe the prohibition, would paying customers in the State a lower interest rate than depositors in other States so clearly offend this provision. Recover in a technical legal sense appears to involve recovery by action and judgement, though even in a broad sense it still appears to involve the customer paying an amount rather than receiving less (see J. James *Stroud's Judicial Dictionary* 4th ed 2291).

6. If the common meaning of the word is used then it may include paying depositors a lesser interest, if it is regarded as making good. The Macquarie Online Dictionary includes the following meanings of the word recover:

(1) to get again, or regain (something lost or taken away): to recover lost property

(2) to make up for or make good (loss, damage, etc., to oneself)

(3) to regain the strength, composure, balance, etc., of (oneself)

(4) Law: a. to obtain by judgement in a court of law, or by legal proceedings: to recover damages for a wrong.

b. to acquire title to through judicial process: to recover land.

7. Ideally, both concepts could be dealt with to avoid doubt.

8. The provision does not express any consequences for a breach.

9. There had been a somewhat similar provision in section 31L of the Stamp Duties Act 1923 (SA) (SDA) dealing with passing on rental duty before that duty was abolished. Whilst it was, in the circumstances simply directed at passing on such duty, it did provide more extensively for the consequences of a breach. The section was inter alia, in the following terms:

31L (1) Subject to this section, a registered person or any person acting on his behalf shall not add the amount of any duty or of any part of the duty payable by the registered person as such under this Act to any amount payable by any other person with whom he has entered into or is conducting any rental business, whether by agreement or otherwise, or otherwise demand or recover or seek to recover any such first mentioned amount from that other person.

Penalty: Two hundred dollars. Expiation fee: Division 10 fee.

(2) In the event of a contravention of subsection (1)—

(a) the court by which the defendant is convicted shall, in addition to imposing a penalty for the offence, order the defendant to refund to the other person referred to in that subsection any such amount which has been paid by that other person; or

(b) the other person referred to in that subsection may recover any such amount from the registered person, or person to whom he paid it, by action in a court of competent jurisdiction as if it were a debt due to him from that person.

10. This provision used recover in the expected sense. It also provided for the consequences of breaching the prohibition. Clause 13 does not. Even when section 31L existed there were questions as to how it could be detected or enforced where the duty was simply built into the overall cost of the leasing and not specifically passed on.

Schedule 2

Part 1

11. Clause 2 of the First Home and Housing Construction Grants Act 2000 (FOGS) inserts a new clause 6A which provides for what is the market value of a home which is an eligible transaction and appears to replicate much of what has been in section 18BB of [the First Home and Housing Construction Grants Act].

The acronym used is FOGS. It continues:

The existing section 18BB is being replaced by this provision.

12. Clause 2 repeats a concept in section 18BB which appears to be designed to prevent grants being available in respect of homes built on farms where it is built on land (owned or to be by the person causing the construction) that does not form part of what is called a 'genuine farm'. It appears to do this by in effect preventing the market value of the eligible transaction being determined if the land on which the building is constructed does not constitute a genuine farm. Section 13(1)(a) of FOGS already requires it to be an eligible transaction that a person entering into the comprehensive home building contract must on the completion of the construction be the owner of the land.

13. In the case of an eligible transaction that relates to the construction of a home on a genuine farm, the proposed section 6A(2) and section 6(7), appear to require that for the property to be a genuine farm that the land is:

13.1 to be used for primary production by the person seeking the benefit of the section;

13.2 the land is by itself or with other land owned by that person;

13.3 capable of supporting economically viable primary production operations.

14. A number of observations may be made about these provisions:

14.1 there is no definition of primary production in FOGS, so it is likely to have a classic interpretation, this may be compared with the broader definition in the SDA [Stamp Duties Act] or the Land Tax Act 1936 (LTA);

14.2 the requirement that the land is owned by the person seeking the construction of the dwelling in effect requires not only that the land is owned by a person but the person must own other land in effect as part of the farm. In a period where much of the farm land is ending up in trusts (see section 71CC of the SDA) neither the ownership of the land requirement or if land on which the construction occurs is severed from such land, the requirement it constitute part of other farming land, are likely to be satisfied.

14.3 the requirement that the land is capable of supporting economically viable primary production operations does add an additional and higher threshold. It is also a threshold that can involve very differing views and is a much higher threshold than simply being in the business of primary production. The concept of a business of primary production is used in the SDA and LTA. It appears a more—

I think that should read 'appropriate threshold' rather than 'approach threshold'. It continues:

15. Some of the possible difficulties can be highlighted in the following example, assuming the foregoing correctly describes the intended operation of the provisions: the son of an established farming family who works on the family farm wishes to build a new home on the farm. The farming land used is either owned by his parents or in a discretionary trust (section 71CC of the SDA type of trust). If the dwelling is constructed under a comprehensive home building contract on the parent's land or the trust land, then the ownership requirements for the grant in section 13(1) will not be satisfied. If a portion of the land is transferred out of the trust to the son (say an acre or thereabouts and is owned by him on completion of the construction) the ownership requirement will then be satisfied.

There is a reference at the bottom of this page, which states:

See evidence and discussion in T&S Liapis Pty Ltd v Commissioner of State Taxation [2015] SASC 63 and on appeal in the Commissioner of State Taxation v T & S Liapis Pty Ltd [2015] SASCFC 151.

And a second note:

Assuming that the market value of the land on which it is built, that is the relevant component as defined in the proposed section 6A(7), is otherwise satisfied.

I continue with the narrative:

However, as the son does not own any other land, the land on which the dwelling is built will not constitute part of a genuine farm. He does not own any other of the farming land.

16. On the other hand, he does own the land on which the dwelling is constructed and as it is not part of a farm, it is not a transaction that relates to a farm. It would therefore not be within the genuine farm concept and therefore the son should be entitled to a grant. So one may question the purpose of the provision relating to genuine farms.

Clause 10

17. The clause proposes to amend section 25(1) of FOGS to include decisions of the Commissioner in respect of the imposition of penalties under section 39(2) and 39(3). The provisions of section 82 of the Taxation Administration Act 1996 (TAA) extend to a broad range of decisions under taxation laws.

18. It is not apparent why the various decisions of the Commissioner under FOGS should not be subject to objection rather than being limited to the grant and the specified penalty provisions.

19. The Objection decisions under FOGS go to the Treasurer. The Objection decisions under the TAA go to the Minister of Finance. Currently they are the same person, but that has not always been the case. It would be preferable if they all went to the same Minister.

Part 2

Clause 13

20. The proposed section5(10)(i) provides for land tax relief for a 'current owner' for up to five years on qualifying off-the-plan contracts. The concept of an 'owner' is nowhere else in the LTA qualified by the use of word 'current'.

21. The word 'current' does not appear to add anything but raises the question as what is the intended difference between an owner as used elsewhere and defined in section 2(1) and this more limited concept of a 'current owner'. It is suggested the word 'current' be deleted'.

Part 3

Clause 15

22. The amendments proposed by clause 15 to the Payroll Tax Act 2009 (PTA) partly follow amendments made to the like section 32 in the New South Wales Act and section 32 of the Victorian Act.

23. The amendments to be made by clauses 15(1) and 15(3) appear to bring the provision into line with the Victorian provisions. The like New South Wales provisions appear to be simpler. The amendments to be made by clause 15(2) appear to bring the provisions into line with New South Wales but not Victoria. Victoria appears to continue to provide for an exemption for door to door sale of goods and insurance sellers.

24. Tasmania and the Northern Territory appear to have fully followed the New South Wales provisions. The Victorian provisions go further than the New South Wales provisions in limiting the operations of section 32(2). So a level of harmonisation is once again further eroded.

25. The amendments do in effect three things. The first is to distinguish between services that are expressly dealt with by the provisions of section 32(2) of the LTA and other services. The decision in Smith's Snackfood Company Ltd v Chief Commissioner of State Revenue (NSW) [2013] NSWCA 470 held that the relevant exclusions in the relevant section cannot apply to part of a relevant contract, only to the contract as a whole. The focus of exclusions is on an entire and indivisible contract. The amendments seek to overturn that exclusion for the whole contract and appears to require in the future some form of apportionment. There is no guidance as to how such apportionment is to occur. There should be at least some criteria, if a single contractual arrangement is to be split.

26. The second change, which will be limited to Victoria and South Australia, will limit the operation of the exclusions based on the time exclusion in sections 32(b)(ii) and 32(b)(iii). It is not clear why such a further limitation on these two time exclusions are required. The Treasurer's second reading speech does not appear to provide any explanation for the additional provisions.

27. In the case of the time exclusion in section 32(b)(ii) it excludes from payroll tax services that are of a kind ordinarily required by the designated person (the person seeking the services) for less than 180 days in a financial year. The proposed amendment (clause 15(3)(2b)(b) appears to mean that if the designated person usually requires such services for a period of less than 180 days but in fact utilises a person to supply such services for more than 180 days in one year then such services will attract payroll tax. This will be the case even if it occurs by inadvertence. It appears to undermine the concept underpinning section 32(b)(ii) of what is ordinarily required.

28. In the case of the time exclusion in section 32(b)(iii) it excludes from payroll tax services that are provided for a period that does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in that financial year and are not services provided by persons providing similar services or work for periods that in aggregate exceed 90 days. One may question whether the proposed amendment, in this context, has any work to do. If the period of service under the contract exceeds 90 days or 90 days in aggregate the exclusion in 32(b)(iii) appears to not apply to such services (i.e. they are likely to be taxable).

29. The third change moves the anti avoidance clause that currently qualifies section 32(2)(c) to qualifying the operation of all of the provisions of section 32(2). It is unclear why this change is now required when to date it has been limited to section 32(2)(c) and there are also general anti avoidance provisions in section 47 of the PTA and Part 6A of the TAA.

Part 4

Clauses 19 and 20

30. The amendments proposed by clauses 19 and 20 will, in effect, no longer require that an instrument is stamped with stamp duty under the SDA. They will permit a separate certificate to be issued by the Commissioner and the instrument to be simply endorsed with an identifying number. These provisions raise a number of issues.

31. Under these arrangements, it will not be possible to see on the face of the instrument how it has been stamped and how much duty has been paid. Under the SDA if the correct stamp duty has not been paid then the validity and enforceability of an instrument in any court is adversely affected (see sections 21 and 22 of the SDA). It has therefore been important to be able to review such information. Whilst sections 21 and 22 of the SDA remain the ability to ascertain the actual duty paid on an instrument and the basis on which it was stamped remains important.

32. The proposed provisions in clause 20 contemplates the Commissioner issuing a certificate to a person on application. It is unclear whether that will be limited to persons who were parties to the instrument and their agents or other persons who may subsequently be interested. Section 77 of

the TAA prohibits disclosure of taxpayer information and sections 78 enumerates particular exceptions to that. Section 79 permits certain limited general disclosure. Nothing in section 78 permits the disclosure contemplated by clause 20, unless it is to be permitted by a regulation, as contemplated by section 78. In the circumstances, it is suggested that section 78 of the TAA be amended to specifically permit disclosure of such information to third parties on request (it is being amended by the Bill for other purposes, see clause 31) if the instrument is not to otherwise be endorsed with the necessary stamping information.

33. It would still be of assistance if the instruments, with the possible exception of transfers under the Real Property Act 1886, were stamped at least with the identifying number, the amount of duty paid and the number of instruments stamped (i.e. original and copies). The clauses do not contemplate such further information appearing on the instrument.

34. Some provisions of the SDA require that an instrument has been stamped with ad valorem duty (i.e. section 71(5)(e)(ii)(A)). Nothing in the proposed sections 2(13) or 2(13a) expressly address that requirement that instrument has been stamped with ad valorem duty, not simply assessed with ad valorem duty.

35. In addition, various provisions of the SDA require that an instrument must be duly stamped for relief to be available (i.e. section 71(5)(e)(i). The proposed section 2(13a) provides for an instrument not chargeable with duty is to be stamped accordingly (which is consistent with section 23(1)). It does not say it is also deemed to be duly stamped, which ideally it should, so as to satisfy other requirements of the SDA (e.g. see section 71(5).

There is a note to that which states:

Also see section 40 of TAA that deems RevNet stamped instruments of all types to be duly stamped so as to satisfy such requirement. Also, there are differing views as to what constitutes duly stamped, which adds to the complexity of this concept, see IRC v Henry Ansbacher [1963] AC 191 and Wilcox Mofflin v Commissioner of Stamp Duties [1978] 1 NSWLR 341.

Parts 5 and 7—Foreign Stamp Duty Surcharge—Clauses 22, 26 and 27

Introduction

36. Clauses 26 and 27 amend the SDA propose the imposition an additional stamp duty of 4% on an instrument that effects, acknowledges, evidence or records a transaction whereby an interest in residential land is acquired by a foreign person or a person who takes the interest as trustee for a foreign trust.

37. The provisions will apply to transactions effected on or after 1 January 2018.

38. Where the foreign ownership surcharge applies, the surcharge is deemed to be duty payable on an instrument that effects, acknowledges, evidence or records a transaction whereby an interest in residential land is acquired by a foreign person or a person who takes the interest as trustee for a foreign trust.

39. Such surcharges have been imposed in New South Wales, Victoria and Queensland. The Western Australian recent Budget announced the intention to introduce such a surcharge. There appears to be limited consistency in the models used. So whilst the proposed provisions are apparently based, at least in part on interstate provisions that does not justify not amending them to ameliorate some of the potential issues.

40. The foreign surcharge is only payable on a 'dutiable instrument'. There is no definition of a dutiable instrument in the SDA. Whilst on one view it appears not to apply to an instrument that is dutiable but then exempted, ideally it should be clarified be an express provision in the proposed section 72 that a dutiable instrument is one assessed with ad valorem duty under the SDA so that the surcharge is only payable where ad valorem duty is payable.

Clause 22—Residential Land

41. The definition of residential land in the proposed provisions is similar to those recently adopted to facilitate the abolition of stamp duty on commercial real property. In effect, the Commissioner will rely on the land use codes provided by the Valuer-General in most situations to determine whether a property is residential land (clause 26, proposed section 72(8)). Such land use codes are provided by the Valuer-General as an administrative practice. They are not mentioned in the Valuation of Land Act 1971 or the regulations made thereunder. There is no right to object to such code as may be assigned by the Valuer-General, yet such codes are being increasingly used. There should be a right to object to such land use codes. This should be addressed by adding a right to object to them in the Valuation of Land Act 1971.

42. Under the proposed provisions if the land is not being used for a particular purpose at the time but the improvements to the land are of a residential character, then it will be taken to be residential

land. If the land is not being used for a particular purpose at the time of the transaction and there are only minor improvements then the zoning of the land under the planning laws is to be used, so land with buildings of a residential character no matter what the zoning and land zoned residential will be treated as residential land for the purpose of these provisions.

43. As will be highlighted, these definitions create significant issues in the case of property the subject of a changing use or involving a mixed development (e.g. deemed residential land currently unused but is acquired for the purpose of a development of commercial premises on the ground and lower floors and residential use in the upper floors).

Clause 22—Foreign Persons

44. An actual person is a foreign person if the person is not an Australian citizen, the holder of a permanent visa or a New Zealand citizen who is the holder of a special category visa. A dual citizen would appear to satisfy the Australian citizen requirements.

45. A corporation is a foreign person if it is incorporated in a jurisdiction that is not an Australian jurisdiction. It appears that a corporation incorporated in another country and owned wholly by Australian citizens is still to be regarded as a foreign corporation (including even, say a New Zealand company).

46. A corporation is also a foreign person if another person who is a foreign person or a trustee of a foreign trust, or a number of such persons in combination, hold 50% or more of the corporation's shares or are entitled to cast, or control the casting of, 50% or more of the maximum number of votes at a general meeting of the corporation. As the emphasis is on voting power rather than economic consequences this provision will be relatively simple to circumvent with foreign persons establishing companies in which they hold the shares entitled to the whole of the economic benefits and sufficient voting control (that is less than 50% but sufficient to block any special resolutions) to prevent the change of such rights.

I might interpose at that stage. There have been a number of recent examples where in tax law in South Australia and other jurisdictions as well these particular provisions have created significant questions and concerns. Certainly, I will be interested in RevenueSA and the government's response to these particular points raised by our senior tax lawyer in Adelaide. I return to the advice from the senior tax lawyer:

47. A foreign trust is one, where the beneficial interests are fixed, or one where a beneficial interest of 50% or more of the capital of the trust property is held by one or more foreign persons. In the case of a discretionary trust, it is a foreign trust if one or more of the following is a foreign person:

- a trustee;
- a person who has the power to appoint under the trust;
- an identified object under the trust; or
- a person who takes capital of the trust in default.

48. The last three of those trust nexus provisions have the potential to create real practical issues. One is the power to appoint that is vested in a foreign person, the second is an identified object who is a foreign person and the third is persons who may take the capital of the trust in default.

49. The first is the power to appoint. Most discretionary trusts have a wide range of powers to appoint, including the power to appoint property, income, a new trustee and a person to be a beneficiary. Most are held by the trustee though occasionally by a third person (e.g. the power to appoint a new trustee). So, if any person with any such power as a foreign person then the trust is a foreign trust without anything more. It is suggested this should be deleted or limited to the person with the power to appoint the trustee.

50. The next trust nexus provision that is likely to cause difficulties is the one referring to an identified object. The Macquarie Dictionary online describes identified as meaning:

1. to recognise or establish as being a particular person or thing; attest or prove to be as claimed or asserted; to identify handwriting; to identify the bearer of a cheque.

2. to serve as a means of identification for: this card identifies the bearer as a member.

51. So, does it mean a person who is actually named as an object or is a reference to the brothers, sisters and parents of the person, named as say the primary beneficiary sufficient. If it means persons identified by a relationship, then many discretionary trusts will be foreign trusts where any one of such relative is a foreign person. In a country of migrants, that Australia is, this will often occur. It is more likely to catch the unwary.

52. The Commissioner has indicated that his office is willing to publish guidance on the operation of this provision. Whilst in a practical manner this is likely to assist in many situations, in the case of a dispute, such guidance has little standing. A taxpayer in dispute with the Commissioner will be assessed by the Courts in accordance with the law not the Commissioner's practice. It is clearly preferable if this issue is specifically addressed in the legislation by specifically limiting it to actually named persons, as it appears is the intention, rather than a Commissioner's practice statement.

53. The third nexus provision is based on a foreign person being a taker in default of the capital of the trust. The provision applies to a 'person who takes capital of the trust property in default', one assumes that means in default of appointment prior to the ultimate vesting of the trust. Ideally it should state that.

54. Such default clauses are usually widely drawn. In many cases it would not be possible to identify any such persons until some time in the future (i.e. the lineal descendants of a named person living on the vesting day, see by way of example some of the issues in this area the discussion in Lygon Nominees Pty Ltd v Commissioner of State Revenue [2007] VSCA 140). If the class of such persons can be identified now and is say the relatives (i.e. brothers, sisters, aunties, uncles and their linear descendants and the spouses of such persons (as is common now living, or otherwise a closed class that is identifiable) there is a real possibility of one such person being a foreign person in a country of migrants, as already highlighted. It appears preferable to simply delete this requirement.

Clause 26—Foreign Surcharge—Adjustment Provisions

55. The provisions propose mechanisms for adjustments in respect of the surcharge where there is a change in status of the person in some situations within twelve months and others within three years. The refund provisions only apply if there is a change in status within twelve months.

56. The surcharge is also payable, if within three years of the acquisition, the person or trust becomes a foreign person or foreign trust. This provision is in effect an anti-avoidance provision to prevent the surcharge being circumvented by a corporation or trust that is not a foreign one at the time of the acquisition of the residential land but becomes one within three years of the acquisition of the land. When that occurs, the person must, within twenty eight days of becoming a foreign person or foreign trust, notify the Commissioner in writing of that fact and pay the foreign surcharge on the instrument. In addition, the Commissioner may impose interest and penalty tax as if the failure to pay the surcharge at the date of the acquisition were a tax default under the TAA.

57. That provision will not apply if the person or trust is paid, or is liable to pay, the foreign ownership surcharge in respect of the transaction by virtue of which the person or trust became a foreign person or a foreign trust. However, that particular exclusion (i.e. the proposed section 72(7)(b)(ii)) will not apply if the person or trust that has paid or liable to pay the surcharge is not a wholly foreign owned corporation or trust (as defined in the proposed clause 26).

58. In that situation, the amount of the foreign ownership surcharge is to be reduced by the amount of the foreign ownership surcharge (if any) paid in respect of the transaction by virtue of which the person or trust became a foreign person or a foreign trust. The meaning of this provision is particularly difficult to understand, as it is effectively an exclusion or an exclusion coupled with an apportionment. It is suggested that this exclusion on an exclusion be redrafted to simplify it, if possible.

59. The three year adjustment provision appears to be unduly harsh where there are changes in the control of a company or a trust for good family reasons (i.e. death, divorce etc), particularly as the proposed legislation does not provide any power for the Commissioner to provide relief from the operation of the provision in such situations.

60. A simple example is a resident taxpayer’s wholly owned company acquires residential land. The resident taxpayer dies shortly after that acquisition. The shares in the company are transferred to his non resident foreign citizen nephew pursuant to the terms of his will. The proposed section 72(7) will require the payment of the surcharge in this situation. Various other similar normal situations can be described.

61. A refund of the surcharge is available where a person was a foreign person when an interest in the residential land was acquired by the person but the person ceases to be a foreign person not more than twelve months after the acquisition of the interest and the interest in the land is still retained at the time that the person ceases to be a foreign person.

62. There is similar relief for the trustee of a foreign trust where the foreign trust ceases to be a foreign trust within twelve months of the acquisition. Such provisions will not apply if the interest in the residential land is no longer held by the trustee of the trust at the time that it becomes a foreign person or a foreign trust.

63. Whilst the trust refund of the surcharge is available if a foreign trust ceases to be a foreign trust within twelve months, it does not provide for a refund of the duty if the trustee of the foreign trust

distributes the land in specie to a resident beneficiary of that trust within that period. Yet the effect is the same, the residential property is acquired by a resident.

64. A simple example of what may occur is an intended migrant to Australia arranges for a relative in Australia to buy a residential property as trustee for the migrant. This is likely to constitute a foreign trust. The migrant arrives within 12 months and the land is transferred to the migrant within that time. A surcharge refund will not be available on such transfer. The trustee will also not be entitled to a refund at the expiration of the twelve months as the trustee does not retain the interest in the land. In that situation, the migrant is better to await the expiration of the twelve months, have the trustee seek the refund and then take a transfer in specie from the trustee. This simply creates traps for the unwary.

65. It is not clear why the asymmetrical approach of twelve months for refunds and three years for payment of the surcharge is adopted. It is suggested there should ideally be a common period.

66. There are no similar adjustments where there is a change in the status of the land acquired, whether within twelve months or three years. There appears to be some inconsistency in the approach of adjusting within certain periods for a change in status of a person (whether natural or legal) but not the use to which land may be put. Obviously, any such adjustment provisions will add further complexity to what appear to be unduly complicated adjustment provisions where there is a change of status. It also appears to provide a disincentive for foreign developers to aggregate land for development that does not apply to local developers. Is this intended?

67. So, if the land is at the time of acquisition for a development predominantly being used for residential purposes, or is vacant but the premises have a residential character or are zoned residential it will be regarded as residential for the surcharge purposes. This is notwithstanding the land is being acquired for developmental purposes, whether as wholly commercial or commercial and residential. It is suggested that the change of status from residential land to commercial land within a specified period should lead to a surcharge refund.

Clause 27—Landholder Provisions

68. Clause 27 proposes the introduction of similar provisions to impose the surcharge on the acquisition of interests in companies or unit trusts that own residential land under the landholder provisions in Part 4 of the SDA including where there is a group acquisition that involves a foreign entity. These provisions include similar anti-avoidance provisions (including exclusion on an exclusion) and refund provisions. The same issues as described above will apply to many of these provisions.

69. In addition, whilst from a policy perspective, the Landholder provisions need to operate in the same way as a surcharge applies on an initial acquisition, they add an unwanted further layer of complications to a set of provisions that already operate on a notional basis.

70. This is particularly highlighted where the company has both residential and qualifying land (i.e. commercial land, on which a lower rate of duty is now payable). The Commissioner's current view is that if a company has such land then the value of both classes of land are aggregated for the purposes of working out the duty. The duty so calculated is then apportioned by reference to the value of the total land between the residential land and the qualifying land and the reduction in the rate of duty on the qualifying land is then only applied to the qualifying land portion. The surcharge provisions then require a further amount of 4% of the value of the interest in the residential land notionally acquired to be paid.

71. A very simple example and its computation highlights some of the issues currently being encountered and will be further encountered. A Pty Ltd owns some qualifying land of the value of $2.2 million. It also owns land that is classified as residential which it is in the course of seeking a rezoning. That land has a value $1.3 million. The whole of the shares in A Pty Ltd are sold in one transaction to three shareholders one of which a foreign company. The foreign company is acquiring 50% of the shares.

72. The Commissioner appears likely to calculate the duty as follows:

    72.1 The duty will be first calculated on $3.5 million (i.e. $2.2 million commercial land and $1.3 million residential land), namely $186,330. It will then be apportioned to qualifying land on the basis of (2.2/3.5 x $186,330) namely $117,121 and the balance to the residential land, namely $69,208.

    72.2 The qualifying land concessional duty will be applied to reduce the duty on the qualifying land to $39,040. The duty will then be assessed on a 100% acquisition in the sum of $108,249.

    72.3 As the foreign person is acquiring a 50% interest as part of the group the foreign ownership surcharge under the proposed section 102AB(5) is likely to be 4% x 50% x $1.3 million namely an additional $26,000.

73. There is a view that an alternative method of calculating duty in this situation is more appropriate and is as follows:

73.1 Calculate the duty on the residential land of $65,330. Calculate the base duty on the qualifying land of $114,830 and reduce it by the qualifying land concessional amount to $38,277.

73.2 The result is the duty that is assessed on the basis of a 100% acquisition on this approach is $103,607.

73.3 Then as the foreign person is acquiring a 50% interest as part of the group the foreign ownership surcharge under the proposed section 102AB(5) is likely to be 4% x 50% x $1.3 million namely an additional $26,000.

74. Which approach is correct depends on view taken as to the operation of section 14(2) that was introduced in the 2015 Budget measures. Ideally, the what is and what was intended to be the correct approach should be clarified by amendments to section 14(2) and Part 4 of the SDA.

75. Whilst it may be expected that few residences will be held in companies or unit trusts, it is likely that land acquired for development that is considered residential land will be held in companies and unit trusts. The foregoing example highlights that issue.

76. Even apart from that issue, where the land is acquired for development there is potential for these provisions to create significant additional stamp duty issues and impediments where foreign developers are involved and the status of the land changes. There are likely to be at least two further areas of issue. One is where the status of the land on its acquisition is regarded as residential. The other is where as a consequence of the development the status of the land is altered from non-residential to residential.

77. In the case of the first situation the surcharge becomes an additional cost for such developers, as already highlighted. Obviously, the inclusion of any such adjustment provisions will add yet further complexity to what appear to be unduly complicated adjustment provisions where there is a change of status of the owner. However, such provisions will reduce the disincentive for foreign developers to be involved in such developments.

78. In the second situation, on the current interpretation that appears to be adopted by the Commissioner, the landholder provisions will apply on the change of status of the land from non-residential to residential. This will arise because on the conversion of the land from non-residential land to residential land it is likely the Commissioner will contend that that there is an acquisition of a prescribed interest by the existing foreign shareholders in a company or unit trust.

There is a note at the bottom:

There has been a similar issue in the past as to whether a change of status of a company from say a public company to a private company triggered the landholder provisions. There has also been a similar issue where a company owning land with a value of less than $1 million (this threshold is abolished 1 July 2018) enters into a contract to develop land and its value exceeds the threshold.

Point 79 states:

79. A company that is wholly foreign owned acquires some shops and an old industrial site on the eastern edge of the CBD. The land acquisition does not attract a surcharge on its acquisition. The company constructs a building with three floors of commercial premises (shops and offices). The balance of the buildings are residential apartments. On completion of the building it deposits a strata plan for the building. The company is now the owner of significant residential property. On the deposit of that plan the foreign shareholder notionally acquires an interest in residential land. Whether it is a result of the transaction may be open to some debate. If it is as a result of the transaction then the foreign ownership surcharge under section 102AB will apply.

Again, there is a note at the bottom of the page:

The current section 102A(4) highlights that the landholder provisions can be triggered by acts of a company not simply by acts affecting rights in respect of the shares of a company.

Dot point 80:

80. It is suggested that there be an express exception from the operation of the landholder provisions where the status of the land changes from non-residential to residential.

As I indicated at the outset, I have read in its entirety the 14 pages of advice from the senior tax lawyer. As I said at the outset, for the last few years I am indebted to this senior tax lawyer for applying his considerable intellect and knowledge of the tax law to government tax legislation. As I indicated at the outset, on at least two occasions the government and RevenueSA have accepted

some of the advice of the respected senior tax lawyer and have either changed practices and processes or, in one case, significantly amended the budget measures type legislation before the house.

As I have indicated on previous occasions in placing on the record the views of the senior tax lawyer, I do not indicate that I or the Liberal Party agree in whole or in part with the 14 pages of tax advice. I seek from the government, or from RevenueSA in particular and the tax commissioner, their response to the concerns and questions and suggestions for changes that the senior tax lawyer has provided. I read this onto the record at this stage to give RevenueSA and the commissioner sufficient time to provide a detailed written response to the reply at the second reading when we recommence debate on the bill, and we can explore the various issues during the committee stage of the debate. With that, I seek leave to conclude my remarks.

Leave granted; debate adjourned.

LIQUOR LICENSING (LIQUOR REVIEW) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 26 September 2017.)

The Hon. T.A. FRANKS (17:44): I rise on behalf of the Greens to indicate our position on the Liquor Licensing (Liquor Review) Amendment Bill 2017. Put simply, while we will be supporting this bill overall, it is an imperfect bill and we will certainly be entertaining some of the amendments.

The bill comes about because in November 2015 Supreme Court Justice Tim Anderson QC undertook a review of South Australia's liquor licensing laws. Justice Anderson made 129 recommendations and the government has sought to include some of these, in part, in this bill. The Liquor Licensing (Liquor Review) Amendment Bill does indeed implement a number of those reforms recommended by Justice Anderson, in particular:

- introducing a new licensing class system and streamlining liquor licensing categories, removing restrictions on trading hours, entertainment and allowing more flexible trading at events;
- enabling councils to set short-term dry zones;
- removing restrictions on the sale of liquor on Sundays, Christmas Day, Good Friday, New Year's Eve and New Year's Day;
- making various offences under the act expiable to improve their enforcement;
- introducing a three-hour liquor break in trade for late-night venues between the hours of 3am and 8am; and
- tightening the laws regarding the sale of liquor through the internet or by telephone, known as 'direct sales'.

I note that the LGA has expressed concerns and has communicated those to me in writing—as well as, I am sure, other members of this council—with regard to clause 77 of the bill, which removes a council's right to make submissions when the liquor licence application is advertised. The LGA's argument is that, under the current regime, council provides the liquor licensing authority with a unique and valid insight into the history of a licensed premises, and that expertise is most useful. I also note that the LGA has expressed its disappointment, a disappointment the Greens strongly share, that this has been a missed opportunity to extend small bars' licences across the state and beyond the hipster-proof fence that has been erected around the Adelaide city council region.

I note there will be both government opposition and Greens amendments to the bill, and I look forward to addressing those. I also note that an amendment was made in the other place by the member for Florey. We will take each of those on their merits, but I indicate that we have great concerns, and have certainly appreciated the input from the Music Industry Council and Matt Swayne, their chairperson, about the potential adverse effect that some of the licensing regime

changes may have on the live music industry. That council is representative of Music SA, the Australian Hotels Association (SA), local radio station Fresh 92.7, APRA AMCOS, the National Live Music Office, the Adelaide Music Collective, 5/4 Entertainment, Adelaide city council, the Local Government Association of SA, the state government (DSD), Arts SA, the Music Development Office and Musitec.

The Greens have strong concerns about anything that will diminish that part of the sector, and have long fought to protect it. We also express our gratitude to the Late Night Venue Association of South Australia, and in particular to Tim Swaine, the president of that association, for raising their concerns with us, as well as the usual players in this space, such as the AHA (SA) and Clubs SA.

As I said at the outset, this is a bill that has broad support from the Greens, but we are very attracted by the opposition amendments that seek to ameliorate some of what we believe are the more draconian and potentially unintended consequences of the licensing fee changes. We will do that with the view to ensuring that we protect good venues and protect those venues which support live music and provide that really quite vital part of the industry.

The Greens will be prosecuting a case that I put in a private members' bill before this place to extend small bars' licences across the state, and take down that hipster-proof fence that the Attorney has erected around the Adelaide city council through his inaction. When we last debated the major liquor licensing reform in this place we did, of course, see the introduction of a small venues licence that was to be trialled in the CBD—indeed, at that stage not even in North Adelaide—and all we have seen in the years since that has been implemented is it being extended to North Adelaide alone.

Yet, when the speeches were made in support of that bill and when the opportunity was presented, I remember the member for Morphett believing that he was going to have small bars in his electorate at Glenelg, and I remember the then member for Schubert being quite excited that there would be small bars in the Barossa. Quite specifically, neither of those events have come to be, and that is all in the hands of the Attorney through his decision not to make it so. We will take that decision out of the Attorney's hands and put it into legislation where he does not have the discretion to decide whether or not a small bar can be in North Adelaide or in Northfield. We think it should be able to be right across the state and that the entirety of the state should be able to take advantage of those opportunities.

We look forward to a robust committee stage. Given the lateness of the hour and the impending close of proceedings for the week, I commend the bill to the council.

Debate adjourned on motion of Hon. R.I. Lucas.

RETAIL AND COMMERCIAL LEASES (MISCELLANEOUS) AMENDMENT 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) (17:51): I move:

That this bill be now read a second time.

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

Leave granted.

The *Retail and Commercial Leases Act 1995* is legislation that regulates 'retail shop leases', principally by protecting the interests of lessees.

For example, it requires lessors to provide certain information to lessees, it regulates certain costs that can be imposed upon lessees and inserts certain terms and warranties into retail and commercial leases.

Importantly, section 5 provides that 'a provision of a lease or a collateral agreement is void to the extent that the provision is inconsistent with this Act.'

So it can readily be seen that from the perspective of lessees (who most often are the least powerful party in such arrangements), the Act is a type of 'consumer' protection—from lessors (or Landlords) who are usually the more powerful party to any lease agreement.

Barring some changes to the regulations however, the Act has not been varied since its inception in 1995. Accordingly, it is highly appropriate for a measured and sensible review of this important piece of legislation.

Pursuant to section 7 of the Act, the Small Business Commissioner is responsible for the administration of the Act.

I am now able to advise the government has, through the Office of the Small Business Commissioner, undertaken a review that consisted of 2 tranches of extensive industry and stakeholder consultation.

Following this lengthy consultation and review process, the government is determined to improve this legislation by broadly improving transparency for lessees and lessors alike and wherever possible, removing ambiguity relating to the processes under the legislation.

I expect the amendments within this bill to contribute to improved operation and efficacy of the updated legislation, in line with the extensive consultation that has occurred, and broadly in line with industry's expectations.

A number of the proposals within the bill simply make common sense. For example, the proposed changes that clarify the operation of 'rent threshold' have been described by the Law Society of SA as 'long overdue'.

I will now briefly outline to the House, the review process that has been undertaken:

In December 2013, the State Government committed to undertake a review of the *Retail and Commercial Leases Act 1995* (the Act).

In December 2014, a formal review process was initiated by the Small Business Commissioner (the Commissioner) on behalf of the (former) Minister for Small Business.

The Commissioner initially published an Issues Paper in December 2014 seeking public comment on various issues relating to the Act. Advertisements were placed in *The Advertiser* on 20 December 2014 and 10 January 2015.

On 13 February 2015, submissions to the Issues Paper closed with 37 submissions received from a broad range of organisations, industry groups and individuals. Some submissions raised a number of complex issues.

The submissions made to the *Issues Paper* went on to inform (retired District Court Judge), Mr Alan Moss, as he formulated the *Moss Review* on 14 April 2016. The Small Business Commissioner released the Moss Review for the 2nd tranche of public consultation on 24 May 2016.

The *Moss Review* made 20 recommendations on a wide range of issues relating to the Act.

Out of that broad industry consultation, the amendments in this bill will seek to give effect to 16 proposed changes to the Act and its regulations. These amendments aim to build further on the existing protective measures for lessees within the legislation, including:

- clarifying important aspects of the legislation, such as making it express that retail shop leases can 'move into' and 'out of' the jurisdiction of the Act; the means of adjusting the 'rent threshold' (that triggers the operation of the Act); and making certain that various sums such as the rent threshold and security bonds are clearly understood to be exclusive of GST;
- clarifying arrangements for the provision of information to lessees entering into leases such as draft leases and Disclosure Statements, as well as clarifying various terms and definitions to improve certainty, and removing redundant terms;
- broadly increasing (by around 60%—roughly the rate of CPI from 1995 to 2015), the various maximum penalties within the Act by CPI since 1995.
- These maximum penalties have not been reviewed since 1995 and the submission proposes an increase of 60% which is broadly in line with the 68% movement in the CPI over the 20 year period from 1995 to 2015. Further, maximum penalties of $8,000 have been proposed for two new offences under the legislation;
- permitting the Government to exclude certain 'classes' of leases and licences from the coverage of the Act; and also
- permitting the Small Business Commissioner to certify Exclusionary Clauses, and to exempt leases and licences from the Act.

I also note that regulation 14(1)(b) will also need to be amended to remedy a mismatch in the regulations regarding the 'rent payable' threshold:

Section 69(1) of the Act properly states that the 'rent payable' threshold is $100,000. However, regulation 14(1)(b) states that that same threshold to be $40,000 – which is an error. The two should be the same.

Accordingly, the regulation needs to be varied such that the threshold is the same amount as that set out in the Act—i.e. $100,000.

Having now contributed significant resources into the two tranches of consultation, the retail and commercial leasing sector arguably has a legitimate expectation of the legislation being amended and thereby improved.

I commend this bill to the House and seek leave to have the explanation of clauses inserted in Hansard without my reading it.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Retail and Commercial Leases Act 1995*

4—Amendment of section 3—Interpretation

This clause inserts definitions of *GST* and *GST law* which are consequential on the amendments to the Act in relation to rent and rent threshold. Definitions of *public company* and *subsidiary* (terms used in section 4 of the Act) are also added, both to have the same meaning as in the *Corporations Act 2001* of the Commonwealth. This clause also inserts a new subsection setting out the meaning of *prescribed threshold* in relation to the rent payable under a retail shop lease. The prescribed threshold of rent is for the purposes of section 4 of the Act, being the amount of rent that will determine whether or not the Act will apply to a particular retail shop lease. The threshold of rent is defined to mean the amount of $400,000 per annum or such greater amount that may be prescribed by the regulations. The amount of $400,000 is the same amount as is currently prescribed by the regulations for the purposes of section 4. The definition also clarifies that the threshold amount does not include GST.

5—Amendment of section 4—Application of Act

The amendments to section 4 are to clarify (as from the commencement of the provision) the manner in which the prescribed threshold of rent is intended to operate to determine whether or not the Act applies to a particular retail shop lease. As is currently the case, the Act does not apply to a retail shop lease if the rent payable under the lease exceeds the prescribed threshold (that is, $400,000 per annum). The amendment clarifies that the prescribed threshold will operate to exclude the operation of the Act at any point the rent under a lease exceeds the threshold, regardless of whether or not, at the time the lease was entered into or renewed, the Act applied to the lease (by virtue of the amount of the rent payable). This means that the Act may apply or cease to apply to a particular lease during the term of the lease, either as a result of a change in the amount of rent that may be payable (for example, as a result of a rent review), or as a result of any increase in the amount of the prescribed threshold (by way of a regulation under the Act). The provision also sets out some examples in order to illustrate the manner in which the 'rent threshold' provision is intended to operate. This clause also makes an amendment to include retail shop leases with lessees who are bodies corporate listed on foreign stock exchanges, or subsidiaries of such corporations, in the list of leases to which the Act does not apply.

6—Insertion of section 6A

This clause inserts a new section.

6A—Valuer-General to review prescribed threshold

The proposed new section provides for the Valuer-General to conduct a review of the amount of the prescribed threshold for the purposes of section 4 of the Act (and thus the threshold amount of rent at which the Act will cease to apply to a particular lease). On completing a review, the Valuer-General is to provide a report to the Minister on whether an increase in the prescribed threshold is recommended. The first review is to be conducted within 2 years of the commencement of this provision and every 5 years after that. The regulations may (but need not) specify requirements in relation to the review regarding such things as matters to be considered by the Valuer-General, or consultation to be undertaken.

7—Amendment of section 9—Commissioner's functions

This amendment is consequential on the amendments to sections 20K and 77(2) of the Act by this measure, and reflects the fact that the Act assigns other functions to the Small Business Commissioner in addition to those set out in section 9.

8—Substitution of section 11

This clause substitutes a new section 11.

11—Copy of lease to be provided to prospective lessee

This clause provides that a lessor who offers, or invites an offer, to enter into a retail shop lease, or advertises that a retail shop is for lease, must provide a prospective lessee with a written copy of the proposed

lease as soon negotiations are entered into. Under current section 11, a copy of the lease need only be made available to the lessee for inspection. As is the case for the current section 11, the copy of the proposed lease need not include the particulars as to the lessee, rent or term of the lease. In addition, the lessee must provide the lessee with a copy of the information brochure published by the Small Business Commissioner.

9—Amendment of section 12—Lessee to be given disclosure statement

This clause amends section 12 to provide that a lessor must, before entering into a retail shop lease, serve on the lessee a signed disclosure statement. The lessee must then return a signed acknowledgement of the receipt of the statement within 14 days to the lessor or the lessor's agent.

10—Amendment of section 14—Lease preparation costs

This amendment deletes the reference to stamping and stamp duty in relation to the lease, as this is no longer payable.

11—Amendment of section 15—Premium prohibited

This clause increases the penalty for the offence of seeking or accepting a premium in connection with the granting of a retail shop lease from $10,000 to $15,000.

12—Substitution of section 16

This clause substitutes a new section 16.

16—Lease documentation

This section, which sets out the requirements for the provision of an executed copy of a lease to the lessee, has been rewritten to remove the references to stamp duty, as this is no longer payable on a retail shop lease. If a lease is not to be registered, the lessor is required to provide a copy of the executed lease within 1 month after it has been returned to the lessor following its execution by the lessee. In the case of a lease that is to be registered, the lessor must lodge the lease for registration within 1 month of its execution and return by the lessee, and the lessor must provide the lessee with an executed copy of the lease and confirmation that the lease has been registered within 1 month of the date of its registration.

13—Amendment of section 19—Security bond

The amendments to this section are to clarify that the reference to a maximum bond of 4 weeks' rent does not include GST. The clause also increases the penalty for failing to provide a receipt for payment of a bond or failing to pay the bond to the Commissioner from $1,000 to $1500.

14—Amendment of section 20—Repayment of security

This clause increases the time in which a written notice of dispute as to repayment of a bond must be lodged with the Commissioner under subsection (4) from 7 days to 14 days, and makes a consequential amendment to subsection (5).

15—Insertion of section 20AA

This amendment inserts a new section 20AA.

20AA—Return of bank guarantees

The proposed clause requires a lessor who has received a bank guarantee to return it to the lessee within 2 months of completing the performance of the obligations under the lease for which it was provided as security, unless the guarantee has expired or been cancelled, or for such time as there are court proceedings in relation to the guarantee. A consent or release necessary to have the bank guarantee cancelled may be provided instead if a lessor is unable to return the original guarantee. A lessor may be liable to pay a lessee compensation for any loss or damage suffered as a result of failing to return a bank guarantee, as well as any reasonable costs incurred by the lessee in connection with cancelling the guarantee. This provision will apply to a bank guarantee given in relation to a lease whether entered into before or after the commencement of this provision.

16—Amendment of section 20B—Minimum 5 year term

This clause amends section 20B by removing the reference to a period of holding over exceeding 6 months. This is to make it clear that a period of holding over after the termination of an earlier lease greater than 6 months, does not imply a new 5 year term of the lease.

17—Amendment of section 20K—Certified exclusionary clause

This clause amends section 20K to include the ability for the Commissioner, in addition to an independent lawyer, to sign a certificate in relation to a certified exclusionary clause. The Commissioner may require payment of a prescribed fee for providing such a certificate.

18—Amendment of section 20L—Premium for renewal or extension prohibited

This clause increases the penalty for the offence of seeking or accepting a premium in connection with the renewal or extension of a retail shop lease from $10,000 to $15,000.

19—Amendment of section 20M—Unlawful threats

This clause increases the penalty for the offence of making threats to dissuade a lessee from exercising a right or option to renew or extend a retail shop lease or exercising the lessee's rights under Part 4A of the Act from $10,000 to $15,000.

20—Amendment of section 24—Turnover rent

This amendment increases the penalty from $1,000 to $1,500 for the offence of a lessor requiring a lessee to provide information about the lessee's turnover when the lease does not provide for rent or a component of the rent to be determined by reference to turnover.

21—Amendment of section 44—Premium on assignment prohibited

This clause increases the penalty for the offence of seeking or accepting a premium in connection with consenting to the assignment of a retail shop lease from $10,000 to $15,000.

22—Amendment of section 51—Confidentiality of turnover information

The amendment to this section increases the penalty for the offence of divulging or communicating confidential information about the turnover of a lessee's business from $10,000 to $15,000.

23—Amendment of section 75—Vexatious acts

This clause increases the penalty for the offence of parties to a lease engaging in vexatious conduct in connection with the exercise of a right or power under the Act or a lease from $10,000 to $15,000.

24—Amendment of section 77—Exemptions

This amendment provides that, in addition to the Magistrates Court, the Commissioner may grant an exemption from all or any provision of this Act, on the application of an interested person, in relation to a particular retail shop lease (or proposed lease) or a particular retail shop (or proposed shop). The clause also increases the penalty for contravening a condition of an exemption granted under section 77 from $500 to $800.

25—Substitution of section 80

This clause substitutes a new provision setting out the regulation making powers under the Act.

80—Regulations

The proposed new section 80 sets out the regulation making powers under the Act to include those provisions now more commonly included. It provides that any regulations made may be of general or limited application and may confer powers or impose duties in connection with the regulations on the Minister or the Commissioner. As is currently the case, it also allows for regulations to prescribe codes of practice to be complied with by lessees and lessors and to impose maximum penalties of $2,000 for contravention of a regulation. The regulations may also make provision of a saving or transitional nature and make different provision according to the classes of persons or matters to which they are expressed to apply, fix fees and make exemptions.

Part 3—Amendment of *Landlord and Tenant Act 1936*

26—Insertion of section 13A

This clause inserts a new section.

13A—Jurisdiction of the Magistrates Court

Proposed new section 13A clarifies that the Magistrates Court has jurisdiction to hear and determine applications and proceedings under Part 2 in relation to distress for rent. If the jurisdictional monetary or property value limits of the Magistrates Court are exceeded, the proceedings are to be referred to the District Court.

27—Amendment of section 24—Adverse claims

This amendment is consequential on the insertion of new section 13A.

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

EDUCATION AND CHILDREN'S SERVICES 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) (17:52): I move:

That this bill be now read a second time.

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

Leave granted.

The Education and Children's Services Bill 2017 represents the most significant reform to the legislation guiding the education and development of children in South Australia in over 40 years. Since the enactment of the Education Act in 1875, repealing the act of 1851, the South Australian parliament has recognised the importance of universal access to education in developing individual citizens and the community.

The new bill recognises the increasing importance of education as a foundation for this state's future prosperity and for the future of every child living in South Australia. It sets out a contemporary framework for the education of children in this state and the support students, teachers and schools need to provide a quality education.

This bill reinforces the government's commitment to quality and compulsory schooling for all children in this state and brings together the legislative provisions that underpin South Australia's system of public schools and children's services. Its introduction will join other improvements this government has made to education in South Australia, including the more than $2.2 billion investment in infrastructure since 2002, the current project to upgrade and build new STEM facilities in schools and the modernising of the SACE to ensure it is a stepping stone for our students to a prosperous future.

The bill will repeal the Education Act 1972 and the Children's Services Act 1985. While these two acts have provided an adequate framework for education and early childhood development for many years now, they no longer reflect the needs of our contemporary system of education. A significant amount of consultation on potential reform of the Education Act and Children's Services Act has occurred over a number of years. Most recently, a consultation draft of this bill was released for public consultation between 19 December 2016 and 10 March 2017. I thank all the stakeholders who contributed to this process. Their feedback has assisted in the final drafting of the bill.

This Bill, through its objects and principles, reflects the values and qualities of the public education system in South Australia by ensuring that education and children's services are of high quality, are accessible and meet the needs of all groups in the community. It promotes the involvement of parents, carers and local communities in education and children's services and acknowledges the important contribution of teachers and support staff in the successful development of children. This bill makes clear that the paramount consideration in the operation, administration and enforcement of the Act is the best interests of the children.

Additionally, as negotiated through amendments moved by the Government and the Member for Morialta in the other place, further objects have been inserted into the Bill to:

- promote continuous improvement in the wellbeing and safety of children in this State;
- recognise the diversity of the student body in Government schools; and
- put beyond doubt that schools, preschools and children's services in this State are free to celebrate events of significance to their communities including, for example, the singing of Christmas carols.

As set out in the principles of the bill, we believe that all children have a right to an education. No child should be denied that right because their parents did not make reasonable efforts to get them to school. While the vast majority of South Australian parents ensure that their children attend school, a small number of children continually miss out on the benefits of education because of unauthorised absences. The research is clear: every day counts and even small amounts of unauthorised absence are associated with falls in educational achievement. Poor participation and engagement in school have been linked to serious and adverse outcomes throughout the course of a person's life.

The department, working with schools partnerships and through its central office, continues to support families to ensure that children regularly attend school. Schools work hard to provide safe and engaging places for learning and work with families to support a child's attendance and participation. Families are connected with services provided by other agencies, non-government organisations and community partners to address the barriers to a child's attendance. However, if this fails, we need to be able to take action to ensure that children are not denied the best start in life. It is for this reason that the bill includes new and strengthened legislative provisions to address non-attendance at school. These measures include:

- new provisions for family conferencing to address persistent non-attendance at school;
- improved provisions for the prosecution of parents who do not take reasonable steps to ensure that their child or children attend school, including a significant increase in the maximum penalty for this offence;
- requiring that parents of a child provide within five business days a valid reason for the child's failure to attend school; and
- improved provision for obtaining information relevant to persistent non-attendance of a child at school.

In addition, the Bill will provide for the expiation of offences related to the non-attendance of a child at school. Amendments moved by the Government in the other place inserted new clause 136 which provides that proceedings for offences under the Bill will have to be commenced within two years of the date on which the alleged offence was committed; this includes offences that might be expiable. This clause dis-applies section 52(1)(a) of the Summary Procedure Act 1921, which sets out that proceedings in respect of expiable offences are normally required to be commenced within six months.

The bill also provides updated provisions for enrolment of children in schools and includes a significant increase in the maximum penalty for a parent's failure to enrol a child of compulsory school age or compulsory education age in school.

The Bill provides for the Chief Executive to direct that a child be enrolled in a specified school in particular circumstances, such as:

- where the child has disabilities or learning difficulties; or
- in the interests of the health, safety or welfare of students and staff at a school.

Following amendments in the other place, the Bill now requires the Chief Executive to take reasonable steps to consult with the persons responsible for a child before making such a direction.

The Bill modernises provisions for the governance of Government schools, preschools and children's services in South Australia to improve consistency between school and preschool governance and make it easy for parents to stay involved in governance along their child's journey through preschool and school system. Following debate in the other place a number of amendments were made to the provisions for school governance in the Bill including:

- requiring that constitutions of governing councils include provisions obliging the governing council to participate in a scheme for the resolution of disputes between the governing council and the principal of the school as well as provisions requiring members of the governing council to comply with a code of practice approved by the Minister;
- provisions to ensure that the presiding member of a governing council is not a member of staff of the school or an employee of the department unless there is no other member of the council willing to be presiding member
- provisions to ensure that if an election of council members fails that at least one supplementary election is held in order to fill positions for council members before the Minister may appoint members as the Minister thinks fit.

As described in the Public Education in South Australia statement, the relentless pursuit of the highest quality of education for all is a central tenet of public education in this state. High-quality education requires high-quality teachers and support staff. This bill brings together modern employment provisions for teachers and support workers in government schools, preschools and children's services centres and promotes a high-quality teaching and education support workforce.

The bill specifically provides for the attraction and retention of high-quality teachers by those public schools facing particular challenges in recruiting or keeping high-quality staff. These provisions will complement the support being provided to principals and preschool directors to assist them to develop and manage a high-quality workforce. Furthermore, the bill will make it easier for a school to engage allied health professionals and other specialist support staff. This will ensure that students get timely access to the services they need most. Every child in our education system has different needs, and parents and schools require access to information to determine how these needs can best be met.

This bill includes new provisions to enable improved sharing of information between schools, parents, the department and other state authorities to support the education, health, safety and wellbeing of children. This includes providing for the sharing of relevant information when a child transfers between schools, whether they are in government or non-government schools. While improving the ability of schools and the department to share information about children and students, the bill also includes important safeguards to protect personal information from unauthorised disclosure or misuse.

The bill recognises that public education is to be secular in nature. It provides discretion for the principal of a school to permit the conduct of intercultural and/or religious instruction by prescribed groups. A student may only attend or participate in such instruction if their parent expressly consents to their attendance. These provisions specifically regulate the activities of third-party cultural and religious groups that seek to provide instruction on particular cultural practices or religious beliefs to children attending government schools.

The bill specifically acknowledges the cultural and religious diversity of school communities and schools will be able to continue to recognise major religious celebrations or cultural festivals such as Christmas and Easter. The singing of carols will continue in our public schools, as has always been the case.

South Australian schools, preschools and children's services should be safe places for children to learn, develop and play. In addition, principals, directors, teachers and support workers have a right to a workplace free from

abuse and harassment. The bill includes new and updated provisions to ensure safe learning and working environments in schools, preschools and children's services.

It includes tough new measures to protect teachers and other staff acting in the course of their duties from offensive behaviour or the use of abusive, threatening or insulting language. Such behaviour need not occur on school or preschool premises and would include, for example, the abuse of staff over the telephone. Other measures aimed at promoting safe environments include:

- provision for a person to be barred from any premises or place used or to be used by a school, preschool or children's service if that person has behaved in an offensive manner while on the premises, or threatened or insulted staff, or committed or threatened to commit any other offences on or in relation to the premises;
- provision for dealing with trespass on all schools, preschools and children's service sites; and
- strengthened powers to enable authorised persons to deal with people behaving in an unacceptable manner.

Make no mistake: education is crucial for the future of this state. Our children must continue to receive a quality education today in order to compete for tomorrow's jobs. This bill sets out legislation we need to achieve this. It will ensure we have a modern framework; the modern framework we need to support a modern education system. I seek leave to have the explanation of clauses inserted in Hansard without my reading it.

I commend the bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause defines terms and phrases used in the measure.

4—Application of Act to non-Government schools

This clause sets out how the measure applies to non-Government schools, including by setting out the provisions that do not apply.

5—Interaction with other Acts

This clause clarifies that this measure does not derogate from other Acts.

6—Minister may acquire land

This clause authorises the Minister to acquire land for the purposes of this Act. By doing so, the measure becomes a special Act for the purposes of the *Land Acquisition Act 1969*, and the provisions of that Act will then apply to such acquisitions.

Part 2—Objects and principles

7—Objects and principles

This clause sets out objects and principles informing the operation of the measure.

Part 3—Administration

8—Functions of Chief Executive

This clause sets out the functions of the Chief Executive (formerly the Director-General, and combining the position of Director of Children's Services from the repealed *Children's Services Act 1985*).

9—Administrative instructions

This clause confers on the CE the power to issue binding administrative instructions to governing councils or affiliated committees of schools, stand-alone preschools and children's services centres.

10—Model constitutions

This clause requires the Minister to publish model constitutions of the kinds specified.

11—Advisory committees

This clause allows the Minister to appoint committees to advise the Minister or the Chief Executive on any matter related to the operation of this measure or the provision of education and children's services in this State.

12—Delegation

This clause is a standard power of delegation.

13—Chief Executive may require information from schools, preschools and children's services centres

This clause empowers the CE to require specified persons and bodies to provide information to the CE that the CE reasonably requires for purposes of this measure, with an offence created for non-compliance.

14—Sharing of information between certain persons and bodies

This clause enables the persons and bodies specified to provide certain information and documents to other such persons or bodies if the provision of the information or documents would assist the recipient to perform official functions or manage certain risks to children.

15—Report

This clause requires the CE to report to the Minister annually (in respect of calendar years) on the operation of the Department.

Part 4—Preschools and children's services centres

Division 1—School-based preschools

16—Minister may establish school-based preschools

This clause provides that the Minister may establish school-based preschools.

17—Governing councils of school-based preschools

This clause provides that the governing council of a school in relation to which a school-based preschool is established is also the governing council of the preschool, and sets out requirements relating to the representation of the preschool on the council.

Division 2—Stand-alone preschools and children's services centres

18—Minister may establish stand-alone preschools and children's services centres

This clause provides that the Minister may establish stand-alone preschools and children's services centres.

19—Governing councils of stand-alone preschools and children's services centres

This clause provides that a governing council is to be established in respect of each stand-alone preschool and children's services centre, although the same council may be the council for multiple preschools and children's services centres. The clause also sets out the nature of a governing council and its governance arrangements.

20—Composition of governing councils of stand-alone preschools and children's services centres

This clause sets out the composition of governing councils of stand-alone preschools and children's services centres, in particular requiring that a majority of appointees to the council be persons who are responsible for children attending, or who are to attend, the stand-alone preschool or children's services centre. The clause also makes procedural provision for where it is not possible for that majority to occur.

21—Approval of constitutions by Minister

This clause allows the Minister to approve a constitution to be adopted by the governing council of a stand-alone preschool or children's services centre (that is, to be adopted in place of a model constitution). The clause also makes procedural provision in relation to approvals.

22—Amendment of constitutions

This clause sets out circumstances in which the Minister may directly amend, or direct a governing council to amend, a constitution.

23—Functions and powers of governing councils

This clause sets out the functions and powers of governing councils of stand-alone preschools and children's services centres.

24—Limitations on powers of governing councils

This clause sets out limitations on the exercise of the functions and powers of governing councils of stand-alone preschools and children's services centres.

Division 3—Continuation of children's services centres registered under *Children's Services Act 1985*

25—Application of Division

26—Continuation of registered children's services centres

This Division continues registered children's services centres under the repealed *Children's Services Act 1985*, and makes transitional adjustments to the terms used under that Act to describe the centres etc to be consistent with the measure.

Division 4—Direction, suspension and dissolving of governing councils etc

27—Minister may remove member of governing council

This clause enables the Minister to remove a member of the governing council of a stand-alone preschool or children's services centre from office for the reasons specified.

28—Minister may direct governing council

This clause enables the Minister to direct the governing council of a stand-alone preschool or children's services centre to take specified action where, due to the fact that the governing council has refused or failed to perform a function under this Act or its constitution, or has done so in a particular manner, detriment may be caused to children attending the preschool or centre and those responsible for them.

29—Minister may prohibit or limit performance of functions etc by governing council

This clause enables the Minister to prohibit or limit, in accordance with the regulations, the exercise of a power or function by the governing council of a stand-alone preschool or children's services centre.

30—Minister may suspend governing council

This clause enables the Minister to suspend the governing council of a stand-alone preschool or children's services centre in the circumstances specified in subsection (1), and allows the Minister to appoint an administrator if a governing council is suspended.

31—Minister may dissolve governing council and establish new governing council

This clause enables the Minister to dissolve the governing council of a stand-alone preschool or children's services centre in the circumstances specified in subsection (1), and allows the Minister to establish a new governing council accordingly.

Division 5—Closure of stand-alone preschools and children's services centres

32—Closure of stand-alone preschools and children's services centres

This clause sets out the process for the closure of stand-alone preschools and children's services centres.

Division 6—Miscellaneous

33—Conflict of interest

This clause is a standard provision relating to conflicts of interest in respect of members of the governing councils of stand-alone preschools and children's services centres.

34—Accounts may be audited

This clause provides that the accounts of stand-alone preschools and children's services centres may be audited at any time by the Chief Executive or the Auditor-General.

35—Corporal punishment prohibited

This clause prohibits corporal punishment from being imposed on children at Government preschools and children's services centres.

Part 5—Government schools

Division 1—Establishment of schools

36—Minister may establish schools

This clause provides that the Minister may establish schools.

Division 2—Governing councils and affiliated committees

Subdivision 1—Governing councils and affiliated committees

37—Governing councils of schools

This clause provides that a governing council is to be established in respect of each school established under the measure, although the same council may be the council for multiple schools. The clause also sets out the nature of a governing council and its governance arrangements.

38—Composition of governing councils of schools

This clause sets out the composition of governing councils of schools, in particular requiring that a majority of appointees to the council be persons who are responsible for students of the school. The clause also makes procedural provision for where it is not possible for that majority to occur.

39—Affiliated committees

This clause allows the Minister to authorise the establishment of affiliated committees, being a committee affiliated with the governing council of a school.

40—Conflict of interest

This clause is a standard provision relating to conflicts of interest in respect of members of the governing councils of schools as well as members of affiliated committees.

41—Accounts may be audited

This clause provides that the accounts of the governing council of a school or an affiliated committee may be audited at any time by the Chief Executive or the Auditor-General.

Subdivision 2—Approval and amendment of constitutions

42—Approval of constitutions by Minister

This clause allows the Minister to approve a constitution to be adopted by the governing council of a school (that is, to be adopted in place of a model constitution). The clause also makes procedural provision in relation to such approvals.

43—Amendment of constitutions

This clause sets out circumstances in which the Minister may directly amend, or direct a governing council of a school to amend, a constitution.

Subdivision 3—Functions and powers of governing councils and affiliated committees

44—Functions and powers of governing councils and affiliated committees

This clause sets out the functions and powers of governing councils of schools and affiliated committees.

45—Limitations on powers of governing councils and affiliated committees

This clause sets out limitations on the exercise of the functions and powers of governing councils of schools and affiliated committees.

Subdivision 4—Arrangements on closure or amalgamation of school

46—Minister may make arrangements for governing councils etc on closure or amalgamation of school

This clause sets out the actions that may be taken by the Minister to deal with the governing council of a school, or an affiliated committee, on the amalgamation or closure of the school under the proposed Division.

Subdivision 5—Direction, suspension and dissolving etc of governing councils and affiliated committees etc

47—Minister may remove member of governing council or affiliated committee

This clause provides that the Minister may remove a member of the governing council of a school or an affiliated committee from office for the reasons specified in the clause.

48—Minister may direct governing council or affiliated committee

This clause enables the Minister to direct the governing council of a school or an affiliated committee to take specified action where, due to the fact that the governing council or affiliated committee has refused or failed to perform a function under this Act or its constitution, or has done so in a particular manner, detriment may be caused to students of the school and those responsible for them.

49—Minister may prohibit or limit performance of functions etc by governing council or affiliated committee

This clause enables the Minister to prohibit or limit, in accordance with the regulations, the exercise of a power or function by the governing council of a school or an affiliated committee.

50—Minister may suspend governing council

This clause enables the Minister to suspend the governing council of a school in the circumstances specified in subsection (1), and allows the Minister to appoint an administrator if a governing council is so suspended.

51—Minister may dissolve governing council and establish new governing council

This clause enables the Minister to dissolve the governing council of a school in the circumstances specified in subsection (1), and allows the Minister to establish a new governing council accordingly.

Division 3—Amalgamation and closure of schools

52—Amalgamation of schools

This clause provides that the Minister may amalgamate 2 or more Government schools, sets out the circumstances in which such an amalgamation can occur and makes procedural provision relating to notice.

53—Closure of schools

This clause sets out the process for the closure of Government schools. In particular, closures are to occur with the consent of students or persons responsible for them, or on the recommendation of a review committee following a review under proposed section 54.

54—Review of schools in a particular area

This clause allows the Minister to commission a review to determine whether each Government school within a particular area continue to be required and, if not, whether 1 or more of the schools should be amalgamated or closed. The clause also makes procedural provision in relation to such reviews.

55—Review committees

This clause sets out how a committee that is to conduct a review under proposed section 54 is to be constituted and how it is to function.

56—Minister to report to Parliament if recommendations of review committee not followed

This clause requires the Minister to report to Parliament where the Minister decides to amalgamate or close a school contrary to the recommendation of a review committee.

Part 6—Special purpose schools

57—Minister may establish special purpose schools

This clause provides that the Minister may establish special purpose schools for the purposes specified in the clause.

58—Governing council and constitution

This clause sets out the governance arrangements for special purpose schools.

59—Closure of special purpose schools

This clause sets out the process for the closure of special purpose schools, namely that the Minister may close one for any reason the Minister thinks fit, and requires notice of closures to be given to the principle and persons responsible for students at the school.

60—Modification of operation of Act in relation to special purpose schools

This clause disapplies Part 5 of the measure in respect to special purpose schools, and confers a regulation-making power to modify the operation of the measure as it applies to special purpose schools.

Part 7—Provision of education in schools

Division 1—Enrolment

Subdivision 1—Compulsory enrolment in school or approved learning program

61—Children of compulsory school age must be enrolled in school

This clause requires children of compulsory school age to be enrolled in a school and replaces the applicable part of current section 75 of the *Education Act 1972*.

62—Children of compulsory education age must be enrolled in approved learning program

This clause requires children of compulsory education age to be enrolled in an approved learning program and replaces the applicable part of current section 75 of the *Education Act 1972*.

63—Chief Executive may direct that child be enrolled in particular school

This clause simply replaces section 75A of the *Education Act 1972*.

64—Chief Executive may direct that child be enrolled in another school if improperly enrolled

This clause allows the Chief Executive to direct that a specified child who is enrolled in a Government school (including a special school) be instead enrolled at another Government school if the Chief Executive is satisfied that the child was enrolled at the school on basis of false or misleading information (including false information about the residential address of the child).

Subdivision 2—Enrolment of adult students

65—Special provisions relating to enrolment of adult students

This clause makes provision about the enrolment of adult students in Government schools, incorporating the effects of the *Child Safety (Prohibited Persons) Act 2016*. In particular, adult students (other than those who become adults in the course of their secondary education) will need to have a current working with children check.

Subdivision 3—Information gathering

66—Certain information to be provided on enrolment

This clause requires a person who is responsible for a child who is to be enrolled in a school or an approved learning program to provide to the principal of the school or the head of the approved learning program the information specified in the clause. Failure to do so without a reasonable excuse is an offence.

67—Chief Executive may require further information relating to student

This clause enables the Chief Executive to require a person who is responsible for a child to provide to the CE specified information that is reasonably required in the administration, operation or enforcement of this Act. Failure to do so without a reasonable excuse is an offence.

68—Principal may require other principal to provide report in respect of specified child

This clause enables the principal of a school to require the principal of another school to provide specified information relating to the enrolment, academic achievement etc of a student in the other school. Failure to do so without a reasonable excuse is an offence.

Division 2—Attendance at school and participation in approved learning programs

Subdivision 1—Compulsory attendance at school and participation in approved learning program

69—Child of compulsory school age must attend school

This clause requires children of compulsory school age to attend the school at which they are enrolled and replaces the applicable part of current section 76 of the *Education Act 1972*.

70—Child of compulsory education age must participate in approved learning program

This clause requires children of compulsory education age to participate in the approved learning program in which they are enrolled and replaces the applicable part of current section 76 of the *Education Act 1972*.

Subdivision 2—Family conferences

71—Purpose of family conferences

This clause explains the purposes of family conferences under the proposed Subdivision, namely the making voluntary arrangements to ensure the attendance of a student at the school, or the participation of the student in the approved learning program, in which they are enrolled but are failing to attend.

72—Chief Executive may convene family conference

This sets out the circumstances in which the Chief Executive may convene a family conference, as well as who can attend a conference.

73—Procedures at family conference

This clause sets out how a family conference is to be conducted.

74—Chief Executive and principal etc to give effect to decisions of family conference

This clause requires the Chief Executive and the principal of a school or head of an approved learning program in which a student is enrolled to give effect to valid decisions made at a family conference; however those decisions cannot require unlawful acts or omissions, nor do they create any legally enforceable rights or obligations.

Subdivision 3—Limitations on employment of certain children of compulsory school age or compulsory education age

75—Employment of children of compulsory school age or compulsory education age

This clause makes it an offence for a person to employ a child of compulsory school age or compulsory education age during school hours, or in labour or an occupation that renders, or is likely to render, the child unfit to attend school etc or obtain the proper benefit from doing so.

Subdivision 4—Reporting of persistent non-attendance or non-participation

76—Principal etc to report persistent non-attendance or non-participation

This clause requires the principal of a school or head of an approved learning program to notify the Chief Executive if a student of the school or approved learning program is persistently failing to attend school, or participate in the approved learning program. The clause also deems a failure to attend or participate on any 10 days in a term to be a persistent failure requiring report (disregarding failures where a person responsible for the child has complied with section 69(3) or 70(3)).

Division 3—Suspension, exclusion and expulsion of students

77—Suspension of students

This clause was regulation 44 of the *Education Regulations 2012* (allowing for the suspension of students) and has simply been relocated into the measure.

78—Exclusion of students

This clause was regulation 45 of the *Education Regulations 2012* (allowing for the exclusion of students) and has simply been relocated into the measure.

79—Expulsion of certain students from particular school

This clause was regulation 46 of the *Education Regulations 2012* (allowing for the expulsion of students from a school) and has simply been relocated into the measure.

80—Expulsion of certain students from all Government schools

This clause was regulation 47 of the *Education Regulations 2012* (allowing for the expulsion of students from all Government schools) and has simply been relocated into the measure.

81—Appeal against decision to exclude or expel student

This clause was regulation 50 of the *Education Regulations 2012* (allowing for an appeal against a decision to suspend etc a student) and has simply been relocated into the measure.

Division 4—Intercultural and religious instruction

82—Intercultural instruction and/or religious instruction

This clause allows the principal of a school to set aside time for either or both intercultural instruction and religious instruction. A child can only participate in such instruction with the express consent of a person responsible for the child.

Division 5—Discipline

83—Corporal punishment prohibited

This clause prohibits corporal punishment from being imposed on students at Government schools.

Division 6—Registration of student exchange programs

84—Interpretation

This clause defines terms used in the proposed Division.

85—Registration of student exchange organisations

This clause enables the Education and Early Childhood Services (Registration and Standards) Board to register a person or body as a student exchange organisation and sets out procedural requirements for such registration.

86—Annual registration fee

This clause requires registered student exchange organisations to pay an annual registration fee.

87—Guidelines

This clause allows the Board to publish or adopt guidelines in relation to student exchange organisations and the operation of student exchange programs.

88—Board may give directions to registered student exchange organisation

This clause empowers the Board to direct a registered student exchange organisation to take, or to not take, such specified action in the circumstances set out in the clause.

89—Suspension and revocation of registration

This clause sets out when and how the Board may suspend or revoke the registration of a registered student exchange organisation.

Part 8—Protections for teachers, staff and students etc at schools, preschools and children's services centres

Division 1—Preliminary

90—Application of Part

This clause sets out the premises to which the proposed Part applies (including non-Government schools and preschools etc).

Division 2—Offences

91—Offensive or threatening behaviour

This clause creates an offence for a person to behave in an offensive or threatening manner on premises to which the proposed Part applies.

The clause also creates an offence for a person to use abusive, threatening or insulting language to, or to behave in an offensive manner towards, a prescribed person acting in the course of their duties (whether or not the offence occurs on premises to which the proposed Part applies).

92—Trespassing on premises

This clause creates an offence for a person to trespass on premises to which the proposed Part applies.

Division 3—Barring orders

93—Power to bar persons from premises

This clause empowers a prescribed person in respect of premises to which the proposed Part applies to bar a person from the premises (and related premises) in the circumstances specified in subclause (1). The clause also makes procedural provision in relation to such barring, and creates an offence for a person to contravene or fail to comply with a barring notice.

94—Review of barring notice by Minister

This clause provides that a person who is barred from premises under section 93 for a period exceeding 2 weeks may apply to the Minister for a review of the barring notice.

Division 4—Power to restrain etc persons acting unlawfully on premises to which Part applies

95—Certain persons may restrain, remove from or refuse entry to premises

This clause empowers an authorised person in respect of premises to which the proposed Part applies to direct a person to leave the premises in the circumstances specified in subclause (1). The authorised person may use reasonable force to restrain or remove the person, or prevent their re-entry to the premises. The clause also makes procedural provision in relation to such directions, and creates an offence for a person to contravene or fail to comply with a direction.

Part 9—The teaching service

Division 1—Preliminary

96—Interpretation

This clause defines 'misconduct' as used in the proposed Part.

Division 2—Appointment to the teaching service

97—Appointment to the teaching service

This clause provides for the appointment of teachers to be officers of the teaching service, and makes provision for the basis, terms and conditions of such appointments.

98—Merit-based selection processes

This clause requires certain appointments and promotions to occur on the basis of merit.

99—Rate of remuneration for part-time employees

This clause sets out how the rate of remuneration for part-time officers is to be determined.

100—Special remuneration for attraction and retention of officers of the teaching service

This clause provides that the Chief Executive may offer special remuneration to officers of the teaching service for the purposes of attracting and retaining officers of a high standard, and may enter into arrangements with officers of the teaching service for that purpose.

101—Probation

This clause requires an officer of the teaching service employed on an ongoing basis to be on probation for period of 2 years, however that period may be reduced or waived in the circumstances specified. The clause also requires officers appointed as term employees to be on probation in accordance with the regulations.

Division 3—Duties, classification, promotion and transfer

102—Assignment of duties and transfer to non-teaching position within Department

The clause enables the Chief Executive to determine the duties of officers of the teaching service, and the place or places at which duties are to be performed. The clause makes procedural provision in respect of such determinations.

103—Transfer within teaching service

This clause enables the Chief Executive to transfer officers of the teaching service between positions in the teaching service, provided that in doing so the officer's salary is not reduced and the transfer is not used to promote the officer to a higher classification level.

104—Classification of officers and positions

The clause enables the Chief Executive to make classifications of the kinds specified in respect of officers of, and positions in, the teaching service.

105—Application to Chief Executive for reclassification

This clause provides that an officer of the teaching service who considers that their classification, or that of their position, is not appropriate may lodge with the Chief Executive an application for reclassification, and makes procedural provision in relation to such applications.

106—Appointment to promotional level positions

This clause provides that the Chief Executive may appoint officers of the teaching service to positions within the teaching service classified at promotional levels, and sets out how such appointments are to be applied for and made.

Division 4—Long service leave

107—Long service leave and retention entitlement

This clause sets out the long service leave entitlements of officers of the teaching service.

108—Taking leave

This clause sets out when and how officers of the teaching service can take long service leave, and makes provision for the salary to be paid during the leave period.

109—Payment in lieu of long service leave

This clause provides that officers of the teaching service can apply to be paid salary in lieu of their accrued long service leave, and makes procedural provision for such payments.

110—Interruption of service where officer leaves teaching service

This clause provides for the service of an officer of the teaching service who leaves the teaching service for specified reasons and is then reappointed to the teaching service to be taken into account as though that service were continuous in the circumstances specified.

111—Special provisions relating to certain temporary officers of the teaching service

This clause preserves the effect of current section 22A of the of the *Education Act 1972*.

112—Entitlement where officer transferred to other public sector employment

This clause recognises the service of officers of the teaching service who are transferred to other employment in the public sector of the State as being continuous with that other employment.

113—Entitlement of persons transferred to the teaching service

This clause recognises the service of persons who transfer from other employment in the public sector of the State to the teaching service as being continuous with their service in the teaching service.

Division 5—Disciplinary action and management of unsatisfactory performance

114—Disciplinary action

This clause sets out the action the Chief Executive may take if the CE is satisfied that an officer of the teaching service is guilty of misconduct.

115—Managing unsatisfactory performance

This clause sets out the action the Chief Executive may take if the CE is satisfied that the performance of an officer of the teaching service is unsatisfactory.

116—Reduction in remuneration level

This clause sets out grounds on which the Chief Executive may reduce the remuneration level of an officer of the teaching service.

117—Suspension

This clause provides that the Chief Executive may suspend an officer of the teaching service if the CE is satisfied that the nature or circumstances of any matter alleged against the officer are such that the officer should not continue in the performance of their duties.

Division 6—Physical or mental incapacity of officers of the teaching service

118—Physical or mental incapacity of officers of the teaching service

This clause provides that the Chief Executive may require an officer of the teaching service to undergo a medical examination if the Chief Executive the officer's unsatisfactory performance may be caused by physical or mental incapacity, and makes procedural provision in relation to such examinations.

Division 7—Resignation and termination

119—Resignation

This clause sets out how an officer of the teaching service resigns from the service, and provides that the Chief Executive may make a determination that an officer has resigned if that are absent, without authority, from their employment for a period of 10 working days and do not give a proper written explanation or excuse for the absence to the Chief Executive before the end of that period.

120—Termination

This clause sets out how the employment of an officer of the teaching service can be terminated.

Part 10—Other employment and staffing arrangements

121—Chief Executive may employ other persons for purposes of Act

This clause provides that the Chief Executive may employ such other persons (in addition to the employees and officers of the Department and officers of the teaching service) as the Chief Executive thinks necessary or appropriate for the purposes of the measure.

122—Part 7 and Schedule 1 of the Public Sector Act 2009 to apply to persons employed under this Part

This clause applies Part 7 and Schedule 1 of the *Public Sector Act 2009* to certain persons employed under proposed section 121, subject to the modifications set out in subclause (1).

123—Use of staff etc of administrative units of the Public Service

This clause provides that the Chief Executive may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

Part 11—Appeals

Division 1—Review by South Australian Employment Tribunal

124—Review by SAET of certain decisions and determinations

This clause provides a right of review to the SAET for a person who is aggrieved with certain decisions or determinations of the Chief Executive under Part 9 of the measure, and makes procedural provision in respect of such reviews.

Division 2—Appeals to Administrative and Disciplinary Division of the District Court

125—Appeal against certain actions of Minister or Chief Executive

This clause provides a right of appeal to the Administrative and Disciplinary Division of the District Court for a person who is aggrieved by a prescribed action of the Minister or the Chief Executive under the measure, and makes procedural provision in respect of such reviews.

Part 12—Authorised officers

126—Authorised officers

This clause sets out who are authorised officers for the purposes of the measure, including the CE, police officers and employees of the Department authorised by the Chief Executive as an authorised officer.

127—Powers of authorised officers

This clause sets out the powers of authorised officers under the measure.

128—Offence to hinder etc authorised officers

This clause creates a series of offences (such as hindering) relating to authorised officers under the measure.

Part 13—Financial provisions

Division 1—Materials and services charges for schools

129—Materials and services charges for schools

This clause allows Government schools to impose materials and services charges in respect of each student enrolled in the school for the whole or part of a calendar year, and makes procedural provision in relation to setting and recovering such charges.

Division 2—Other fees and charges

130—Charges for certain overseas and non-resident students etc

This clause allows the Chief Executive to fix charges in relation to the matters set out in subclause (1), and procedural provision in relation to setting and recovering such charges.

131—Certain other charges etc unaffected

This clause clarifies the fact that the measure does not prevent other charges or payments being fixed or made in relation to the matters specified.

Division 3—Recovery of amounts payable to the Commonwealth

132—Recovery of amounts payable to the Commonwealth

This clause allows the State to recover certain debts due to the Commonwealth under the *Australian Education Act 2013* of the Commonwealth.

Part 14—Miscellaneous

133—Exemptions

This clause allows the Minister exempt a specified person, or a specified class of persons, from the operation of a provision or provisions of the measure.

134—Use of certain school premises etc for both school and community purposes

This clause allows the Minister to permit Government premises etc to be used for community purposes, and to provide assistance to community bodies so as to allow Government schools to use their facilities etc.

135—Proceedings for offences

This clause requires the consent of the Minister before proceedings can be commenced for an offence against the measure.

136—Commencement of prosecution for offence against Act

This clause provides that proceedings for an offence against the measure must be commenced within 2 years of the alleged offence.

137—Confidentiality

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

138—Protections, privileges and immunities

This clause limits liability under the measure, and provides that certain privileges and immunities are not affected by the measure.

139—Evidentiary provisions

This clause allows specified matters to be proved in legal proceedings by means of a certificate.

140—Service

This clause sets out how notices or documents under the measure can be served on a person.

141—Regulations

This clause sets out regulation making powers under the measure.

Schedule 1—Repeals, related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Repeal of *Children's Services Act 1985*

2—Repeal of *Children's Services Act 1985*

This clause repeals the *Children's Services Act 1985*.

Part 3—Repeal of *Education Act 1972*

3—Repeal of *Education Act 1972*

This clause repeals the *Education Act 1972*.

Part 4—Amendment of *Children's Protection Act 1993*

Part 5—Amendment of *Criminal Law Consolidation Act 1935*

Part 6—Amendment of *Education and Early Childhood Services (Registration and Standards) Act 2011*

Part 7—Amendment of *Independent Commissioner Against Corruption Act 2012*

Part 8—Amendment of *National Tax Reform (State Provisions) Act 2000*

Part 9—Amendment of *Public Sector Act 2009*

Part 10—Amendment of *SACE Board of South Australia Act 1983*

Part 11—Amendment of *Summary Offences Act 1953*

Part 12—Amendment of *Superannuation Act 1988*

Part 13—Amendment of *Teachers Registration and Standards Act 2004*

These Parts make related amendments to the Acts specified consequential to the enactment of the measure.

Part 14—Transitional provisions

This Part makes transition provisions in respect of the enactment of this measure, and the repeal of the *Education Act 1972* and the *Children's Services Act 1985*.

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

STATUTES AMENDMENT (EXPLOSIVES) BILL

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (17:52): I move:

That this bill be now read a second time.

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

Leave granted.

The Statutes Amendment (Explosives) Bill 2017 seeks to amend the *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953* to ensure that the penalties for the possession, manufacture and use of explosive devices, and the related substances, apparatus and instructions, are commensurate with the seriousness of the risk posed by the reckless and malicious use of improvised explosive devices.

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

At present, most of the offences relating to the manufacture and possession of explosives are set out in the *Explosives Act,* the *Explosives Regulations* 2011, the *Explosives (Security Sensitive Substances) Regulations 2006* and the *Explosives (Fireworks) Regulations 2016*. However, the offences in the Explosives Act and regulations are primarily targeted towards commercial or maritime misuse or manufacture of explosives: covering, for example, rules governing licensing for the manufacture, keeping, sale and transport of explosives. Penalties under this legislation are not significant and the requirement that proceedings under the Act are to be disposed of summarily means that SAPOL cannot utilise the investigatory options under the *Telecommunications (Interception) Act 2012,* the *Listening and Surveillance Devices Act* and the *Criminal Investigation (Covert Operations) Act 2009*.

The Bill inserts a new part 3D into the Criminal Law Consolidation Act to create new criminal offences with significantly higher penalties. For the purposes of new Part 3D, an explosive device is defined as 'any apparatus, machine, implement or materials used or apparently intended to be used or adapted for causing or aiding in causing any explosion in, or with, any explosive substance (and includes any part of any such apparatus, machine or implement)'. An explosive substance is defined as 'any substance used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect and any substance, or substance of a kind, prescribed by the regulations'. Both definitions are subject to new subsection 83M(2), which allows the Attorney-General, by notice in

the Gazette, to exempt a specific substance, apparatus, machine, implement or material from the definitions and therefore from the operation of Part 3D.

New section 83N sets out three new offences relating to explosive devices. The unlawful use of an explosive device is the most serious offence with a maximum penalty of 20 years imprisonment. It will also be an offence to possess an explosive device in a public place without lawful excuse and to possess, supply or take steps in the process of manufacture of an explosive device without lawful excuse. The maximum term of imprisonment for these offences is 10 years and 7 years respectively. The burden of proving that there is a lawful excuse lies on the defendant in accordance with existing section 5B of the Criminal Law Consolidation Act.

The Bill also creates a new offence, with a maximum penalty of 7 years imprisonment, where a person possesses, uses or supplies an explosive substance, prescribed equipment or instructions on how to make an explosive device, in suspicious circumstances without a lawful excuse. The requirement for suspicious circumstances has been included because many of the substances used to make improvised explosive devices have legitimate uses and can be easily and lawfully purchased from retail stores.

The final offences in new Part 3D relate to bomb hoaxes. The offences have been modelled on similar offences interstate and are punishable by imprisonment for 5 years.

To support the new criminal offences, the Bill also amends the Summary Offences Act to create additional search and seizure powers for police that are limited to the investigation of explosives offences. Under new section 72D, a police officer will have the power to enter and search any premises, and break into or open any part of the premises if reasonably necessary, for the purposes of ascertaining whether an explosives offence is being or has been committed.

New section 72D also sets out the requirements relating to the seizure and destruction of any property that may afford evidence as to the commission of an explosives offence. To ensure the safety of police officers attending to investigate a possible explosives offence the Commissioner has broad powers to direct that any seized property should be destroyed, either *in situ* if required or at some other suitable place. Reasons for giving such a direction could include that the seized property is considered too volatile to be safely stored and tested or that there is no appropriate facility in which to store the seized property. If the property is destroyed and the person is convicted of an offence in relation to that property, the court may order the convicted person to pay the reasonable costs of destruction to the Commissioner.

The Bill also contains evidentiary provisions that will assist in proceedings for an explosives offence, particularly where the seized property may need to be destroyed *in situ* because of the risks to SAPOL officers and the public in removing and storing the seized material.

New section 72E provides for the appointment of analysts by the Commissioner for the purpose of analysing seized property and the use of evidentiary certificates. The manner in which seized property may be analysed must be set out in guidelines developed by the Commissioner and placed on a website. Subsection (3) makes it clear that what amounts to an analysis is not limited to the scientific testing of samples which is not always possible with unstable devices and substances and can include physical examination, visual inspection of the property or visual inspection of photographs or films of the property. Once analysed, an evidentiary certificate may be used and will be, in the absence of any proof to the contrary, proof of the facts stated in the certificate. In addition, subsection (6) provides a presumption as to the contents of containers or vehicles if the label states or indicates that it contains a dangerous substance.

The new offences, search and seizure powers and evidentiary provisions in the Bill ensure that police have the tools to effectively detect and investigate activity connected with the domestic manufacture, possession or use of improvised explosive devices and the related precursors, instructions and apparatus and makes it clear to the community that such activity can only be for a lawful purpose.

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 *Criminal Law Consolidation Act 1935*

4—Amendment of section 31—Possession of object with intent to kill or cause harm

This clause amends some penalties for consistency with the penalties proposed in new Part 3D.

5—Insertion of Part 3D

This clause inserts a new Part 3D creating serious explosives offences as follows:

Part 3D—Explosives offences

83M—Interpretation

This section contains definitions for the purposes of the Part and allows the Attorney-General to make certain declarations exempting devices from the definition of explosive device and exempting substances from the definition of explosive substance.

83N—Explosive devices

This section sets out 3 new offences relating to explosive devices. The most serious offence (punishable by imprisonment for 20 years) relates to unlawful use of an explosive device. Secondly there is an offence (punishable by imprisonment for 10 years) relating to unlawful possession of an explosive device in a public place. Thirdly there is an offence (punishable by imprisonment for 7 years) relating to unlawful possession of an explosive device (which would apply to areas that are not public places), supply or taking a step in the process of manufacture of an explosive device. Under section 5B of the *Criminal Law Consolidation Act 1935* the burden of proving lawful excuse lies on the defendant.

83O—Explosive substances, prescribed equipment or instructions

This section creates an offence of using, having possession of or supplying an explosive substance, prescribed equipment or instructions on how to make an explosive device in suspicious circumstances and without lawful excuse. The penalty is 7 years' imprisonment.

83P—Bomb hoaxes

This section creates offences, punishable by imprisonment for 5 years, relating to bomb hoaxes.

Part 3—Amendment of *Summary Offences Act 1953*

6—Insertion of sections 72D and 72E

This clause inserts new sections as follows:

72D—Explosives offences—special powers

This section sets out powers for police to search for and seize material in relation to the proposed new explosives offences. The section also allows for the destruction or forfeiture of any such seized material.

72E—Explosives offences—analysis and evidence

This section allows for the appointment of analysts by the Commissioner of Police for the purpose of analysing the seized material (and for proof of such appointment in proceedings) and for the development of guidelines on the manner in which the seized material will be analysed and the records to be kept in relation to such analysis. The section goes on to provide for proof of certain matters by evidentiary certificate of an analyst and a further evidentiary provision provides a presumption that a label on a container or vehicle that states or indicates that it contains a dangerous substance contains true information relating to the contents of the container or vehicle.

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

STATUTES AMENDMENT (VEHICLE INSPECTIONS AND SOUTH EASTERN FREEWAY OFFENCES) BILL

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (17:53): I move:

That this bill be now read a second time.

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

Leave granted.

The South-Eastern Freeway forms part of the Adelaide to Melbourne road corridor and is an important strategic freight route for South Australia.

Adelaide is a significant attractor for freight vehicles with key destinations including the Port of Adelaide, Adelaide Airport and the city's growing domestic import/export industries.

The South-Eastern Freeway is classed as a High Productivity Vehicle access route enabled to cater for Adelaide's increase in freight tasks. To meet the growing demand of freight this strategic freight route is also approved to carry Performance Based Standard Level 2A vehicles – equal to large B Doubles.

Analysis of heavy vehicle movements utilising the South-Eastern Freeway indicate only 10-15% of heavy vehicles coming from east of Murray Bridge use the existing heavy vehicle route via Murray Bridge and Sedan to the Sturt Highway and then into Adelaide along the Northern Expressway.

Investigations have identified that a further bypass route cannot be justified on economic grounds, primarily due to the limited number of vehicles that would use such a bypass and the longer distances and travel times associated with alternative route options.

Of the heavy vehicles continuing on through the seven kilometres of decline between Crafers and intersection of Cross, Portrush and Glen Osmond Roads. Data from the Department of Planning, Transport and Infrastructure display only 1% of these vehicles travel north beyond the Northern Expressway via Port Wakefield Road.

Construction of the new South Eastern Freeway section was completed in early 2000. It was the largest South Australian road project at that time, costing a total of $151m, wholly funded by the Australian Federal Government.

The road has a steady decline and was designed and fitted with two safety ramps / arrestor beds.

On a weekday, this section of road carries an average of over 50,000 vehicles per day with over 5,000 of these vehicles being trucks or buses.

If a roadworthy heavy vehicle descends this road correctly in a low gear and at the right speed, then it is perfectly safe. Of the almost 800,000 trucks and buses vehicles travelling this descent into Adelaide each year, most do so in the right gear and the right speed.

But Mr Speaker, when they do not, the results are, as we all know, catastrophic.

When a crash occurs at the intersection of Cross, Portrush and Glen Osmond Roads we must remember that our whole community is affected. From the families and friends who must deal with the tragedy to the emergency service workers, police, medical professionals and the myriad of people who must manage the aftermath.

The real tragedy however, is that these crashes are wholly preventable. But for the inappropriate behaviours of an exceptionally small minority of drivers and owners, who either do not maintain their vehicles or fleet to the required standards of roadworthiness or simply ignore speed limits and warnings about the simple way to descend safely.

The Bill I have introduced today, informed by the work of the Deputy State Coroner, Mr Anthony Schapel and developed by the Government in consultation with South Australia Police, the South Australian Road Transport Association, the Transport Workers Union and the National Heavy Vehicle Regulator is designed to target those drivers and owners whose irresponsible attitudes and behaviours put everyone in our community at risk and to ensure the heavy vehicle fleet operating on our roads is maintained at the required standards.

The Bill has been specifically informed by three of the Deputy Coroner's recommendations from the inquest into the death of Mr James William Venning.

First, in response to recommendations 1 and 2, the Bill amends the *Road Traffic Act 1961* to create two specific offences for drivers of heavy vehicles on the section of the South-Eastern Freeway descending into Adelaide beginning between Crafers and the intersection of Cross, Portrush and Glen Osmond Roads. The first, based on Australian Road Rule 108, is failing to descend the downward track in low gear and the second, exceeding the set speed limit by 10 kilometres an hour or more.

These offences will be punishable by an expiation fee of $992, six demerit points and escalating periods of licence disqualification or suspension: 6 months for a first offence, 12 months for a second and three months for a third or subsequent offence.

The Bill will empower South Australia Police (SAPOL) to issue an immediate loss of license with an expiation notice roadside. For safety camera detected offences, the *Motor Vehicles Act 1959* will be amended to enable the Registrar of Motor Vehicles to apply a period of licence disqualification or suspension on expiation.

For the purposes of determining the appropriate period of disqualification or suspension following an expiation all previous South-Eastern Freeway offences regardless of whether it was a low gear or speed offence will be taken into account.

Heavy vehicle owners who fail to nominate an offending driver will also be subject to these penalties.

Should a driver or owner be convicted by a court of either these offences then they face for a first offence, a maximum fine of $5,000, six demerit points and licence disqualification for not less than 12 months.

For a second or subsequent offence there is no fine, instead in addition to six demerit points, licence disqualification for no less than three years in addition to a maximum penalty of two years imprisonment.

For the purpose of determining the appropriate penalty a Court will be able to count and previous convictions for a South-Eastern Freeway offence regardless of whether it was a low gear or speed offence.

The penalties that a court may impose on a body corporate on conviction is a fine no less than $25,000 and up to $50,000.

The fines for bodies corporate who choose not to nominate drivers have also been substantially increased to a sum comprising the expiation fee and $25,000 for a speeding offence on the South-Eastern Freeway descent. This increase in fine from a current $300 expiation fee for other speeding offences to $25,000 will increase the responsibility for a body corporate to identify the driver of a speeding vehicle.

Second, in response to the fourteenth recommendation made by the Deputy Coroner, that all heavy vehicles be the subject of a periodic and frequent safety inspection regime, the Bill amends the Motor Vehicles Act and the Road Traffic Act to introduce a mandatory inspection scheme for high risk heavy vehicles.

The Bill also provides for a more robust compliance framework for inspections, by raising penalty levels for a breach of the code of practice from $5,000 to $10,000 and providing for additional offences. The amendment to the Road Traffic Act enables an Authorised Officer to give directions over the phone to a vehicle operator at a private inspection facility where an Authorised Officer may not be present if the vehicle presents a critical risk.

To ensure costs in the regions are consistent with the metropolitan area, a cap is proposed on inspection fees conducted by private inspection stations that will be set in regulation.

This Bill represents the latest initiative of the Government to respond to the findings of the Deputy Coroner.

Mr Speaker, a pilot heavy vehicle inspection scheme commenced on 1 January 2017 which requires heavy vehicles three years of age and older with a Gross Vehicle Mass or Aggregated Trailer Mass of 4.5 tonnes to be inspected upon a change of ownership. As of May 2017, approximately 600 vehicles were inspected with an average of a 50% failure rate. A frightening statistic that this Bill aims to remedy.

Since 2014, the Government has taken a number of steps to improve safety on the downward track of the Freeway.

First an education campaign has been undertaken on using low gear on the descent and not the primary brake. This campaign has included posting brochures regarding Australian Road Rule 108 to all South Australian heavy vehicle licence holders, truck owners, freight companies and industry representatives. Information on ARR108 also appears on the website at mylicence.sa.gov.au.

Since late August 2015, the Heavy Vehicle Driver's Handbook has been available online to download for free. Ring bound copies were also made available at Service SA centres. The first 5,000 copies were free, with some being made available to heavy vehicle training providers as part of their heavy vehicle licence training package.

Second, the Government has taken active steps to promote the use of the two South-Eastern Freeway descent safety ramps.

In conjunction with the release of the Handbook on line, a ten minute safety information and training video was developed in collaboration with Industry, educators and Ambulance SA to demonstrate how to safely descend the South Eastern Freeway in accordance with Australian Road Rule 108. The video, which can be viewed on YouTube and accessed from the Department of Planning Transport and Infrastructure website raises awareness of the locations and the benefits of using safety ramps.

Registered training organisations (RTO) have updated their training material to include more detail on ARR108, hills driving and use of Safety Ramps.

To promote their use the Government changed the name of the term *Arrester Bed* to *Safety Ramp* and now covers the cost for the recovery of a heavy vehicle from a safety ramp.

Thirdly, signage along South East Freeway and Dukes Highway has been upgraded and improved.

Promotional signs targeting interstate drivers who may not have used the South Eastern Freeway before were installed at three of the heavy vehicle rest areas on and approaching the South-Eastern Freeway at Mt Barker, Tailem Bend and Tintinara. The warning, *Penalties Apply* is included on the sign artwork.

Advance warning signs advising of the steep descent have been installed 7 and 10 kilometres prior to the descent.

Flashing amber lights above the last descent warning sign have also been activated.

Forth, an improved incident response for industry protocol has been implemented by the Government whereby a number of transport operators are now being sent email alerts of incidents on the Freeway that affect heavy vehicle access to the Freeway, or the use of the safety ramps located on the downward track.

In addition to these initiatives, to enhance the effectiveness of these new penalties and boost their deterrent effect, work will commence on upgrading the existing safety camera system on the at the South-Eastern Freeway descent adjacent to the Mt Osmond Road interchange.

I have no doubt that some in the community and industry will have concerns about the harsh nature of penalties in the Bill. However this government is unapologetic about road safety measures such as these.

Mr Speaker, from the tragic experiences in the past, such as the events in 2014 we all know what happens when just one driver speeds down the freeway, uses the wrong gear, or loses control of their truck because of mechanical failure resulting from inadequate maintenance.

Mr Speaker, I commend this 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 *Motor Vehicles Act 1959*

4—Amendment of section 20—Application for registration

This clause amends section 20 so that the Minister can require an application for registration to include additional information.

5—Amendment of section 24—Duty to grant registration

This clause amends section 24 so that the Registrar is required to refuse to register a motor vehicle if—

(a) the vehicle is a vehicle of a class prescribed for the purposes of section 139(1)(c); and

(b) the vehicle has been examined under section 139; and

(c) the Registrar reasonably believes that because the vehicle does not comply with an Act or law that regulates the design, construction or maintenance of such a vehicle, the vehicle would, if driven on a road, put the safety of persons using the road at risk.

6—Amendment of section 58—Transfer of registration

This clause amends section 58 so that the Registrar is required to refuse to transfer the registration of a motor vehicle if—

(a) the vehicle is a vehicle of a class prescribed for the purposes of section 139(1)(c); and

(b) the vehicle has been examined under section 139; and

(c) the Registrar reasonably believes that because the vehicle does not comply with an Act or law that regulates the design, construction or maintenance of such a vehicle, the vehicle would, if driven on a road, put the safety of persons using the road at risk.

7—Insertion of section 81BC

This clause inserts new section 81BC to require the Registrar of Motor Vehicles to give notices of licence disqualification or suspension to persons who expiate offences relating to section 45C of the *Road Traffic Act 1961*.

81BC—Disqualification for certain offences relating to section 45C of the *Road Traffic Act 1961*

If a person is given an expiation notice for an offence against proposed new section 45C of the *Road Traffic Act 1961* (exceeding a speed limit by 10 kph or more, or failing to engage a low gear, on a prescribed part of the South Eastern Freeway in a truck or bus) or section 79B of that Act, as amended by this measure (being the owner of a truck or bus that appears from camera evidence to have been involved in exceeding a speed limit by 10 kph or more on such a prescribed part of the Freeway), and the person pays the relevant expiation fee for the offence, then this section requires the Registrar of Motor Vehicles to give the person a notice of licence disqualification or suspension for the offence.

The period of disqualification or suspension is 6 months for a first offence,12 months for a second offence and 3 years for a subsequent offence (unless the disqualification or suspension is withdrawn or otherwise ended earlier). In determining whether an offence against section 45C is a first, second or subsequent offence, any previous conviction or expiation for an offence against section 45C (regardless of whether the previous offences were speeding or low gear offences or a mixture of the two) committed within the period of 5 years preceding the alleged new offence must be taken into account. In the case of an offence (against section 79B of the *Road Traffic Act 1961*) of being the owner of a vehicle involved in the speeding offence, any previous conviction or expiation for the same owner offence committed within the period of 5 years immediately preceding the current alleged offence must be taken into account. In each case the period of licence disqualification or suspension must be reduced by any period of disqualification or suspension imposed for the offence by the police by notice under proposed new section 45D of the *Road Traffic Act 1961*.

(Under new section 45D the police are empowered to issue a notice of licence disqualification or suspension for a period of 6 months for these offences).

The provisions relating to the withdrawal of a notice of licence disqualification or suspension, and the effect of the withdrawal of an expiation notice on the continued application of such a notice of licence disqualification or suspension, that apply in the case of a notice issued by the police under section 45D of the *Road Traffic Act 1961* also apply to a notice of licence disqualification or suspension issued by the Registrar under this section.

8—Amendment of section 93—Notice to be given to Registrar

This clause amends section 93 of the Act and is consequential on the addition of proposed new section 45E to the *Road Traffic Act 1961*. If the Magistrates Court makes an order under that proposed new section removing a licence disqualification or suspension imposed under proposed new section 45D of the *Road Traffic Act 1961* or proposed new section 81BC of the *Motor Vehicles Act 1959*, this amendment requires the Court to notify the Registrar of Motor Vehicles of the order.

9—Substitution of section 139

This clause substitutes section 139.

139—Inspection of motor vehicles

Subsection (1) empowers the Registrar or an authorised vehicle inspector to examine a motor vehicle for any of the following purposes:

(a) verifying any information disclosed in—

(i) an application made to the Registrar in respect of the vehicle or any evidence provided by an applicant in response to a requirement of the Registrar under this Act; or

(ii) a notice of the making of an alteration or addition to the vehicle given to the Registrar by a person under section 44 or any evidence provided by a person in response to a requirement of the Registrar under that section;

(b) ascertaining any facts on which the amount of any fee or payment to the Registrar in respect of the vehicle depends;

(c) ascertaining whether—

(i) the vehicle complies with an Act or law that regulates the design, construction or maintenance of such a vehicle; or

(ii) the vehicle would, if driven on a road, put the safety of persons using the road at risk;

(d) ascertaining whether the vehicle or part of the vehicle is or may be stolen.

Subsection (2) provides that a motor vehicle may not be examined for the purposes of subsection (1)(c) unless—

(a) the vehicle is of a class prescribed for the purposes of that subsection; or

(b) an application to register, or transfer the registration of, the vehicle has been made; or

(c) notice of the making of an alteration or addition to the vehicle is given, or is required to be given, to the Registrar by a person under section 44; or

(d) prescribed circumstances exist.

Subsection (3) empowers the Registrar to determine that motor vehicles of a class prescribed for the purposes of subsection (1)(c) must be examined periodically at intervals prescribed by the regulations.

Subsection (4) provides that for the purposes of subsection (1)—

(a) the Registrar or an authorised vehicle inspector may take from any part of a motor vehicle a sample of any liquid fuel used or appearing to be used for propelling that vehicle;

(b) the Registrar, a police officer or an authorised officer may—

(i) enter and remain in any premises at any reasonable time and search those premises for motor vehicles; or

(ii) require a person to produce a motor vehicle at a specified authorised inspection station or other specified place at a specified day and time for the purpose of examination.

Subsection (5) provides that the Registrar, a police officer or an authorised officer may only exercise the powers conferred by subsection (4)(b)(i) in respect of residential premises on the authority of a warrant issued by a magistrate.

Subsection (6) provides that a warrant may not be issued unless the magistrate is satisfied that the warrant is reasonably required in the circumstances.

Subsection (7) provides that an application for the issue of a warrant may be made personally or by telephone and must be made in accordance with any procedures prescribed by the regulations.

Subsection (8) makes it an offence for a person of whom a requirement is made by the Registrar, a police officer or an authorised officer under subsection (4)(b)(ii) to refuse or fail to comply with the requirement. The maximum penalty is $10,000.

Subsection (9) makes it an offence for a person to—

(a) without reasonable excuse, hinder or obstruct an authorised vehicle inspector in the exercise of powers under this section; or

(b) falsely represent, by words or conduct, that the person is an authorised vehicle inspector; or

(c) falsely represent, by words or conduct, that premises are an authorised inspection station.

The maximum penalty is $10,000.

Subsection (10) provides that the Registrar may—

(a) authorise a person, or persons of a specified class, to examine motor vehicles for the purposes of this section;

(b) authorise the use of specified premises as an inspection station for the examination of motor vehicles for the purposes of this section;

(c) make an authorisation subject to such terms and conditions as the Registrar thinks fit;

(d) vary or revoke an authorisation at any time.

Subsection (11) empowers the Minister to establish a code of practice to be observed by persons authorised to examine motor vehicles in accordance with this section and subsection (12) makes it an offence for a person to contravene such a code of practice. The maximum penalty is $10,000.

Subsection (13) provides that a person authorised by the Registrar to examine motor vehicles for the purposes of this section may, with the approval of the Minister, charge fees for the examination of a motor vehicle that exceed the fees prescribed under the Motor Vehicles Act or the Road Traffic Act for that purpose.

Subsection (14) empowers the Minister to grant or revoke an approval for the purposes of subsection (13) as the Minister thinks fit, or make any approval subject to such conditions as the Minister thinks fit.

Subsection (15) defines *authorised inspection station* and *authorised vehicle inspector* for the purposes of the section.

10—Amendment of section 139BD—Service and commencement of notices of disqualification

This clause amends section 139BD of the Act to make it clear that a notice of licence disqualification or suspension by the Registrar of Motor Vehicles under proposed new section 81BC must be given to a person in accordance with section 139BD, which means that the notice must be sent by post to, and acknowledged by, the person or else served on the person. The disqualification or suspension commences 28 days after the day specified in the notice or after service of the notice (or at the end of any period of disqualification or suspension that is already in force at that time).

Part 3—Amendment of *Road Traffic Act 1961*

11—Amendment of section 40G—Application of Subdivision

This clause amends section 40G so that the powers of authorised officers under Part 2, Division 5, Subdivision 2 (sections 40H to 40M) apply in relation to vehicles in or on any premises that are authorised inspection stations under the Motor Vehicles Act. These powers include the giving of directions to stop or move vehicles to enable the exercise of other powers, directions to move vehicles if there is danger or obstruction, directions to leave vehicles and powers to move unattended vehicles to enable the exercise of other powers.

12—Insertion of sections 45C, 45D and 45E

This clause inserts new sections 45C, 45D and 45E into the Act.

45C—Speed and gear restrictions for trucks and buses on prescribed roads

Proposed new section 45C(1) makes it an offence to drive a truck or bus on a portion of the South Eastern Freeway (or adjacent land) prescribed by regulation at a speed exceeding a speed limit applicable to the driver by 10 kph or more. It does not apply in relation to speed limits applicable to passing school buses or passing through emergency service speed zones. Proposed new section 45C(2) makes it an offence when driving a truck or bus on such a portion of the South Eastern Freeway to fail to engage a gear that is low enough to enable the vehicle to be driven safely without the use of a primary brake.

In each case the penalty is a fine of $5,000 for a first offence and imprisonment for 2 years for a subsequent offence. In addition, on convicting a person of either offence a court must order that the person is disqualified from holding or obtaining a driver's licence for a period of not less than 12 months for a first offence and not less than 3 years for a subsequent offence. If the person holds a driver's licence, the licence is suspended for the period of the disqualification.

In determining whether an offence is a first or subsequent offence for these purposes, any previous offence against the section (whether against section 45C(1) or 45C(2)) for which the person has been convicted must be taken into account, but only if the previous offence was committed within the period of 5 years immediately preceding the date on which the offence under consideration was committed.

45D—Power of police to impose licence disqualification or suspension for section 45C etc offences

This proposed new section empowers police officers to give a notice of licence disqualification or suspension to a person for an offence against proposed new section 45C(1) or (2) or an offence against section 79B constituted of being the owner of a vehicle that appears from photographic detection device evidence to have been involved in the commission of an offence against section 45C(1). A police officer can give a person such a notice (specifying the offence to which the notice relates) if the person is given an expiation notice for the offence, or if a police officer reasonably believes that the person has committed the offence. On being given a notice under this section, a person who does not hold a driver's licence is disqualified from holding or obtaining such a licence for the disqualification period and the licence of a person who does hold such a licence is suspended for that period. Particulars relating to the disqualification or suspension are forwarded to the Registrar of Motor Vehicles and subsequently to the person who was given the notice.

The disqualification or suspension commences, in the case of an offence against section 45C, when the person is given the notice of licence disqualification or suspension or (at the discretion of the police officer) 48 hours later. In the case of an offence against section 79B (the owner offence) relating to section 45C(1), the disqualification or suspension commences 28 days after the notice is given to the person. If another period of disqualification or suspension is running at the normal time for commencement then the disqualification or suspension commences when that other period ends.

The period of disqualification or suspension is for 6 months unless: the notice is withdrawn; the proceedings for the offence to which the notice relates are determined by a court or discontinued; the person is notified by the Commissioner of Police that the person is not to be charged with, or given an expiation notice for, any relevant offence; or the Magistrates Court cancels the notice on application under proposed new section 45E.

If a notice of licence disqualification or suspension is given to a person under this section, but no expiation notice is given for the offence, or an expiation notice is given but subsequently withdrawn or the person elects to be prosecuted instead of expiating, then the Commissioner of Police is required to make a determination within a reasonable time as to whether to charge the person with an offence or issue an expiation notice, and if the Commissioner decides not to do either then the Commissioner must send the person written notice to that effect (and must also forward notice of the determination to the Registrar of Motor Vehicles). The effect of the notice of such a determination is to bring the notice of licence disqualification or suspension to an end. Failure to comply with the requirement to make a determination and notify the person does not affect the operation of the notice of licence disqualification or suspension.

If a notice of licence disqualification or suspension is given to a person by the police under this section for an offence and the person is subsequently convicted of the offence (or another offence arising out of the same course of conduct) and the court is required to impose a period of disqualification or suspension as part of the penalty for the offence, then the court is required to take into account any period of licence disqualification or suspension that has applied to the person under this section in determining the length of disqualification or suspension to be imposed by the court.

The Commissioner of Police can authorise the withdrawal of a notice of licence disqualification or suspension issued under this section if the notice has been given to the wrong person, or is defective or for other proper cause, and may, if satisfied that there are proper grounds to do so, authorise the giving of a fresh notice (provided that if the new notice is given to the same person, the period for which the new notice applies must be reduced by any period for which the withdrawn notice applied).

No compensation is payable by the Crown or a police officer in respect of the exercise of powers under this section, but a police officer is not protected if the police officer exercised powers other than in good faith.

45E—Application to Court to have disqualification or suspension under section 45D lifted

Under this proposed new section, if a person is given a notice of licence disqualification or suspension by the police under proposed new section 45D (or is sent particulars of such a notice by the Registrar of Motor Vehicles) but is not given an expiation notice for an offence to which section 45D applies, or is given such an expiation notice but the notice is withdrawn or the person elects to be prosecuted instead of expiating the offence, the person can apply to the Magistrates Court for an order removing the licence disqualification or suspension imposed by the notice.

The Commissioner of Police is a party to the application and can appear through a police officer or legal counsel to make submissions, but can't cross-examine the applicant.

The Magistrates Court may make an order that the person is not disqualified, or the person's licence is not suspended, by the notice issued under section 45D by the police if the Court is satisfied, on the basis of oral evidence given on oath by the applicant, that there is a reasonable prospect that the applicant would, in proceedings for the offence to which the notice relates, be acquitted of the offence and the evidence before the Court does not suggest that the applicant may be guilty of another offence to which section 45D applies. The Magistrates Court may also make such an order if the Court is satisfied that the prosecution authorities have had a reasonable time in which to determine whether or not to charge the person with an offence and have not done so.

13—Amendment of section 79B—Provisions applying where certain offences are detected by photographic detection devices

This clause amends section 79B of the Act to make it an offence to be the owner of a vehicle that appears from evidence obtained through the operation of a photographic detection device to have been involved in the commission of an offence against proposed new section 45C(1) (the offence of driving a truck or bus on a prescribed portion of the South Eastern Freeway at a speed exceeding by 10 kph or more a speed limit applicable to the driver).

The maximum penalty for the offence is, if the owner of the vehicle is a natural person, a fine of $5,000. If the owner of the vehicle is a body corporate, the maximum penalty is a fine of not less than $25,000 and not more than $50,000.

The expiation fee for the offence is, if the owner of the vehicle is a natural person, the expiation fee fixed by the regulations for a section 45C(1) offence. If the owner of the vehicle is a body corporate, the expiation fee is the expiation fee for an alleged offence against section 45C(1) plus $25,000.

If a court convicts a natural person of the offence, the court must order that the person be disqualified from holding or obtaining a driver's licence for a period of not less than 12 months in the case of a first offence or not less than 3 years in the case of a second or subsequent offence. If the person holds a driver's licence, the licence is suspended for the period of the disqualification. In determining whether an offence is a first or subsequent offence, any previous offence against section 79B constituted of being the owner of a vehicle that appears from camera evidence to have been involved in the commission of an offence against section 45C(1) for which the person has been convicted or that the person has expiated that was committed within the period of 5 years immediately preceding the commission of the new offence will be taken into account.

If there is a registered operator of the vehicle, an expiation notice for this offence can only be given to, or a prosecution for this offence can only be brought against, the registered operator.

14—Amendment of section 110AAAA—Certain provisions not to apply to drivers of emergency vehicles

This clause amends section 110AAAA of the Act to indicate that proposed new section 45C does not apply to police officers or other emergency workers if they are taking reasonable care (and their vehicle is, except in some circumstances, displaying flashing lights or sounding an alarm) and it is reasonable that the section not apply to them.

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

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) (REMOTE AREA ATTENDANCE) AMENDMENT 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) (17:54): I move:

That this bill be now read a second time.

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

Leave granted.

I rise to introduce the *Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) Amendment Bill 2017*. This Bill is in response to the murder of Mrs Gayle Woodford, a dedicated nurse whose life ended in tragic circumstances on 23 March, 2016. Mrs Woodford responded to a late night callout from Dudley Davey for emergency medical treatment. In responding to this call Mrs Woodford was subsequently abducted by Davey and murdered.

Understandably Mrs Woodford's murder brought outrage from the community and professional bodies such as the Australian Nursing and Midwifery Association and the Council of Remote Area Nurses of Australia.

Health practitioners working in remote areas already face a number of challenges in the environment being the first responder for emergency issues, living in small or very small communities that are often only accessible by four-wheel drive vehicles, and travelling on unsealed roads that at times may be impassable because of heavy rains and flooding. Under these conditions our health practitioners do not also need to be concerned about their own physical health and safety.

The Amendment Bill before the House today provides protection to the safety of health practitioners working in health services in the remote areas of the State that are funded by the South Australian Government, or contracted by the Government to provide health services in these areas. When responding to out of hours or unscheduled callouts for emergency medical treatment these health practitioners must be accompanied by a second responder. The second responder will serve the role of accompanying the health practitioner on emergency callouts to reduce the chances of personal attack. These second responders may be local community members, another staff member from the health service or a person from another government agency.

Second responders are already in use in remote areas of the Northern Territory and Queensland to accompanying remote area nurses on emergency callouts. The arrangements in these jurisdictions are by policy and not legislation. While this provides additional security for remote area nurses it has raised other issues. A review of remote area nurse safety in the Northern Territory following the murder of Mrs Woodford found that practices had not been formalised or documented in relation to staff safety. Staff surveyed stated that they usually considered the clinical needs of the client before their own safety. This highlights the dedication of our health workforce but this Government is not prepared to place the safety of our health workers at risk.

The Northern Territory survey also found that remote area nurses were concerned that if they did not attend an emergency callout they could be legally liable or their registration could be put at risk. The legislation addresses this issue by providing, in the event that a second responder cannot be found and the health practitioner is unable to attend an emergency callout, they cannot be subject to any disciplinary action by a regulatory body. I am told that in the experience of the Northern Territory Department of Health in most emergency callouts a second responder can be found. I would hope that the same can be achieved in this State as the prospect of not attending to an emergency call is not one that is taken lightly by this Government and nor is it likely to be sit comfortable with health practitioners. I note that the Northern Territory survey highlighted that remote area nurses and managers were worried about client outcomes and community responses if the client deteriorated because the nurse died not attend, or if there were delays while contacting a second responder.

This legislation will apply to all health services provided in a remote area of South Australia comprising the Anangu Pitjantjatjara Yankunytjatjara Lands, the Maralinga Tjarutja Lands, and those areas that fall outside of a council area, more commonly known as unincorporated South Australia.

Should a health practitioner receive an out of hours or unscheduled callout for emergency treatment they will be required to go through a risk assessment to determine whether the service needs to be provided now or can wait until clinic hours. Should the health practitioner confirm that attendance is required on an emergency basis then a second responder will be contacted to accompany the practitioner. The second responder will arrange to meet the health practitioner at a designated point and accompany the practitioner until such time that the callout is completed.

In the Northern Territory most second responders are persons from the local Aboriginal communities. The persons are able to provide further information to health practitioners about the local communities which over time increased the knowledge of practitioners working in the remote areas and allowed them to manage community relationships. This model is attractive for remote areas in South Australis and as part of the implementation of this legislation a process will be undertaken to engage with local Aboriginal communities to identify individuals to serve as second responders. I am told that many of the Aboriginal community groups were dismayed with what happened to Mrs Woodford and concerned about what this may mean for health service delivery to their communities. Given this I anticipate that the Government will be able to work closely with these communities to ensure that health practitioners will be able to provide services without fear for their own safety and security.

Where second responders are unable to be provided by local communities the role will taken by other health service providers or staff from other government agencies.

Health service providers in remote areas will also be required to have policies and procedures in place to ensure the safety and security of health practitioners. Many government health services already have policies in place for persons working alone or in isolation in remote areas. The legislation will require these policies to be reviewed at least every five years.

Where the State Government has contracted with another provider to deliver health services in the remote areas the provider will be required to comply with all requirements of this legislation.

The work of health practitioners in remote areas can be both rewarding and challenging. These practitioners are responsible for providing essential primary health care services and are the first point of contact for emergency medical issues. They will deal with everything from antenatal care to end-of-life care. Working in remote areas is not inherently dangerous. However, there are a number of factors such as isolation that can contribute to increased risks to health practitioners working in these areas. For those dedicated practitioners that are currently working in the remote areas of this State, and for those future practitioners who may work in these areas, this legislation allows them to work without fear that they may be assaulted or murdered.

As I mentioned earlier this legislation has been called for by the community and professional bodies following the murder of Mrs Woodford. There has been no greater advocate than Mrs Woodford's husband who has asked governments and health authorities to implement 'Gayle's Law.' If I may quote Mr Keith Woodford:

> 'We must act to adequately protect nurses and medical staff in remote areas to ensure the crime that took Gayle away from us will never be allowed to happen again.'

With this simple request 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 *Health Practitioner Regulation National Law (South Australia) Act 2010*

4—Insertion of Part 5A

This clause inserts new Part 5A into the *Health Practitioner Regulation National Law (South Australia) Act 2010* as follows:

Part 5A—Restrictions on single person attendances in remote areas

Division 1—Preliminary

77A—Interpretation

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

77B—Interaction with other Acts

This clause clarifies that the proposed Part is in addition to, and does not derogate from, the provisions any other Act or law.

Division 2—Restrictions on single person attendances in remote areas

77C—Application of Division

This clause describes the health practitioners, and callouts, to which the proposed Division applies.

77D—Second responders

This clause sets out how a health practitioner engages a second responder, and makes procedural provisions in relation to second responders, including a power to make regulations regarding second responders.

77E—Health practitioner to be accompanied by second responder

This clause prevents a health practitioner to whom the proposed Division applies from attending a callout to which the Division applies unless they are accompanied by a second responder. The clause sets out what it means for a health practitioner to be accompanied by a second responder.

77F—Limitation of liability

This clause limits liability arising out of the operation of the proposed Part.

Division 3—Providers of health services in remote areas to have policies and procedures to ensure safety and security of health practitioners

77G—Application of Division

This clause sets out persons and bodies to whom the proposed Division applies.

77H—Providers of health services in remote areas to prepare or adopt policies and procedures for the safety and security of health practitioners

This clause requires persons and bodies to whom the proposed Division applies to prepare or adopt policies and procedures designed to ensure the safety and security of health practitioners providing health services in remote areas on behalf of the State authority.

77I—Policies and procedures to be reviewed

This clause requires persons and bodies to whom the proposed Division applies to review the policies and procedures required under new section 77H in accordance with the regulations. A review must be conducted at least once every 5 years.

77J—State authorities not to contract etc with non-compliant providers

This clause prevents a State authority from contracting with providers of health services who are not compliant with the proposed Division, and requires contracts and agreements to contain provisions ensuring the provider will comply with proposed Division 2.

77K—Power of Minister on refusal etc to comply with Division

This clause sets out steps the Minister can take if a State authority refuses or fails to comply with the proposed Division, including reporting the refusal or failure to Parliament.

Division 4—Miscellaneous

77L—Exemption

This clause provides the Minister with the power to exempt a specified person, or a specified class of persons, from the operation of a provision or provisions of the proposed Part.

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

POLICE (DRUG TESTING) AMENDMENT 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) (17:55): I move:

That this bill be now read a second time.

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

Leave granted.

South Australians have demonstrated their high levels of trust and confidence in the South Australia Police (SAPOL). As indicated in the 2015-2016 SAPOL Annual Report, the community has returned ratings of 88.6% for community confidence, 84.0% for community satisfaction and 91.2% for professionalism.

With illicit drug taking present in society, the risks associated with Police Officers taking illicit drugs would serve to undermine community confidence. It is important that Police Officers involved in significant incidents such as when a person is killed or suffers serious injury are closely scrutinized. The public must have confidence that Police Officers involved in such incidents are not affected by alcohol or drugs. Current drug testing provisions within the *Police Act 1998* and the Police Regulations 2014 only allow for limited testing of illicit drugs and do not encompass a number of commonly available drugs used in the community.

Interstate inquiries into the personal use and supply of prohibited drugs by Police Officers highlighted the following risks

- the nature of police duties call for calm and careful decisions, a clear head and a balanced exercise of discretion, and the need to use motor vehicles and weapons. These requirements are incompatible with the impaired judgment and coordination which can result from drug use;
- public respect for the Police Service, and the maintenance of good order and discipline are impossible in an environment that tolerates the presence of police at clubs, hotels and the like where they are seen to be affected by alcohol or drugs;
- the necessary association of any police officer who uses drugs, even for recreational purposes, with a supplier creates opportunities for compromise, blackmail and corruption, particularly if the habit becomes expensive to feed;
- a user of prohibited drugs is unlikely to approach the enforcement of drug laws with any degree of conviction; and

- participation in any form of criminal offence by a police officer is in fundamental conflict with the sworn duty of the officer to uphold the law.

The community would rightfully be concerned by members of SAPOL being impaired by drugs in their decision making or engaging in conduct which would compromise their integrity. The harm associated with illicit drug taking in the community is of significant public importance and SAPOL has a leadership role in addressing this problem.

There is no evidence to suggest a significant issue exists with SAPOL. In September 2014, amendments to the *Police Act 1998* and regulations created the first legislative framework for drug and alcohol testing of police officers. SAPOL have subsequently developed the internal policy framework and from early 2016 have applied drug and alcohol testing to members involved in significant incidents – these are circumstances such as being involved in a critical incident whilst on duty, high risk driving whilst on duty and applying for classified positions. Classified positions are those which require that the applicants (ie already serving Police Officers) undergo a medical or psychological assessment as part of an application process. These positions, such as in the Special Tasks and Rescue (STAR) Branch and undercover operatives have elevated demands in respect to resilience, fitness, psychological and physiological demands. A critical incident is where a person is killed or suffers serious bodily injury while detained by a police officer, or as a result of the discharge of a firearm or an electronic control device, or in circumstances involving a police aircraft, motor vehicle, vessel or other mode of transport; or as a result of alleged police action. So far, no positive results have arisen from testing undertaken in these circumstances. Police can also be tested when it is believed the member has used a drug or alcohol. One member returned a positive drug test in these circumstances and that matter is before the Police Disciplinary Tribunal.

Part 6 Division 2 of the *Police Act 1998* provides for drug and alcohol testing of Police Officers, Cadets and applicants for SA Police in certain circumstances. Within the Act, drug is defined as a substance that is a controlled drug under the *Controlled Substances Act 1984*. The Police Regulations 2014 limit analysis to the prescribed drugs of cannabis, methylamphetamine and MDMA (ecstacy) only. The presence of other drugs commonly found within the community, such as heroin and cocaine, cannot be tested for within the current legislative provisions.

SAPOL has advised of a need for legislation to allow testing for a broader range of drugs. For future proofing, it is proposed that any drug listed as a controlled substance pursuant to the *Controlled Substances Act 1984* should be able to be tested for. In reality, the expansion at this time is to cocaine and heroin.

To achieve this consistency, amendments are required to the Police Regulations 2014. This would allow Police Officers and Police Cadets to be tested for drugs such as heroin and cocaine, already frequently found in the community. The authority will also allow for future testing of new drugs as they evolve, on the basis that the substance is first listed as a controlled drug under the *Controlled Substances Act 1984*. The Commissioner of Police would approve testing for drugs for any future drug as a policy decision rather than requiring legislative amendment on each occasion. Such a testing regime is supported by the Police Association of South Australia. Changes are not proposed to the range of circumstances in which a Police Officer or Police Cadet can be tested.

The current drug testing process SAPOL uses under the *Police Act 1998* has similarities to that used for drug driver testing of the public underpinned in the *Road Traffic Act 1961*. The drafting approval given by Cabinet on 5 December 2016 was to amend the *Road Traffic Act 1961*, the *Rail Safety National Law (South Australia) Act 2012* and the *Harbors and Navigation Act 1993* to replace the oral fluid analysis (OFA) procedure with an oral fluid collection (OFC) procedure. This Bill makes those amendments to the Police specific *Police Act 1998* and Police Regulations 2014.

SAPOL will source and purchase oral fluid screening (OFC) equipment that can detect the presence heroin and cocaine as well as the drugs covered by the *Road Traffic Act 1961* that are already tested for. The devices in use are approved by His Excellency the Governor pursuant to the *Road Traffic Act 1961*. For consistency and transparency, SAPOL proposes that any new device(s) for conducting OFC procedures would also be prescribed by regulation to be made by His Excellency the Governor, but pursuant to the *Police Act 1998* as this range of testing only applies to Police Officers and Cadets. The current drug testing procedure for Police Officers and Cadets uses the same oral fluid analysis apparatus used in the current 2nd stage of drug testing authorised by the Road Traffic Act. This apparatus will not be available in the future as the consumables have been discontinued from manufacture.

This circumstance has led to some of amendments contained in the Statutes Amendment (Drink and Drug Driving) Bill 2017 currently within Parliament. There is benefit in the *Police Act 1998* adopting the same procedure as it provides an immediate positive/negative result, minimises anxiety for members and supports immediate action being taken to ensure public safety and a safe workplace. When a positive indication to a test occurs, a series of administrative, investigational and likely disciplinary actions follow. This includes analysis by Forensic Science SA to confirm the results. SAPOL's Ethical and Professional Standards Branch co-ordinate this process with oversight of the Police Ombudsman and will continue to do so.

Section 41D (2) (e) of the *Police Act 1998* allows for apparatus used for drug and alcohol testing to be approved by His Excellency the Governor through regulation. The *Police Act 1998* describes the apparatus to be used for oral fluid drug testing within the definition of 'oral fluid analysis'. This is apparatus of a kind approved under the *Road Traffic Act 1963*. Removing the term and the definition of 'oral fluid analysis' will allow apparatus to be approved by His Excellency the Governor pursuant to the *Police Act 1998*. The apparatus is utilised only for Police Officers and Cadets and approval in this manner provides transparency in the process.

I commend the Bill.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Police Act 1998*

4—Amendment of section 41A—Interpretation

This clause amends section 41A to insert a definition of *drug screening test* and substitute a new definition of *oral fluid analysis*.

5—Amendment of section 41B—Drug and alcohol testing of members and cadets

This clause amends section 41B to so that police officers and police cadets can be required to submit to drug screening tests.

6—Amendment of section 41C—Drug and alcohol testing of applicants to SA Police

This clause amends section 41C so that persons applying to be police cadets and persons applying for other appointments to SA Police can be required to submit to drug screening tests.

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

Ministerial Statement

CARERS WEEK

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (17:55): I table a copy of a ministerial statement, entitled Continuation of Funding for SA Carer Support Services, made in the other place by the Minister for Communities and Social Inclusion.

Bills

STATUTES AMENDMENT AND REPEAL (SIMPLIFY NO 2) BILL

Introduction and First Reading

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

Second Reading

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (17:56): I move:

That this bill be now read a second time.

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

Leave granted.

The *Statutes Amendment and Repeal (Simplify No 2) Bill 2017* is the key feature of the Government's Simplify Day program to reduce red tape and simplify regulation for businesses and consumers.

This occasion marks the second simplify bill following the passage of the first bill in March this year, which implemented a broad range of important legislative changes and initiatives to reduce the regulatory burden in South Australia.

The State Government is committed to making South Australia the best place to do business. We are committed to creating an environment in which our businesses can operate competitively in the global economy.

Over the course of this term and in our most recent Budget, the Government has delivered significant reforms in the areas of State taxation, the Return to Work Scheme, transport, planning and the delivery of public services.

Since Simplify Day 2016, the government has also delivered on a broad range of regulatory and business process reforms on procurement, worker health and safety and screening processes for employees and volunteers. Today's focus is on further reducing the regulatory red tape burden imposed on business.

The government's red tape reduction strategy is all about supporting businesses by putting into place efficient processes. This approach supports innovation in how government regulates and interacts with business to the greatest extent possible. Simplify Day represents a process of continual regulatory review—to ensure that our regulatory frameworks remain effective and relevant to the South Australian community.

Regulatory barriers can also hinder competition and prevent small businesses from starting up. Inefficient regulation costs more than just time and money—it makes the economy less responsive to economic trends and global market forces.

Simplify Day also supports the government being able to respond more quickly to the demands of the community and to promote commerce and innovation in the business sector.

In our second round of Simplify Day changes, there are four elements – 1) legislative changes being introduced today 2) regulatory changes made this week 3) current reforms being delivered by the government as we speak and 4) reforms to be delivered in the future.

The Statutes Amendment and Repeal (Simplify No 2) Bill 2017 makes a number of changes, including to the Motor Vehicles Act 1959, the Irrigation Act 2009, the Stamp Duties Act 1923 and the State Procurement Act 2004. 29 Acts are also being amended to allow a website to be used for communicating public notices.

The Bill contains some important reforms which I will now detail.

A feature of the Bill is the various amendments to the *Motor Vehicles Act 1959*. Pleasingly transport reforms have been a feature of both the inaugural Simplify Day and Simplify Day 2017. The package of initiatives reflect an ongoing commitment to supporting passenger transport, motor vehicle and goods transport improvements to support the local economy.

The transport reforms in this Bill include:

- Enabling automatic progression of a motor bike license after a period of 12 months, that is, removing the need for clients to attend a Service SA centre to have engine capacity restrictions removed from a motorcycle licence after completing 12 months on a restricted motorcycle licence,
- Offering an additional option for vehicle owners to register their light vehicle trailers, including boat trailers and caravans, for 6 month periods. This is delivering on the commitment made as part of Simplify Day 2016.
- Providing more flexibility in the accepted means of verifying a learner's test that has been passed online. This means that an applicant for a learner's permit will not be required to produce a certificate. We will also allow testing to be conducted by more delegated government employees, this will expand services, add to flexibility and create efficiencies.
- Amending the Act so that vehicle owners, once the registration has expired, can destroy the plates, surrender them voluntarily to DPTI or keep them in a safe place, not on the vehicle. This will provide cost savings for the department associated with postage and administration and save a person's time by not having to attend Service SA.
- Allowing government departments the ability to use photographs taken for driver's licences to be used for other government issued licenses. This will provide for costs savings to business and households and to agencies in having to get photographs taken and submit them to multiple government departments.

We will amend the *Road Traffic Act 1961* to allow low-risk public events to occur without the need for closing off public roads. In addition to this legislative change DPTI has implemented other policy changes which include reducing the duplication in the medical fitness to drive assessments; streamlining the multiple forms and processes so that the assessment of fitness to drive can occur without motorists going through multiple hoops. In addition, before registering as a passenger transport operator, new unmodified light vehicles –other than buses or taxis, will be able to apply for an exemption from inspection for use as a passenger transport vehicle. A valuable time saver for business.

The *Irrigation Act 2009* will be amended to facilitate new investment in South Australia's irrigated agriculture sector, by enabling irrigation trusts to adopt more efficient and fit-for-purpose business models. This is an industry driven proposal responding to market barriers under the existing legislative scheme that will positively impact on irrigators' water supply and business productivity.

The *Stamp Duties Act 1923* will amended so that stamp duty will not apply to a family farm transfer transaction that involves family members. Stamp duty is an impediment to family farm transfers in a company structure, As such this requirement will be abolished, subject to standard conditions regarding family farm transfers being met. This issue was raised by a constituent with the Minister for Regional Development.

The *State Procurement Act 2004* will be amended to make for greater consistency across both procurements of goods and services and grants to the not-for-profit sector and to make the process for grant applications for not-for-profit businesses more efficient. This will reduce red tape by aligning as much as possible the different government policies for procurement, grant application and approvals. The Government has been working with the not-for-profit sector to implement the South Australian Not-for-profit Funding Rules and Guidelines. This work has identified a lack of clarity relating to the definition of procurement and grant.

The current definition of procurement operation in the State Procurement Act is very broad and can capture Government payments which would ordinarily be considered a grant.

The proposed amendment seeks to clarify the definition of procurement operation and provide a mechanism so that the Government can work with the not-for-profit sector to agree on a clear definition of a grant that will be specifically excluded from the procurement framework. The treatment of grants are set out in the Treasurer's Instructions established under the *Public Finance and Audit Act 1987*.

The *Fisheries Management Act 2007* will be amended to give courts clear discretion to reduce the number of demerit points where a person is found guilty of multiple offences from a single court action that together would result in disqualification from holding a fisheries license. The amendments will also ensure that fees may be collected for more than 1 year at a time saving business time and costs in renewing their fisheries licenses.

The Bill includes amendments to 29 Acts to create flexibility and include an option to publish notices online but these amendments do not remove publishing in print where it is considered the best approach. These changes follow a review into public notifications and community notices, which was announced as part of the inaugural Simplify Day.

The public notices reform is in line with the government's 'Digital by Default' objectives and aims to decrease the cost associated with public notices advertisement and the time taken to publish those notices. Where it is considered the best option, publication of notices in newspapers will continue to play an important role, particularly in rural and remote communities where internet access is not always available. There are also amendments to five regulations associated with changes to public notices.

In addition, this week the Governor has made regulations to further support Simplify Day and this Bill. The measures of note I will briefly describe to the House.

We will implement the following changes to the Second-hand Vehicle Dealers industry:

- Exemption for dealers from contributing to the Second-hand Vehicles Compensation Fund where that dealer has contributed to the Fund for other registered premises in the same financial year.
- Reduction in the prescribed amount for contribution from the fund from $350 to $200 for motor vehicle dealers and from $100 to $60 for motor cycle dealers.
- Reintroduction of the dealer handling fee. This fee relates to the costs associated with the dealer organising transfer of registration of a vehicle. A maximum fee of $385 will be set in cases where roadworthy certification is required and a maximum of $100 in all other cases. These changes have been supported by the Motor Trade Association.

There will be changes to the land agents regulations to remove the requirement for certain commercial property owners from needing a real estate licence. Large commercial property owners tend to rely on their experience and access to legal and other advisory services in conducting their property transactions. This amendment was announced as part of Simplify Day 2016 and is expected to reduce costs for businesses.

Changes to motor vehicles regulations will enable 3 monthly and 12 monthly direct debit for vehicle registration and the release of the name of the Compulsory Third Party insurance provider on EzyReg to simplify the insurance claims process.

The aquaculture regulations will be amended so that tuna farmers' applications for new lease area, within a tuna zone, can be exempt to be assessed by the Aquaculture Tenure Allocation Board. This assessment looks at whether the applicant's proposed operation will be viable, which is superfluous for existing tuna farmers who have been in the industry for many years. This change is possible because the pool of people or companies able to undertake tuna farming is very limited as they must hold tuna quota. This change will save the tuna industry 2 to 3 months for each application.

Fisheries Regulations will also be amended to allow for the transfer of pipi licenses from fishers to companies. This amendment is a fantastic opportunity for Aboriginal communities to enter the fishery through formation of a company. It also provides greater flexibility for licence holders who fish pipi and will contribute to ensuring the sustainability of the Lakes and Coorong Fishery.

There will also be multiple amendments to fisheries regulations to provide flexibility for the communication of information from fishers to fishery regulators either in writing or by electronic means and commits the government to publish the collected information at an industry level on a government website.

This *Statutes Amendment and Repeal (Simplify No 2) Bill 2017* proposes the repeal of 10 spent and redundant Acts; these will be removed from the State's statute books as they have fulfilled their purpose or are no longer required.

Two similar acts, the *Bank Merger (National/BNZ) Act 1997* and the *Westpac/Challenge Act 1996* will both be repealed. These two Acts enabled the transfer of assets and liabilities to new banking structures and as such have served their purpose.

Two rather antiquated pieces of legislation will also be repealed, the *Statistics Act 1935* and the *Redundant Officers Fund Act 1936*.

The amendments, repeals and announcements of Simplify Day are the result of concerted and extensive engagement and collaboration with the business sector and community at large to deliver beneficial reforms that improve the competitiveness of the State.

This engagement was done through the Government's YourSAy platform, through face-to-face meetings with peak industry groups, an online survey of business as well as encouraging written submissions from small business owners and individuals.

Today is one part of the Simplify Day initiative. Many other ideas and reforms will be the subject of future work and partnership between business and government to continue to reach a resolution on the unnecessary regulations and burdens on business in South Australia. We will continue to seek more ideas for change in our discussions with business and the community.

To that end I can advise the house that the Government has already identified many issues to continue to work on and is committed to delivering the following future reforms.

Over the last few years the Industry Advocate has received significant feedback from businesses indicating they are overwhelmed with the amount of information required during tendering and quoting processes requiring businesses to complete a template for each Department. To address this, the Industry Advocate will work with the Chief Procurement Officer to investigate whether the concept of a single Business Identifier Number for businesses interested in working with government is feasible, including costs and benefits, and what type of structure and system would need to be deployed to make such a strategy become a reality, A critical consideration for what is proposed by the Industry Advocate will be that any such system would need to be able to integrate with existing systems being used by State government agencies and be scalable if proven successful following the application of a pilot project,

Reforms to the State's planning system will support the ongoing planning needs of business and the community. To date, the implementation process has consisted of a considerable consultation process on the application of the planning act through the design code.

The design code is currently in very early stages of development and when prepared, will be required to undergo detailed community consultation. That is the point at which any changes to the current definitions for development will be considered. This will address issues raised in the Simplify Day consultation process such as rural structures, planning applications supporting agricultural businesses and CBD development.

We will look at easing the planning burden for business seeking Development Approval for things such as permanent orchard netting over fruit trees, murals in the Adelaide City Council area and simple rural developments via amendments to the *Development Regulations 2008* or via other means. This will be done through conversations with Local Government and the community and complement reforms to the State's planning system.

We will establish a State and Local Government Red Tape Taskforce with representation from local councils, relevant government departments, as well as the Local Government Association with the aim of reducing red tape that affects prevents economic development and growth of small business. The taskforce will identify and remove duplication and overlap between State and Local Government regulations as well as consider, prioritise and deliver on red tape ideas put forward as part of the Simplify Day public and industry engagement. The taskforce will be established under the governance of my State/Local Government Forum.

The State's tourism sector is a significant contributor to the South Australian economy and it is vital to jobs and incomes in regional South Australia. Consultation undertaken for Simplify Day raised issues in the tourism sector, for example some regional caravan parks operators that have had difficulty raising finance and gaining approvals to progress development applications. In the context of these issues, the government will ensure an approach that supports high quality regional tourism developments so they can be approved in a timely and efficient manner.

We will consult with a number of tourism operators such as caravan parks, bed and breakfast operators and tourism experience providers to gain a detailed understanding of the administration hurdles they encounter with tourism development – such as development, planning and environmental approvals and ongoing compliance to regulations. We are currently implementing a major planning system reform and will ensure that the implementation of the reformed system supports tourism operators and investment in regional tourism development. In addition, the South Australia's Nature Based Tourism Strategy is committed to removing red tape to remove barriers to investment to help support existing and create new nature based tourism experiences.

We will investigate opportunities to ensure that state and territory payroll tax definitions are as consistent across Australia as possible. This would include reviewing relevant legislation and administration practices to identify opportunities to achieve greater consistency, less complexity and better compliance.

A longer term reform program will be undertaken to reducing red tape and removing outdated regulatory burden in key industry sectors.

This approach will involve Government working collaboratively with industry and business to process map the regulatory journey and reduce unnecessary barriers in key areas. One particular focus area will be small scale artisan food and drink producers, allowing the economic opportunities for 'paddock to plate' businesses to flourish by allowing small businesses a whole supply chain approach to their production, and enhance employment opportunities across the State, while maintaining our standards.

To complement work being done to the *Long Service Leave Regulations 2002*, SafeWork SA will implement a range of tools to assist to assist employers and workers to better understand and comply with their long service leave obligations. These tools will include guidance material on South Australia's long service leave laws, as well as an online calculator to determine a worker's long service leave entitlement and online forms to assist employers to comply with their record keeping requirements.

SafeWork SA is also developing simple, easy to understand information which will be promoted to small business outlining the requirements when it comes to inspection and testing of electrical plant. This will help small businesses increase their understanding of the changed requirements and about their obligations regarding inspection and testing of electrical plant.

The changes announced today continue the Government's regulatory reform agenda. Simplify Day is a commitment to continuously looking for ways to reduce the red tape burden on business in the State and to improving government processes to support the economy and services to the community.

The *Statutes Amendment and Repeal (Simplify No 2) Bill 2017* is another important step in removing unnecessary red tape. It is removing the regulatory and administrative burden on business and the community and improving the State's competitiveness.

I commend this Bill to the House.

Explanation of Clauses

Part 1—Preliminary

1—Short title

This clause is formal.

2—Commencement

This clause provides that, other than those provisions of the measure in respect of which it is specifically provided will commence on a date or on proclamation, the measure will commence on receiving the Governor's assent.

3—Amendment provisions

This clause is formal.

Part 2—Amendment of *Aerodrome Fees Act 1998*

4—Amendment of section 6—Aerodrome operator may fix fees for arrivals, departures etc

The proposed amendment provides that if an aerodrome operator fixes fees, a notice setting out the fees must be published by the operator in the Gazette. The notice can also be published on the operator's website, or in a periodical publication prescribed for the purpose, or in a daily newspaper circulating in the State.

Part 3—Amendment of *Agricultural and Veterinary Products (Control of Use) Act 2002*

5—Amendment of section 20—Manner of making order

The proposed amendment provides that as soon as practicable after a trade protection order addressed as referred to in section 20(1)(b) is made, a notice setting out the date on which the notice is published, the terms of the order and the persons to be bound by the order, must be published by the Minister in a manner and form that, in the opinion of the Minister, will be most likely to bring the order to the attention of the persons bound by it.

Part 4—Amendment of *Air Transport (Route Licensing—Passenger Services) Act 2002*

6—Amendment of section 5—Declared routes

This proposed amendment provides that the Minister must ensure that a copy of the relevant notice relating to a declaration under section 5 is published—

- on a website determined by the Minister; or

- in a newspaper circulating generally in the State; or
- in a newspaper circulating generally in Australia.

Part 5—Amendment of *Aquaculture Act 2001*

7—Amendment of section 28—Granting of corresponding licence for pilot lease

8—Amendment of section 35—Granting of production leases and corresponding licences in public call areas

9—Amendment of section 36—Granting of production leases and corresponding licences if public call not required

10—Amendment of section 39A—Granting of research leases and corresponding licences

11—Amendment of section 50—Grant of licences other than corresponding licences

The proposed amendments provide for an alternative to current requirements for publishing various notices or publicising other information under the principal Act by means of publishing on a website determined by the Minister.

Part 6—Amendment of *Associations Incorporation Act 1985*

12—Amendment of section 43A—Application for deregistration

This proposed amendment would allow the Commission to publish a notice of an application under section 43A in a manner and form determined by the Commission to be most appropriate in the circumstances.

13—Amendment of section 44—Defunct associations

This amendment would allow the Commission, by notice published in a manner and form determined by the Commission to be most appropriate in the circumstances, to give notice requiring an association to show good cause why it should not be dissolved.

Part 7—Amendment of *AustralAsia Railway (Third Party Access) Act 1999*

14—Amendment of Schedule—AustralAsia Railway (Third Party Access) Code

The regulator must undertake public consultation when the regulator is undertaking a review or considering adopting a guideline. The amendment would provide the regulator with the option of publishing on a website or in a newspaper a notice about the matter on which consultation is to occur.

Part 8—Repeal of *Bank Merger (National/BNZ) Act 1997*

15—Repeal of Bank Merger (National/BNZ) Act 1997

This Act is to be repealed.

Part 9—Repeal of *Corporal Punishment Abolition Act 1971*

16—Repeal of Corporal Punishment Abolition Act 1971

This Act is to be repealed.

Part 10—Amendment of *Correctional Services Act 1982*

17—Amendment of section 81E—Notice to victims to be published

This proposed amendment requires the CE to publish in the Gazette a notice notifying victims. The CE may also publish the notice in other ways, including on a website determined by the CE.

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

18—Insertion of section 18A

This clause inserts a new provision requiring the consent of the Minister responsible for the administration of the *Crown Land Management Act 2009* before a council resolves to exclude dedicated land from classification as community land in the circumstances described in section 193(4)(a) of the *Local Government Act 1999*.

Part 12—Amendment of *Dog Fence Act 1946*

19—Substitution of section 35A

35A—Establishment of local dog fence boards

New section 35A provides for the Minister, on the recommendation of the board, by notice in the Gazette, to establish a local dog fence board constituted of the persons specified in the notice for the area inside a dog fence specified in the notice, with the powers and duties specified in the notice.

20—Substitution of section 35C

35C—Variation and abolition of local boards

New section 35C allows the Minister, on the recommendation of the board, by further notice in the Gazette—

- to amend or vary a notice under section 35A; or
- to abolish a local board and make provision for incidental matters.

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

21—Amendment of section 20—Sale of land for non-payment of levy

The proposed amendment gives the Commissioner the option to advertise notice of an auction on a website determined by the Commissioner.

Part 14—Amendment of *Environment Protection Act 1993*

22—Amendment of section 28—Normal procedure for making policies

23—Amendment of section 39—Notice and submissions in respect of applications for environmental authorisations

The amendments proposed would provide for the option of publishing notices on a website or in a newspaper.

24—Amendment of section 46—Notice and submissions in respect of proposed variations of conditions

This amendment would provide the option to cause public notice of a proposed variation to be published in a manner and form determined by the Authority to be most appropriate in the circumstances.

Part 15—Amendment of *Explosives Act 1936*

25—Amendment of section 25—Power to sell explosives

The amendment would allow a call for public tender under the section to be published on a website determined by the Director or in a newspaper.

Part 16—Amendment of *Fire and Emergency Services Act 2005*

26—Amendment of section 78—Fire danger season

The amendment would allow the Chief Officer's order fixing a fire danger season to be published in the Gazette and also on a website, in a State-wide newspaper or in a local newspaper.

27—Amendment of section 105F—Private land

A notice to take specific action may be published on a website or in a local newspaper if the responsible person cannot be served personally or by post.

Part 17—Amendment of *Fisheries Management Act 2007*

28—Amendment of section 44—Procedure for preparing management plans

The amendment would allow the Minister to publish notice of the intention to prepare a management plan on a website or in a newspaper.

29—Amendment of section 54—Application for licence, permit or registration

30—Amendment of section 57—Transfer of licence or permit

31—Amendment of section 64—Applications for registration

The amendments proposed to each of these sections remove the necessity for applications to be signed or are consequential on the amendments proposed to section 127 of the principal Act.

32—Amendment of section 68—Issue of duplicate authority

This amendment is consequential on the amendments proposed to section 127 of the principal Act.

33—Amendment of section 104—Demerit points for certain offences

This proposed amendment provides a court with guidance in deciding whether to reduce the number of demerit points incurred by a person on being found guilty or expiating an offence.

34—Amendment of section 116—Registers

This is consequential.

35—Amendment of section 127—General

This proposed amendment makes it clear that the regulations may—

- prescribe fees for the purposes of the principal Act and regulate the payment, refund, waiver or reduction of such fees; and

- prescribe various methods for the calculation of various fees; and
- prescribe fees which may be differential, varying according to any factor stated in the regulations; and
- prescribe amounts payable for the late payment of fees under the principal Act.

Part 18—Amendment of *Gaming Machines Act 1992*

36—Amendment of section 29—Certain applications require advertisement

The proposed change provides that the required notice—

- must be published in the Gazette and on a website; and
- may be published in a State-wide newspaper or in a local newspaper.

37—Amendment of section 42A—Advertisement of certain applications and objections

The publication by the applicant of notice must be advertised in the Gazette and on a website or in a State-wide newspaper.

Part 19—Amendment of *Genetically Modified Crops Management Act 2004*

38—Amendment of section 5—Designation of areas

The proposed amendment allows the Minister to choose between publishing the notice in a newspaper or on the Department's website.

Part 20—Amendment of *Geographical Names Act 1991*

39—Amendment of section 11B—Assignment of geographical name

This clause amends section 11B by establishing the publication requirements for a notice under the section to be in the Gazette and on a website or in a local newspaper.

Part 21—Amendment of *Government Business Enterprises (Competition) Act 1996*

40—Amendment of section 11—Public notice of investigation

This clause substitutes section 11(1) of the principal Act to provide that the Commissioner may determine the manner and form of a notice of investigation.

Part 22—Amendment of *Heavy Vehicle National Law (South Australia) Act 2013*

41—Amendment of section 10—Other declarations for purposes of Heavy Vehicle National Law in this jurisdiction

This amendment updates the references to reflect recent changes to the Law to declare the Magistrates Court to be the relevant tribunal or court for the purposes of section 590D as well as section 556 of the Law. This amendment will not come into operation until 1 July 2018.

Part 23—Amendment of *Impounding Act 1920*

42—Amendment of section 25—Notice of impounding

The amendment will allow for the publication of a notice to be in a newspaper or on the Department's website.

43—Amendment of section 26—Poundkeeper may charge for service of notice

44—Amendment of section 32—Proceedings prior to sale by poundkeeper of unclaimed cattle

45—Amendment of section 33—Time and mode of sale of impounded cattle

The other proposed amendments are consequential on the changes made to section 25 of the principal Act.

Part 24—Amendment of *Irrigation Act 2009*

46—Amendment of section 14—Dissolution on application

47—Amendment of section 15—Dissolution on Minister's initiative

The proposed amendments to sections 14 and 15 of the principal Act facilitate the vesting or attachment of irrigation trust property, rights and liabilities in 1 or more persons on the dissolution of the trust. However, if that is not practicable or appropriate, the property, rights and liabilities will vest in or attach to the Crown or an agency or instrumentality of the Crown (including a Minister), as specified by the Minister.

48—Repeal of section 16

This clause repeals section 16 of the principal Act. Section 16 concerns the disposal of property on the dissolution of a trust. Those matters are now covered by the amendments to sections 14 and 15.

Part 25—Repeal of *Liens on Fruit Act 1923*

49—Repeal of Liens on Fruit Act 1923

This Act is to be repealed.

Part 26—Amendment of *Livestock Act 1997*

50—Amendment of section 37—Gazette notices

This clause amends the provision to enable the relevant notice to be published on a website determined by the Minister.

Part 27—Amendment of *Marine Parks Act 2007*

51—Amendment of section 14—Procedure for making or amending management plans

Publication procedures are updated and simplified in this amendment with Gazette and newspaper notices replaced by notices on a website determined by the Minister.

Part 28—Amendment of *Maritime Services (Access) Act 2000*

52—Amendment of section 43—Review and expiry of Part

The amendments by this clause to section 43 of the principal Act alter the publishing requirements for giving notice of a review of the operation of Part 3 of the Act as it applies to particular industries.

Part 29—Amendment of *Motor Vehicles Act 1959*

53—Amendment of section 24—Duty to grant registration

This clause amends section 24 to enable the period of registration of motor vehicles other than heavy vehicles to be prescribed by the regulations.

54—Amendment of section 38A—Reduced fees for pensioner entitlement card holders

This clause amends section 38A to remove the reference to the 'State concession card' which no longer exists.

55—Amendment of section 38AB—Registration fees for trailers owned by pensioner entitlement card holders

This clause amends section 38AB to remove the reference to the 'State concession card' which no longer exists.

56—Amendment of section 47C—Return, recovery etc of number plates

This clause amends section 47C so that the Registrar is not required to direct the owner of a motor vehicle to return number plates to the Registrar when the registration of the vehicle expires, is void or is cancelled other than on the owner's application. The amendment will allow the Registrar to direct the owner to destroy the plates or ensure that they are securely stored so that they can't be affixed to a motor vehicle that is driven on a road or allowed to stand on a road.

57—Substitution of section 72

This clause substitutes section 72.

72—Classification of licences

Subsection (1) provides that a licence must be assigned 1 or more prescribed classifications.

Subsection (2) provides that subject to the Act, if a person applies for the grant or renewal of a licence and the licence is granted or renewed (as the case may be), the Registrar must ensure that the licence is assigned the classification for which the person has applied.

Subsection (3) provides that if—

(a) an applicant for the renewal of a licence applies for the licence to be assigned any further or other classification; and

(b) the Registrar is satisfied that the applicant is competent to drive a motor vehicle in respect of which that further or other classification is required under this Act,

the Registrar must ensure that the licence, if renewed, is assigned that further or other classification.

Subsection (4) provides that if the Registrar is satisfied that a person who holds a licence is competent to drive motor vehicles for which a licence assigned a further or other classification is required under this Act, the Registrar must ensure that the licence is assigned the appropriate further or other classification.

Subsection (5) provides that Registrar may, for the purposes of this section, require a person who holds a licence or applies for the grant or renewal of a licence to provide evidence to the satisfaction of the Registrar of the person's competency to drive motor vehicles for which a particular classification is required under this Act.

Subsection (6) provides that the regulations may provide that, for the purposes of this Act, a person is to be taken to hold a licence that is assigned a particular classification if the person has held a licence of some other classification for a prescribed period (the *qualifying period*).

Subsection (7) provides that, subject to the regulations, a classification assigned to a licence must be endorsed on the licence.

Subsection (8) provides that for the purposes of the Act, in determining whether a person has held a licence for the qualifying period, any period during which—

(a) the person's licence was suspended; or

(b) the person was disqualified from holding or obtaining a licence in this State or in another State or Territory of the Commonwealth,

is not to be taken into account.

58—Amendment of section 77BA—Use of photographs taken or supplied for inclusion on a licence or leaner's permit

This clause amends section 77BA so that a photograph taken or supplied for inclusion on a driver's licence or learner's permit can be used on a licence, permit or other authority issued under the Harbors and Navigation Act, the Passenger Transport Act or a prescribed Act, or for a purpose authorised by the person whose image appears in the photograph.

59—Amendment of section 79—Examination of applicant for licence or learner's permit

This clause amends section 79 to allow the Registrar to accept evidence (other than a certificate) that an applicant has passed a theoretical examination. It also broadens the definition of tester to include persons or classes of persons to be authorised by the Registrar as testers.

60—Amendment of section 80—Ability or fitness to be granted or hold licence or permit

61—Amendment of section 141—Evidence by certificate etc

62—Amendment of section 145—Regulations

These clauses make minor amendments that are consequential on the substitution of section 72.

Part 30—Amendment of *National Parks and Wildlife Act 1972*

63—Amendment of section 5—Interpretation

The definition of *Director* is updated reflecting new appointment procedures in section 11A. *Public notice* is defined as notice published on a website determined by the Minister.

64—Insertion of section 11A

New section 11A (headed Director of National Parks and Wildlife) is inserted governing the appointment of the Director.

65—Amendment of section 38—Management plans

Publication of the notice in subsection (3) need now only be on a website determined by the Minister, and not in the Gazette or a newspaper.

66—Amendment of section 41A—Alteration of boundaries of reserves

Publication of the notice in subsection (2) need now only be on a website determined by the Minister, and not in the Gazette or a newspaper.

67—Amendment of section 49A—Permits for commercial purposes

Publication of the notice in subsection (1) and the recommendations in subsection (4) need now only be on a website determined by the Minister, and not in a newspaper.

68—Amendment of section 60D—Code of management

Publication of the notice in subsection (5) need now only be on a website determined by the Minister, and not in the Gazette or a newspaper. Publication of the notice in subsection (7) need now only be on a website determined by the Minister, and not in a newspaper.

69—Amendment of section 60I—Plan of management

Publication of the notices in subsection (4) and (7) need now only be on a website determined by the Minister, and not in the Gazette or a newspaper.

Part 31—Amendment of *Payroll Tax Act 2009*

70—Section 95—Assessment if no probate within 6 months of death

This proposed amendment replaces the requirement to publish the notice in a newspaper with a requirement to publish the notice on a website, with publishing in a newspaper to be optional.

Part 32—Amendment of *Petroleum Products Regulation Act 1995*

71—Amendment of section 34—Controls during periods of restriction

This would allow notice of the directions to be published in the Gazette, on a website determined by the Minister or in a newspaper.

72—Amendment of section 38—Publication of desirable principles for conserving petroleum

This amendment would allow desirable principles to be observed to be published in the Gazette, on a website determined by the Minister or in a newspaper.

Part 33—Amendment of *Phylloxera and Grape Industry Act 1995*

73—Amendment of section 18—Duty to prepare and maintain five year plan

This amendment would allow the Board to publish a notice of the date, time, place and purpose of a public meeting on a website determined by the Board or in a newspaper circulating generally throughout the State (or both).

Part 34—Amendment of *Prices Act 1948*

74—Amendment of section 12—Accounts and records in relation to certain declared goods and services

The proposed amendment would allow the choice between publishing the notice in the Gazette, or in a newspaper, or on the Commissioner's website.

Part 35—Amendment of *Primary Industry Funding Schemes Act 1998*

75—Amendment of section 9—Management plan for fund

This clause would allow the person or body administering the fund to publish notice of a public meeting to be convened in a manner and form that, in the opinion of the person or body, will be most likely to bring the notice to the attention of members of the public.

Part 36—Amendment of *Public Assemblies Act 1972*

76—Amendment of section 4—Notice of assembly

This amendment would provide for the option of publishing a copy of an objection to an assembly on a website determined by the Minister.

Part 37—Amendment of *Public Finance and Audit Act 1987*

77—Amendment of section 8—Special deposit accounts

This clause amends section 8 so that the power of the Treasurer to establish and maintain a special deposit account, and the power to approve a purpose of, or relating to, a government department for the purposes of section 8, can be delegated by the Treasurer.

78—Amendment of section 9—Imprest accounts

This clause amends section 9 so that the power of the Treasurer to establish an imprest account can be delegated by the Treasurer.

79—Amendment of section 21—Deposits

Section 21 provides that money accepted by the Treasurer on deposit from a person must be recorded in a separate account maintained by the Treasurer. This clause amends the section to enable the Treasurer to delegate the power to establish and maintain accounts.

80—Insertion of section 42

Proposed section 42 applies where the Treasurer delegates a power under the Act. The delegation—

- may be to a specified person or to a person occupying or acting in a specified position; and
- must be in writing; and
- may be absolute or conditional; and

- does not derogate from the power of the Treasurer to act in a matter; and
- is revocable at will by the Treasurer.

Part 38—Amendment of *Railways (Operations and Access) Act 1997*

81—Amendment of section 7A—Review and expiry of access regime

The amendment provides for the regulator to give reasonable notice of the review of the access regime, by publishing a notice in a manner and form determined by the regulator to be most appropriate in the circumstances, inviting written submissions on the matters under review within a reasonable time specified for the purpose in the notice.

Part 39—Repeal of *Redundant Officers Fund Act 1936*

82—Repeal of Redundant Officers Fund Act 1936

This Act is to be repealed.

Part 40—Amendment of *Road Traffic Act 1961*

83—Amendment of section 33—Road closing and exemptions for certain events

This clause amends section 33 so that on the application of any person interested, the Minister may declare an event to be an event to which section 33 applies and may do either or both of the following:

(a) make an order directing that specified roads (being roads on which the event is to be held or roads that, in the Minister's opinion, should be closed for the purposes of the event) be closed to traffic for a period specified in, or determined in accordance with, the order;

(b) make an order directing that persons participating in the event be exempted, in relation to specified roads, from the duty to observe an enactment, regulation or by-law prescribing a rule to be observed on roads by pedestrians or drivers of vehicles.

Part 41—Amendment of *Serious and Organised Crime (Control) Act 2008*

84—Amendment of section 10—Publication of notice of application

85—Amendment of section 12—Notice of declaration

86—Amendment of section 14—Revocation of declaration

87—Amendment of section 38—Service

88—Amendment of section 39B—Notice of registration

89—Amendment of section 39G—Notice of cancellation or expiry of registration of corresponding declaration

The amendments will allow notices under the principal Act to be published on the Commissioner's website or in a newspaper, as well as having to be published in the Gazette.

Part 42—Repeal of *Sex Disqualification (Removal) Act 1921*

90—Repeal of Sex Disqualification (Removal) Act 1921

This Act is to be repealed.

Part 43—Repeal of *Snowy Mountains Engineering Corporation (South Australia) Act 1971*

91—Repeal of Snowy Mountains Engineering Corporation (South Australia) Act 1971

This Act is to be repealed.

Part 44—Amendment of *Stamp Duties Act 1923*

92—Amendment of section 71CC—Interfamilial transfer of farming property

This clause amends section 71CC(1) of the *Stamp Duties Act 1923* so as to extend the exemption that currently applies where land used for the business of primary production is transferred between family members (including trusts with beneficiaries who are family members) to include transfers involving companies where the shareholders of the company are family members and a family relationship exists between the transferor and transferee. For the exemption to apply, the sole or principal business of at least one shareholder of the company must be the business of primary production, and there must have been a business relationship between at least one of the shareholders and the other party for a period of 12 months with respect to the use of the property for the business of primary production.

93—Transitional provision

This section provides that the amendments made by section 92 to section 71CC of the *Stamp Duties Act 1923* apply only in relation to instruments executed after the commencement of Part 44.

Part 45—Amendment of *State Procurement Act 2004*

94—Amendment of section 4—Interpretation

The amendments will clarify the definition of *procurement operations* so as to include the procurement of the delivery of a service by a third party on behalf of the authority, but so as not to include—

- the provision of funding to a third party by the authority that, in accordance with Treasurer's instructions, is classified as a grant; or
- operations excluded from this definition by the regulations;

Part 46—Repeal of *Statistics Act 1935*

95—Repeal of Statistics Act 1935

This Act is to be repealed.

Part 47—Repeal of *Statutory Salaries and Fees Act 1947*

96—Repeal of Statutory Salaries and Fees Act 1947

This Act is to be repealed.

Part 48—Amendment of *Summary Offences Act 1953*

97—Amendment of section 72A—Power to conduct metal detector searches etc

This amendment would give the Commissioner of Police the option of publishing a notice of a declaration under section 72A on the Commissioner's website or in a newspaper.

Part 49—Repeal of *War Service Rights (State Employees) Act 1945*

98—Repeal of War Service Rights (State Employees) Act 1945

This Act is to be repealed.

Part 50—Repeal of *Westpac/Challenge Act 1996*

99—Repeal of Westpac/Challenge Act 1996

This Act is to be repealed.

Part 51—Amendment of *Wilderness Protection Act 1992*

100—Amendment of section 3—Interpretation

The definition of *public notice* is amended to mean notice published on a website determined by the Minister, and no longer means notice published in the Gazette.

101—Amendment of section 12—Wilderness code of management

This is a consequential amendment preserving the status quo with respect to public notification of the adoption of a revised or substituted code of management (namely by notice in the Gazette).

102—Amendment of section 16—Prevention of certain activities

This amendment gives the Minister discretion to publish a notice under subsection (7) in a newspaper or on the Minister's website, whichever medium the Minister considers appropriate in the circumstances.

103—Amendment of section 31—Plans of management

This is a consequential amendment preserving the status quo with respect to public notification of the adoption of plan of management (namely by notice in the Gazette).

104—Amendment of section 33—Prohibited areas

This amendment preserves the status quo with respect to public notification of the declaration of prohibited areas or variation or revocation of such declarations (namely by notice in the Gazette) but also adds a requirement for the notifications to be on a website determined by the Minister.

Part 52—Amendment of *Work Health and Safety Act 2012*

105—Amendment of section 274—Approved codes of practice

This amendment would provide the Minister with the option of publishing notice of the approval, variation or revocation of a code of practice on a website or in a newspaper as well as in the Gazette.

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

Ministerial Statement

GENERAL MOTORS HOLDEN

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) (17:56): I table a copy of a ministerial statement on the subject of the Holden closure made earlier today in another place by the Premier.

Bills

AUSTRALIAN ENERGY MARKET COMMISSION ESTABLISHMENT (GOVERNANCE) AMENDMENT BILL

Introduction and First Reading

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

TOBACCO PRODUCTS REGULATION (E-CIGARETTE REGULATION) AMENDMENT BILL

Introduction and First Reading

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

At 17:58 the council adjourned until Tuesday 31 October 2017 at 11:00.