LEGISLATIVE COUNCIL

Tuesday, 28 November 2017

The PRESIDENT (Hon. R.P. Wortley) took the chair at 11:02 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.

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) (11:03): 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

LABOUR HIRE LICENSING BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 November 2017.)

The Hon. J.A. DARLEY (11:03): I understand that the impetus for this bill was the ABC *Four Corners* program that exposed the unscrupulous practices of some labour hire companies. I have seen this program and it was very difficult to watch so many people being exploited by these companies. I understand that it is within the federal government's jurisdiction to monitor and enforce the existing laws around the exploitation of workers. Clearly, the system has failed.

The South Australian government has recognised that there is a problem here and, through this bill, is attempting to address the issues. Whilst I applaud them for taking this step, the mere fact that we have five sets of government amendments indicates that this bill was not very well thought out or consulted on before its introduction to parliament.

I support the principle of this bill to license labour hire businesses, which will lead to greater oversight and regulation of the industry. I have met with many stakeholders and understand the main point of contention is the definition of labour hire, which is primarily outlined in clause 6 of the bill. The two schools of thought are either to leave the definition broad to capture as many businesses and provide exemptions as needed, or to refine the definition so the bill is restricted on which businesses will be included.

I have considered both arguments but believe that dishonest labour hire operators are very clever in finding loopholes in legislation to continue their unscrupulous business practices. As such, I support the government's position to have a broad definition. However, I acknowledge the concerns from some stakeholders that this might be unworkable and have filed amendments for review of the act after three years. This way, any problems will be identified and can be rectified.

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) (11:05): I want to thank those who have contributed in this place and the other place. The government would also like to thank all the stakeholders who have participated in the consultation and provided informative and constructive submissions. As a result of the responses received and conversations with relevant parties, the

government has filed a number of amendments to the bill, which I will address in more detail during the committee stage.

From the outset, I want to reiterate that the government recognises that the labour hire industry is a significant employer of South Australian workers and a major contributor to our economy. Labour hire provides an effective employment tool to manage skill shortages, recruitment and seasonal workloads, and benefits a vast array of industries. I would also like to take this opportunity to acknowledge the many legitimate labour hire providers who operate ethically and lawfully in this space.

However, there is no doubt that there is a broad spectrum of compliance within the labour hire industry and that the triangular nature of labour hire arrangements offers an opportunity for unscrupulous operators to operate almost entirely outside of the existing regulatory environment. We know this because the exploitation of workers in the labour hire industry has been the subject of four separate inquiries in Australia in recent times. Each of those inquiries has identified that there is a need for greater transparency and regulation in the labour hire industry.

One fundamental problem found by all of the inquiries was the ease with which an unscrupulous operator can enter the market with the intention of avoiding legal obligations such as taxation, workers compensation premiums, superannuation, the payment of appropriate wages and working conditions. With the same ease, these types of operators fold the business as soon as there is any questioning of their operations, only to start up a new business with the same intentions. This operation is commonly known as 'phoenixing'.

There are persons who oppose the regulation of the labour hire industry. Their arguments are based on opinions that the existing laws for compliance and enforcement in relation to the underpayment of wages, superannuation, taxes, return-to-work premiums and breaches of work health and safety laws are sufficient and that the answer is greater compliance and enforcement activity. If this was the case, the *Four Corners* program that has been referred to in the second reading debate would not have occurred.

What such an argument fails to recognise is that you cannot enforce compliance against a party you cannot identify or locate, and at its heart this is the legislative gap that this bill aims to address. It establishes measures that complement and enhance existing regulation, providing greater transparency, improving compliance, protecting workers and making it harder for rogue operators to enter and participate in the market.

Many examples of illegitimate practices have been provided in evidence to inquiries across Australia. What has been demonstrated time and time again throughout those inquiries is that investigations into breaches of legislation are impeded by not being able to identify and contact representatives of the business or the business folding once they understand that inquiries are being undertaken into their operations. Unfortunately, given the complex nature of this illegal activity and avoidance, data collection in this area is extremely difficult.

While it is often cited that more than 90 per cent of all participants in the industry are compliant labour hire firms, evidence provided to this parliament's Economic and Finance Committee simply does not indicate that that is the case. Indeed, in its submission to the inquiry, Recruitment and Consulting Services Association acknowledged that while it believes that the prevalence of illegal and illegitimate labour hire operators is restricted to less than 1 per cent of the recruitment and on-hire sector, it is realistic, in its view, that these illegal and illegitimate operators are unlikely to be members of its or any other industry association.

From a South Australian perspective, SafeWork SA has experienced such issues when investigating incidents where labour hire workers have been injured or raised concerns about their working conditions whilst hosted at large worksites. The labour hire company that supplied the workers was unable to be contacted in response to an incident where a worker suffered a serious injury that resulted in the amputation of the worker's fingers, and inspectors were unable to take any action against the labour hire company.

The inquiry heard evidence directly from workers who were the victims of unscrupulous labour hire operators. In one case the labour hire worker was underpaid wages and superannuation

over a two-year period, receiving only two payments of superannuation into their fund. The worker told the committee how she had difficulty getting a hold of anyone from the labour hire company.

When she started making inquiries, she received a text message from the host employer, just a few hours before she was due to commence a shift, advising her that she was no longer required because there was not enough work. She was not able to recover the unpaid income and superannuation from the labour hire company, which folded. The individuals who operated the labour hire company that she worked for started a new labour hire company.

The committee was told how labour hire workers engaged through these questionable operations often do not know who their employer is. They may have a name of a person and an email address, but that is often all. There are no payslips, in many cases, or documentation. At the hearing where these workers were present, a member of the committee from the opposition acknowledged that the legal processes available to protect workers are difficult to enforce when you have companies that phoenix, and that instituting a licensing scheme would help in this regard. Rogue labour hire operators who phoenix in and out of business with the full intention of ripping off workers and the state and undercutting legitimate labour hire operators are not able to be traced in a timely manner and are not able to be held in compliance with existing laws.

It is disappointing that there are some members who do not appear to be supportive of measures designed to assist reputable labour hire providers, given the evidence provided throughout the inquiry that many are struggling to compete with those elements of the labour hire industry who repeatedly and systematically do the wrong thing. These measures include the fit and proper person test, responsible person requirements and the creation of responsibility along the supply chain.

The labour hire licensing scheme proposed in this bill will aid compliance with relevant laws and promote a level playing field, with no competitive disadvantage, for legitimate labour hire operators. It also has the potential to attract labour hire workers to this state, as there will be greater confidence that those operating in the South Australian labour hire sector are acting honestly and ethically.

Mention was made in the other place of the fantastic work that ReturnToWorkSA have done in relation to unpaid premiums by labour hire providers since the *Four Corners* report. ReturnToWorkSA have improved their forensic financial capabilities and undertaken investigations to ensure labour hire enterprises in the food production industry are meeting their obligations as employers under the Return to Work Act 2014.

A total of 149 forensic investigations into labour hire in food production have commenced. As at September 2017, declared remuneration discrepancies in excess of $100 million have been identified. ReturnToWorkSA are taking action to recover the outstanding premium payable on this undeclared remuneration. Advanced audits of employers in the food producing industry, using learnings from the forensic investigations, are also being conducted where premium leakage is suspected. ReturnToWorkSA works closely with the Australian Tax Office, the Australian Securities and Investments Commission and RevenueSA.

RevenueSA undertakes regular payroll tax compliance. RevenueSA recently undertook an audit of 149 labour hire firms in the food production industry in relation to compliance with legal and taxation responsibilities in accordance with the Payroll Tax Act 2009. As a result of the audit, RevenueSA identified that there were 10 labour hire entities with wage amounts above the threshold of $600,000. Seven were correctly registered, but three could not be located at all. Five of the labour hire firms were reviewed in detail, which resulted in approximately $650,000 in additional revenue detected. The largest individual liability was $543,000. That labour hire firm went into liquidation and the revenue was not received.

If you think about that for a moment, from one industry sector where labour hire operates—the food production industry—ReturnToWorkSA uncovered undeclared remuneration discrepancies in excess of $100 million that premiums are owed on. RevenueSA identified tax liabilities of $650,000, which leaves us to consider what else is not being paid in other sectors. It was summarised during the committee's hearings that if a labour hire provider has 200 workers on the books and they skim two or three dollars an hour from every worker's pay, over a period of time that adds up to a huge amount.

If you also consider other payments, such as superannuation and taxes on appropriate wages that are also potentially not being paid, that is a massive amount of money that is not going into the hands of workers or commonwealth and state revenue. It is going into the hands of unscrupulous companies. Often, when the authorities try to catch them, they disappear.

It is in this context that RevenueSA supports a licensing scheme to aid in compliance. Without a licensing scheme, these unscrupulous operators will continue to operate in the labour hire industry, and regulators and authorities like ReturnToWorkSA and RevenueSA will have to devote considerable time and money to undertake in-depth forensic investigations to recoup money that is owed and then try to recoup what is owed before the company folds.

The Labour Hire Licensing Bill before us will establish a mandatory business licensing scheme for all labour hire operators. The two core elements underpinning the scheme are a requirement that labour hire operators must be licensed in order to operate and supply labour in South Australia and a requirement that a person engaging a labour hire provider for the supply of workers must engage only a licensed operator. The scope of the scheme, in particular the broad definition of 'labour hire services' at clause 6 of the bill, has been the topic of many discussions with stakeholders.

The government acknowledges the concerns that are being raised, but a broad scope and definition of labour hire is necessary and appropriate to achieve the purpose of the scheme. Once you narrow the scope of the scheme, you simply create loopholes for unscrupulous labour hire operators to avoid coverage, and that is not an outcome that the government is prepared to accept. This deliberately broad approach keeps in scope a range of arrangements that people might enter into that would be considered labour hire by a reasonable person. The broad definition represents the complexity of defining labour hire arrangements.

In Australia, the typical labour hire employment arrangement is a triangular relationship between the worker, the provider and the client that a worker is supplied to, as well as variations on this model that can be used to disguise labour hire arrangements. The arrangements generally involve the labour hire company providing a worker to a host employer under the following conditions:

- the worker performs duties at the host employer's premises or worksite under the practical day-to-day direction of the host employer;
- the worker uses the host employer's tools and equipment and, in many cases, wears the host employer's uniform;
- the worker is paid by the labour hire company and has a direct employment or contractual relationship with the labour hire company; and
- the host employer pays a contract fee to the labour hire company for the provision of the worker's labour and, accordingly, the host employer has a contractual relationship with the labour hire company.

I wish to make clear that businesses that undertake recruitment leading to direct employment or permanent job places, genuine independent contracting arrangements and workforce consulting services are not within the scope of the bill, neither are work experience or student practical placements organised by an educational institution as part of a course. A number of stakeholders submitted that an arrangement where a worker employed by a business to deliver a service in a domestic capacity, such as a plumber, would be captured by the bill. It is not the intention of the bill to capture such arrangement, and the government has filed an amendment to clarify this.

We do intend to capture employment arrangements in which a labour hire agency supplies the labour of a labour hire worker to a host employer and there is no direct employment or contractual relationship between the host employer and the labour hire worker; rather, the labour hire worker is engaged by the labour hire agency. The meaning of 'worker' in the bill at clause 7 must be considered when determining if labour hire services are being provided. The definition of 'worker' in clause 7 limits the scope of the bill by defining the nature of the agreement between the provider and the worker. A person is only taken to provide labour hire services if the individual they make available to another person is a worker for the purpose of this bill.

In this bill, an individual is a worker if they enter into an agreement with the provider for that provider to supply them to another person to work for that person. This is, essentially, a person who is on the books of the labour hire provider and who may or may not be provided for work at a future time. Other employment agreements, such as for plumbers working in a firm for a wage, are not the same. Their agreement is that they will be doing work for the firm. The bill includes a regulation-making provision that can deal with other arrangements that are not generally within the scope of labour hire, and a government amendment enables circumstances in which a person does not provide labour hire services to be prescribed by the regulations.

The bill also provides the commissioner power to grant a specific person or a specified class of persons an exemption from the bill or specified provisions of the bill. In this way, the bill provides avenues for the scheme to respond to other scenarios, where necessary, to provide further clarification on the scope of the scheme. The government notes that there have been submissions made by some industry bodies that the bill should replace the concept of a person 'supplying' a worker, with the concept of a person 'on-hiring' a worker.

Whilst it is acknowledged that the concept of on-hiring a worker is used in a number of modern awards, and stakeholders are seeking consistency, what must be kept in mind is that the primary purpose of including the term 'on-hire' in modern awards is to ensure that labour hire workers are entitled to the same minimum rates of pay as any other employee. It does not in and of itself seek to define what labour hire services are, nor does the term 'on-hire' have any clearly understood common meaning at law, and adopting that term is not likely to lead to any greater certainty about who is or is not a provider of labour hire services.

There have also been calls to introduce a new requirement that the worker must work 'under the general guidance and instruction of a client, or representative of the client'. While it may be the case in a traditional labour hire arrangement that a worker supplied to the client of a labour hire provider will carry out work under the general guidance and instruction of the client, it is inevitably not always the case. Some workers may work free of guidance or instruction, or upon the guidance or instruction of another source, as has been exposed by the numerous inquiries into the labour hire industry.

As such, the adoption of these changes has the real potential of narrowing the application of the bill so that it excludes labour hire providers that are intended to be captured, and also creates opportunities for those unscrupulous providers to structure their arrangements in such a way as to avoid being captured by the bill. This is exactly the scenario we do not want to create.

The government notes the concerns that have been raised about the inclusion of terms of imprisonment in the criminal sanctions of this bill and calls by some stakeholders for imprisonment penalties to be removed altogether. These concerns have been carefully considered, and the government has filed an amendment to reduce the maximum imprisonment term from five years to three years; however, it is not proposing to remove these sanctions altogether.

In saying that, I highlight that the government is required to act as a model litigant and will only pursue prosecution in accordance with prosecutorial guidelines and in cases where penalties are appropriate. They have been included to ensure that, where warranted, those labour hire providers who systematically contravene the provisions of this bill, or who deliberately avoid financial penalties by liquidating the company, can be held accountable for their actions. They have been included to provide a strong deterrent to those who think they can undermine the integrity of the industry as a whole. The criminal practices of unscrupulous operators cannot be ignored. To allow this state of affairs to continue in South Australia is not an option. We do not think doing nothing is an option.

The bill is a much needed and appropriate response to the evidence of exploitation in labour hire, which has gone on for far too long. The only way to put an end to some of this appalling exploitation and to take the first step to cleaning up this industry is the introduction of a rigorous labour hire licensing scheme. That is what the state can do, and that is what this government will do with this bill. The bill is not about favouring any union or employee or employer body, as some members of the opposition have claimed. This bill is about locking out rogue operators from the industry, protecting vulnerable workers and the integrity of the industry.

I commend the bill to the house. It supports workers, and supports legitimate businesses operating in the South Australian labour hire industry. Key industry bodies such as the National Electrical and Communications Association, the Master Builders Association SA, the CFMEU SA, the Motor Trade Association and the Master Plumbers Association support this bill. Together, these associations wrote to the government and the opposition, expressing their support for this bill to stamp out the exploitation of vulnerable workers and the undercutting of employers who abide by the law. These associations came to the government seeking an amendment to the bill. After further discussions regarding that amendment, the government has agreed to that amendment.

As I mentioned when I commenced this speech, the government made it clear that we were willing to continue to consult on the bill, following its passage in the other place, and we have been very pleased to receive such informative and constructive responses from so many who have an interest in this area. As a result of the comments received, the government has filed a number of amendments to the bill and I will be pleased to address those and other concerns during the committee stage. I commend the bill to the chamber.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. R.I. LUCAS: I think we have had a misunderstanding. I am ready to proceed at the committee stage this afternoon, I hope, but I am not ready to proceed with the committee stage this morning. The minister has just read a very long reply at the second reading and I have asked the appropriate minister's office for a copy of that so that I can consult over the lunch break. I am not in a position to proceed with the committee stage this morning.

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: What I said was that I was prepared—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: Would you like an answer? I was prepared to do the stamp duties budget bill, the research and innovation bill—

The CHAIR: Would you like to report progress?

The Hon. T.A. FRANKS: I indicate that the Greens are more than willing and ready, and we have been waiting to debate this bill for some time now. We have indicated several times in the debate on this bill that it is becoming increasingly urgent. It was number one on the priority list. We are ready to go.

Progress reported; committee to sit again.

STAMP DUTIES (FOREIGN OWNERSHIP SURCHARGE) AMENDMENT 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) (11:28): I move:

That this bill be now read a second time.

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

Leave granted.

The Bill amends the *Stamp Duties Act 1923* to introduce a foreign ownership surcharge on the conveyance or transfer of an interest in residential property to a foreign person, corporation or trust, executed on or after 1 January 2018 (including land holder acquisitions).

The surcharge will be set at a rate of 7 per cent of the dutiable value conveyed but will only be payable with respect to the extent of the interest in the residential property. The surcharge will be in addition to the normal stamp duty that is payable.

The definition of foreign person includes natural persons, corporations and trusts. A foreign natural person is a person who is not an Australian citizen or permanent resident. Generally, a company is a foreign company where it is incorporated outside Australia or where 50 per cent or more of its shareholding is held by other foreign persons or companies in aggregate. A trust will be a foreign trust where the trustee of the trust is a foreign individual or company, or where the trust itself is established for the benefit of, or is controlled by, foreign persons or companies.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Stamp Duties Act 1923*

3—Amendment of section 2—Interpretation

This clause inserts definitions of the terms *foreign person* and *foreign trust*.

A natural person is a foreign person if the person is not—

- an Australian citizen within the meaning of the *Australian Citizenship Act 2007* of the Commonwealth; or
- the holder of a permanent visa within the meaning of section 30(1) of the *Migration Act 1958* of the Commonwealth; or
- a New Zealand citizen who is the holder of a special category visa within the meaning of section 32(1) of the *Migration Act 1958* of the Commonwealth.

A corporation is a foreign person if it is incorporated in a jurisdiction that is not an Australian jurisdiction or a person who is a foreign person or a trustee for a foreign trust (or a number of such persons in combination)—

- holds or hold 50% or more of the corporation's shares; or
- is 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.

A trust is a foreign trust if the beneficial interests of the trust are fixed and a beneficial interest of 50% or more of the capital of the trust property is held by 1 or more foreign persons. A discretionary trust is a foreign trust if a trustee under the trust, a person who has power to appoint under the trust, an identified object under the trust or a person who takes capital of the trust in default is a foreign person.

The clause also inserts related definitions of *wholly foreign owned corporation* and *wholly foreign owned trust*.

4—Insertion of Part 3 Division 9

This clause inserts a new Division into Part 3 of the Act.

Division 9—Foreign ownership surcharge

72—Surcharge for foreign purchasers of residential land

Proposed section 72 makes provision for a *foreign ownership surcharge* payable in respect of a dutiable instrument executed on or after 1 January 2018 if the instrument effects, acknowledges, evidences 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. The surcharge, which is equal to 7% of the value of the interest acquired by the person, is to be taken to be duty payable on the instrument and is payable in addition to duty otherwise payable under the Act.

The proposed section includes a requirement for the Commissioner to refund a foreign ownership surcharge to a person where, within 12 months of the acquisition of the relevant interest, the person ceases to be a foreign person or the trust for which the person is trustee ceases to be a foreign trust. The refund is payable only if the interest is retained by the person when the person ceases to be a foreign person or the trust ceases to be a foreign trust.

There is also a requirement for a person who acquires an interest in residential land effected, acknowledged, evidenced or recorded by an instrument to which the section applies to pay the surcharge if the person becomes a foreign person, or the trust for which the person is trustee becomes a foreign trust,

less than three years after the acquisition. A person who is liable to pay duty in these circumstances must notify the Commissioner that the person has become a foreign person, or that the trust has become a foreign trust, within 28 days.

The criteria for determining whether land is residential land are the same criteria that apply under section 71DC. Land will be taken to be residential land for the purposes of the section if—

- the Commissioner, after taking into account information provided by the Valuer-General, determines that it is being predominantly used for residential purposes; or
- the Commissioner, after taking into account information provided by the Valuer-General, determines that although the land is not being used for any particular purpose at the relevant time the land should be taken to be used for residential purposes due to improvements that are residential in character having been made to the land; or
- the Commissioner, after taking into account information provided by the Valuer-General, determines that the land is vacant, or vacant with only minor improvements, that the land is within a zone established under the planning and development law of this State that envisages the use, or potential use, of the land as residential, and that the land should be taken to be used for residential purposes due to that zoning (subject to the qualification that if the zoning of the land indicates that the land could, in a manner consistent with the planning and development law, be used for some other purpose (other than for primary production) then the vacant land will not be taken to be used for residential purposes).

5—Insertion of section 102AB

This clause inserts a new section into Part 4 of the Act (Land holding entities).

102AB—Surcharge where foreign person or group acquires interest in residential land

Proposed section 102AB provides for the payment of a foreign ownership surcharge in relation to transactions entered into on or after 1 January 2018 that are dutiable under Part 4. The surcharge is payable by a foreign entity if the entity, or a group of which the entity is a member, notionally acquires an interest in residential land. A *foreign entity* is a foreign person or a foreign trust. The amount of the surcharge is 7% of the value of the interest notionally acquired by the entity, or 7% of the entity's interest in the interest notionally acquired by the group, in the residential land. Section 102AB includes requirements for the payment of a refund where an entity that has paid the surcharge ceases to be a foreign entity within 12 months of the relevant notional acquisition. The refund is payable only if the relevant interest is retained when the entity ceases to be a foreign entity. As with section 72, there is also a requirement for an entity to pay the surcharge if it becomes a foreign entity within three years of the notional acquisition of an interest in residential land by the entity, or by a group of which the entity is a member, as a result of a transaction to which the section applies.

The criteria for determining whether land is residential land are the same as the criteria that apply under section 71DC and proposed section 72.

The Hon. R.I. LUCAS (11:29): I rise to speak to the Stamp Duties (Foreign Ownership Surcharge) Amendment Bill. In doing so, as I indicated by way of interjection with the minister across the chamber, from my viewpoint the opposition is very happy to try to meet the government's request for the top 12 or 13 bills it wants to have completed in the three sitting days this week. Certainly, an indication of that is that in the normal process the second reading of this bill had not even been moved today. The reply to the second reading is generally done at least 24 hours after the minister's second reading explanation. We are happy to put those technicalities aside in the interests of assisting the government with the program.

In relation to the Labour Hire Licensing Bill, as I said, again by way of interjection, the minister has just read a very long reply to the second reading. I would like the opportunity to get a copy of that, which I have asked for from the minister's office, and to at least consult with some stakeholders over the lunchtime break. The opposition's viewpoint is that we are prepared to move on with it immediately after question time. I think that is an entirely reasonable position. In the interests of harmony and getting through the program, people might like to respond accordingly.

In relation to the Stamp Duties (Foreign Ownership Surcharge) Amendment Bill, the background to this is obviously the lengthy debate the parliament and this chamber in particular had in relation to the Budget Measures Bill. The Liberal Party position and ultimately the position the parliament adopted on the Budget Measures Bill was that we, and particularly the majority in the Legislative Council, were prepared to support all elements of the Budget Measures Bill, with the

exception of the state bank tax. Ultimately, that was the position that prevailed in the Legislative Council.

Contrary to the claims made by the Premier, the Treasurer and others, at no stage did the Liberal Party, or indeed the minor parties in the Legislative Council who supported the Liberal Party position, indicate that they were voting against the payroll tax concessions, that they were voting against the off-the-plan apartment concessions or indeed that they were going to exercise their right to vote against the original model of the Stamp Duties (Foreign Ownership Surcharge) Amendment Bill.

The position the Legislative Council ultimately adopted was to pass the Budget Measures Bill, which did include the original foreign ownership surcharge provision. The position adopted by the Legislative Council and supported by the Liberal Party was that all of those elements of the budget could be processed; however, the state bank tax would not be supported.

I think I indicated during the budget measures debate that, should we have been in government, we would not have been introducing or supportive of a foreign ownership surcharge. That was the position we put some time ago and it is the position we continue to reiterate, if we had been in the position to introduce our own budget.

What we see in the Stamp Duties (Foreign Ownership Surcharge) Amendment Bill now is an extraordinary backflip from the government, the Treasurer and the Premier in particular, in relation to these provisions. Contrary to the claims being made in pressuring business groups and minor party members in this place, we said all along that the payroll tax concessions and the off-the-plan apartment concessions could all be delivered in one of two ways: either through the passage of the Budget Measures Bill minus the state bank tax, or, if the government so chose, it could deliver the payroll tax concessions and the off-the-plan apartment concessions administratively. Ultimately, that is what this bill is doing.

In the release of the arguments for this bill, the government said, 'Look, we can do the payroll tax concessions administratively. It is more cumbersome but we can still do it. And we can do the off-the-plan apartment concessions. It is more cumbersome but we can do it.' That is exactly what the Liberal Party said weeks ago and it was denied at the time by the Premier and the Treasurer. However, the imposition of the new foreign ownership surcharge on stamp duties did require legislative support. That is why we now have this particular bill before us.

As our position at the time was to allow all other elements of the Budget Measures Bill to go through—whether or not we were wildly, mildly or not supportive of any particular provision of it—as we indicated, that remains our position now in relation to the Stamp Duties (Foreign Ownership Surcharge) Amendment Bill. During the second reading and certainly through the committee stage, when we will have the opportunity to question the government on the detail of the bill, we will raise what we believe are a lot of deficiencies but, ultimately, we are going to leave the government, as they have done on many other occasions, to suggest amendments or to move amendments to budget or money bills in the Legislative Council.

What has been informative in recent weeks is that the Premier and the Treasurer have not been able and, indeed, no minister in this house has been able to rebut the long history of the Labor Party themselves in the Legislative Council, whether they be in government or in opposition, moving amendments to money bills or budget-related measures, contrary to the claims that they made and continue to make that it was unprecedented in some way for a Budget Measures Bill to be amended or have suggested amendments in the Legislative Council.

It is instructive, it is informative, but there has been no rebuttal from the Premier, the Treasurer, the Leader of the Government in this chamber or, indeed, any minister representing the government against the detailed analysis that was put on the public record when we debated this last. So, it is open to the government to amend its own bill in relation to the foreign ownership surcharge. Particularly through the committee stage, I intend to point out, on the basis of detailed tax advice that we have received, the loopholes, the errors and the requirement, certainly from the experts in tax law, that the government, once they have made a decision to impose a foreign ownership surcharge, should contemplate in terms of imposing a fair set of arrangements under this bill.

In the original release from the Treasurer on 16 November this year, the minister indicated that this particular measure is proposed to increase revenue returns over a four-year period by $36.6 million. That is an average over the four years of about $9 million, although there is more to be collected in additional revenue in the last year of the forward estimates rather than in the first year of the forward estimates.

Treasury have estimated that, if implemented, the new 7 per cent surcharge will collect $85.4 million over four years. I think one of the questions I seek a response from the government on is that it looks like ultimately it is estimated to collect about $25 million per annum by the last year of the forward estimates period. In comparison to the state bank tax, which was going to collect $417 million over four years, the additional $36.6 million over four years from this particular provision is small in comparison to the state bank tax.

The situation as it was then in the other states that I think I indicated in the debate on the Budget Measures Bill has now changed or was proposed to be changed in Queensland. That is, the foreign purchaser surcharge currently in New South Wales is 8 per cent; in Victoria, it is 7 per cent; in Queensland, it is 3 per cent, although depending on the results of the Queensland election, if there is a majority Labor government there is a proposal to increase that to 7 per cent after the election; and Western Australia is proposing a 4 per cent surcharge from 1 January 2019. So, on that basis, it appears that of all the states Tasmania would be the only state that, potentially, will not have a foreign ownership surcharge, after 2019 anyway.

In terms of what the potential impact of this measure might be, I seek leave to have incorporated in *Hansard* a table, which has been calculated by a prominent tax lawyer, on the impact of the base stamp duty surcharge, the increased surcharge. There is also a column in there for the LTO lodgement fee and what the total in terms of charges would be on various property transactions for foreign investors after the implementation of this measure. I seek leave to have incorporated into *Hansard* without my reading it a table which is purely statistical in nature.

Leave granted.

Value	Base Duty	Surcharge	LTO Lodgement Fee	Total	Total as a % of Value
300,000	11,330	21,000	2,271.50	34,601.50	11.53
350,000	13,830	24,500	2,674.00	41,004.00	11.72
500,000	21,330	35,000	3,881.50	60,211.50	12.04
750,000	35,080	52,500	5,894.00	93,474.00	12.46
1,000,000	48,830	70,000	7,906.50	126,736.50	12.67
1,500,000	76,330	105,000	11,931.50	193,261.50	12.88
2,000,000	103,830	140,000	15,956.50	259,786.50	12.99

The Hon. R.I. LUCAS: That shows that, for a property with a value of $750,000, the base duty on that property would be $35,080, the surcharge would be $52,500 and the LTO lodgement fee would be $5,894, so for a property of $750,000 the total imposts for a foreign investor would be $93,474, or 12.46 per cent of the value of the purchase. For a $1 million property, the equivalent figures are $48,830 for the base duty, a surcharge of $70,000, a LTO lodgement fee of $7,906.50, for a total state impost of $126,736.50 on the $1 million property, which as a percentage is 12.67 per cent of the total value of the property.

Obviously, the higher you go (and I will not go through all the detail), for a $2 million property the total impost is $259,786.50, or 12.99 per cent—almost 13 per cent, of the total value. If one looks at the range of $750,000 to $1 million, we are talking, as a result of this particular imposition from the government, a very significant increase in the state tax collections.

It is informative to look at the Treasurer's and this government's history in relation to the foreign investor tax. I refer to a story in *The Australian* by Michael Owen just over a year and a bit ago on 21 July 2016. The story commences with:

Queensland, NSW and Victoria have been accused of 'xenophobia' by South Australian Labor Treasurer Tom Koutsantonis, who has slammed the eastern states for introducing another layer of taxation on top of regular stamp duty and land tax for foreign investors.

At that stage, the New South Wales government was introducing a foreign investor surcharge of 4 per cent on stamp duty and 0.75 per cent on land tax for residential real estate. Mr Koutsantonis said he had come under intense pressure from the Eastern States to ensure South Australia introduced similar measures, which he had refused. The article states:

'I've been under a lot of pressure from my interstate counterparts to bring in this type of tax on foreign investment', he said.

'They think it's a "no regrets policy"; that no one who is subject to this tax can vote against you, so, "what are you worried about?"'

Asked what was driving the policy interstate, Mr Koutsantonis said: 'I think it's a little bit of xenophobia. It is also a recognition there are a lot of people in Southeast Asia and India who are fleeing…and they want to invest in other economies and bring their capital to Australia…I am never going to say that I don't want a type of investment because "I don't speak your language", I think that's appalling.'

That was a direct quote from Treasurer Tom Koutsantonis just over 12 months ago saying that he was appalled at the prospect of introducing a foreign investor surcharge. He believed that what was driving it was xenophobia. He is quite explicit in saying that he thinks it is a recognition by politicians in the Eastern States that there are a lot of Asians—a lot of people in South-East Asia and India—who are fleeing and want to invest, and he was not going to succumb to that.

He said, 'I'm not going to say I don't want that type of investment because I don't speak your language. I think that's appalling.' These are noble sentiments from Treasurer Koutsantonis. Xenophobic politicians responding to perceptions in the community, anti-Asian sentiment—because people do not speak the language of the foreign investor, these particular measures were being introduced. Just over 12 months ago, he thought that was appalling. How times change.

Out of that same mouth just over 12 months later, what do we hear from Treasurer Tom Koutsantonis as he introduced a measure which he described as xenophobia, as he introduced a measure which he said was being driven by an anti-Asian sentiment, which he said was being driven by a view in the Australian community that because they do not speak the language of the Asian investors, we should impose a foreign investor tax?

What now comes out of that same mouth just over 12 months later? We are indebted to Tom Richardson from InDaily who put—and these are my words, not his—the hypocrisy of the Treasurer's position directly to him because he quoted exactly the comments from just over 12 months ago where the Treasurer railed against xenophobia. This is how Tom Richardson described Treasurer Tom Koutsantonis's response to the questions:

But he struck a very different rhetorical tone today declaring that 'a lot of South Australians are being priced out of their own homes, out of their own suburbs, by foreign investors'.

'The very reason we're putting in the surcharge is to stop that type of activity…we don't want people competing with South Australians to buy a home to raise a family in,' he said. 'They'll pay a penalty—and we hope it will have some impact on it.' He appeared to stop himself midway through using the word 'disincentive', instead of 'impact'.

Informatively, Mr Richardson goes on to quote Real Estate Institute CEO Greg Troughton's response:

But it's a disincentive the Real Estate Institute of [South Australia] is warning of, with CEO Greg Troughton lamenting the increased surcharge was 'even more xenophobic than we were before'.

He is referring, of course, to the Treasurer's own claims of just over 12 months ago. So, what has happened? Out of that very same mouth that mouthed such worthy and laudable platitudes 12 months ago about these sorts of initiatives being driven by xenophobia and anti-Asian sentiment, what caused that very same mouth and that very same mind to now adopt this particular position?

We have had little explanation from Treasurer Tom Koutsantonis because, I suspect, he has no response, as his own words perhaps indicate. He said that he had been under a lot of pressure from his interstate counterparts to bring in this type of foreign investment, and I referred to that quote before. Maybe the Treasurer here had just succumbed to the pressure from his interstate counterparts.

He said he was strong enough to resist it just over 12 months ago, but clearly he was not strong enough to resist it just over 12 months later, because now he is not only introducing it at 4 per cent, he is seeking to introduce it at 7 per cent. At some stage, I think the Treasurer, and the Premier, ought to be interrogated, ought to be grilled by members of the media, or indeed members of the community, as to those statements that the Treasurer made in July of last year about these sorts of measures being driven by xenophobia.

I want to refer to some facts in relation to this debate. That might be an intriguing notion for a budget-related measure. It certainly would be an intriguing notion to the current Treasurer because he has given no evidence in the second reading explanation—and we will certainly pursue this during the committee stage—as to what evidence he has in the Adelaide market, or indeed nationally, that those terrible foreign investors from Asia, some of whom do not speak English very fluently, have been driving up prices in the Adelaide property market.

I refer the Treasurer and the government to the most recent detailed analysis of this that I was able to find, written by the federal Treasury. It is a Treasury working paper called 'Foreign Investment and Residential Property Price Growth' released in December 2016. The authors of this particular Treasury working paper were Chris Wokker and John Swieringa. It is a technical and detailed paper, and certainly one would not expect the Treasurer to understand the mathematics, the regression analysis and other elements of the Treasury working paper, but for the Treasurer's edification, I refer him to just the results and summary section, which puts it into layperson's language, enabling our current Treasurer to at least understand what evidence federal Treasury has been able to establish as to the impact of foreign investors on the property market.

I refer to page 15 of that Treasury working paper, under the section of results. The two major markets, of course, where there has been criticism have been in relation to Sydney and Melbourne. What the federal Treasury working paper says is:

> Across Sydney and Melbourne, the models which we consider to be the best specified indicate that foreign demand typically increased prices by between $80 and $122 on average in each quarter.

I point out that the period that federal Treasury analysed nationally, and in particular in Sydney and Melbourne, was the period from 2011 to 2015, a four to five-year period, and they looked at quarterly price movements in terms of residential property. I return to the results of this paper:

> This is based on the average postcode in these two cities—

that is Sydney and Melbourne—

> receiving around 0.6 more foreign investment approvals each quarter through time. It is important to note that this is very small when compared with the average quarterly increase in Sydney and Melbourne property prices over the period studied of around $12,800.

What federal Treasury has said is that, having analysed property prices in Sydney and Melbourne, they were increasing, and increasing dramatically, an average of $12,800 per quarter during that four to five-year period from 2011 to 2015, and that foreign demand typically increased the prices by between $80 and $122 in that quarter. Foreign demand was driving prices up by about $100, but the total price was being driven up by $12,800 through a variety of other explanations.

I will be pursuing in the committee stage of this particular debate what is the evidence in relation to price movements that the Treasurer has relied upon to (a) introduce a bill and (b) make the limited statements he has made as to the impact of foreign investors on the residential property market in Australia. As I said, let us acknowledge the fact that the property prices have moved and moved most significantly over the last half a dozen years in Sydney and in Melbourne. Certainly, the initial impetus for targeted foreign investor taxes started in the Eastern States as a result of a widely held perception—and I acknowledge that—that wealthy, in the main Asian, investors were driving up residential property prices in those particular markets.

That is what is obviously driving Treasurer Tom Koutsantonis to introduce the foreign investor surcharge. He has said he does not want foreigners driving up prices in the Adelaide market. The challenge to him and to the government is: what is the evidence? Do they agree with the federal Treasury working paper? Whilst I certainly would never expect the Treasurer to have any knowledge of the federal Treasury working paper, indeed even to understand the detail of it, I would hope that

Treasury and Treasury officers are well aware of this working paper and have done their own analysis in terms of the impacts of the imposition of this particular measure.

On page 25 of that federal Treasury working paper, under 'Conclusion', let me quote the conclusion in its entirety:

> Foreign investment has contributed to Australia's sustained economic growth. Recently, foreign investors have accounted for an increasing share of demand for Australian residential real estate. This paper estimates that only a small proportion of the strong property price growth over the study period can be attributed to foreign demand. It is also the case that the majority of foreign investment approvals are for new dwellings, consistent with Australia's foreign investment policy for residential real estate which, in part, aims to increase the total supply of dwellings.

I could quote at greater length from the federal Treasury working paper, but I will not, but I think it is instructive, it is informative and it is an issue that the government should respond to and that I will certainly be asking the government to respond to during the committee stage of the debate.

There has been widespread condemnation from a number of the significant industry groups or stakeholders in the real estate, construction, property sectors. I quote from the Real Estate Institute. Some of the language is extravagant so I will not quote in precise detail, but suffice to say their very strongly held position, as expressed by CEO Greg Troughton, is opposition to the particular measures. They refer in some detail to the Treasurer's previous position, to which I have referred, about xenophobia, and they have indicated their strong opposition to the measure before us.

The Housing Industry Association has also indicated their position. They say they do not support the introduction of the surcharge, and they are especially concerned about the further increase from the original proposal of 4 per cent even to 7 per cent. Part of their letter to me says:

> At a time when residential land development and building is facing a prolonged period of reduced activity in South Australia, the introduction of a foreign investor surcharge from 1 January 2018 is considered a wholly inappropriate step. Given the introduction of similar surcharges in the eastern states where housing activity is much stronger, it would seem more appropriate for the South Australian government to be promoting the fact and seeking investment from other states based on not applying this type of tax.

They do raise a particular issue that I will pursue in the committee stage, namely, that in relation to the definition of foreign persons or trusts, the HIA considers that an exemption should apply in similar terms to those that apply in Queensland and Victoria, whereby the surcharge does not apply where the purchaser can show that they demonstrated to the Commissioner of Taxation that they are actively investing in and significantly adding to the supply of housing stock. In the committee stage, I will refer in detail to the provisions that exist in most other jurisdictions, as I understand it, that are not covered in the legislation that we currently have before us.

The Property Council of Australia's public position has been to strongly oppose the imposition of a foreign investor surcharge. That remains their particular position; however, they indicate that if the government is going to proceed with the legislation and is likely to get the support of the parliament, they urge it to consider some significant amendments to the bill that we currently have before us.

Members will be aware that, during budget measures bills, I normally consult widely and, in particular, consult a certain prominent tax lawyer. My normal modus operandi has been to read the detailed critique in the second reading to allow the government and its advisers to prepare a response for the minister that will help expedite the committee proceedings. Given that the government has indicated that they are desperate not to sit during the optional sitting week of parliament next week and want to conclude this bill and all their other priority bills in the next three days (or just over 48 hours), that would not seem a sensible course of action.

However, I have had a detailed analysis of the foreign investor surcharge provided to me. It provides a further rebuttal, or critique, of the government's position as outlined during the budget measures debate. I will necessarily have to raise each of those issues during the clauses of the bill during the committee stage, and the government's advisers will need to provide answers on the run. So, I alert the government's advisers that there will be detailed questions provided by the prominent tax lawyer for the committee stage of the debate and that I will be seeking detailed responses during the committee stage of the debate to assist the government in expediting this bill through the parliament in the next two-and-a-bit days.

One of the issues I want to raise has come from a person who has, as I understand it, corresponded with all members of parliament, both in the Legislative Council and the House of Assembly. I am assuming that it has also gone to all ministers, but I know that it has gone to all opposition and minor party members in the Legislative Council. I want to refer to the detail of this particular series of letters because this person is raising what they believe to be a very significant inequity in the way this government is proposing to implement the bill.

The first email I received, and I think all members received, was on Sunday 19 November, and this raised the issue of what the correspondent kindly referred to as 'unintended injustices' within this particular bill. He refers to what he says very kindly again, 'the inadvertent inclusion under the new stamp duty surcharge of long-term holders of 410 retirement visas living in South Australia'. He also refers to the inequity or the unfairness of those who had contracted to purchase their property off the plan before any knowledge of the surcharge was made public but whose settlement dates are after the proposed introduction of the new surcharge on 1 January 2018.

This particular correspondent is seeking amendments to the legislation to cater for what he indicates is unfairness and inequity. Subsequently, on 26 November, the same correspondent outlined in greater detail further inequities, and I want to quote from the correspondent's concerns:

> Further to my mail a few days ago, I am writing again as I now have some further information on the issues I raised…
>
> It's useful to note that, since I first wrote, it has become clear that the proposed surcharge of 7% of the purchase price applies in fact to two classes of Retirement Visa holders living in South Australia, the still renewable 410 Retirement Visa…and the still on offer 405 Investor Retirement Visa.
>
> Nowhere in the application processes for either retirement visa was, or is there, any mention of the likelihood of any Stamp Duty Surcharge—nor by the way, of the FIRB fee on 'foreign buyers', in our case, $10,000.
>
> This further adds to the unfairness of the measures I believe, particularly as retirees are likely to have very carefully budgeted their finite resources when buying a new home, and are perhaps the least able to withstand such a sizeable new surcharge.

Again, I interpose here, regarding the size of that surcharge, that I indicated earlier in my second reading contribution what it is on properties, for example, in the price range of $750,000 to $1 million. I continue with the letter:

> The second category of unfairness that I mentioned, those Temporary Residents who Contracted to buy well before any mention of the Stamp Duty Surcharge, but will go to Settlement after the new measures are introduced on 1st January, still applies. This mainly applies to 'off the plan' buyers of course, which both Government and the Adelaide City Council have been heavily promoting.
>
> In our case, as long-term SA residents (firstly in work for a number of years and now in retirement), we are examples of buyers who unfortunately fall into both these punitive categories...
>
> As you will be fully aware of course, two opportunities to correct these two examples now arise…

He then outlines amendments to this particular bill, and erroneously he thinks that the Budget Measures Bill is still before the parliament. That is obviously no longer an option. He argues for a straightforward amendment to both these bills, perhaps offering exemptions for the above two categories. In relation to the retirement visa holders issue, he has further provided detail as follows:

> In the case of 410 Visa holders, the argument is that no recognition is given at all to the special case of 410 Retirement Visa Holders, many of whom have been here for years and have contributed widely to the Australian economy and social fabric. Although our visas are renewable every 10 years, we are it seems permanently stuck in the 'Temporary Resident' category, presumably (and understandably perhaps), only so that we place no burden on Medicare as we grow older, being required instead to fully insure our own costs privately.
>
> Nonetheless, it does seem very unfair that we are now being put into the same category as offshore 'foreign investors', when it comes to the new Stamp Duty Surcharge. Any 410 holders moving into property nearer the City, or more convenient for hospitals and other services perhaps, as the years pass, would currently be hit by the new Surcharge.

In one of these emails—I cannot quickly pick it up at the moment—this correspondent makes it quite clear that they are not entitled to actually become Australian citizens. So, whilst they can renew their retirement visa on an ongoing basis every 10 years, they are not capable of moving out of what the government describes as a 'foreign investor' category, as they read the bill, and are therefore permanently caught in this position.

The correspondent also gives some examples in relation to the potential impact on the settlement contract timing issue. He gives examples of a contract date before the surcharge became public knowledge—that was July 2017 settlement—and settlement after the introduction of the surcharge on 1 January 2018. He says, 'Such a timespan is entirely likely in the case of many, if not all, off-the-plan new property purchases, particularly apartments.'

He goes on to highlight that the purchase of a property of $450,000 would include additional stamp duty of $31,500 or $63,000 on a $900,000 property, according to his calculations in this letter. Both sums are, of course, in addition to normal stamp duty, and, again, they are similar sorts of numbers to the earlier figures I put on the public record. I have now found the additional material he provided on 18 November to all of us. He said:

> Temporary residents living in South Australia under rolling 10-year 410 Retirement Visas.
>
> A significant number of Temporary Residents in South Australia are here under the 410 Retirement Visa provisions.
>
> Available for new applicants up to 2005 and subject to initial means testing, family circumstances, character and health criteria, these visas were designed for retirees and near-retirees and their partners who wish to spend their remaining retirement years in Australia. Only renewals are now allowed, at 10 year intervals.
>
> Many of these 410 Retirement Visa holders have lived, worked and contributed to the South Australian economy for many years through the import of their personal savings, part-time work and their spending and taxation in Australia. They have also contributed in a number of ways to the fabric of society through social and voluntary activities.
>
> It is important to note that under the conditions of these Visas, holders have no path to either Permanent Visas or Citizenship, however much they might wish it. There is therefore no choice for them but to remain Temporary Residents.
>
> Another condition of this Visa is that there is strictly no access to Medicare, and holders have to show full Private Health Insurance history at renewal. 410 visa holders therefore make no demand whatsoever on the health or other support services in Australia, despite being Tax Residents and paying income and other taxes here.
>
> It seems unfair therefore that such committed and mature senior residents are now being aggregated together with what are perceived, by some at least, as wealthy offshore foreign investors and that similarly, by implication, 410 Visa Temporary Residents are therefore also somehow speculating and helping push up local property prices.
>
> On the contrary, a retiree living here is simply seeking to purchase a place to live as full-time resident owner. Often, for age considerations, their choice is apartments—frequently new-build apartments, further boosting the local economy.
>
> Is it really fair therefore that 410 Retirement Visa holders should pay an extra 7% supplement on top of normal Stamp Duty, pushing their total Stamp Duty charge in some cases up to a total of almost 12% of the purchase price? This is a really significant extra penalty for them—and comes on top of a $10,000 FIRB house purchase approval fee already levied on all Temporary Residents, regardless of Visa or purchase purpose.

That particular correspondent, as I said, has corresponded with all members of parliament. During the committee stage of the debate, I will be seeking the government's response to the concerns that have been raised in that particular correspondence. I will conclude my second reading speech by indicating, as I said earlier, that there are many detailed questions raised by the prominent tax lawyer that I will pursue during the committee stage of the debate. I look forward to the committee stage.

I again indicate that the Liberal Party's position is the position we outlined originally in relation to the Budget Measures Bill; that is, if the government removed the state bank tax, the opposition was prepared to allow and support the remainder of the Budget Measures Bill, including the original form of the foreign ownership surcharge provision. Given that was the position we adopted then, it will be the position we adopt now.

In relation to the period between now and the state election, the Liberal Party has already indicated a contrary view to the Weatherill Labor government, which sees the response to any problem being another tax or another charge or another impost. We have seen the massive increase in ESL bills in South Australia. We saw the attempted imposition of a car park tax. We see the imposition of a wagering tax in South Australia. We have seen the attempt to bring in a state bank tax.

We see a foreign ownership surcharge bill, and we have seen the state government supporting a massive increase in the GST from 10 per cent to 15 per cent. Their plan B in relation to the GST, if they cannot get that proposal up, is to spread the GST across a whole range of other financial services which are not currently covered by the GST, which would mean a massive increase in charges for struggling South Australian families and businesses.

It is quite clear that, if the Weatherill Labor government is elected, they will return to their common tactic, their common path, of looking at further ways to massively increase taxes in South Australia. To the contrary, the Liberal Party has indicated that we will significantly reduce ESL bills by $90 million a year—a $360 million cut—commencing in July of next year. We will be capping local government council rates. We will be capping NRM levies, although they come under another name, if there is a Liberal government elected in March.

In relation to a raft of measures, including this foreign investor tax, land tax, payroll tax and stamp duty, as consistent with the 2014 and 2010 election, closer to election day we will be releasing a lower tax package than the high-tax environment of the Weatherill Labor government. Our specific response, if elected, in these particular areas, including this particular new surcharge, will be outlined in detail prior to election day. I look forward to the committee stage of the debate.

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) (12:18): I thank the honourable member for his contribution on the second reading, and I look forward to the swift passage of this bill through the committee stage.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. R.I. LUCAS: I flagged this question in the second reading contribution: can the minister indicate to the chamber what detailed work, if any, has the South Australian Treasury done in relation to the impact of foreign investors on residential property prices in South Australia and, in particular, investors—as the Treasurer referred to last year—from South-East Asia and India?

The Hon. K.J. MAHER: I thank the honourable member for his question. I am advised that data from the Foreign Investment Review Board shows that property applications for residential property from foreign residential investment has increased in South Australia. The total value of applications for foreign investment in residential property in South Australia has increased.

The Hon. R.I. LUCAS: That is entirely unsurprising, but my question is in relation to the driving up of prices in South Australia as a result of foreign investors, as the Treasurer referred to in July last year, in particular from South-East Asia and India. Is it correct that Treasury itself has done no analysis of the current impact of foreign investors on residential property prices in South Australia?

The Hon. K.J. MAHER: I am advised that the South Australian Treasury does not have a detailed analysis; instead, as I said, they rely on data from the Foreign Investment Review Board.

The Hon. R.I. LUCAS: Can the minister outline exactly what that data demonstrates?

The Hon. K.J. MAHER: My advice is that the total value of applications to the Foreign Investment Review Board for foreign investment in residential property from the financial year 2013-14 to 2014-15 increased by 98 per cent, and the advice is also that from 2014-15 to 2015-16 it increased by a further 19 per cent.

The Hon. R.I. LUCAS: Does the minister accept or do the minister's advisers accept that part of that would be driven by property price increases generally in the market; that is, property prices have increased generally in the market with or without the investment from overseas in relation to it and that property prices were going up during 2013-14 and 2014-15 anyway?

The Hon. K.J. MAHER: There are obviously a range of factors, but certainly I do not think it holds true that that increase is responsible for a 98 per cent increase between 2013-14 and 2014-15.

The Hon. R.I. LUCAS: Let me refer the minister and his advisers to this federal Treasury working paper, which has actually done some detailed work in this area. First, are the government's advisers aware of the Foreign Investment and Residential Property Price Growth, Treasury working paper, published in December 2016?

The Hon. K.J. MAHER: I am advised that they are aware of that paper.

The Hon. R.I. LUCAS: Let me refer to that paper, because the minister refers to a 98 per cent increase in the total value of applications for residential property between 2013-14 and 2014-15. This particular paper looked at property price increases between 2011 and 2015, so it covers the period to which the minister has referred (it covers a wider period, obviously).

That paper has referred to the fact that, whilst there had been a $12,800 average quarterly increase in property prices, you could only attribute foreign investor demand to be the cause of $80 to $122; that is, whilst there had been a very significant increase in the value of property prices during that period, federal Treasury has analysed Sydney and Melbourne, which are clearly the ones that have been most impacted over the years, supposedly by foreign investor demand, and said that the foreign investor demand was just a very small $100 out of $12,800. If the minister's advisers are aware of this particular paper, do they have any disagreement with the analysis and results of the working party report from federal Treasury on foreign investor demand?

The Hon. K.J. MAHER: I am advised that our advisers have not analysed the assumptions or the methodology underpinning that study: they are aware of it, but they have not done any analysis of the methodology or the assumptions that underpin it.

The Hon. R.I. LUCAS: I understand that. It is disappointing, given that we are having to go through this particular debate, that we do not have access to those Treasury officers who have done the work, but clearly at the very least there is no rebuttal from the government here at the moment. If the government at a later stage wishes to send a rebuttal through the post, I would happily receive the rebuttal; I do not intend to delay the proceedings here.

It is unrebutted evidence at this stage, and it is the only evidence at this stage, contrary to the claims from the minister of a 98 per cent increase as being proof positive that there is a particular issue in Sydney and Melbourne (and their analysis covers all capital cities, it is just that they have highlighted the big increases in Sydney and Melbourne), that the big percentage increases the minister is talking about, the 98 per cent, the overwhelming bulk of that is caused by factors other than foreign investor demand. So, it is a nonsense for the minister or the minister's advisers to take the view that, because there is a 98 per cent increase in the value, that it has been driven by foreign investor demand driving up prices in Adelaide, which is the inference from the minister's response to my earlier question.

Given that neither this minister nor the minister's current advisers have seen the paper, the findings remain unrebutted and unchallenged at this stage by the minister. All I am saying is that the flimsy excuse or reason the government has given to justify this particular surcharge is unsupported by any evidence or any statement that the minister has made in the second reading or response to the second reading or on behalf of the government so far in the committee stage of the debate.

The second issue on which I seek the minister's response, as the Leader of the Government but also as the minister handling this bill, is what changed from the government's position, in particular the Treasurer's position, where he indicated in July of last year that this was driven by xenophobia and a fear of investors from South-East Asia and India in particular to now introducing the exact same measure? Can the minister outline on behalf of the government and on behalf the Treasurer (as he represents him) what changed between July of last year, where this measure was xenophobic, and now? Does the minister now concede that it is xenophobic and still is, but he is happily introducing it, or does he disagree with the statement of the Treasurer from July of last year?

The Hon. K.J. MAHER: This is not a debate I am going to get to in the committee stage of the bill. It has nothing to do with the operation of this bill.

The Hon. R.I. LUCAS: Let the record show that the minister was unprepared to defend the statements of the Treasurer. The minister was given the opportunity to defend the statement that this was a xenophobic approach, that the Treasurer would never countenance it and was appalled by it, and the Treasurer is now introducing it. He is the Leader of the Government in this chamber. He is handling the bill and he now says that this has nothing to do with it, yet the Treasurer is on the public record saying that he is appalled by these particular measures and that he was not going to introduce it because it was xenophobic. It was attacking South-East Asians and Indians because some people did not think they could speak the language or understand them.

Yet, given the opportunity, the minister in this chamber is not prepared to stand up and defend Treasurer Koutsantonis. I am not surprised: I would not defend him either. I think it is an appalling position the Treasurer has got himself into because of the language he used in July last year to pat himself on the back as having resisted the pressure from those nasty people in the Eastern States who wanted him to introduce a foreign investor surcharge. I think it clearly indicates that this Treasurer and this government have very flexible principles. The principles of July last year and the things you supposedly believe in, you can jettison those just over 12 months later, as soon as you wish.

In regard to the set of detailed critiques that I gave from the individual correspondent about the 410 visas, I understand the government has received that correspondence and I think some members have corresponded with the government on the issue. What is the government's response to that position that they think it is unfair and inequitable? Is the government prepared to amend its own bill to provide some exemptions?

The Hon. K.J. MAHER: This is a matter where a line needs to be drawn somewhere over who is in and who is out. It will apply to a natural person who is not an Australian citizen, an Australian permanent resident or a New Zealand citizen who holds a special category visa. Of course, there will be some who fall within and without who will complain about the operation and that is understood, but a line has to be drawn somewhere and this is where it is drawn, consistent with the operation of these measures in other jurisdictions.

The Hon. R.I. LUCAS: So, the government's position is essentially to say, 'Stuff you, we don't care how unfair and inequitable this might be. We've just drawn the line.' Even though these are people who have been here for many years, some decades in fact, the government is saying, 'We're not going to do anything.' There is no willingness to consider an exemption or any particular set of arrangements that will provide relief to these particular people who, as the correspondent has indicated to the government and to us, have no opportunity to get a permanent visa and have no opportunity to become Australian citizens.

They are permanently locked into these 410 retirement visas. They can renew them every 10 years. They clearly say that they are not speculative offshore foreign investors driving up property prices: they are long-term residents of South Australia. They have paid tax and they have contributed to the South Australian and national economies. They are captives of the visa arrangements they entered into when they came to South Australia many years ago. Is the minister's response as cold-blooded as, 'Stuff you, we're not going to do anything to help you. We've drawn the line and we're not interested in, firstly, recognising that there might be an issue and, secondly, seeking to address it in some way'?

The Hon. K.J. MAHER: As I said, when people accuse the Hon. Rob Lucas of verballing them and putting words in their mouth, I think this is a great demonstration of how one stands to be accused of these things. That is not what I said at all. Of course, when a line is drawn, there will be people who fall on one side or the other of that line. This is where the line is drawn for this measure. It is consistent with other jurisdictions, and I look forward to the Hon. Rob Lucas, if ever he is on the Treasury benches, reversing this to make up for what he is saying needs to be changed. I am sure that if ever he is on the Treasury benches he will go back through the *Hansard* and change all of the things that he is outlining.

The Hon. R.I. LUCAS: The other issue that was raised by this correspondent was the unfairness he outlined to all members of, in essence, what the government and city council and many others encourage a lot of people to do, which is to purchase off the plan. There are other elements of the Budget Measures Bill that are now to be implemented administratively that provide a range of

concessions to encourage people to buy off the plan and to encourage city living, which is again a government and Adelaide city council policy goal.

Another policy goal that the Labor government and many others have supported has been to encourage couples or individuals to downsize; that is, if they have a big property, to move into apartments closer to the city and free up bigger suburban houses, if they own them, for younger families to move into. This is the sort of circumstance that this correspondent has highlighted. They are saying that, in some cases, people have entered into an off-the-plan arrangement prior to the surcharge originally being announced in July—so not just the recent increase—but settlement date is not until after 1 January.

What they are saying is that, on a $450,000 or $900,000 property, they have entered into an arrangement prior to the surcharge being announced, but the settlement date is not until 1 January, and the way the government has drafted this means, in essence, that retrospectively they are going to bang these particular people with the additional surcharge because of the arrangements of the contract that they have entered into.

I think the minister would be aware that there are many off-the-plan apartment arrangements where your settlement date is significantly after the date you originally enter into the contract. This particular correspondent, and I assume some others, have found themselves in the unenviable position of having signed up to something thinking they know what the costs are, and because of the way the bill has been drafted—that is, it is payable on settlement—it is going to significantly increase their costs.

The government has been asked whether it is prepared to consider relief in these particular circumstances by way of an amendment to the bill. Is the government prepared to consider that, or is its response as cold-hearted as it was before, which was essentially to say, 'Stuff you, we're not interested in giving you any support'?

The Hon. K.J. MAHER: I thank the honourable member for his question. Again, I thank him for his attempt to put words into my mouth and give me my opinions for me. It is very helpful of him to occasionally do that. Again, whenever legislation or these measures are drafted, there is a line that is drawn somewhere, and that is where the line is drawn on this bill. I look forward to these promises that he is making, should they win the election, to change all these things that he has raised.

The Hon. R.I. LUCAS: That was interesting, but he did not actually answer the question: is the government prepared to either amend the bill or provide relief in the circumstances this correspondent has outlined?

The Hon. K.J. MAHER: We have the bill before us and we are not proposing amendments to the bill.

The Hon. R.I. LUCAS: The minister is indicating that he is not going to change the bill, but does the minister indicate that the correspondent has accurately outlined the position; that is, that people caught in the circumstances that he has outlined will in the end have to pay this additional surcharge? Is it a confirmation that that is, in fact, the case under the bill that the government has proposed?

The Hon. K.J. MAHER: My advice is that if the property settles after 1 January, that is the case.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. R.I. LUCAS: I now enter what I outlined in the second reading as the detailed analysis done by a prominent tax lawyer, and the first series of questions relate generally to clauses 3, 4, and 5 of the bill. Firstly, the prominent tax lawyer has made the claim that in effect the duty outlined in this bill could be payable on an option or contract for the sale of land to a foreigner, as it is likely to be regarded as an instrument that affects, acknowledges, evidences or records a

transaction whereby an interest in residential land is acquired by a foreign person or a person takes the interest as a trustee for a foreign person. Can the minister indicate whether that is in fact correct?

The Hon. K.J. MAHER: My advice is that a very general question like that is almost impossible to answer. If there was an exact nature of a particular transaction, that advice might be able to be provided as to how that exact example might work, but with a very general one, there is not advice on such a general question to be asked, is my advice.

The Hon. R.I. LUCAS: It is not a general question at all. It is quite a specific question from the tax lawyer. In effect, he says, as drafted the duty imposed could be payable on an option or contract for the sale of land to a foreigner. He refers to the tax case of George Wimpey and Co v IRC [1974]. He says to see also section 2(4) of the Stamp Duties Act. He goes on to say, quite specifically—so it is not a general question—the reason why, in his view, this duty could be imposed on an option or a contract for the sale of land to a foreigner is it is likely to be regarded as an instrument, under the definitions, that affects, acknowledges, evidences or records a transaction whereby an interest in residential land is acquired by a foreign person, or a person takes the interest as trustee for a foreign person.

So, it is a specific question. It is not general. It is based on a previous case, going back to 1974. Does the government agree that this duty could be payable on an option or contract for the sale of land to a foreigner?

The Hon. K.J. MAHER: My advice is if the effect is that there is an actual transfer of land, then it would attract this, yes.

The Hon. R.I. LUCAS: The minister can correct me if I am wrong. I take his response to be that the minister's advice is that the tax lawyer's view is correct; that is, in effect, the duty imposed could be payable on an option. So, the minister is saying, in the circumstances he has outlined, on the basis of the advice given to him, that that is correct—

The Hon. K.J. MAHER: Yes, if there is an actual transfer of land.

The Hon. R.I. LUCAS: The tax lawyer claims that this is a significant departure from the current taxing regime of the Stamp Duties Act. Do the minister's advisers agree that, given that they have now conceded that is correct, this is a significant departure from the current taxing regime of the Stamp Duties Act?

The Hon. K.J. MAHER: My advice is that there is not a departure and that the foreign investment surcharge is only liable if there is a duty that is liable.

The Hon. R.I. LUCAS: The tax lawyer's view, which the minister's advisers have agreed with, is that duty imposed could be payable on an option or a contract for the sale of land. So, the minister has already agreed with that in certain circumstances that he outlined. The tax lawyer is saying that that is a significant departure from the current taxing regime. The minister is saying, on the basis of his advice, that the government and the government's advisers disagree with the tax lawyer's interpretation.

The Hon. K.J. MAHER: Again, my advice is that the foreign ownership surcharge is only payable if it is a dutiable instrument. We are at a loss to see how that is a departure if it is only payable on a dutiable instrument.

The Hon. R.I. LUCAS: I guess the government's advisers and the tax lawyer will just have to agree to disagree. Ultimately, a court of law will determine that. I move on to the next area. This is in relation to the advice I have received, as follows:

> So the current drafting of the proposed section—

this is under the 'dutiable instrument' section—

> suggests the surcharge applies whether or not any ad valorem duty is payable or not payable. Section 72(2) is fundamentally a new head of duty. All that is required is that there is an instrument; that instrument effects, acknowledges, evidences or records a transaction; the transaction involves a foreign person acquiring an interest in residential land.
>
> Therefore, it should be clarified by an express provision in the proposed section 72 that a dutiable instrument is one assessed with ad valorem duty under the SDA [Stamp Duties Act]. This is so that the surcharge is only payable

where ad valorem duty is payable. Further, as previously suggested, on one view the surcharge appears not to apply to an instrument that is liable to ad valorem but then exempted from such duty. The provision should then specifically exempt from the surcharge those instruments that are not liable from conveyance duty.

The second part of that was raised in the debate on budget measures, and I think the government's advisers agreed to disagree in relation to that aspect. However, my question remains. According to the tax advice I have received, there should be an amendment, a clarification and an express provision in proposed section 72 that a dutiable instrument is one assessed with ad valorem duty under the SDA. What is the government's response to that tax advice?

The Hon. K.J. MAHER: I thank the honourable member for his question. The very simple advice I am getting is that the response that we previously gave has not changed. It is the same as when this was raised a couple of weeks ago when we were doing the Budget Measures Bill.

The Hon. R.I. LUCAS: Which is what? That the government understands the tax lawyer's position but does not agree that there should be an amendment?

The Hon. K.J. MAHER: Yes, that is correct.

The Hon. R.I. LUCAS: As I said, these questions all range over clauses 3, 4 and 5, so with your concurrence they alternate between clauses. This one is in relation to clause 4, residential land. The background to this is, as outlined in the budget measures debate, the Commissioner of Taxation is going to rely on the land use codes provided by the Valuer-General. In most situations, it is determined whether a property is residential land, which is clause 4, 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 a code as may be assigned by the Valuer-General, yet such codes are being increasingly used.

What the tax lawyer is highlighting again is that this legislation is referring to land use codes and the commissioner is going to rely on the land use codes produced by the Valuer-General and there is no mention in the Valuation of Land Act about land use codes. It is done administratively and there is no right to object from a complainant to such a code as may be assigned by the Valuer-General. The complaint is, 'Well, these are now being increasingly used under this provision and the government is relying on that again.' The tax lawyer is suggesting that 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 and ensuring they are subject to a full merit review.

This is not addressed in this bill or in the package of legislation. What is the government's response to the first point, that is, the use of the land use codes? Secondly, what is the government's policy position in relation to whether or not a complainant should have the right to object to what they may well argue is a completely erroneous decision taken originally by the Valuer-General about a land use code, which is now being used by the tax commissioner, which is now going to be used to impose additional stamp duty surcharges?

The Hon. K.J. MAHER: My advice on the first part of that is that the government believes the Land Use Codes is the most appropriate mechanism. On the second part, and I cannot remember exactly how it was described, but if someone believes it is a completely erroneous categorisation, the advice that was given last time when we discussed it in budget measures is that the commissioner and the Valuer-General had preliminary discussions and are committed to considering the issue in greater detail about providing some sort of right for objection to be considered.

The Hon. R.I. LUCAS: I guess the tax lawyer was optimistically hoping that, given it has been a few weeks since the last time we debated it, the Valuer-General, the commissioner and the government might have progressed it so that they could have introduced a right of complaint. It seems to me that the tax lawyer has identified a problem. The government is not arguing that there is not a problem, saying, 'Look, we will have a look at it.' Here is the opportunity to have done something about it but the government's position is currently that they do not have a resolution and they will look at it if they are re-elected in March of next year.

Moving on to another issue: in relation to the issue of residential land definitions, tax advice provided to me indicates:

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 transaction and there are only minor improvements then the zoning of the land under zoning laws is to be used, so land with buildings of a residential character no matter what the zoning will be treated as residential land for the purpose of these provisions.

My question to the minister is: do the government's advisers agree with that? In essence, what he is saying is that the land is not zoned residential—it is zoned commercial or whatever other zoning it might be, not residential—but if the government decides that land has buildings of a residential character, no matter what the zoning is you will be applying these particular provisions to that particular purchase.

The Hon. K.J. MAHER: The advice stands from last time. The methodology set out in this act, which was previously in the Budget Measures Bill, is identical to the methodology adopted in the Stamp Duties Act, and we think that is the appropriate mechanism.

The Hon. R.I. LUCAS: I will check the record, but I do not believe this particular issue was raised in this detail in the Budget Measures Bill, although I will stand corrected if it was.

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: Well, it might have been very broad, but it was not this particular issue. The issue of the land use codes was, but this is actually the definition of residential land. The question still remains, irrespective of whether it is consistent with what has been there or not. That is, is it correct that, irrespective of the zoning, if there is a zone that is not residential but the government decides, or the commissioner decides, that the buildings on that commercial zone are of a residential character, that this particular surcharge can be imposed in that case?

The Hon. K.J. MAHER: I thank the honourable member for his question, and I preface what I am about to say, for the future use of what we put onto *Hansard*, that this is advice from Treasury, not advice from experts in the land use area. Working through the section, the predominant use test, if it is predominant residential use, would, on the plain reading of it, tend to indicate that if its predominant use is residential then, yes—but these are not land use experts, these are Treasury officials.

The Hon. R.I. LUCAS: Can I suggest we report progress? I would like to pursue this after lunch.

Progress reported; committee to sit again.

Sitting suspended from 13:00 to 14:18.

POLICE (DRUG TESTING) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

LIQUOR LICENSING (LIQUOR REVIEW) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (COURT FEES) BILL

Assent

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (SACAT NO 2) BILL

Assent

His Excellency the Governor assented to the bill.

AUSTRALIAN ENERGY MARKET COMMISSION ESTABLISHMENT (GOVERNANCE) AMENDMENT BILL

Assent

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (SENTENCING) BILL

Assent

His Excellency the Governor assented to the bill.

STATUTES AMENDMENT (VEHICLE INSPECTIONS AND SOUTH EASTERN FREEWAY OFFENCES) BILL

Assent

His Excellency the Governor assented to the bill.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the President—

Auditor General Supplementary Reports for the year ended 30 June 2017—
- Adelaide Riverbank (Festival Plaza) Development November 2017
- Disaster Recovery Planning November 2017
- Grant to One Community SA November 2017
- State Finances and Related Matters November 2017

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

Reports, 2016-17—
- Administration of the Development Act 1993
- Courts Administration Authority
- Department of Planning, Transport and Infrastructure
- Electoral Commission of South Australia
- Equal Opportunity Commission
- HomeStart Finance
- Independent Gambling Authority
- Legal Profession Conduct Commissioner
- Mining and Quarrying Occupational Health and Safety Committee
- Riverbank Authority
- South Australian Civil and Administrative Tribunal
- South Australian Employment Tribunal
- South Australian Housing Trust
- State Theatre Company of South Australia
- Urban Renewal Authority (Renewal SA)

Remuneration Tribunal
- Determination No. 13 of 2017—Accommodation and Meal Allowances for Ministers of the Crown and Officers and Members of Parliament
- Determination No. 14 of 2017—Accommodation and Meal Allowances—Judges, Court Officers and Statutory Officers
- Determination No. 15 of 2017—2017 Judicial Security Allowance
- Report No. 10 of 2017—2017 Review of the Common Allowance for Members of the Parliament of South Australia
- Report No. 11 of 2017—2017 Review of Electorate Allowances for Members of the Parliament of South Australia
- Report No. 12 of 2017—Annual Review of Reimbursement of Expenses Applicable to the Electorate of Finniss—Travel by Ferry

Report No. 13 of 2017—2017 Review of Accommodation and Meal Allowances for Ministers of the Crown and Officers and Members of Parliament.
Report No. 14 of 2017—Accommodation and Meal Allowances—Judges, Court Officers and Statutory Officers.
Report No. 15 of 2017—2017 Judicial Security Allowance
Report of the Operation of the Independent Commissioner Against Corruption Act 2012 for the period 20 December 2012 to 24 November 2017
Regulations under the following Acts—
Harbours and Navigation Act 1993—Lifejackets
Heavy Vehicle National Law (South Australia) Act 2013—Amendment of Law No 4
Intervention Orders (Prevention of Abuse) Act 2009—National Domestic Violence Orders
Public Corporations Act 1993—Supported Community Accommodation Services

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

Reports, 2016-17—
Australian Children's Education and Care Quality Authority
Department for Child Protection
Dairy Authority of South Australia
Education and Early Childhood Services Registration and Standards Board of South Australia
SA Cattle Advisory Council
SA Sheep Advisory Council
Teachers Registration Board of South Australia
Veterinary Surgeons Board of South Australia

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

Reports, 2016-17—
Balaklava Riverton Health Advisory Council Inc.
Barossa and Districts Health Advisory Council Inc.
Bordertown and Districts Health Advisory Council Inc.
Ceduna District Health Services Health Advisory Council Inc.
Department for Communities and Social Inclusion
Eudunda Kapunda Health Advisory Council Inc.
Far North Health Advisory Council Inc.
Gawler District Health Advisory Council Inc.
Hawker District Memorial Health Advisory Council
Hills Area Health Advisory Council
Kangaroo Island Health Advisory Council Inc.
Kingston Robe Health Advisory Council Inc.
Leigh Creek Health Services Health Advisory Council
Lower Eyre Health Advisory Council
Lower North Health Advisory Council Inc.
Mid North Health Advisory Council Inc.
Mid-West Health Advisory Council Inc.
Millicent Hospital Advisory Council Inc.
Mount Gambier and Districts Health Advisory Council Inc.
Northern and Yorke Peninsula Health Advisory Council Inc.
Office for the Ageing
Port Broughton District Hospital and Health Service Health Advisory Council Inc.
Port Pirie Health Service Advisory Council Inc.
Quorn Health Services Health Advisory Council Inc.
South Australian Multicultural and Ethnic Affairs Commission
South Coast Health Advisory Council Inc.
Southern Flinders Health Advisory Council Inc.

Whyalla Hospital and Health Service Health Advisory Council Inc.
Yorke Peninsula Health Advisory Council Inc.

Parliamentary Committees

SELECT COMMITTEE ON STATEWIDE ELECTRICITY BLACKOUT AND SUBSEQUENT POWER OUTAGES

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:27): I lay upon the table the final report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON STATUTORY CHILD PROTECTION AND CARE IN SOUTH AUSTRALIA

The Hon. S.G. WADE (14:28): I lay upon the table the final report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

SELECT COMMITTEE ON TRANSFORMING HEALTH

The Hon. S.G. WADE (14:28): I lay upon the table the final report of the select committee, together with minutes of proceedings and evidence.

Report received and ordered to be published.

STATUTORY AUTHORITIES REVIEW COMMITTEE

The Hon. J.M. GAZZOLA (14:28): I lay upon the table the 69th report of the committee on its inquiry into the Economic Development Board.

Report received and ordered to be published.

CRIME AND PUBLIC INTEGRITY POLICY COMMITTEE

The Hon. J.E. HANSON (14:29): I bring up the report of the committee on its inquiry into serious and organised crime, that being the Unexplained Wealth Act 2009.

Report received and ordered to be published.

Ministerial Statement

MURRAY-DARLING BASIN ROYAL COMMISSION

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) (14:29): I table a copy of a ministerial statement made in the other place by the Premier relating to the Murray-Darling Basin Royal Commission.

POWER PLANT PURCHASE

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) (14:29): I table a copy of a ministerial statement made in the other place by the Treasurer on the topic of State Government Power Plant Purchase.

SMALL BUSINESS STATEMENT

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:29): I table a copy of a ministerial statement made in the other place by the Minister for Investment and Trade and the Minister for Small Business, entitled Small Business Statement, and I also table the document it refers to.

Question Time

QUEEN ELIZABETH HOSPITAL

The Hon. D.W. RIDGWAY (Leader of the Opposition) (14:30): I seek leave to make a brief explanation before asking the Minister for Health a question in relation to The Queen Elizabeth Hospital.

Leave granted.

The Hon. D.W. RIDGWAY: Last Friday morning, the government announced, at short notice, that patients assessed as having had a heart attack will bypass The Queen Elizabeth Hospital on weekends, after 8pm or before 8am. A few hours before, the minister attended a press conference, where Dr Tom Soulsby, the Network Director of Emergency Services for the Central Adelaide Local Health Network—the person responsible for the emergency services at both the new Royal Adelaide Hospital and The QEH—called for a range of issues to be addressed before the government implemented its plan.

Dr Soulsby referred to the current stress in the Royal Adelaide Hospital emergency department where, he said, staff were working with about 30 to 40 admitted patients each morning, the majority of whom didn't leave the ED until the afternoon. Dr Soulsby said:

> We have spent much of this week ramping because of access block. We do not have the capacity to absorb an increase in presentations or admissions without a significant improvement in discharges (both total number and time of discharge).

Given this, my question to the minister is: why did the government ignore the clinical advice of Dr Soulsby and implement the changes last Friday?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:32): I thank the honourable member for his question. There is a very important tenet to the honourable member's question which is something this government takes very seriously, and that is the need to be able to take into account the expert advice provided to the government by clinicians when we are making decisions orientated towards clinical matters.

Throughout the time I have been health minister, and that clearly has not been an extensive period of time, the government has had to make decisions—decisions that have principally rested with me as the health minister—that do require clinical advice, and that is an important part of the process. Clearly, the government has had to take clinical advice in order to be able to make sound, competent decisions that are in the interests of patients' wellbeing. That is certainly the case in respect to our decisions around The QEH.

This government is very serious about making sure that suburbs in and around western Adelaide enjoy the full suite of benefits that a modern public health system can provide for. This is a government that has regularly fronted difficult challenges and made substantial investments to ensure that that can take place. That will very much be on show in the lead-up to this election. The state government is delivering a $270 million upgrade to The Queen Elizabeth Hospital and that reflects just how much our government values the role that that hospital plays as part of our metropolitan hospital network and how much we understand that the hospital is an important, iconic institution for the provision of public health services for the western suburbs of Adelaide.

I emphasise the word 'public' because this government believes in public hospitals. This government believes in hospitals that are owned by the taxpayers and the constituents of South Australia and are in their hands so they can be responsible for future policy direction in and around those institutions. We will never be a government, we will never be a party, that will support the privatisation of key public institutions. Public hospitals are very much in the forefront of that. We know—

Members interjecting:

The PRESIDENT: Order!

The Hon. P. MALINAUSKAS: It's amazing—

Members interjecting:

The PRESIDENT: Order! Don't respond. Just answer the question, minister.

The Hon. P. MALINAUSKAS: I am happy to. It is insightful that every time a government minister in this place stands up and starts talking about the value of public ownership, those on the other side start to rankle. They start to squirm; they start to pipe up. They are listening to an answer quietly, listening to the information, and then as soon as we start talking about the value of public hospitals, they start to respond; they start to arc up. I think that is telling, personally.

Nevertheless, The Queen Elizabeth Hospital, we believe, is an iconic public institution that is worthy of investment. That's why we are committing $270 million. As part of that $270 million investment, we are going to achieve a number of things. The first thing is that we are going to build a brand-new car park. Last week, I was very proud to be able to release the design for that car park.

Members interjecting:

The Hon. P. MALINAUSKAS: The car park is important because it has to be built first. It might be a learning for those members opposite, who again seek to interject, that the car park needs to be built first, because the existing car park site, on the southern side of the iconic tower at The QEH, is where we are going to build a brand-new clinical facility, which will include a brand-new emergency department—a brand-new and, I am advised, larger emergency department, which will be a great result for everyone who relies on the ED in the western suburbs.

Also part of that redevelopment will be brand-new theatres, brand-new operating theatres. We will also be including brand-new cath labs, which will be a great outcome for those people who are seeking cardiac services in the western suburbs. This government is serious about The QEH. We are serious about The QEH remaining in public hands for many years to come, and not just because that sounds good but because this government actually believes in high-quality health care delivered by the government of South Australia, for the people of South Australia, in public hands.

QUEEN ELIZABETH HOSPITAL

The Hon. S.G. WADE (14:37): A supplementary question: did the minister speak to Professor Horowitz and seek his clinical advice on the changes he made last Friday?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:37): Yes.

QUEEN ELIZABETH HOSPITAL

The Hon. S.G. WADE (14:37): Supplementary: when did the minister speak to Professor Horowitz?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:37): On more than one occasion in the lead-up to the decision that was made.

QUEEN ELIZABETH HOSPITAL

The Hon. S.G. WADE (14:37): Supplementary: given that the key clinical issue in relation to safety was the lack of anaesthetic cover, how did this lack of cover occur and why should it take seven months to fix?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:37): We want to make sure that we are employing the best. We want to have a thorough recruitment process around all the required services that need to be in place to be able to deliver a 24/7 cath lab operational in a safe way. The Hon. Mr Wade should take note that this government is serious about taking clinical advice. We are starting to see a bit of a track record develop, where the Hon. Mr Wade, in a bolt to try to have some relevance, in a desperate attempt to try to create the impression that the Liberal Party has a cogent, well thought through health policy, in a desperate attempt to do that, rushes decisions out.

It is starting to unravel. We have already seen reported recently that there is a very large number of clinicians who are very concerned about the Hon. Mr Wade and the Liberal Party's policy

in respect of the Modbury Hospital. They are very concerned. Forty-six people have signed a letter to that effect.

The Hon. S.G. Wade: One hundred Modbury clinicians versus zero.

The Hon. P. MALINAUSKAS: It is very interesting.

The Hon. S.G. Wade: Transforming Health ambassador.

The Hon. P. MALINAUSKAS: Yet again, the Hon. Mr Wade arcs up when we start talking about clinical advice. I would have thought that that is something there would be a unanimity of opinion around. I would have thought that it is a pretty basic tenet when it comes to the development of health policy that you don't just rush out a policy because we had a reshuffle and you are worried about what might occur, that you are better to work through these complex issues, and they are complex—

The Hon. S.G. Wade: You just can't make decisions. Postpone it until after the election.

The Hon. P. MALINAUSKAS: There will be a decision. Don't worry, the Hon. Mr Wade. There will be a decision when it comes to our Modbury review and you are going to find out all about it. We are serious about taking on board clinical advice, whether it be at The QEH, whether it be at the RAH, whether it be at the Modbury Hospital, and that is why our health policy will be cogent, methodical and based on evidence and advice, because we want to make sure people get the health care they deserve.

DAW PARK SITE

The Hon. J.M.A. LENSINK (14:39): I seek leave to make a brief explanation before directing a question to the Minister for Health on the subject of the Daw Park site, the former Repatriation General Hospital.

Leave granted.

The Hon. J.M.A. LENSINK: The ACH Group has made a submission to the government to amend the zoning of the former Repat site to make land subdivision a permitted use. The group has indicated that it expects to pay stamp duty on the sale in spite of the fact that it is a charity. My question for the minister is: can the minister assure this place that he will not agree to any master plan for the former Repat site which is predicated or includes a sell-off of Repat land?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:40): The government's position in respect to the Repat site is clear. We've got an agreement with the ACH Group which is all about making sure that that site is used into the future in the community's interest, and that is what we are working towards delivering. I am expecting in due course, in fact hopefully rather soon, from the ACH the master plan for that site. We are very confident and hopeful that that master plan will be consistent with the principles that we have set out for the site, including it being used for community use in a health-precinct orientated way.

It's a great site. It's an iconic site. It's got a lot of emotion attached to it, and that's something that we are very keen to acknowledge. But we want to make sure that the site can be used in a way that is consistent with the needs of the community and consistent with the legitimate expectations the community has around it. We want to make sure that the site honours the legacy of it but also delivers an outstanding service into the future.

DAW PARK SITE

The Hon. J.M.A. LENSINK (14:41): Supplementary arising from the answer: is the sale of any portion of the site consistent with those principles?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:42): My advice is that the ACH Group are very much committed to the site in the long term, but in the event that any sale of part of the site were to occur, it would be subject to the same principles through the land management agreement that is associated with it. We have put in place a range of protections to ensure that that site will continue into the future regardless of its ownership, will continue into the future to ensure it is used in the way that we want it to be used, which is consistent with the community's interests in a health-orientated precinct.

DAW PARK SITE

The Hon. J.M.A. LENSINK (14:42): A further supplementary: can the minister guarantee that the land management agreement will apply to all of the former Repat site, including any portion of land that's sold by the ACH Group?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:42): I think I've answered that question. I said previously that if the ACH Group were to sell a component of that land in the future—we don't anticipate that will be happening anytime soon, but if that were to occur—my advice is that the land management agreement that applies to that site would continue on, which means that the site would continue to be used into the future, regardless of its ownership, in a way that's consistent with the principles set out in the land management agreement, which is consistent with what this government wants to see happen to the site, which is that it gets used for community purposes.

DEMENTIA CARE FACILITIES

The Hon. S.G. WADE (14:43): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse questions in relation to accommodation for people with extreme BPSD.

Leave granted.

The Hon. S.G. WADE: In his report into the older persons mental health facility at Oakden, then chief psychiatrist, Dr Aaron Groves, noted that the level of care needed to support people with tier 7 BPSD—that is, extreme behavioural and psychological symptoms of dementia—far exceeds the level of care able to be provided by dementia-specific nursing homes. According to Dr Groves, at the time of his review there were at least 20 people with tier 7 BPSD in South Australia, 14 of whom were living at Oakden. The remainder were in public hospital mental health wards and dementia-specific aged-care facilities where Dr Groves noted their presence has a significant disruptive impact on other residents.

Four months after finalising his report, Dr Groves told a parliamentary inquiry that the number of people with tier 7 BPSD stuck in our general hospitals may have risen to about eight. Last week, the CEO of the Northern Adelaide Local Health Network, Ms Jackie Hanson, told a Senate inquiry that no new residents have been accepted into Oakden or Northgate since the beginning of the year. Therefore, one can only assume that there are still eight people with BPSD stuck in our general hospitals. My questions to the minister are:

1. How many people with tier 7 BPSD are currently being accommodated in SA Health general hospitals?

2. When does the minister expect the moratorium on new residents being accepted into Northgate will be lifted?

3. In the meantime, can the minister assure the council that patients with tier 7 BPSD are not being inappropriately housed long term in public hospital wards?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (14:45): Thank you to the honourable member for his important question. The Oakden experience has undoubtedly been tragic. This is one of the most unacceptable cases that has occurred in recent South Australian history in respect to care for older people, and that has been widely acknowledged. It is very important that whoever is in the position that I am now privileged to hold devote themselves to ensuring we do whatever we can to prevent such an instance from happening again. One of the ways that the government is seeking to achieve that objective is, of course, to respond to the SA Health Oakden Response Plan that was established some time ago, back in June this year.

The SA Health Oakden Response Plan Oversight Committee was established to provide oversight and guidance in implementing the six recommendations that were made in the Chief Psychiatrist's report. There were a number of recommendations—six—and we set up six distinct and interrelated expert working groups. These have been established to implement each of the recommendations. An expert working group has been working on the development of a proposed

model of care for people with very severe to extreme behavioural and psychological symptoms of dementia, and, of course, enduring mental illness.

The model of care is in the final stages of its development and a scoping study is underway to determine the site and design of the brand-new $14.7 million facility. In respect to some of those recommendations that came out of the Oakden report for people with extreme BPSD or tier 7 BPSD, the development of a 24-bed, single-site neurobehavioural clinic as the centre of excellence for subacute care was recommended. That's something we are getting on with in developing and pursuing. In respect to the Hon. Mr Wade's specific question around numbers, I am happy to take that question on notice and try to get that information as quickly as possible.

SPACE INDUSTRY FORUM

The Hon. J.E. HANSON (14:47): My question is to the Minister for Science and Information Economy. Can the minister inform the chamber about the fourth South Australian Space Industry Forum, which was held in Adelaide last week?

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) (14:48): I thank the honourable member for his question and his ongoing interest in the area of space and the emerging economic opportunities. I was fortunate to speak at the opening of the forum. I noted the Hon. Justin Hanson attending not just the opening but also delivering the closing address. I suspect he probably attended every session during the whole day of this forum held last week.

Last week, global space players touched down in South Australia for an exceptionally important space forum. The forum is a biannual event that facilitates collaboration in the space sector between academics, entrepreneurs, industry associations, government and key international space players. The forum, held at the Adelaide Convention Centre, included a full day of talks and presentations from local and international space organisations, including speakers from such organisations as Planet, CSIRO, the United Arab Emirates Space Agency, Korean company APSI, Italian space company SITAEL and New Zealand's Centre for Space Science Technology.

It was also a good opportunity for key international space players to connect with some of South Australia's most innovative start-ups and companies at the largest ever space forum that we have held. It was an opportunity to talk about the important industry that is rapidly gaining momentum in South Australia and across Australia. Our state is a trailblazer in Australia when it comes to this industry so it is little wonder that we had around 250 representatives attend this forum. We had one of the very first space industries in our part of the world, and in years gone by developed a significant space economy.

This will stand us in good stead for when the new and recently announced national space agency is developed, as we have an industry that is ready to step up and lead our nation's contribution in the space area. The South Australian government is collaborating with the ACT and the NT to achieve a unified voice. We are a state with a long history in the space field: from the very first rocket launch at Woomera in 1957 to Australia's first satellite launch in 1967—which had us as only the third nation to launch a satellite from their own territory after the US and Russia during the Cold War period, during which Woomera had the second highest rate of rocket launches in the world, second only to NASA at Cape Canaveral—right through to the current decade where Woomera is still being used for research and activities in this area.

We are not just a state with a strong past in the space industry; we are a state with a highly competent and strong future as well. Very recently, Adelaide hosted one of the most successful international astronautical congresses ever held. It put South Australia in the international spotlight and fostered collaboration opportunities between international agencies, universities, primes and start-ups. The outcomes of the congress will no doubt lead to increased innovation, investment and jobs across the sector. It is estimated that there are currently around 800 people employed in some form in the space sector in South Australia, and we are keen to significantly grow this number.

The opportunities are almost limitless, from upstream engineering and science projects involved in space operations, through to downstream activities related to the use and commercialisation of data and images obtained from satellites. South Australia is perfectly placed to

lead this emerging industry in this country and to be a key industry hub that is integral to the success of the industry here. Our state is home to a highly developed and capable ecosystem which is rapidly expanding and thriving. More than two-thirds of our space companies were established since 2000 and I am informed that of these almost half have been founded in the last five years.

In the past seven years, the number of South Australian companies involved in this area has tripled. I am informed that there are 32 companies now in operation, in addition to a further 30 organisations, from education and research institutions, private consultancies and state and federal government departments, that are involved in the local space industry. I understand there are about 34 start-up companies involved in space-related projects nationally, and one-third of these are based in South Australia. This number is set to increase, with support from the South Australian government's $4 million Space Innovation Fund. There will be incubator and accelerator programs for entrepreneurs and start-up space businesses, and applications, I am informed, will be open in February next year.

The Space Industry Association of Australia has more members based in SA than any other state or territory. The space industry has been and particularly going forward will be vital as part of the transformation of our economy to a high-growth, high-value economy that includes research and advanced manufacturing. It was pleasing to see at the recent jobs expos around South Australia, many young people considering careers that may lead them into the space industry. Supporting students to explore and pursue pathways in science, technology, engineering and maths is a high priority.

We recently announced, and it was publicly announced at the space forum, the recipients of five scholarships to participate in the Southern Hemisphere Space Studies Program next January. I want to congratulate the recipients, Jade Chantrell, Edward Cronin, Jack Hooper, Hamish McPhee and Keith Wright, who will undertake an intensive multidisciplinary program for space organised by the University of South Australia and the International Space University. I look forward to this developing industry and the potential that it has for industry and employment in this state.

POWER SUPPLY, FOSSIL FUEL

The Hon. M.C. PARNELL (14:54): I seek leave to make a brief explanation before asking the Minister for Climate Change a question about new fossil fuel power stations in South Australia.

Leave granted.

The Hon. M.C. PARNELL: Tomorrow is the final day for public submissions in relation to two new private gas-fired power stations in South Australia, which have a combined capacity of 720 megawatts. If we add the government's own proposed new 250-megawatt gas-fired power station we can see that there are now 970 megawatts—nearly a gigawatt—of new fossil fuel generators proposed for South Australia to pollute the environment and exacerbate climate change.

The two coming up for a decision soon include AGL's proposed Barker Inlet power station and an Alinta proposal for a power station at Reeves Plains, which is about 50 kilometres north of Adelaide. To put these new fossil fuel generators into context, they are together nearly twice the size of South Australia's biggest wind farm, the one at Snowtown. The AGL proposal is to replace the ageing plant at the Torrens A power station. So, rather than retiring redundant fossil fuel generation and moving to renewables and storage, AGL's plan is to replace it with more fossil fuel generators.

The Alinta proposal at Reeves Plains is a new peaking plant of 300 megawatt capacity. According to the proponent it is likely to achieve an emissions intensity of half a tonne of CO_2 per megawatt hour of energy produced. Alinta estimates that the power station will operate approximately 1,400 hours per year, and they anticipate the gas turbines would typically run for a duration of no more than four hours, although this would be substantially subject to market conditions. Of course, there will be nothing to prevent them from running for as long or as often as they want, provided they can make money. On Alinta's own figures the plant will produce 210,000 tonnes of CO_2 per year, which is equivalent to around 45,000 additional petrol or diesel cars on the road. My questions are:

1. As Minister for Climate Change, what role did the minister play in supporting these new fossil fuel power stations, which are being sponsored by the Department of the Premier and Cabinet and the Department of State Development?

2. Was the minister consulted about the climate change implications of these projects?

3. Does the minister think that building new fossil fuel generators is the best way to achieve climate objectives, such as the Carbon Neutral Adelaide initiative?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (14:57): I thank the member for his most important question, because it allows me to again put on the record the absolute lack of action, in terms of climate change, by the federal government. Let's understand what the now NEG proposal put up by the Prime Minister and minister Frydenberg—

The Hon. D.W. Ridgway: I don't recall him asking about the federal government.

The Hon. I.K. HUNTER: It is the federal government that sets these policies. The federal government sets the policies—or does not, in this case—

The PRESIDENT: Order! The minister will not respond—

The Hon. D.W. Ridgway interjecting:

The Hon. I.K. HUNTER: The Hon. David Ridgway is a little bit prickly about this, Mr President.

The PRESIDENT: Order! The minister will not respond to the Leader of the Opposition—

The Hon. D.W. Ridgway interjecting:

The PRESIDENT: —and the Leader of the Opposition will desist immediately.

The Hon. I.K. HUNTER: They don't have a policy in this state. What is the Liberal Party's policy on climate change and energy? It is to remove the state's renewable energy target and hand over control to the federal government, that does not want one. That is their policy, that is the policy that the Hon. David Ridgway is out there trying to support: 'Let's take away the state renewable energy target, let's take it away and give all responsibility for it to the federal government.' What is the federal government's proposal? It is not to have a renewable energy target, it is to have an NEG, a national energy guarantee, which backs in coal, backs in fossil fuels, and stops any more investment of renewable energy across the country right through to 2030 and thereafter.

The other thing about this policy that is not understood is that it will stop South Australian householders putting new PV solar-generating panels on their own homes. This is what the commonwealth policy that has been floated by the Prime Minister and by Josh Frydenberg, the Minister for the Environment, for goodness sake, proposes to do. It is actually going to put a handbrake on renewable energy installation across our country while it is backfilling with coal and gas-fired power stations. That is the signal they are sending to the market through their so-called NEG.

So, when we come to the proposal of what is happening to South Australia, these are being led by initiatives of the federal government. They have control of the market mechanism, not South Australia. What happened to our control? The Liberal Party sold it. They sold our power stations. They sold our electricity system to overseas interests, taking away any control whatsoever the state government has over the electricity market in South Australia. For the first time, this state government has now bought back into energy by purchasing our own state-owned power plant.

Even before we sign the documentation to buy that, the Liberals are out there proposing that it be sold again. That's their next policy on energy. Anything the state government invests in energy policy and security and reliability for this state, they are going to go out and sell. They are going to flog it off again because they don't believe that the state government should have any role in setting energy policy. They don't believe the public should have control over energy. They don't believe we should have sustainability and self-sufficiency of our energy supplies in this state, because in their hearts they are rank privatisers, and that's all they can do.

I have spoken before in this chamber about my very deep fears that if they ever get their hands on the Treasury benches, they will be privatising SA Water. We know from their record they have already privatised ETSA. Before we even inked the cheque to buy back a little bit of our security and self-sufficiency in power supplies, they have promised to sell it.

Let's understand clearly where the levers are. What the Liberals want to do in this state is take the other control, the state-based renewable energy target, that this state government has established and give it away to the commonwealth to run, which means there will be none, because the commonwealth Liberal and National parties don't believe in renewable energy targets. They don't even believe in clean energy targets which were set up by the Chief Scientist at the behest of Malcolm Turnbull. What he found out very quickly was that he is being held captive by the coal interests in the Coalition who won't let him have one; they won't let him have a clean energy target. What he wants to do now is to have—

The Hon. P. Malinauskas: Weak as water.

The Hon. I.K. HUNTER: Absolutely; weak as anything. What he wants to do now is fall back to the fourth best position, the NEG. All the NEG will do—

Members interjecting:

The PRESIDENT: Order! Will the Leader of the Opposition and the Minister for Health desist. The minister is trying to answer a question. Allow him to answer.

The Hon. I.K. HUNTER: What we have seen so far is that the policies that are in place at a federal level which control the market signals that go to that sector of the economy are saying, 'We haven't got any policies for you other than our 2030 plan to put a handbrake on all renewables.' There will be a tiny amount.

What is not often not understood—and I make this point again very strongly—is that Malcolm Turnbull's plan for the NEG will stop any more renewable being invested in this country and it will stop private householders investing in renewable rooftop solar energy, because that's not what the Liberal-National Party Coalition in Canberra see as the future. They do not see renewables as the future.

I come back to the question asked by the Hon. Mark Parnell. Once again, he misunderstands how we transition to a renewable energy grid. We have had this debate in this chamber previously. The Hon. Mark Parnell, in the traditional way of the Greens, says we should go cold turkey, turn off all of the fossil fuel generating facilities that we have. Never mind if that crashes the grid because we don't have sufficient renewables in the system.

We have a much more realistic approach. We know that you need to transition your economy if you want to go into renewable energy. We have made commitments, which we are now seeing delivered.

Members interjecting:

The PRESIDENT: Order! Minister, take your seat.

Members interjecting:

The PRESIDENT: Order! The next time we are interrupted, on either side, you will lose a question and I will put it straight to the crossbench. They are sitting there patiently waiting to put their question, only to be sidetracked by listening to some—

An honourable member: To the rubbish.

The PRESIDENT: Well, it's his answer. The honourable minister, will you complete your answer as soon as possible, please.

The Hon. I.K. HUNTER: I have quite a bit of answer to give, Mr President. The challenge, which the Hon. Mr Parnell doesn't want to understand, clearly—well, at least in this chamber—is that when you need to decarbonise your electricity sector, you need to transition it away from coal. You can't do that in one big jump. You need to send a signal to the industry about what your intentions are so they can plan for the future, because the investment that is required in this plant and

equipment has a 20 to 30-year time frame for the level of that investment. You can't do that overnight. You certainly can't do that overnight in a planned way that is going to keep your electricity flowing through the grid.

Experts have, for a number of years, said that gas has a role to play in this transition, particularly as we perfect the renewable energy technologies, such as battery storage, and integrate them into the grid system. Gas generally has a much lower emissions profile than coal—something else the Hon. Mr Parnell will probably confess to in a private conversation but not here in the chamber in question time, clearly—and is regarded as a cleaner energy source than coal. For example, as the federal government's own Climate Change Authority has noted, over one-third of Australia's greenhouse gas emissions arise from the electricity sector.

It puzzles me as to why the federal government, which understands that there is technology in place to transition our electricity sector away from fossil fuels into the newer technologies and do some of the heavy lifting to get to the Paris goals that were set and signed up to by Prime Minister Turnbull, wants to put the handbrake on that and say to the energy production sector, 'No, we won't require you to do this extra heavy lifting to help decarbonise our emissions in this country. We are now going to move that responsibility out of the energy sector, where there are already technical solutions to these problems, out to the transport sector, out to the agriculture sector, out to the manufacturing sector,' where there aren't the same sort of cost-effective solutions already in play. Why would the federal government do that? I don't understand.

The electricity sector can bear most of this heavy lifting because we have the technology and, guess what, Mr President? The technology is cheaper. Renewables are cheaper than fossil fuels. We can do this in a planned and structured way over time, but the federal government says, 'No, we're not going to do that anymore. We're going to force the other sectors in our economy—

Members interjecting:

The PRESIDENT: Order!

The Hon. I.K. HUNTER: —where there aren't these solutions, certainly aren't cheap solutions to do more of the heavy lifting.' The federal government's de facto answer for supporting the NEG will be that agriculture has to pick up the slack and reduce more emissions. It will be manufacturing that will have to pick up the slack and reduce more emissions. It will mean the transport sector will have to pick up the slack and reduce more emissions. That is what the NEG is all about and that is something you are not reading about, and certainly the Hon. Mr Ridgway won't be telling you that because I doubt he even understands the first part of it.

The same data that I referred to from the Climate Change Authority shows that brown coal makes up about 19 per cent of energy generation but accounts for about 35 per cent of the sector's emissions, while black coal generation is about 43 per cent and accounts for about 53 per cent of the sector's emissions.

The role of gas in the electricity sector has also been recognised by many people as being incredibly important in our transition to a renewable energy structured grid. Indeed, it has actually been recognised as such by the Greens party. I am advised that modelling released by the Greens in the lead-up to the 2016 federal election, as part of their commitment to 90 per cent renewable energy by 2030, showed that gas will continue to play a role both leading up to 2030 and in subsequent years. Their own modelling that their federal Greens party has relied on says that gas will continue to play an important role in that transition. Maybe the Hon. Mark Parnell didn't get a memo. Maybe he didn't; we will give him the benefit of the doubt.

The PRESIDENT: It is the last week of our parliamentary term. There are a number of people who want to ask questions, so could you please bring your answer to a conclusion.

The Hon. I.K. HUNTER: Indeed, Mr President. I will sum up by saying this: the challenge facing our country and indeed our state is the lack of national leadership and a coherent national policy when it comes to the electricity sector. Both the business sector and community groups are calling for the federal government to drop the ideological opposition to climate change and renewable energy and help to fix a broken National Electricity Market. I call on the Greens to drop their ideological position of going cold turkey overnight because it is just plain stupid and it won't work.

MENTAL HEALTH PLAN

The Hon. J.S. LEE (15:09): I seek leave to make a brief explanation before asking the Minister for Mental Health and Substance Abuse a question in relation to the state's mental health plan.

Leave granted.

The Hon. J.S. LEE: The state's last mental health plan expired in 2012. Four years ago, in the run-up to the last election, the South Australian Labor Party promised to ask the state's Mental Health Commission to develop the South Australian Mental Health Plan 2015-20. However, 2015 came and went, and no plan appeared. Eventually, in the second half of 2016, the Mental Health Commission commenced community and stakeholder conversations on the long-awaited plan. This led to the release of a discussion paper in June this year, and public commitment to finalise the plan in October.

Notwithstanding that it is now late November, in the last sitting week, and the plan has not been publicly released, the following statement still appears on the Premier's website: 'The mental health strategic plan is proposed to be delivered in October 2017 as part of Mental Health Week.' My question to the minister is: has the state's new mental health plan been finalised?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:11): I thank the honourable member for her important question. The state mental health plan is an important exercise. It will set, largely, the strategic direction of mental health services in this state for many years to come. We see it taking us through to 2022, so it is important that we get it right.

I mentioned earlier that we are not going to be an outfit that just sort of rushes things out there. They need to be thought through, based on clinical advice, and need to be dealt with cogently, methodically and in a way to achieve a political objective. What we want to do is make sure we get it right, and when it comes to mental health I think we are all too aware that this is an area that is enjoying a lot more attention than it has in the past, and it needs to have a lot more attention into the future if we are going to ensure that people who need these services, and rely upon state government, publicly-owned delivered services, get the right outcomes.

I had the great pleasure only yesterday to be able to meet with a youth advisory group which has played an important role in making a contribution to the plan. I was quite taken aback yesterday evening when I got to meet with some of the contributors who have decided to have the courage, despite their own difficult circumstances, to not just dwell on their own condition but rather use their condition as an opportunity to be able to convey important messages when it comes to young people's issues in and around mental health service delivery.

These were young people who in at least two instances had rather difficult circumstances in their own lives as a result of their mental illness at a young age, and for them to have the courage to be able to come forward and make a contribution in a positive way is something I would like to acknowledge, and I most certainly commend. Consultation like that, which has taken place with young people, has occurred throughout the state—older people, younger people, people from regional and metropolitan areas, right across the state. There has been a comprehensive effort to make sure that the plan isn't something that is just cooked up, but rather a plan that has been developed in conjunction with those people who are most affected by it: clinicians, consumers, you name it.

We anticipate the plan will be released very shortly. We won't be rushing it, but it will be released shortly. We remain committed to getting this right. I put on record my thanks to Commissioner Burns for all the efforts he has undertaken and continues to undertake in this important field.

LOW-FLOW BYPASS SYSTEMS

The Hon. J.A. DARLEY (15:13): I seek leave to make a brief explanation before asking the Minister for Sustainability, Environment and Conservation a question about low-flow bypass systems.

Leave granted.

The Hon. J.A. DARLEY: As outlined in the 2017-18 budget, $13.5 million has been allocated over three years to install up to 500 low-flow bypass systems in strategically located dams and watercourse diversions in the Eastern Mount Lofty Ranges, in the Angas and Bremer River catchments. I previously asked a question about low-flow bypass systems in December 2016 as to how many of these systems had been installed. In his answer, the minister advised that 11 trial sites had been installed, utilising $340,000 in funding from the Murray-Darling and Adelaide and Mount Lofty Ranges natural resources management boards. My questions to the minister are:

1. Is installation of these systems voluntary or compulsory?

2. How are sites for low-flow bypass systems and the associated funding identified?

3. How is the level of funding determined?

4. Can the minister advise how many low-flow bypass systems have now been installed and the amount of funding allocated?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:15): I thank the honourable member for his most important question, and I think it is inherent in his question that we understand—or he certainly does—the importance to the environment when we are talking about water. It is not just for irrigation purposes: it is also to maintain healthy ecosystems from which water is then extracted further downstream for other irrigation purposes. You can't see a stream, a river or a creek, for example, in isolated pockets where you just talk about taking the water out of one area—the top, the bottom or the middle. It is one contiguous system and it needs to be dealt with in that way.

If you think about it, we have been in this discussion previously, led again, I think, by the Hon. Mr Brokenshire in the past. Everybody downstream from an irrigator upstream has a very real interest in having these low-flow bypasses in place because, unless you do that, there is no water coming downstream unless it is a very large flow. You have to wait until all the dams up the top of the stream line are full before any trickles down to the next person, and the same applies to the people further downstream, so there is a question of equity involved as well.

Healthy catchments are crucial for the sustainability of irrigated agriculture all the way through our watercourses. They are very crucial to the productivity of the Mount Lofty Ranges communities in particular, and we need to make sure that the health of those river systems, those watercourses, is not adversely affected by failures to meet the environmental needs of those ecosystems that transport the water down those watercourses for irrigators to use who are further downstream from those upstream.

For that purpose, a number of water allocation plans have been constructed on the basis that environmental flows will be provided to maintain the health of those watercourses. In the Mount Lofty Ranges, water allocations to existing water users are underpinned by the requirement for environmental flows to be passed by some licensed catchment dams and watercourse diversions. Without this provision of environmental flows, the volume and the timing of flows to the environment remain significantly altered, and catchment health cannot be maintained in the way I outlined in my opening remarks.

The provision of environmental flows allows for a greater allocation of water for consumptive users such as irrigation and for it to be better managed and a more equitable approach taken. This is particularly important during periods of low flow. Environmental flows result in significant environmental benefits, if you have these bypass systems in place, for the cost of only a very small reduction in the volume captured by dams. Current research is supporting the concept of providing environmental flows from strategic locations within particular catchments rather than around each and every existing dam. Low flows are only a small proportion of total flows. Medium and high-flow events can still be expected to fill a dam, as is normal business.

As the honourable member said in his question, 11 trial sites have been established to test a range of different methods to pass environmental flows from farm dams. Several of these sites are used for production, and business has continued as per usual, I am advised, after the installation of these low-flow devices. Some of these sites provided a demonstration opportunity, and I think the

Hon. Mr Brokenshire has taken advantage of that and gone out to visit a couple of these sites, along with the member for Mayo, Ms Rebekha Sharkie. Some of these sites provide a great demonstration for the community to see how they are meant to work.

I am advised that during the process to select the sites, the project engaged in one-on-one conversations with over 50 individual landholders as well as with key industry partners and NRM groups. In August 2016, to assist landholders in the Western Mount Lofty Ranges, the Adelaide and Mount Lofty Ranges Natural Resources Management Board has supported a two-year pilot project to secure low flows at required dams and watercourse diversions in the Carrickalinga catchment. Community engagement with stakeholders in the Carrickalinga catchment has been undertaken and on-ground works commenced in October 2017.

To assist landholders in the Eastern Mount Lofty Ranges during late 2015 and throughout 2016, a business case was developed by the Department of Environment, Water and Natural Resources seeking funding through the Murray Futures program for state priority project funds from the commonwealth. These funds sought were to support the implementation of low-flow projects in the Eastern Mount Lofty Ranges, the project named Flows for the Future.

The Flows for the Future business case process was successful in gaining Australian government funding support for a project in a section of the Eastern Mount Lofty Ranges. On 16 December 2016, the Australian government approved funding of a bit over $12 million for the Flows for the Future program. This represents 90 per cent of the total project cost, with the remaining 10 per cent to be contributed by South Australia, bringing the total investment to almost $13.5 million.

Flows for the Future will provide funding for devices designed to pass low flows and their installation at up to 500 strategically located dams and surface water diversion points across the Eastern Mount Lofty Ranges, beginning, I am advised, with the Angas catchment. The program is taking a strategic approach to get the best outcome for resources invested. Some dams and watercourse diversions have more influence on the pattern of flow than others, I am advised, so are the more effective places to secure the low flows. That goes to the Hon. Mr Darley's point about how they are selected and why.

By securing low flows at these strategic locations, the environmental flow requirements described in the water allocation plans for the project region will be provided at critical times, improving catchment health and maximising the amount of water that can be allocated to support primary production and the wider community.

I am further advised that a tender for businesses to join a panel of suppliers for the design and/or construction of low-flow devices for the Flows for the Future program has opened and will close on 20 November (just past). Discussions with local industry and other representative groups in the Eastern Mount Lofty Ranges are continuing, I am advised, as part of the Flows for the Future program. Discussions with participating landholders began in July, as I said earlier, and the installation process has also begun. The Flows for the Future program will continue through to July 2019.

LOW-FLOW BYPASS SYSTEMS

The Hon. J.A. DARLEY (15:21): Supplementary: my first question was, is the installation of these systems compulsory or voluntary?

The Hon. I.K. HUNTER (Minister for Sustainability, Environment and Conservation, Minister for Water and the River Murray, Minister for Climate Change) (15:21): I believe I made that answer fairly clear, but clearly not clear enough. The way this process has been run out is that we are talking to landholders and working with willing partners, so it is voluntary participation.

INDIGENOUS STEM EDUCATION

The Hon. A.L. McLACHLAN (15:22): I seek leave to make a brief explanation before asking the Minister for Aboriginal Affairs and Reconciliation a question.

Leave granted.

The Hon. A.L. McLACHLAN: It was recently reported that only 48 per cent of South Australian Indigenous year 12 students completed at least one STEM subject, compared to 73 per cent of year 12 students overall. I ask the minister to provide his understanding of why the government's noble aim to increase the number of Aboriginal students studying STEM subjects does not appear to have been achieved and how it is being addressed.

The Hon. K.J. MAHER (Minister for Employment, Minister for Aboriginal Affairs and Reconciliation, Minister for Manufacturing and Innovation, Minister for Automotive Transformation, Minister for Science and Information Economy) (15:22): I thank the honourable member for his question. I won't have the granular detail on an area that is in the Minister for Education's area, but I am happy to make some general comments and then perhaps seek a bit more information and maybe share it with him over a coffee later in December or in January.

In many areas, the access for Aboriginal people to the same opportunities that non-Aboriginal people have sadly still lacks today. Next year will mark 10 years since the start of the Closing the Gap agenda that was introduced by former prime minister Kevin Rudd and that is spoken to in February each year by both prime ministers and leaders of the opposition, who go through seven key areas where a decade ago, as a country as represented by our prime ministers, we have made commitments to try to close that gap between Aboriginal and non-Aboriginal people in Australia. The Closing the Gap targets include things such as life expectancy and infant mortality rates, but importantly, areas to do with education. I don't have them in front of me, but they are things like year 12 completion rates and enrolling in preschool programs.

In many of the education targets that go in to meet those Closing the Gap areas, South Australia performs relatively well on a national average, but still not well enough. The honourable member is right that the science, engineering and maths areas provide great opportunities for Aboriginal students to gain meaningful, dignified employment but they also provide opportunities for Aboriginal students (afterwards) to make a huge contribution back to their communities once they enter the workforce.

I have spoken at schools around South Australia and at programs that the private sector and universities are involved in to encourage Aboriginal students to consider careers in those areas. I will find out more details on those, because it is a critically important area and is one of the ways that in the future we're going to see many Aboriginal people work towards overcoming the great disadvantage that so many face.

SLEEP CLINIC

The Hon. D.G.E. HOOD (15:25): I seek leave to make a brief explanation before asking the Minister for Health questions about the Repat sleep clinic.

Leave granted.

The Hon. D.G.E. HOOD: The last night of sleep studies at the Repat sleep clinic was Thursday 26 October 2017, just one month ago. The new sleep clinic, which is to be located at the Flinders Medical Centre, will not be ready until March 2018, I understand. The government may well have known that there was going to be some five months' delay between closing the Repat and offering the same sleep clinic services at Flinders Medical Centre, but I am advised that the employees weren't informed of this matter—at least some of them weren't—and in fact they were only recently notified about this change. In fact, I am aware of one person—but it may well be indicative of many staffers; that is, there may be more—who are now being offered piecemeal work hours which fall short of the hours offered at the Repat as it previously stood and which, of course, reduces the staffer's resulting wages significantly for what we are advised will be approximately five months, until the new Flinders Medical Centre laboratory is ready.

Our constituent made some inquiries some three years ago about converting to permanent part time—he was caught up in this situation—but was told to wait until the negotiations about the Repat future had been resolved. He became increasingly concerned about his future and the slow drawn-out process that was occurring, earlier this year, so he contacted the public sector union regarding his employment status. He was advised that, and I quote, 'SA Health is an exempt employer with regard to being compelled to change the status of long-serving employees from casual

to full or part-time.' Despite this, some staff have been employed on rolling short-term casual contracts in that environment. My questions to the minister are:

1. How many patients attended the Repat sleep clinic, and where are they currently being treated, if they are being treated currently?

2. When did the government find out that there would be a five-month gap between the closure of the Repat sleep clinic and the opening of the Flinders Medical Centre sleep clinic?

3. What steps have been taken to ensure that staff are awarded appropriate working hours, and does that include trying to make up any loss of hours caused by the closure of the Repat?

4. For what reason is SA Health an exempt employer with regard to not being compelled to change the employment status of long-serving employees from casual to full or part-time?

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:27): Let me thank the Hon. Mr Hood for his important question. Let's start with a basic component of the honourable member's question, which I think is important to acknowledge; that is, of course, the movement off the Repat site of a number of services, including the sleep clinic that was previously located at the Repat facility.

Recently, as many would know or as all would know, we completed transferring services off the Repat site to other facilities around the state. That is all part of the government's policy, which has been a challenging one for members of the community in some instances, but part of the government's policy to really be serious about making the tough decisions that are required to be able to deliver high-quality public health services in high-quality public institutions.

We have seen that policy on show in a number of areas. I think the one that has obviously got the most attention is, of course, the new Royal Adelaide Hospital, an outstanding institution. But that often, because of its sheer size, gains a lot more notoriety than other investments the state government has made in brand-new facilities. Some of those facilities are in the southern area of Adelaide.

There is a very substantial investment that has occurred at the Flinders Medical Centre. In excess of $180 million, I am advised, has been expended on those facilities, including the building of a brand-new sleep clinic that will provide an improved service on what was the case at the Repat site, in brand-new facilities. Likewise with the Jamie Larcombe Centre around Ward 17, we have seen the Ward 17 services move off the Repat site and now be housed at a brand-new facility that cost approximately $15 million, I am advised, at the Jamie Larcombe Centre at Glenside.

I have spoken about that facility previously in this place, but even top brass officials from the Australian Defence Force speak incredibly highly of that facility delivering a brand-new level of service that hasn't been seen anywhere else in the nation when it comes to returned service men and women from our armed forces who suffer conditions such as post-traumatic stress disorder.

In respect to the sleep clinic, I have received advice around some of the issues that the Hon. Mr Hood has raised. I understand that all sleep clinic services have been transitioned to the Flinders Medical Centre or the Noarlunga GP Plus. There was a period of approximately three weeks, I am advised, with no clinics to allow for the relocation, along with the administrative processes for appointments due to changing sites. I am advised that there wasn't any five-month gap. There had been a temporary reduction in sleep laboratory capacity due to the time required to build the new services. This is going out to tender on 4 December 2017.

To accommodate in the interim, there is now capacity for two sleep beds operating seven days per week at the Flinders Medical Centre and an additional five extra sets of ambulatory care equipment to provide more assessments in the home, provided, of course, that it is clinically appropriate. It is my understanding that there are no anticipated impacts to existing arrangements as part of the sleep services transferring to the Flinders Medical Centre or the Noarlunga GP Plus.

In respect to the employee's concerns or the industrial concerns that were raised by the Hon. Mr Hood, I make my office available to him. If he is willing to share the details of that individual, I am happy to make some particular inquiries in regard to that person's circumstances. Having said

that, though, I can speak more generally around the fact that the government has been very keen to make sure that we retain the services of all those people who have something important to offer from the Repat site. The majority—in fact, the overwhelming majority—of those people who are working at the Repat site have been, I am advised, dispersed to other areas of the public health system, principally to Flinders because that's where a big component of the services are now delivered, but also to the Jamie Larcombe Centre.

That's been really, really important. Retaining the services of those key clinicians from the Repat is undoubtedly going to be instrumental when it comes to delivering a high-quality service that we want to see arrived at as a result of the government's investment. I think a good example of that, again, is the Jamie Larcombe Centre. Staff at Ward 17 are exceptional. You only need to speak to those veterans who have engaged with Ward 17 personnel—in some instances over a long period of time—to appreciate how lucky we are as a state to have in our employ men and women who are so dedicated to their important work.

The overwhelming majority of those personnel are, I am advised, now working at the Jamie Larcombe Centre. I understand that it was only a very small number that didn't transfer across, and I understand that was principally because of retirement, not any other reason. So, we are very glad that the overwhelming majority of people's services has been retained. That is good news for residents in southern Adelaide when they come to expect a high-quality standard of service in the public health system. However, in respect to the individual concern that has been raised, I make my office available to the Hon. Mr Hood to see if we can ensure that the right outcome occurs in that instance, if it's appropriate.

Parliamentary Procedure

VISITORS

The PRESIDENT: I would like to acknowledge the presence of the Woodford family in the gallery. Welcome here today.

Bills

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) (REMOTE AREA ATTENDANCE) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 19 October 2017.)

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:34): I would like to thank all members for their contribution on this important legislation and look forward to dealing with it in the committee stage. I would like to thank members in the council for their support of this legislation. I hope for the Woodford family, who are present in the chamber today, that the parliament has heard their pleas, and what happened to their beloved wife and mother and dedicated nurse does not happen to anybody else. The safety of any health practitioner performing their duties is of paramount importance but none more so than the health practitioners working in the remote areas of South Australia.

The Hon. J.S.L. DAWKINS: We have three speakers on this.

The Hon. P. MALINAUSKAS: I have been asked by the President to make a few words, so if I can complete my speech.

The Hon. J.S.L. DAWKINS: No, you can't. You have already had a go at it.

The Hon. P. MALINAUSKAS: Mr President, may I continue?

The Hon. J.S.L. DAWKINS: You are summing the thing up. It will mean there will be no debate on it.

The PRESIDENT: By speaking, you are winding up the debate.

The Hon. P. MALINAUSKAS: That is what I was asked to do, Mr President.

The PRESIDENT: Can you come up here for one second, minister, please. Minister.

The Hon. P. MALINAUSKAS: Thanks, Mr President. The safety of any health practitioner performing their duties is of paramount importance but none more so than health practitioners working in the remote areas of our community and our vast state. Of course, remote areas are not inherently dangerous but the isolation coupled with societal problems, such as drug and alcohol abuse, expose these practitioners to greater risk than those working in other areas. A Northern Territory report found that many remote area nurses accepted abuse and violence as part of working in these isolated communities. Those who could not cope opted to leave rather than put up with it.

But, today, this parliament has the opportunity to ensure that the safety of health practitioners working in the remote areas of South Australia is paramount. These practitioners dedicate their lives to helping others, but it is important that we also protect their lives. Before this chamber considers this bill, I would like to thank a number of people, principally the Woodford family—husband Keith, daughter Alison and son Gary—for their tireless efforts since their loss to have governments implement Gayle's Law. I would also like to express gratitude to organisations including the Australian Nursing and Midwifery Federation, CRANAplus, and also the Aboriginal Health Council and the APY Aboriginal communities for their support for the government in bringing this legislation to parliament.

Other MPs deserve a lot of credit as well, and I would like to acknowledge Ms Annabel Digance, member for Elder. I would like to take this opportunity to thank them for all their efforts, and also thank the officers who assisted in the development of this legislation, including parliamentary counsel and staff from the Department for Health and Ageing, who are also present here in the chamber today.

It takes a particular degree of courage, a great source of strength, to be able to pick oneself up after such a devastating incident as what was imposed upon the Woodford family, and then to take that and turn it into an opportunity to protect so many other South Australians into the future. There are often moments of tragedy in our society, but rarely do they translate into a suite of legislative reform that will protect so many people for so many years to come.

This is the parliament working at its best, all politicians from all sides coming together to turn what is otherwise a tragic incident into a positive reform for so many people who serve our community in such a brave and courageous way. I would like to acknowledge those family members again, and look forward to continuing the discussion in the committee stage of the bill.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. S.G. WADE: I rise on behalf of the parliamentary Liberal Party to indicate our support for the Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) Amendment Bill 2017. As the minister has indicated, the impetus for this bill was a terrible tragedy, the murder of Gayle Woodford, a beloved nurse, wife and mother.

Gayle had taken on a challenging role as a remote area nurse in one of the most isolated areas of this state. On 23 March Mrs Gayle Woodford responded to a late-night emergency call. A 35-year-old man lured her from her home before abducting her, murdering her and burying her body in a shallow scrubland grave near Fregon in the APY lands.

Tributes to Mrs Woodford have flowed from far and wide: from her local community, from the nursing profession, from the wider public and, last month, from the House of Assembly. The strong image that has emerged is that of both an outstanding person and an outstanding health professional. Her death is a devastating loss. The injury of this crime is felt most keenly and painfully by members of Gayle's family, and our heartfelt sympathy goes to each of them. We thank them for honouring us with their presence today.

This parliament is determined to do what it can to prevent such crimes happening again. As Associate Professor Dabars of the Australian Nursing and Midwifery Federation put it:

> Outback remote nurses, regardless of where they are working, are vulnerable and their safety has to be a priority so they can carry out their work with confidence and support their communities to the very best of their ability.

Nurses and other health professionals cannot give their full attention to delivering care if they need to have one eye over their shoulder looking out for their personal safety. The bill before us today is a demonstration of this parliament's shared commitment to the safety of our health professionals.

Let me highlight some key points. The bill requires health practitioners in remote areas to be accompanied by a second person when responding to after-hours or emergency call-outs. The presence of a second person should reduce the risk of a personal attack. Second responders may, for example, be local community members, other staff members or staff from another government agency. If a health practitioner is unable to find a second responder and refuses to attend an emergency call-out, he or she cannot be held to have breached a code of professional ethics or to have behaved unprofessionally.

For this model to work, we need to ensure that we recruit and maintain a network of second responders throughout the remote areas. When called for an after-hours or unscheduled emergency call, health practitioners will need to assess the risk involved in the situation, deciding whether their service needs to be provided immediately or whether it can be provided during normal hours. If deemed to be an emergency, the practitioner will rendezvous with a second responder at an agreed location to accompany him or her to the site of the emergency. The second responder will remain with them until the call-out is finished.

The Liberal team will be supporting both the bill and the amendment to it proposed by the Hon. Tammy Franks. A review gives the parliament the opportunity to be assured that the bill is having the desired outcome in terms of protecting health professionals. Further, it may highlight opportunities to finetune the model.

In that context, I highlight the issues raised by the Australian Medical Association that the act should not put health professionals in conflict with their code of ethics and legal obligations. The AMA acknowledges that the impact could be modified by regulation. Indeed, the regulations will be crucial to the effective operation of this act. Parliament will have the opportunity to consider the regulations and to ensure that they do not infringe on ethical and legal duties of health professionals.

In conclusion, I reiterate the support of the Liberal opposition. Health practitioners are men and women who save our lives. To do so, they should not have to risk their own.

The Hon. T.A. FRANKS: On behalf of the Greens, I rise to support the Health Practitioner Regulation National Law (South Australia) (Remote Area Attendance) Amendment Bill, commonly known as Gayle's Law. I acknowledge the presence of not only Gayle's family in the gallery today but indeed the member for Elder, Annabel Digance, and I acknowledge her work on this. This has certainly been something that I think has affected not just those in the medical profession and those in the APY lands but indeed people across South Australia and Australia. With that, we strongly support action taken to take care of our first responders and to ensure their safety.

I note that this bill will cover after-hours attendance. That is not just night-times but also weekends and public holidays. I am informed that the bill will not have financial implications. I have some concerns that the bill will have financial implications and that those need to be addressed, should they arise.

I have met with members of the Fregon community and I have seen Gayle's memorial that they have erected there just outside the community. I have spoken to those members of the community and my concerns are also that we have to guarantee the safety of all people within the remote areas of this state.

The man who murdered Gayle should potentially not have been in that community in the first place, and the community should have been able to have had the safety and protection of him not being there. That is why I have moved an amendment to ensure a review of this law between two and three years of its operation to ensure that it is being implemented to have the effect to protect those first responders, to ensure that unforeseen implications have not arisen, to ensure that health

professionals, should they choose to avail themselves of this law, or should they choose not to, are not being punished for offering assistance outside the scope of Gayle's Law. Should a medical professional decide to actually help somebody, I do not want them coming up and facing punitive measures.

For those reasons and with those few short words, I commend the government for taking leadership on this. I say the job is not over with this bill. We need to keep working to ensure not just the safety of the medical professionals and the first responders but indeed all in these communities.

The Hon. K.L. VINCENT: The Dignity Party of course supports this bill that allows for health practitioners working in remote areas of South Australia to be accompanied by a second responder so as to hopefully put them at less risk. I would also like to add my condolences to the family of Ms Woodford, her friends and colleagues and thank them for joining us here today and honouring us with their presence.

All workers have the right to come home at the end of a shift, wherever they work and whatever they do, and all family members have the right to expect that their loved ones will return safely. To think that that is not always the case is awful, but to know that someone has been deliberately and brutally attacked and murdered in the normal course of their duty is abominable. To further contemplate that the role of a health practitioner is to assist people in need and that it was in that role where that help was taken advantage of and that Gayle lost her life as a result is tragic. I only use these words because I struggle to find any other that actually measure up to what this is.

I understand that provisions similar to these in this bill have come into effect through policy rather than legislation in the Northern Territory but nonetheless may we see them roll out across all states in this country where necessary for the protection of all workers and the good of all families. The Australian Nursing and Midwifery Federation, South Australia Branch, as well as Ms Woodford's family, friends and many supporters are to be commended for their work in ensuring that this potentially lifesaving legislation comes before us. With that I indicate as well that, in the spirit of continuing this important work, the Dignity Party will also be strongly supporting the amendments of the Hon. Ms Franks.

Again, thank you to everyone who has put work into this bill, from friends and family, the workers themselves, as well as parliamentary counsel for drafting this important piece of legislation before us, and long may this collaborative holistic work continue to protect all workers and, indeed, all people in this state.

The Hon. D.G.E. HOOD: I will be brief but I did want to place on the record the Australian Conservatives' strong support for this bill. Nobody should go about their work duties and not return home at the end of their shift or the end of their day's work as it may be. That is especially true, I think, when the intention of that worker is solely to go to someone's assistance. This is a truly tragic situation that has occurred with Gayle's death as a result of this terrible situation, and it has resulted in the parliament ultimately moving to support this legislation, and I commend the government for bringing it before the chamber.

We have had a number of situations over the years that have resulted in tragedies at work but perhaps none quite as significant as this, and it is appropriate that the parliament acts. It makes sense and is an appropriate move that when a first responder is dispatched, particularly in a remote location, that they have company when they do it. It dramatically lowers the risk of anything untoward taking place. We support the bill and we also indicate our support for the amendments by the Hon. Ms Franks.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

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

Amendment No 1 [Franks–1]—

Page 9, after line 33—Insert:

77M—Review of Part

(1) The Minister must cause a review of the operation of this Part to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and the report must be completed after the second, but before the third, anniversary of the commencement of this Part.

(3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

As I noted, this causes a review of the operation of this legislation to be undertaken between the second and third years of its operation. I do so to ensure that it is having the effect that we desire today and that it is appropriately resourced to ensure that those who are the first responders are not treated punitively if they do respond without complying with the provisions of that second person accompanying them, and to ensure that this issue is not seen as being finished and done with, because this issue is not finished and done with. Safety for all in rural and remote communities and particularly on APY lands is something that should be a priority for this parliament.

The Hon. S.G. WADE: I mentioned in my second reading comments that I think the regulations will be crucial to this legislation. I wonder if the minister will indicate what process is intended for the development of the regulations and in particular if it is intended that there be any public consultation on the draft regulations.

The Hon. P. MALINAUSKAS: I am advised that once the bill is passed then a working group will be convened, made up of various interested parties, to start developing the regulations. The government is, of course, amenable to a public consultation process around that; notwithstanding the fact that the development of the regulations in the first instance will be guided by the working group made up of interested parties and stakeholders, and I simply want to indicate the government's support for the amendment.

The Hon. S.G. WADE: The opposition also supports the review.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendment.

Third Reading

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (15:55): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STAMP DUTIES (FOREIGN OWNERSHIP SURCHARGE) AMENDMENT BILL

Committee Stage

In committee (resumed on motion).

Clause 3.

The Hon. R.I. LUCAS: Before the luncheon break we were exploring provisions in relation to interpretation of clause 4, residential land. The question I had been putting to the minister and his advisers was trying to get an answer as to whether the tax lawyer's advice that I have sought is correct; that is, if land is not zoned as residential but the buildings on it are decided by the government (I presume the Commissioner of Taxation) to be of residential character, then they will be subject to the provisions of the surcharge.

A clear example has been raised. The suggestion is that, even though land might not be zoned residential—it might be zoned commercial or whatever it might happen to be—if the tax commissioner decides that, in his or her judgement, the building on this commercial land is of a residential character, then the surcharge will apply. The tax lawyer is suggesting that that would be the case. I am seeking confirmation or otherwise from the government.

The Hon. K.J. MAHER: My advice is that what the honourable member has outlined is correct.

The Hon. R.I. LUCAS: Following on from that and in relation to a point I raised earlier on behalf of the tax lawyer relating to the fact that a letter or an option, the contract for sale, the subsequent deed, varying the contract and conveyance may well all end up being caught by these particular provisions, the tax lawyer has suggested that, rather than being caught up with all these potential grey areas in the legislation, it should simply be the date of the conveyance consistent with section 60A(1) of the Stamp Duties Act. Rather than the various options provided in this drafting, would it not be as simple, as the tax lawyer has suggested, that the action point, to use a non-expert phrase, should be the date of the conveyance consistent with section 60A(1)?

The Hon. K.J. MAHER: Just so we are clear, are we referring to section 72(1)? Is that the area the tax lawyer is suggesting should be amended?

The Hon. R.I. LUCAS: I think my office has now provided a copy of the tax lawyer's advice to the government's advisers to expedite matters. The points being raised here are on pages 4 and 5 of the tax lawyer's advice, regarding clause 4 in relation to residential land. It commences at point 20 and the questions I have just put are under point 24. Rather than repeating all the advice there, it is all going through various subsections of section 72.

What the tax lawyer is suggesting is that, rather than having all those grey areas—to use my phrase, not his—the date of the conveyance consistent with section 60A(1) of the Stamp Duties Act would be a simpler way of drafting this particular provision of the legislation. I am assuming that the government has considered that and rejected it for some reason. If that is the case, what is the reason for that rejection, or has the government just not contemplated the simpler position as put by the tax lawyer?

The Hon. K.J. MAHER: The advice is that we think it is clear. When 72(9) is read in conjunction with 72(1), it makes it clear that the date is the date that the instrument is executed.

The Hon. R.I. Lucas: The date is the date of what?

The Hon. K.J. MAHER: That the instrument is executed. This section applies to a dutiable instrument taken to have been executed, or taken to be executed. That is the relevant date and we think that works perfectly well under that section.

The Hon. R.I. LUCAS: I will not revisit the past arguments earlier in the tax advice. The government's advisers can consider that and reflect on it, but he is certainly arguing the difference between the point in time when something actually occurs here and when it is dutiable, and he has contrasted the issue of when the instrument is actioned and when the transaction has occurred. That is a previous discussion; I will leave that to the side for the moment.

Moving on to point 25 of the tax adviser's advice, he raises questions in relation to the government's previous response in the Budget Measures Bill, which was again used this morning. The minister used, based on advice, the fact that the predominant use test is the test that should be applied. What the tax lawyer is saying is that the predominant use test is only one of three tests that are applied. He instanced one of the other two tests as being the character of unused improvements on the land. I firstly seek whether or not there is agreement with the government's advisers. Do the government's advisers accept that the predominant use test is only one of three tests that are applied, and one of the other tests is the character of unused improvements?

The Hon. K.J. MAHER: My advice is, as I outlined, that's correct.

The Hon. R.I. LUCAS: The tax lawyer then raises an example where a developer acquires a number of properties that have derelict unoccupied dwellings on them for a commercial development. The proposed section 72(8)(b), being much more specific than section 72(8)(a), will require the commissioner to treat the land as residential land for the surcharge purposes. The subsequent procuring of a rezoning of that land, or carrying out of the development as a commercial development, will not lead to a refund of the surcharge.

What the tax lawyer is saying is that someone may well buy land with the clear intention to have a commercial development on it. There might be derelict unoccupied dwellings on it, but the

way that this legislation is drafted, the commissioner's intention, the government's intention, is to actually apply the levy surcharge on that particular development as residential even though the clear intention is commercial.

The tax lawyer goes on in point 26 to acknowledge that the introduction of an intention test can create problems. He has not come down in the last shower; he is aware of the problems. What he is suggesting is that much like the proposed refund provisions in sections 72(5) and 72(6), if within, say, three years, the purchaser obtains a rezoning of the land—that is, for commercial properties—and/or constructs commercial premises on the land, then the purchaser is entitled to a refund.

What the lawyer is saying is these people have bought derelict land for a commercial development. That is their intention. The government is going to levy them an additional stamp duty surcharge at 7 per cent, on the basis that, 'We don't know what you're actually going to do.' What he is saying is that if you go ahead and do a commercial development, it has not actually driven up residential land prices at all. It is a commercial development. Should there not be provision, as exists under sections 72(5) and 72(6) in other circumstances, where they are entitled to a refund of the surcharge?

The Hon. K.J. MAHER: I thank the honourable member for his question. I think in the first part he is right: a solely future-intention test would be extraordinarily difficult and unworkable, and it would presumably lead to a motivation for people to have all sorts of intentions that they never intended to carry out. In terms of the follow-on then, what if it is not only an intention but an actuality that happens at some stage in the future—applying for refund? That is one thing that a future government could change, but it is the intention of this bill that it is what the land is at the time of the transaction, not what the intention is in the future or what happens in the future. It is at the time of the transaction.

The Hon. R.I. LUCAS: Yes, but that is the question the tax lawyer is raising. At the time of the transaction, you are not actually buying residential property in competition with Australian or non-Asian buyers, which is the Treasurer's concern about all of this. What you have are derelict, unoccupied buildings on a site that the tax commissioner has deemed to be essentially residential in nature even though they are derelict and unoccupied and are going to be knocked down and there is going to be commercial development there. So at the time of the transaction, again they are not competing with anyone in terms of purchasing residential property and driving up prices. They are actually going through a process of building a commercial development. They then go ahead and do it.

I understand the government are saying they are not going to do anything about it and that is the lay of the land. That is the government's response; I understand that. My question is: is there a provision under the ex gratia payments arrangements where the Treasurer, who I know has the capacity ex gratia to reimburse? Has there ever been an example where the Treasurer has ex gratia reimbursed somebody a stamp duty payment, or would that be potentially available to the Treasurer under these circumstances?

The Hon. K.J. MAHER: My advice is that by the very nature of what ex gratia is, it is theoretically possible that a Treasurer could make an ex gratia payment that would in effect reimburse a taxation measure, but the officer advising cannot think of a circumstance that is the exact one that has been outlined where that has occurred.

The Hon. R.I. LUCAS: I will move on to the foreign persons definition, which was the subject of some debate in the Budget Measures Bill. The tax lawyer has looked at the government's response and has come back with some further questions in relation to it. My first question is: having listened to the advice from the government in response to the debate on the Budget Measures Bill, the tax lawyer has raised the question as to why the government rejected the notion of the simple control test as proposed to be adopted for determining the status of an Australian corporation; why was that not used in the drafting of these particular provisions?

The Hon. K.J. MAHER: I suspect this may be a similar answer to some of the ground we have already covered and that is quite reasonably being reagitated given the answers the government has given previously, but we are comfortable with the way it is drafted and the way it

operates. I am sure there will be argument not just from the tax lawyer but from others about a preferred way for this to operate, but this was what was intended, and we are comfortable with the way that it is drafted and will operate in this respect, in terms of the company provisions.

The Hon. R.I. LUCAS: The problem with the government being comfortable with the way it is drafted is that the tax lawyer has highlighted that this raises a significant loophole from the government's viewpoint in terms of avoidance of the measure; that is, the government has determined this should apply.

The tax lawyer is saying that, given the way the government has gone about this particular definition, the government has raised a significant prospective loophole in terms of tax lawyers, accountants and others to construct their affairs to avoid the payment of the surcharge. So, in points 30, 31 and 32, the essential point that the tax lawyer is making in his advice to me is, in point 31:

> 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. The [Stamp Duties Act] already looks beyond such control in other provisions in the SDA and to dividend and capital rights.

I will not agitate that particular issue again. It has been highlighted before that there is this loophole. He has raised a question as to why you did not consider the simple control test, which is a question I raised earlier, and the government says, 'We're just comfortable with the way we have drafted it.' The lawyer is saying that the drafting raises a very simple mechanism for people with the capacity to structure their affairs—that is, corporations in particular—to circumvent the payment of this particular provision.

He then goes on, and I highlight point 32, to give a detailed example of how a simple structure can be set up where a foreign person who owns only 40 per cent of the votes which have been cast but is entitled to 100 per cent of the dividends and 100 per cent of the capital on the winding-up of the company can structure their affairs so that zero surcharge is payable in the circumstances. Given that I have provided that to the government advisers, can they confirm that, if someone structures their affairs in that way, they agree with the tax lawyer's advice that zero surcharge will be payable?

The Hon. K.J. MAHER: My advice is that we do not think it is a significant loophole in the way it is drafted. It is significant with other jurisdictions, and we do not see it as being a potential significant problem.

The Hon. R.I. LUCAS: That was not actually my question. If the minister wants me to go through the detail of the example, I will. In point 32 of the tax adviser's advice, he outlines where a corporation can be established with a foreign person with 40 per cent of the votes, entitlement to 100 per cent of the dividends and 100 per cent of the capital on the winding-up of the company, there is an Australian resident adviser of the foreign person who holds shares, entitling him to vote the other 60 per cent of the votes that may be cast.

In those circumstances, as outlined in point 32, the tax adviser is saying that no surcharge would be payable. The government might be comfortable with that, but my question is, simply: is that correct? If you structure yourself that way, is no surcharge payable?

The Hon. K.J. MAHER: My advice is that it is possible, as outlined by the honourable member, that those circumstances could exist. My further advice is that we think it is unlikely that this would be something that is significantly employed to structure your affairs to give you the result under this particular legislation, given all the other consequences that would flow from structuring your affairs in that exact manner.

The Hon. R.I. LUCAS: I thank the minister for that advice. The reason for placing it on the record during this particular debate is that if at some stage in the future, in the event that the government is re-elected, this particular loophole, as advised by the tax adviser, is used and used significantly, we want to make it quite clear that the government has been given this warning. The government's adviser is aware of the name of the prominent tax lawyer and if this is a loophole that is widely used then the government certainly will not be in a position to say they were not warned.

They have been warned on two separate occasions now in relation to this. They have said, and with the greatest respect, the government does not want to be in the position of acknowledging that the tax lawyer knows more about the drafting of the tax law than the government themselves. The Treasurer is obviously reluctant to give another example where legislation has been amended in the Legislative Council, but I think putting the Treasurer's ego aside, the issue here is the nature of the bill that we are being asked to support. It has clearly been highlighted that there is a potential significant loophole. The government acknowledges that that is potentially the case but does not believe that it will be significant. The warning has been given and there is not much else that we can do at this stage other than noting the government's response.

Further on, there was a debate in the Budget Measures Bill about other definitional issues in relation to foreign trusts. In the case of a discretionary trust, the legislation provides that a trust 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.

Without going through all of the responses, the government's response to the Budget Measures Bill in essence was saying that they believe this nexus provision was suitable. The government's response was that a simple way of avoiding the problem identified by the tax lawyer was to ensure that the person who has the power to appoint is not a foreign person.

Essentially, the government's response was: 'Well, look, there are potentially problems but the way around this is these are all voluntary decisions; just make sure that an identified object under a trust is not a foreign person or a person who has the power to appoint under the trust is not a foreign person, or a person who can take the capital of the trust in default is not a foreign person, then you won't have a problem.' The tax lawyer is saying that in some cases it is not as simple as that because it is not a matter of choice of the individuals, and he gives the following examples:

> …in some cases the persons who have such control or entitlement accrue such right by death, divorce, bankruptcy or possibly such a person becoming a foreign person. If any of those events occur within three years of the acquisition of the residential property by the trustee then it appears that the proposed section 72(7) will apply to render the acquisition by the trustee of the trust the acquisition of the residential land by a foreign trust. This will be triggered by involuntary events not simply matters of choice.

My question to the minister's advisers are: do they agree with the tax lawyer's advice that in some cases it is not voluntary and that in some cases, such as death, divorce or bankruptcy, these are examples where, beyond the control of individual choices, persons might find themselves in one of these positions and then, ultimately, a particular transaction might become a transaction involving a foreign person?

The Hon. K.J. MAHER: I can confirm the advice, that yes, in those circumstances that is correct.

The Hon. R.I. LUCAS: Again, I think the tax lawyer is saying that in those circumstances, if that is the case, the points he was making originally that were originally rebutted by the government still carry weight. That is, if these things can happen involuntarily, in the tax lawyer's view—and I concur—it would appear to be unfair to those individuals that certain transactions might then become subject to the surcharge, which is now 7 per cent, not the original 4 per cent.

In relation to the trust nexus provision that refers to an identified object under the trust, the government responded to that at the Budget Measures Bill. The tax lawyer is now saying (and I quote point 38 from his advice):

> It is still unclear how the provision will work if say three brothers are by name stated to be the identified objects of the trust and one of them is [a] foreign person (as defined). Is it sufficient that one person is a foreign person or does it need to be a majority or all of them? The current drafting appears to assume there will only be one such person. This issue is likely to arise more by way of inadvertence.

So, the question is: in the circumstances of the three brothers being stated to be the identified objects, is it sufficient that only one person is a foreign person for it to become a transaction subject to tax?

The Hon. K.J. MAHER: My advice is that that is correct.

The Hon. R.I. LUCAS: Further on in the tax lawyer's advice he refers to a Victorian decision in Lygon Nominees Pty Ltd v Commissioner of State Revenue. He highlights the point that such persons often cannot be determined until the actual vesting day. This refers to the third nexus provision of the discretionary trust area, which is a person who takes capital of the trust in default. Quoting from that court decision in Lygon Nominees Pty Ltd v Commissioner of State Revenue, in the middle of that, he quotes:

> Her Honour held that it was not possible to identify the persons who will have an interest in the fund at the Vesting Day, because all members of that class were not yet in existence or were not yet ascertained. The terms of the trust provide for the possibility of new primary beneficiaries to be born, and existing primary beneficiaries to die prior to the Vesting Day.

He then goes on to say in point 41:

> As previously indicated, 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.

My first question is: do the government's advisers agree with Her Honour's decision in Lygon Nominees Pty Ltd v Commissioner of State Revenue, the bit I quoted? Does that have application in relation to the current drafting of this legislation?

The Hon. K.J. MAHER: The advisers are not disagreeing with a judgement that a judge has handed down in relation to the operation of the Stamp Duties Act in Victoria.

The Hon. R.I. LUCAS: My question was: does the government agree, as the tax lawyer argues, that that also, therefore, has application to the government's proposed drafting of the Stamp Duties Act in South Australia? I acknowledge that we are not asking the government's advisers to advise on Victorian tax law. What I am saying is that the tax lawyer is saying that that particular judgement has application in the drafting of this bill because the government is proposing to use similar definitions in South Australia.

The Hon. K.J. MAHER: I am not going to be able to give very specific advice. I might be able to do that at a future time, but it might take some time. Certainly, court cases and judgements will, of course, potentially have application as they unfold and as the law develops in all areas right around Australia.

The Hon. R.I. LUCAS: I am happy to leave that as a request for the Commissioner of Taxation, via the Treasurer, if he is able to provide an answer to that on notice after the passage of the legislation. Finally, wrapping up this point, similar issues were raised in relation to this discretionary trust issue in the Budget Measures Bill. I am now referring to point 42 of the current advice. Let me read it:

> The response to the Budget Bill provision, on that aspect, was that it is a reference to a specified person in the trust deed. That is, the person must be identified in the trust deed by name.

That was the government's response to the questions I asked on behalf of the tax lawyer in the Budget Measures Bill. You had to specify a name in the trust deed. Further:

> The term is not a blanket reference to a person who may potentially take capital of the trust property in default under a discretionary trust deed. It is submitted [that] most discretionary trust deeds do not specify such a person by name. In most cases the takers of the capital in default are a broad class. So, if what is intended is simply limited to a named individual, which is most unusual, then the provision should be redrafted to expressly state that. Otherwise it has the potential to embrace a much broader group of persons, namely all of the persons who may take under this broad type provisions.

My question is: are the government's advisers still sticking to the advice they gave during the Budget Measures Bill, which is that the person must be identified in the trust deed by name? If that is the case, do they agree with the tax lawyer's advice that: if that is the case, why do you not draft the provisions expressly to require that, because if you do not it can be read more broadly than that?

The Hon. K.J. MAHER: We agree with the tax lawyer that the person needs to be named. It is my advice that we are comfortable that that is what this legislation does in fact require.

The Hon. R.I. LUCAS: I think that is where the tax lawyer is disagreeing. If that is what the government intends, he is saying the current drafting does not achieve that. He is saying that the current drafting does not require the person by name, it actually refers to a class of persons and a broad class of persons, and if that is the government's intention, what you should do is redraft the amendment to actually say that you require a person by name. He is disagreeing with that particular position.

The Hon. K.J. MAHER: I suspect there are going to be a couple of points where we just do not agree with the view the tax lawyer has about how this operates and his preferred methodology of drafting.

The Hon. R.I. LUCAS: I move on to the tax lawyer's questions in relation to the adjustment provisions of the foreign owner surcharge. In particular, I am referring to points 46 and 47 of his recent tax advice to me. He raises the issue about the operation of proposed section 72(7)(c). He goes on to say:

> 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 or 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.

He then gives an example in point 47 of his advice:

> 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 common situations can be described.

Do the government's advisers agree that, in the circumstances outlined, the Commissioner for Taxation and the government would levy the surcharge on the non-resident foreign citizen nephew of someone who is deceased?

The Hon. K.J. MAHER: My advice is that a transfer pursuant to a will is not liable to duty and therefore would not be liable to the foreign ownership surcharge.

The Hon. R.I. LUCAS: I think the tax lawyer has challenged this issue about transfers and wills in another part of his advice. I thought that the tax lawyer had challenged the particular interpretation that the minister has just given; however, I cannot immediately find it. I may well be able to find clarification of that particular issue before the conclusion of the committee stage.

The Hon. K.J. MAHER: If you want us to take things on notice—

The Hon. R.I. LUCAS: I am happy for you to provide answers on notice for some of the ones where you have said you need to take it on notice. I think the dilemma at this stage is, given that we may well only be sitting these three days, anything that you provide on notice will not be part of the *Hansard* record for tax advisers, courts and others to educate themselves.

The Hon. K.J. MAHER: For a couple of months.

The Hon. R.I. LUCAS: For the next issue, again coming under the broad heading of adjustment provisions, I refer to point 52 of the tax lawyer's advice. I will read that in order to explain:

> The response to a like comment in respect of the Budget Bill was that developments that may benefit the State where it would be appropriate to grant ex gratia relief from the foreign owner surcharge, for example, Australian based, foreign-owned developers who contribute significantly to the South Australian housing supply. Accordingly, it is proposed to publish a ruling setting out factors that will be considered in determining whether ex gratia relief from the surcharge will apply to certain land. All other jurisdictions with a foreign owner surcharge exclude significant residential developments either by way of Treasurer's discretion or ex gratia relief. As already described relief should be available where there is a change of status within a limited time. Outside of that the adoption of ex gratia relief or other tools of government to encourage development is a matter for government. However, as the decision of the South Australian Supreme Court in Chubb Electronic Security Australia Pty Ltd v Commissioner of State Taxation taxpayers disgruntled with an ex gratia relief decision have little recourse to have the decision reviewed, if any.

My question is: given that this issue was raised in the budget bill debate, is that still the case; that is, is the government still proposing to publish a ruling setting out the factors that might determine ex gratia relief? If that is the case, what progress, if any, has been made in terms of drafting that ruling?

The Hon. K.J. MAHER: Yes, that is still the intention, I am advised. The drafting to then publish a ruling is already well progressed.

The Hon. R.I. LUCAS: Is it the government's intention to have that ruling concluded and published prior to the commencement of the surcharge on 1 January?

The Hon. K.J. MAHER: My advice is similar to the last answer: yes, but if not by that time then very shortly thereafter.

The Hon. R.I. LUCAS: Submissions made by the Property Council and a number of other stakeholder groups have traversed this same general area; that is, other jurisdictions, in particular New South Wales and Queensland, do try to distinguish, either by legislation or by this ex gratia relief arrangement, the circumstances where developers who are developing foreign companies, or investors who are developing large tracts of land and are not contributing to the housing price boom, as the Treasurer is concerned about, and are in fact increasing housing supply and housing stock, are catered for by legislation or by the ex gratia arrangement. Can the government outline why they chose to go down the ex gratia path rather than a legislative provision in the drafting?

The Hon. K.J. MAHER: My advice is that we have gone down the path that I think another jurisdiction has gone down in order to provide greater flexibility, and we do not think the application is going to be great, which is why we have gone down this path rather than a legislative intervention.

The Hon. R.I. LUCAS: The tax lawyer provides, by way of explanation on point 64/65 of his advice:

> Nothing in clause 5 extends the operation of section 102A(4) to provide a rebate for that surcharge. The rebate in section 102A(4) is limited to the ad valorem duty paid on the acquisition of the land. It is possible that the situation is now even more complicated. An example may better highlight the problem.

Then, he gives the example:

> A company Z Pty Ltd is wholly owned by X an individual who is a foreign person. Z Pty Ltd acquires residential land to the value of $2 million. The transfer of the land to Z Pty Ltd will require the payment of the usual ad valorem duty. On the basis that the transfer is the relevant instrument under the proposed section 72 it will also attract the foreign surcharge.
>
> Under the landholder provisions the acquisition of the land also triggers landholder duty as recognised by section 102A(4) and will trigger the landholder foreign surcharge under the proposed section 102AB. So both landholder duty and a foreign ownership surcharge under the proposed section 102AB are triggered. Section 102A(4) then provides for a rebate of the ad valorem duty insofar as the landholder provisions are triggered. Nothing provides for relief from the double imposition of the foreign surcharge (i.e., under section 72 and section 102AB). This suggests that section 102A(4) needs to be extended to avoid the double imposition of the foreign surcharge in this situation, if for no other reason to be consistent.

Do the government's advisers agree with the tax lawyer's explanation there? Is that in fact an accurate description of how those particular provisions operate?

The Hon. K.J. MAHER: My advice is that this is another one. Four or five questions ago, I gave a similar answer: we do not agree, my advice is, with the tax lawyer's view, and we are comfortable that the way it is drafted operates so that the rebate will mean that the surcharge is not imposed twice, in effect.

The Hon. R.I. LUCAS: To clarify, the government is saying that the government's advisers do not agree that section 102A(4) needs to be extended to avoid the double imposition of the foreign surcharge in the situation that was outlined?

The Hon. K.J. MAHER: My advice is that we are comfortable that the section works fine with that provision that provides for the rebate.

The Hon. R.I. LUCAS: The government might be happy that it works fine. I am trying to work out how the government sees this provision working. They may well think it is fine or not; that is up to them. My question is: do the government's advisers agree that section 102A(4) needs to be extended to avoid the double imposition of the foreign surcharge? The government is saying that they do not want to redraft it. Is the government saying that there is no double imposition of the foreign surcharge in the circumstances outlined by the tax lawyer?

The Hon. K.J. MAHER: My advice is that 102A(4) does not need to be extended because it works as we think it should work. We do not agree that it needs to be extended as the tax lawyer has outlined.

The Hon. R.I. LUCAS: I accept that the government says that they do not want to change the drafting, but my question is: is the government's advice that there will not be double imposition of the foreign surcharge in the circumstances outlined, or is the government saying that there will be double imposition of the surcharge and that that is what we want?

The Hon. K.J. MAHER: My advice is that it is not that we think that there will be double charging and that that is a good thing. The way it is drafted, we believe, takes care of that circumstance where, on the second transaction, the rebate does apply, so it is only applied once. The rebate works once and it works sufficiently to avoid the scenario.

The Hon. R.I. LUCAS: I will conclude my questioning, but for the sake of the record, did the minister's advisers come from Treasury or from RevenueSA?

The Hon. K.J. MAHER: I can advise the honourable shadow treasurer that the officers are from RevenueSA. For the sake of completeness, the two who are with me on the floor now are from RevenueSA. Our good friend who has been helping during the course of this and the debate on the Budget Measures Bill is a very fine Treasury official.

Clause passed.

Remaining clauses (4 and 5) and title passed.

Bill reported 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) (16:49): I move:

That this bill be now read a third time.

Bill read a third time and passed.

LABOUR HIRE LICENSING BILL

Committee Stage

In committee (resumed on motion).

Clause 1.

The ACTING CHAIR (Hon. J.S.L. Dawkins): When the committee last met, we very briefly considered clause 1 and we can continue at that stage.

Clause passed.

Clause 2.

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

Amendment No 1 [Employment–2]—

Page 3, line 7—Delete 'a day to be fixed by proclamation' and substitute '1 March 2018'

Amendment No. 1 amends clause 2 to say that the act will come into operation on 1 March 2018.

The Hon. R.I. LUCAS: We support the amendment.

Amendment carried; clause as amended passed.

Clauses 3 and 4 passed.

New clause 4A.

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

Amendment No 1 [Employment–1]—

Page 4, after line 15—After line 15 insert:

4A—Registered group training organisation exempt from application of Act

(1) This Act does not apply in respect of a registered group training organisation to the extent that the organisation supplies apprentices or trainees to do work for other persons.

(2) In this section—

registered group training organisation means a group training organisation registered in South Australia on the Group Training Organisation National Register maintained by the Commonwealth.

This amendment is in direct response to stakeholders' concerns. The government has agreed to amend the bill to provide that registered group training organisations are exempt from its application to the extent that the organisation supplies the premises or trainees to do work for other persons. It is acknowledged that the registered group training organisations must already comply with vigorous requirements under the national standards for group training organisations.

The Hon. R.I. LUCAS: In rising to speak to the minister's amendment and also to move my amendment, it would expedite proceedings in the committee stage of the debate and prevent the need for divisions if the other minor parties, if they are listening, who might have an interest in this particular bill might take heed that we have moved on to the Labour Hire Licensing Bill, committee stage. Otherwise, where there is a difference of opinion between the government and the opposition, we will not be in a position to know where the numbers lie, and it would certainly prevent the need for a whole series of divisions if all of the minor parties—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: If you are happy for me to speak on behalf of the Greens and Kelly Vincent! Anyway, so for those who might be monitoring the debate in other places, that would certainly assist. In relation to the government's amendment, we support the government's amendment. It has certainly been a response to concerns raised by a number of stakeholders, and for those reasons we will support it.

The Hon. D.G.E. HOOD: I indicate that the Australian Conservatives have a keen interest in the bill before us and that we will play a considered role in the committee stage. I indicate that we will also be supporting the government amendment on this occasion.

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

New clause inserted.

New clause 4B.

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

Amendment No 1 [Lucas–1]—

Page 4, after line 15—After line 15 insert:

4B—Other exemptions from application of Act

This Act does not apply in respect of the following:

(a) a person who provides labour hire services as part of a business or undertaking operating on a not for profit basis;

(b) a person who provides labour hire services where the provision of such services is not the primary function of the person's business or undertaking.

I might indicate at the outset that the shadow attorney-general has had carriage of the legislation and has very capably, with her office, negotiated with stakeholders and with others in relation to the Liberal Party's position on the bill before us.

The Liberal Party amendment is drafted on the basis of concerns that have been raised that even with the government's amendment, which caters for group training organisations, a number of other types of arrangements would still be caught up potentially in the legislation. Contract winemaking services, contract bottling services, engineers, electricians, irrigation repairs, contracted management are further examples of what some stakeholders have argued are normal operating

arrangements for businesses in South Australia that have certainly never been the subject of criticism in relation to the way those arrangements have operated over many years. The amendment of the Liberal Party as drafted simply states:

This Act does not apply in respect of the following:

(a) a person who provides labour hire services as part of a business or undertaking operating on a not for profit basis;

(b) a person who provides labour hire services where the provision of such services is not the primary function of the person's business or undertaking.

The Hon. K.J. MAHER: I rise to indicate that the government will be opposing this amendment. It is our view that this goes a long way to disabling the purpose of this scheme and that the amendments have the potential to create loopholes for unscrupulous operators to enter the labour hire industry and take advantage of vulnerable workers under the guise of being a not-for-profit business or operating another business with a small arm of labour hire.

The government's amendment No. 2, which is coming up, provides a regulation-making power to prescribe certain circumstances in which a person does not provide labour hire services. It is our view that this provides the right flexibility to consider the particular circumstances of those particular persons. This could potentially apply to a not-for-profit organisation that is in the business of supplying some labour hire services. The government does not support blanket exclusions to a particular sector or type of organisation or structures that will give rogue business operators a potential pathway into the industry.

The Hon. D.G.E. HOOD: The Australian Conservatives support the opposition's amendment.

The Hon. J.A. DARLEY: I also indicate that I support the opposition's amendment.

New clause inserted.

Clause 5.

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

Amendment No 1 [Employment–3]—

Page 5, after line 7—After the definition of *premises* insert '*provider*—see section 6(1);'

This amendment provides a new definition of 'provider' under clause 6(1). It provides the definition of 'substitute a responsible person'. This allows for the incorporation of the new clause 27A further in the bill.

The Hon. R.I. LUCAS: My advice is that this is related to the minister's amendment to package 3, which is 'the meaning of labour hire services'. Is that correct? On that basis, we see it as consequential to the more substantive one that is coming, so we will support it.

Amendment carried.

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

Amendment No 2 [Employment–1]—

Page 5, line 32 [clause 5, definition of *substitute responsible person*]—Delete the definition and substitute:

substitute responsible person means a person appointed as a substitute responsible person under section 27 or section 27A;

I briefly outlined this in moving the amendment before. It is consequential on what we have just done. This amendment provides for a new definition of 'substitute responsible person'. It allows for the incorporation of clause 27A into the bill, further on. So, it is consequential on that being accepted further on, but this is where it appears in the bill.

The Hon. R.I. LUCAS: Just to clarify, this is unrelated to the amendment we have just done. So this is consequential on another amendment later on in the minister's package. With respect, this is a difficult committee stage to go through because we actually have five sets of amendments from the minister, which go backwards and forwards with the various clauses. There are two sets of

amendments from us and there is one from the Hon. Mr Darley and, I think, one from the Hon. Mr Brokenshire, so clarity in relation to the connection would assist those of us (which includes the minister, I assume) who do not have carriage of the legislation. That would assist in trying to keep up with all of this. My advice is that the Liberal Party will be supporting the amendment moved by the government.

Amendment carried; clause as amended passed.

Clause 6.

The Hon. K.J. MAHER: So, we are all clear, and I can be corrected by the boss of everyone, the Clerk, if needed, I am proposing to move Amendment No. 2 [Employment-3], which is replacing clause 6 with the new definition, as well as moving the explanatory notes to that definition, which is Amendment No. 1 [Employment-4]. I move:

Amendment No 2 [Employment–3]—

Page 5, lines 35 to 36 [clause 6(1)]—Delete subclause (1) and substitute:

(1) A person (a *provider)* provides *labour hire* services if, in the course of conducting a business, the person supplies, to another person, a worker to do work in and as part of a business or commercial undertaking of the other person.

Note—See section 7 for the limited definition of *worker*.

(1a) The regulations may prescribe circumstances in which a person does not, despite subsection (1), provide labour hire services for the purposes of this Act.

Amendment No 1 [Employment–4]—

Amendment to Amendment No 2 [Employment-3]——After the inserted note insert:

Note—

The definition of labour hire services is mainly directed at engagement arrangements generally referred to in industry as 'on-hire' but also includes other engagement arrangements that (unless exempted in accordance with this Act) satisfy the requirements of this section because the nature or structure of the engagement or arrangement involves a worker being supplied in circumstances where the provider has a pre-existing agreement with the worker under which the provider may, from time to time and at the provider's discretion, send the worker to work in another person's business or commercial undertaking but be paid by the provider for the work.

Examples—

Guy runs a plumbing business and has an employment contract with Tracey under which Tracey is paid to come to work each day at the plumbing business and be assigned work. Corey runs a grape growing business at which there is a problem with the plumbing. Corey enters into a contract with Guy to diagnose and fix the problem at the business and so Guy sends Tracey to Corey's grape growing business to do the work. Guy does not provide labour hire services in sending Tracey to do work at Corey's business.

Richard runs a manufacturing business for which he requires a production worker to work on the production line assembling components. Amy has a pre-existing arrangement with Steve under which Amy may, from time to time and at Amy's discretion, send Steve to do work for other persons for which Steve will be paid by Amy. Richard enters into a contract with Amy under which Amy will supply Steve to Richard to perform the work in the manufacturing business. Amy provides labour hire services in supplying Steve to do work at and as part of Richard's business.

By way of explanation, the government has listened to the reasonable concerns of numerous industry groups and has amended clause 6(1) by ensuring that the definition of 'labour hire services' only applies in a situation where a person who conducts a business supplies a worker to do work in and as part of a business or commercial undertaking with another person. This definition captures the typical triangular labour hire arrangement, which I went through in my second reading summing-up, between the worker, provider and the client. The worker is supplied to, as well as variations on this model which have been used occasionally by questionable labour hire providers to disguise labour hire arrangements

It is not intended to capture arrangements where a worker employed by a business is provided to deliver a service in a domestic capacity. The government amendments make this clear, limiting the persons who will be taken to provide labour hire services by excluding persons who

supply a worker to another person who is not conducting a business or a commercial undertaking, such as in a domestic capacity, and the requirement that the work be done in and as part of the business or commercial undertaking, clarifying that the work must be done to form a part of the other person's business and not be simply done in order to provide services to that other business.

As I am moving them together, this is further clarified with the inclusion of examples within the definition provided by clause 6(1) to demonstrate this. Further, the regulations may now prescribe circumstances in which a person does not, despite subsection (1), provide labour hire services for the purposes of the act. This amendment also clarifies that a person who provides labour hire services is a provider. This creates greater clarity in relation to who the persons referred to in clause 6(1) are. A note has also been included to highlight that section 7 should be used in determining who a worker is under the bill.

There have been calls by some industry groups to incorporate the term 'on-hire', which I went through at some length in my second reading contribution, and its use in modern awards to differentiate that from how it is used here. Particularly, the term 'on-hire' has been used in modern awards for purposes that are not consistent with this bill, that is, to ensure labour hire workers are entitled to the same minimum rates of pay as any other employee.

With regard to a proposal to introduce new requirements that a worker must work under the general guidance and instruction of a client or representative client, it is noted that while this may be appropriate for additional labour hire arrangements where a worker is supplied to a client of a labour hire provider to carry out work under the direction of the client, it is not always the case. The reality is that it is just not always the case that some workers may work free of guidance or instruction or upon the guidance and instruction of another source.

Consequently, the adoption of such changes has the real potential for narrowing the application of the bill to the extent that it excludes labour hire providers who are intended to be captured by the scheme, and also provides opportunities for rogue labour hire operators to structure their arrangements to avoid being captured by the bill, as I went into in some detail in the second reading of this bill.

The Hon. R.I. LUCAS: Given that the minister has moved two sets of amendments as part of one—including what I think must be the longest note to a clause I have ever seen in my 35 years in this place (I stand to be corrected, parliamentary counsel may well know), almost half a page of an explanatory memorandum to try to explain what the minister is seeking to do—my question is: can the minister put on the public record the nature of his advice as to the status, in legal terms, of the explanatory note?

Clearly legislation is legislation, and the courts interpret it. What is the legal precedent for the status of notes and explanatory memorandum, as the minister has incorporated in his amendments under Minister for Employment [4]?

The Hon. K.J. Maher: It does not have the same weight as any other words in the legislation, but—

The Hon. R.I. LUCAS: The minister's response is that it does not have the same weight, but my question is: what is the legal advice the minister has? I am assuming it must have some weight, based on precedent. Is the minister able to explain what weight, if any, the explanatory notes have in the legislation we are being asked to support?

The Hon. K.J. MAHER: I thank the honourable member for his question. Section 19 of the Acts Interpretation Act makes it clear that they do not form part of the act, so they do not carry the same weight as the legislation itself. However, my advice is that they can be used in helping to interpret the act and how it operates.

The Hon. R.I. LUCAS: My advice from the shadow attorney-general is that the Liberal Party will support these particular provisions. The reason for doing so is that this has been one of the issues that stakeholder groups, in particular, have raised significant concerns about—with the government, I am sure, but also with the opposition and other parties—in terms of the nature of the way it was originally drafted. It was way too broad and would potentially encapsulate or incorporate or capture—whatever word you would like to use—a whole range of normal employment

arrangements in South Australia, none of which have been the subject of the sort of criticism that some have directed towards the labour hire industry.

This is a genuine endeavour from the government to meet that criticism, and only time will tell whether or not it is successful. I have indicated our party's position in relation to the legislation overall, but we see this at least as a genuine attempt to try to tidy up some of the more difficult parts of the legislation, and so we will support the amendment. On a personal point I note that I am disappointed in the gender stereotyping by the government in its answers. It is always the male who runs the business and the female who is working, so when one does explanatory memoranda I encourage less gender stereotyping by the government.

The Hon. R.L. BROKENSHIRE: I move:

Amendment No 1 [Broke–1]—

Page 5, lines 35 to 36 [clause 6(1)]—Delete subclause (1) and substitute:

(1) A person (a *provider*) provides labour hire services if, in the course of conducting a business, the person on-hires a worker to another person (a *client*) and the worker works under the general guidance and instruction of the client (or a representative of the client).

I advise the house that the reason we are moving this amendment is that I have met with the South Australia Wine Industry Association, who obviously have a lot of issues around a bill like this because it has a significant impact on how they go about their work.

Subsequent to my meeting with them, I understand that Mr Wallgren and Ms Hills from SAWIA met with members of a SafeWork SA and also the adviser to the Attorney-General. I am advised that during that time, interestingly enough, no-one from CBS was there, even though they would be governing the licensing scheme.

The government, I am advised, insisted that this bill would not capture the industries SAWIA have concerns about, but they cannot provide any actual assurances that they will be protected. The government have advised that the concerns of the South Australia Wine Industry Association are unfounded. The government says it is not seeking to limit the application of the bill in any way.

The wine industry does not believe the bill is necessary and submits that they have significant federal legislation that governs labour hire. The issue to them is not the legislation so much but the enforcement of the legislation. They believe the definition of 'labour hire licensing' is too broad and strongly suggest using a different definition, which is why I have tabled this amendment.

I might add that, relative to this, Business SA have also been in contact with our office. Business SA have exactly the same concerns as those of the wine industry and wanted to see an amendment such as the one that we have put up. I understand that the Australian Industry Group and the Master Builders Association have likewise concerns.

I would ask the house to strongly consider this amendment as some improvement in what is a real concern to these industry sectors. Indeed, I believe my colleague the Hon. Dennis Hood, who is handling the whole bill on behalf of Australian Conservatives, has had quite significant representation from other groups. There are a lot of businesses in this state that are not happy campers as a result of this bill, but this is an attempt to tidy up this particular concern. I commend the amendment.

The Hon. K.J. MAHER: I can rise to indicate that this is effectively a preferred amendment instead of the government amendment. It amends exactly the same part of the bill. I do not think it will come as a surprise that the government prefers our amendment to the bill and those explanatory notes and examples rather than what the Hon. Robert Brokenshire is putting forward.

I traversed this in some detail during my second reading contribution, particularly in relation to the term 'on-hiring', which is used in many modern awards. The modern award serves a specific purpose relating to conditions of employment of labour hire providers, but we are concerned that the term 'on-hire' is merely a lay term used to describe a typical labour hire arrangements. It is not a well-understood term. Adopting it in this bill, we submit, will not provide any further clarity and may reduce the clarity about who is or is not a provider of labour hire services. For those reasons, we prefer the government amendment to provide that clarity.

The Hon. R.I. LUCAS: Is it the minister's legal advice that the two amendments—that is, the government's and the Hon. Mr Brokenshire's—cannot both be passed, it would make little sense of the drafting of the bill, or can they both pass and be incorporated into the final legislation?

The Hon. K.J. MAHER: It is my advice that we do not think they can both be passed and—

The Hon. R.I. Lucas: So, it is one or the other.

The Hon. K.J. MAHER: —sensibly interact with each other. It is amending clause 6, page 5 and similar things that go to do the same thing. You would have two different competing definitions of labour hire and my advice is that we do not think they can be sensibly used together. It is our view that it is one or the other.

The Hon. R.I. LUCAS: That advice, which I think is probably my initial understanding—that is, it is one or the other—places me and the Liberal Party in a little bit of difficulty at the moment, which might be assisted by the fact that we are unlikely to conclude the whole bill before 6 o'clock.

The Hon. K.J. Maher: You never know!

The Hon. R.I. LUCAS: It would make sense in terms of getting a sensible resolution of the bill if we did not conclude the whole bill before 6 o'clock, I guess is my advice. My current instructions are to support both amendments—that is, the amendment the government has moved and the amendment the Hon. Mr Brokenshire has moved—but I understand the point the minister is making: that these are, in essence, choices—one or the other in relation to it. If we were to move both where would we be left in terms of the interpretation of this particular provision? I am going to need to take further instruction during the dinner break on this particular issue. The options that are open to me to suggest to the minister are—

The Hon. K.J. Maher: To recommit if necessary.

The Hon. R.I. LUCAS: I was going to say that if the minister is prepared to recommit this particular clause after the dinner break I can then decide which of the two amendments—maybe I will even support both and so we will have a situation where both are sitting on the table. What I am suggesting to the minister is that I may well support both and therefore both will be passed, so they sit there, but after the dinner break if you recommit this particular clause I will take further advice from the shadow minister and decide if we are actually supporting Mr Brokenshire's amendment or yours and we can decide. If that is not suitable then the simple solution is to support—what I was going to say, just to assist the minister in his decision-making capacity, is that if the minister is not prepared to give that commitment the simple—

The Hon. K.J. MAHER: I can indicate to the honourable member that if we pass—I think what he is suggesting is that the Liberals will support both the government amendment and the opposition amendment, recognising though that that might cause internal difficulties within that definition section, but for the sake of allowing us to go on for the next 40 minutes before dinner we are prepared to recommit this clause to resolve this after the dinner break?

The Hon. R.I. LUCAS: Yes.

The Hon. K.J. MAHER: Yes.

The Hon. T.A. FRANKS: For the record, the Greens will oppose the Brokenshire amendment and support the government amendment.

The Hon. J.A. DARLEY: For the record, I will be supporting the government amendment and opposing the Brokenshire amendment.

The Hon. K.J. Maher's amendments carried; the Hon. R.L. Brokenshire's amendment carried.

The Hon. R.L. BROKENSHIRE: I move:

Amendment No 2 [Broke–1]—

Page 6, lines 7 to 8 [clause 6(2)(d)]—Delete paragraph (d)

I understand that this amendment is consequential.

Amendment carried; clause as amended passed.

Clause 7.

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

Amendment No 3 [Employment–3]—

Page 6, lines 21 to 24 [clause 7(1)]—Delete subclause (1) and substitute:

(1) An individual is a *worker* for a provider if the individual enters into an arrangement with the provider under which—

(a) the provider may supply, to another person, the individual to do work; and

(b) the provider is obliged to pay the individual, in whole or part, for the work.

This amendment deletes current definition of 'worker' under the bill and will replace it with a definition that makes it clear that the bill only applies to labour hire arrangements where a worker for the provider enters into an arrangement with the provider under which the provider may supply to another person the individual to do work, and that the provider is obliged to pay the individual in whole or part for that work.

The Hon. R.I. LUCAS: My advice is that the Liberal Party will support this amendment. Again, it was an issue raised by a number of stakeholders with the government and the opposition, and this is an endeavour by the government to at least partially meet some of those criticisms.

Amendment carried.

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

Amendment No 2 [Lucas–1]—

Page 6, lines 27 to 29 [clause 7(3)]—Delete subclause (3)

Subclause (3) provides:

(3) To avoid doubt, a worker includes an apprentice or trainee under a training contract entered into with a person who was the employer under the Training and Skills Development Act 2008.

The Liberal Party's position is that we do not believe that this particular provision in the legislation is required. Significant concern has been raised by a number of stakeholders, and the Liberal Party's position is to delete this subclause.

The Hon. K.J. MAHER: I rise to indicate that the government will oppose the opposition's amendment. Whilst the government has filed an amendment to exempt registered group training organisations, it has retained this clause that this amendment seeks to delete. Any business that registers a training contract with the Training and Skills Commission can employ an apprentice or trainee.

Labour hire providers that employ trainees and apprentices would still be captured by the scheme, as these businesses are not subject to the registration requirements and auditing undertaken by trainee and apprenticeship services within the Department of State Development. Removing apprentices and trainees from the meaning of work for the purpose of this bill would potentially put this vulnerable group of workers at risk of being exploited by unscrupulous labour hire operators.

The Hon. D.G.E. HOOD: The Conservatives will support the amendment.

The Hon. T.A. FRANKS: The Greens will oppose the amendment.

The Hon. J.A. DARLEY: I will oppose the amendment

Amendment negatived; clause as amended passed.

Clause 8 passed.

Clause 9.

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

Amendment No 3 [Employment–1]—

Page 6, line 38 [clause 9(1)(a)]—Delete paragraph (a) and substitute:

(a) the person's character including, for example, the person's honesty, integrity and professionalism;

This amendment to clause 9(1)(a) removes the 'reputation' consideration in the fit and proper person test and replaces it with a requirement for the commissioner to consider the person's character including, for example, the person's honesty, integrity and professionalism. This is consistent with the approach adopted in Queensland and, I am informed, is regarded by stakeholders as a more objective consideration in determining whether a person is a fit and proper person to be the holder of a licence.

The Hon. R.I. LUCAS: My advice is that, again, this relates to a criticism of the original drafting raised by a number of stakeholders. The Liberal Party will support the amendment.

Amendment carried.

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

Amendment No 3 [Employment–2]—

Page 7, lines 7 to 9 [clause 9(1)(e)]—Delete paragraph (e) and substitute:

(e) in the case of a natural person—

(i) whether the person has sufficient business knowledge, experience and skills for the purpose of properly carrying on business under the licence; and

(ii) whether the person has previously been the director of a body corporate that has previously held a licence under this Act or a corresponding law and whether such a licence was suspended or cancelled;

I am advised that this has been requested by Consumer and Business Services who will be administering this scheme. It deletes proposed paragraph (e) and substitutes new paragraph (e) as stated in the amendment. The amendment enables the commissioner of Consumer and Business Services to have regard to whether a natural person has previously held a licence under this act or a corresponding law and whether such a licence was suspended or cancelled.

The Hon. R.I. LUCAS: My advice is that, again, this issue was raised during consultation. The Liberal Party supports the government's amendment.

Amendment carried; clause as amended passed.

Clause 10.

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

Amendment No 3 [Lucas–1]—

Page 9, line 15 [clause 10(1), penalty provision, (a)]—Delete ' or imprisonment for 5 years'

The shadow attorney-general referred to these issues in her contribution in the House of Assembly, and I also referred to them briefly in my second reading contribution in this chamber. There is a series of three amendments. Amendments Nos 3, 4 and 5 are all consequential on each other, so I will take this as a test vote for the three of them.

In the bill, penalties for breaches are $140,000 to $500,000 and include the possibility of imprisonment. After consultation with stakeholders, the Liberal Party position is that the imprisonment clauses were not appropriate in relation to the legislation. Certainly, stakeholders submitted that the imprisonment and also the cost penalties, for that matter, were much higher than other similar laws and, in their view, were grossly disproportionate to the offences. For those reasons, the Liberal Party position is to move this amendment, which seeks to delete the imprisonment options.

The Hon. K.J. MAHER: In speaking to these amendments, it will also cover the amendments that are, I think, amendments that either support the opposition amendment or the government amendments. The opposition amendment, as the Hon. Rob Lucas has outlined, removes the potential for any term of imprisonment. The government amendments, which we favour

instead, reduce the term of imprisonment from five to three years. As the honourable member indicated, the five years was more than other jurisdictions, so what our amendments do is reduce it from five years down to three years to bring it in line with the scheme, for example, in Queensland.

I am sure that I will be corrected if I am wrong. The opposition is favouring taking imprisonment as a possible penalty out altogether. The government's amendments agree, after stakeholder engagement, to lessen the term of imprisonment, to not remove it altogether but reduce the maximum from five to three years, in line with Queensland.

The Hon. T.A. FRANKS: The Greens will be opposing the opposition amendment and supporting the government amendments.

The Hon. D.G.E. HOOD: The Conservatives' position is that we will support the opposition amendment to remove the imprisonment provisions, but should that amendment fail, then we would support the government amendment to reduce it to three years.

The Hon. J.A. DARLEY: I will be opposing the opposition's amendment and supporting the government's amendments.

The CHAIR: The first question is that the words 'or imprisonment for five years' stand.

The committee divided on the question:

Ayes 10
Noes 9
Majority 1

AYES

Darley, J.A.	Franks, T.A.	Gago, G.E.
Gazzola, J.M.	Hanson, J.E.	Maher, K.J. (teller)
Malinauskas, P.	Ngo, T.T.	Parnell, M.C.
Vincent, K.L.		

NOES

Brokenshire, R.L.	Dawkins, J.S.L.	Hood, D.G.E.
Lee, J.S.	Lucas, R.I. (teller)	McLachlan, A.L.
Ridgway, D.W.	Stephens, T.J.	Wade, S.G.

PAIRS

Hunter, I.K.	Lensink, J.M.A.

Question thus agreed to; amendment negatived.

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

Amendment No 1 [Employment–5]—

Page 9, line 15 [clause 10(1), penalty provision, (a)]—Delete '5 years' and substitute '3 years'

Amendment carried; clause as amended passed.

Clause 11.

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

Amendment No 2 [Employment–5]—

Page 9, line 26 [clause 11(1), penalty provision, (a)]—Delete '5 years' and substitute '3 years'

Amendment carried; clause as amended passed.

Clause 12.

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

Amendment No 3 [Employment–5]—

Page 9, line 37 [clause 12, penalty provision, (a)]—Delete '5 years' and substitute '3 years'

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14.

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

Amendment No 4 [Employment–2]—

Page 10, line 31 [clause 14(4)(a)]—After 'cancelled' insert 'under section 21'

This amendment provides that a two-year application preclusion applies only to licences cancelled for a reason provided under section 21. This means that the two-year preclusion will not apply to a licence that is cancelled due to failure of the licence holder to pay the required fee and submit the required report on time.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

Amendment carried; clause as amended passed.

Clause 15.

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

Amendment No 4 [Employment–1]—

Page 11, after line 20 [clause 15(1)]—After paragraph (a) insert:

(ab) a person nominated to be a responsible person for the purposes of the licence is not a fit and proper person to be a responsible person; or

This amendment to clause 15(1) provides that a designated entity may object to an application for a licence on the grounds that the person nominated to be a responsible person is not a fit and proper person.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

Amendment carried.

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

Amendment No 5 [Employment–1]—

Page 11, line 26 [clause 15(2)(b)]—Delete '28' and substitute '14'

This follows on and provides that a notice of objection must be made within 14 days, not 28 days as previously provided, of the publication of the notice of application.

The Hon. R.I. LUCAS: May I ask which stakeholder argued for this particular change?

The Hon. K.J. MAHER: My advice is that this occurred after all consultation and was suggested by Consumer and Business Services as a better option; that is, to go to 14 rather than 28 days.

The Hon. R.I. LUCAS: My instructions are to support, so I will do as I am instructed and support. However, as a personal view, limiting the time within which people can object to 28 days does not seem to be excessive. Nevertheless, the Liberal Party wholeheartedly endorses the amendment.

Amendment carried; clause as amended passed.

Clause 16.

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

Amendment No 6 [Employment–1]—

Page 12, line 9 [clause 16(1)]—Delete 'may' and substitute 'must'

The amendment to clause 16 deletes the word 'may' and substitutes the word 'must'. I think most of us will be familiar with how that operates. It provides that where the applicant for a licence has satisfied the fit and proper person test and demonstrated that they have sufficient financial resources, the commissioner must grant a licence. This provides certainty to applicants on the requirements they must meet for the licence application to be successful by removing any additional discretionary power that the word 'may' would indicate.

The Hon. R.I. LUCAS: I am pleased to support the amendment. There was a period of time, going back some years, when there was a parliamentary counsel debate that 'may' equalled 'must'. To us laypersons, 'must' always meant more than 'may'. I am pleased to support the amendment as moved by the government.

Amendment carried.

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

Amendment No 7 [Employment–1]—

Page 12, line 14 [clause 16(1)(a)(ii)]—Delete '; or' and substitute '; and'

This deletes an 'or' and substitutes an 'and'. I am advised that this is a technical amendment to correct a drafting error.

Amendment carried; clause as amended passed.

Clause 17 passed.

New clause 17A.

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

Amendment No 8 [Employment–1]—

Page 13, after line 7—After clause 17 insert:

17A—Prohibition on licence transfer, sale etc.

The holder of a licence must not transfer, sell, dispose of, lend or hire out the licence to another person.

Maximum penalty: $25,000 or imprisonment for 1 year.

This amendment provides for the inclusion of a new clause 17A to the bill to prohibit the holder of a licence to transfer, sell, dispose of, lend or hire out the licence to another person. This provides additional safeguards and strengthens the integrity of the bill and the scheme created by the bill. Any person who seeks to operate a business that provides labour hire services, including a person who purchases a business from a licensed provider, will be required to make an application for a licence, and this was suggested as an improvement to the bill by Consumer and Business Services.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment. We do have an amendment flagged in the [Lucas-2] set of amendments.

The CHAIR: That is right.

The Hon. R.I. LUCAS: I indicate that I will not move that amendment given that I believe it is now consequential on the earlier division and vote where the principle of imprisonment as a sentence under the legislation was established. Contrary to our view, the majority has argued that imprisonment of varying terms is appropriate in the legislation. Our position was to oppose it and for those reasons I accept the vote of the committee and do not propose to move our amendment to this particular amendment. The Liberal Party will now support the government's amendment.

New clause inserted.

Clauses 18 to 23 passed.

Clause 24.

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

Amendment No 9 [Employment–1]—

Page 17, lines 2 to 9—Delete the clause and substitute:

24—Requirements for responsible persons

A responsible person, for a licence, must be an individual who—

(a) is responsible for the day-to-day management and operation of the business to which the licence relates; and

(b) is a fit and proper person to be a responsible person; and

(c) satisfies any other requirements prescribed by regulation.

The government has acknowledged the concerns of stakeholders and provided for an amendment to clause 24 of the bill to clarify the original intent and scope of the provision by providing new requirements for a responsible person. These requirements include that the responsible person for a licence must be an individual who is responsible for the day-to-day management and operation of the business to which the licence relates, and is a fit and proper person to be a responsible person and satisfies any other requirements prescribed by the regulations.

The Hon. R.I. LUCAS: My advice is that the Liberal Party supports this amendment.

Amendment carried; new clause 24 inserted.

Clause 25 passed.

Clause 26.

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

Amendment No 5 [Employment–2]—

Page 17, lines 19 to 21 [clause 26(2)]—Delete subclause (2) and substitute:

(2) An application under subsection (1) must be accompanied by—

This amendment inserts a new clause 26(2) so that the information required on application to change a responsible person is determined by the commissioner, providing more certainty on the information that is required for licences. The new subclause also includes the requirement for an application to be accompanied by the prescribed fee. This fee will be fixed by regulation.

The Hon. R.I. LUCAS: Support.

Amendment carried.

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

Amendment No 4 [Employment–3]—

Page 17, lines 22 to 23 [clause 26(3)]—Delete subclause (3) and substitute:

(3) The Commissioner may approve the application if—

(a) the Commissioner has complied with the requirements of section 27B; and

(b) the Commissioner is satisfied that the proposed appointee is suitable for appointment as a responsible person.

This amends clause 26 to provide that the commissioner is only able to change a responsible person if the commissioner is satisfied that the person is suitable for appointment as a responsible person and has complied with the requirements under new clause 27B, which provides designated entities to lodge an objection to the appointment of a substituted responsible person.

The Hon. R.I. LUCAS: I can advise that the Liberal Party supports this amendment.

Amendment carried; clause as amended passed.

Clause 27.

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

Amendment No 6 [Employment–2]—

Page 17, line 34 [clause 27(2)]—After 'appointment of a person under subsection (1)' insert:

(but in any case within 7 days)

This amendment to makes it clear that a licence holder must notify the commissioner of an appointment by a licence holder of a substitute responsible person within seven days of the appointment. This provides guidance on what is considered reasonably practicable in the circumstances.

The Hon. R.I. LUCAS: The Liberal Party supports this amendment.

Amendment carried.

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

Amendment No 7 [Employment–2]—

Page 17, after line 36—After subclause (2) insert:

(2a) The holder of a licence must, on providing notice to the Commissioner under subsection (2), pay to the Commissioner the prescribed fee.

This simply provides for the inclusion of a fee to be fixed by regulation to accompany the notice to the commissioner.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

Amendment carried.

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

Amendment No 8 [Employment–2]—

Page 17, lines 37 to 38 [clause 27(3)]—Delete subsection (3) and substitute:

(3) The Commissioner may cancel the appointment of a person under subsection (1) if satisfied that—

(a) the person is not a fit and proper person to be a responsible person; or

(b) the licence holder has failed to pay the fee under subsection (2a) in accordance with that subsection.

This is consequential upon the amendment we have just passed, so amendment No. 8 [Employment-2] is consequential on the passing of amendment No. 7 [Employment-2].

Amendment carried; clause as amended passed.

New clauses 27A and 27B.

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

Amendment No 5 [Employment–3]—

Page 18, after line 12—After clause 27 insert:

27A—Appointment of substitute responsible person by Commissioner on application

(1) If a responsible person for a licence will be absent from the business to which the licence relates for a period of more than 30 days the Commissioner may, on application by the holder of the licence, appoint another individual as a *substitute responsible person* in respect of the licence for the period of that absence.

(2) An application under subsection (1) must be accompanied by enough information about the person proposed to be appointed to enable the Commissioner to decide whether the person is suitable for appointment as a substitute responsible person.

(3) The Commissioner may only appoint a person as a substitute responsible person under this section if—

(a) the Commissioner has complied with the requirements of section 27B; and

(b) the Commissioner is satisfied that the person is suitable for appointment as a responsible person.

(4) If the Commissioner approves the application, the Commissioner must update the register to record the change to the licence details.

27B—Objection to appointment of responsible person or substitute responsible person

(1) If the Commissioner receives an application to which this section applies, the Commissioner must cause notice of the application to be published on a website determined by the Commissioner.

(2) A designated entity may, in response to a notice published under subsection (1) in respect of an application and by notice in writing, lodge with the Commissioner an objection to the application on the grounds that the person proposed to be appointed as a responsible person, or as a substitute responsible person, is not a fit and proper person to be a responsible person.

(3) A notice of objection under subsection (2) must—

(a) state reasons for the objection; and

(b) be made within 14 days of notice of the application being published under subsection (1).

(4) If the Commissioner receives a notice of objection under subsection (2) in respect of an application, the Commissioner must—

(a) forward a copy of the notice of objection to the person making the application as soon as reasonably practicable after receiving the notice; and

(b) allow a period of 14 days from the date of forwarding the notice for the applicant to respond to the notice of objection.

(5) If a notice of objection has been lodged under subsection (2) in respect of an application—

(a) the Commissioner must not grant the application unless the Commissioner has taken into account the objection and the response of the applicant to the objection (if any); and

(b) if the Commissioner grants the application, the Commissioner must give notice of the grant to the designated entity that lodged the notice of objection.

(6) This section applies to the following applications:

(a) an application under section 26(1)(b) to appoint another individual as a responsible person for a licence;

(b) an application under section 27A(1) to appoint an individual as a substitute responsible person.

(7) In this section—

designated entity has the same meaning as in section 15.

This inserts new clauses 27A and 27B. The amendment adds new clause 27A to allow a business, on application, to appoint a substitute responsible person for the period of absence of the appointed responsible person. This provision can be used where the appointment of a substitute responsible person is required for a period of more than 30 days. An application under this provision will need to be accompanied by information that will enable the commissioner to determine whether that person is suitable for appointment.

The commissioner is only able to appoint a substitute responsible person under 27A, again, if the commissioner is satisfied that the person is a suitable appointment as a responsible person and that it complies with the requirements under new clause 27B, which provides designated entities with the ability to lodge an objection to the appointment of a substitute responsible person—very similar to the clauses we have just been discussing.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

New clauses 27A and 27B inserted.

Clause 28.

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

Amendment No 9 [Employment–2]—

Page 18, line 20 [clause 28(1)(c)]—After '27' insert 'or 27A'

This is consequential on what we have just passed with the new clause 27A.

The CHAIR: The Hon. Mr Lucas, are you alright with that?

The Hon. R.I. LUCAS: Yes.

Amendment carried; clause as amended passed.

Clause 29 passed.

Clause 30.

The Hon. K.J. MAHER: My amendment to clause 30 deletes 'persons' and substitutes 'Public Service employees'. It specifies that an authorised officer must also be a Public Service employee. While I am on my feet, I indicate that the government does not oppose amendment No. 6 [Lucas-1], which will follow, and it is my intention that, after we finish this clause 30, we break for dinner and then commence this afterwards.

The Hon. R.I. LUCAS: In the spirit of wanting to get to dinner, I support the government's amendment and they are supporting our amendment, so it sounds wonderful.

The CHAIR: You are causing a constitutional crisis here. My advice is that, if the minister is going to support the Hon. Mr Lucas's amendment, we leave out the minister's amendment. Alright?

The Hon. K.J. MAHER: Yes, leave ours out.

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

Amendment No 6 [Lucas–1]—

Page 19, lines 32 to 33 [clause 30(2)]—Delete subclause (2) and substitute:

(2) The Commissioner may, by instrument, appoint any of the following as an authorised officer for the purposes of this Act:

(a) a public sector employee under the *Public Sector Act 2009*;

(b) the holder of a statutory office;

(c) a person who is appointed as an authorised officer or inspector under a corresponding law;

(d) a person in a prescribed class of persons.

Amendment carried; clause as amended passed.

Clause 31 passed.

Sitting suspended from 18:01 to 19:47.

Clause 32.

The Hon. R.I. LUCAS: I am advised that amendment No. 7 is consequential upon a subsequent amendment to the same clause, which is amendment No. 8 [Lucas-1], so we might as well have the substantive debate on this. If the Liberal amendment prevails we will not need to repeat it on our amendment No. 8.

The CHAIR: You can move both amendments.

The Hon. R.I. LUCAS: I am happy to move both amendments, if that is permissible. I move:

Amendment No 7 [Lucas–1]—

Page 20, line 31 [clause 32(1)]—Delete 'For the purposes' and substitute:

Subject to subsection (1a), for the purposes

Amendment No 8 [Lucas–1]—

Page 21, after line 8—After subclause (1) insert:

(1a) The following powers may only be exercised with the authority of a warrant issued by a magistrate:

(a) the power to enter and search—

(i) premises that are not, or that are not reasonably suspected of being, a workplace; or

(ii) any part of a workplace that is used only for residential purposes;

(b) the power to stop, enter and search a vessel or vehicle that is not a workplace;

(c) the powers under subsection (1)(c) and (i), insofar as they relate to items or things found in a vessel or vehicle that is not a workplace or in premises that are not, or are not reasonably suspected of being, a workplace,

(and the requirement for a power under subsection (1) to be exercised at a reasonable time does not apply if the power is exercised under the authority of, and in accordance with, a warrant).

Both amendments relate to right of entry provisions. Under the current bill I am advised that authorised officers have a broad power to enter and seize information. These entry provisions are much broader than other similar laws, such as the Work Health and Safety Act. The amendments the shadow minister has had drafted place a requirement for power to enter and search a premise may only be exercised when the authorised officer is granted a warrant issued by a magistrate. As I said, both amendments should be taken as a package and they stand or fall together.

The Hon. K.J. MAHER: I rise to indicate the government is strongly opposed to these amendments. The evidence that was provided to the Economic and Finance Committee on this shows, I think, that these provisions are needed; for example, the provision of substantial accommodation to labour hire workers has been identified as a significant issue in the industry. In addition, there have been media reports and evidence provided into inquiries across the country of workers being required to pay for accommodation of an exceptionally substandard nature, often in cramped conditions, having to live with many others.

This is another legislative gap that this bill seeks to address to ensure the providers of labour hire services and the persons that host labour hire workers who provide accommodation do provide accommodation that is in keeping with acceptable standards of the wider community. This addresses recommendation No. 3 of the Economic and Finance Committee's report. It is imperative that authorised officers have the power to enter and inspect premises that is accommodation provided in connection with the supply of labour hire workers.

Supporting this amendment, we contend, will be workers having to potentially live in substandard conditions and having to pay for it without the proper oversight that is needed. The powers of entry and inspection contained in this clause in the bill are not new powers to inspectors, they are existing powers for authorised officers; for example, under the Fair Trading Act.

The Hon. R.I. LUCAS: Can I just clarify then: the advice provided to the opposition is that these powers are significantly wider than the powers for authorised officers under the work health and safety legislation. Does the government acknowledge that these powers for authorised officers are significantly wider and stronger than equivalent powers under the work health and safety legislation?

The Hon. K.J. MAHER: I do not have advice on the comparative nature of the powers to those two pieces of legislation. My advice though is that these powers are taken directly from the powers under the Fair Trading Act.

The Hon. D.G.E. HOOD: My understanding is similar to that of the Hon. Mr Lucas, that is, that these powers are considerably broader than those under the work health and safety legislation. For that reason, we will support the amendment.

The Hon. J.A. DARLEY: I indicate that I will be supporting these two amendments.

Amendments carried.

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

Amendment No 9 [Lucas–1]—

Page 21, after line 14—After subclause (3) insert:

(4) In this section—

workplace has the same meaning as in the Work Health and Safety Act 2012.

I am advised this is consequential.

Amendment carried; clause as amended passed.

Clause 33 passed.

Clause 34.

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

Amendment No 12 [Employment–1]—

Page 21, line 30—After 'authorised officer' insert ', or a person assisting an authorised officer,'

This amendment provides that a person who hinders a person assisting an authorised officer will also be guilty of an offence.

Amendment carried; clause as amended passed.

Clauses 35 to 37 passed.

Clause 38.

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

Amendment No 13 [Employment–1]—

Page 22, lines 37 to 38 [clause 38(1)(b)]—Delete paragraph (b) and substitute:

(b) a decision under section 17 to impose a condition on, or vary a condition of, a licence held by the person (including a condition imposed on the grant of the licence);

Amendment No 14 [Employment–1]—

Page 23, after line 4 [clause 38(1)]—After paragraph (e) insert:

(f) a refusal to extend the appointment of a person as a substitute responsible person under section 27(6);

(g) a refusal to appoint a person as a substitute responsible person under section 27A.

These amendments to clause 38 are to include decisions made by the commissioner, that is, to impose or vary a condition of licence to extend the appointment of a substitute responsible person and to refuse to appoint a substitute person, are reviewable decisions and therefore can be appealed.

The Hon. R.I. LUCAS: Support.

Amendments carried; clause as amended passed.

Clauses 39 to 43 passed.

New clause 43A.

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

Amendment No 15 [Employment–1]—

Page 25, after line 19—After clause 43 insert:

43A—Advertisements to include licence number

The holder of a licence must not publish, or cause to be published, an advertisement relating to the provision of labour hire services unless the advertisement specifies, alongside the name or contact details of the holder of the licence, the licence number preceded by the letters 'LHS'.

Maximum penalty: $2,500.

This is to insert a new clause 43A to create an offence for a holder of a licence to publish an advertisement in relation to the provision of labour hire services, unless the advertisement includes

details of the licence holder and the licence number. This will assist host employers and workers in determining whether a labour hire provider is a legitimate labour hire provider.

The Hon. R.I. LUCAS: Support.

New clause inserted.

Clause 44.

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

Amendment No 16 [Employment–1]—

Page 25, lines 20 to 40—Delete the clause

This amendment removes the liability provision under clause 44. The government considers that the primary liability established by the bill in conjunction with the prescribed information responsible persons requirement provides sufficient provisions removing the need for a vicarious liability provision.

The Hon. R.I. LUCAS: Significant concern was raised about the vicarious liability provisions by some stakeholders. I am pleased to see the government move the amendment; we support it.

Clause negatived.

Clause 45.

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

Amendment No 17 [Employment–1]—

Page 26, lines 26 to 27 [clause 45(4)]—Delete subsection (4) and substitute:

(4) This section does not apply in relation to a prosecution for a contravention of section 10.

This amendment provides that the general defences provision does not apply in relation to prosecution for a contravention of section 10, that is, a licence required to provide labour hire services.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

Amendment carried; clause as amended passed.

Clauses 46 to 48 passed.

New clause 49.

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

Amendment No 1 [Darley–1]—

Page 28, after line 12—After clause 48 insert:

49—Review of Act

(1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.

(2) The review and report must be completed as soon as reasonably practicable after the third anniversary of the commencement of this Act (but in any event within 6 months after that commencement).

(3) The Minister must cause a copy of the report to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

As I indicated in my second reading, I believe the introduction of this bill was a little hasty. There is a lot of contention from stakeholders about many aspects of the bill. Whilst the amendments filed by the government indicate they are willing to compromise, there would be no need to file so many in-house amendments if the bill was consulted on properly to begin with.

The issue with the definition of 'labour hire' has been documented in my second reading, and it is because of these reasons that I am moving an amendment to insert a review of the act after three years. This will give an opportunity for any issues with the definition of 'labour hire', or any other

provision of the act, to be identified and rectified as needed. This amendment has the support of stakeholders, and I thank all contributors for their input into this amendment.

The Hon. K.J. MAHER: I understand that the government supports this amendment.

The Hon. R.I. LUCAS: The Liberal Party supports the amendment.

New clause inserted.

Schedule and title passed.

Bill reported with amendment.

Bill recommitted.

New clause 4B—reconsidered.

The Hon. K.J. MAHER: This was discussed before the dinner break. As we said, we think this amendment has the potential to create a significant loophole for illegitimate operators. In particular, the amendment as it was passed and now stands as part of the bill adds more questions about who is or is not captured in this bill, and what would be considered a primary function. Potentially, anyone looking to elude being captured by the scheme could set up a business structure to try to fit within this exemption. We would urge the chamber not to allow these potential loopholes that we think would significantly weaken the purpose of this bill.

The Hon. R.I. LUCAS: I am not churlish in relation to these things. We had agreed to recommit clause 6; we were unaware of the proposal to recommit new clause 4B. We think this is a magnificently structured amendment, originally moved by the shadow attorney-general, drafted, cogently and passionately argued in the house, and this chamber determined to support it. I would urge those members who supported this, as I said, very elegantly crafted and designed amendment.

Without being too frivolous, this is a significant issue for significant stakeholders in the industry. They had grave concerns about the drafting of the government's current bill, not just in relation to this particular provision but many other provisions as well. We have indicated our position as a party, that whilst we are prepared to support a number of these amendments and seek to improve the bill, we are nevertheless implacably imposed to the legislation and will vote against the legislation at the third reading.

We accept it is likely that the government may well have the numbers at the third reading. Nevertheless, we think this particular amendment, which was very adequately argued, discussed and debated prior to the dinner break, should remain as part of the bill. We do urge those members who supported it prior to the dinner break to continue to support it after the dinner break.

The Hon. D.G.E. HOOD: Our position remains unchanged.

The Hon. J.A. DARLEY: I will not be supporting this.

The Hon. T.A. FRANKS: The Greens' position also remains unchanged.

New clause negatived.

Clause 6—reconsidered.

The Hon. K.J. MAHER: This was one where we passed two amendments, and it was the government's view that both amendments could not stand as part of the bill. They did work for a very similar reason, and it would be internally inconsistent to have them both remain. We passed both of them with the intention to not hold up the passage of the bill but to come back at the end and reagitate, if it was the view that they both cannot stand—which is our view—which one would rise and which one would fall.

It is no surprise that it is our view that the government amendment should stand rather than the Brokenshire amendment. The Brokenshire amendment introduces another term of 'the client', which is not mentioned anywhere else in the bill. It also introduces the term 'on-hire', whereas the term 'supplies' is used in the bill and is preferred by the government. I will not go over it all again. I spoke about this at some length in the second reading summary and also on this clause before about the term 'on-hire' and why we think it is not the appropriate term for this bill.

I think that it is reasonably well accepted that both amendments will create confusion over a provision where all the stakeholders have sought clarity. It is now up to this chamber to decide which is the preferred method of clarifying this. I understand that there have been significant discussions. I thank members of the crossbench, who I understand are supportive of the government's preferred way to clarify this issue.

The Hon. R.I. LUCAS: I have consulted the shadow minister responsible for the bill, the shadow attorney-general. She has indicated that the Liberal Party's preferred position is the amendment moved by the Hon. Mr Brokenshire, so we will be supporting that. It is really for your decision, Mr Chair; it is an unusual position to be in. My suggestion is that, if we did a round robin and worked out who has 11 votes and who has 10, whoever has the 11 can move to remove the other provision, if that is the way the Clerk and you as Chair wish to proceed.

Whoever has the 11 votes out of the 21 will get to have either the government amendment or the Hon. Mr Brokenshire's amendment. Clearly, whoever has the numbers would then need to ensure that the other amendment no longer exists in the bill. We are supporting the Brokenshire amendment. It is for the other crossbenchers to indicate their positions.

The Hon. T.A. FRANKS: I would like the mover of the amendment to explain what he believes the term 'on-hire' covers. Certainly, we have concerns that perhaps, while it is at the behest of the industry, it does not actually do what they hope it will do. If the mover of the Brokenshire amendment could address that question, that would provide the clarity that we desire.

The Hon. K.J. MAHER: I might be able to assist this chamber in some of this. I talked about this quite a lot during the second reading sum-up stage. The term 'on-hiring' is used in some modern awards. It is assumed that this amendment is being proposed because a number of submissions from industry groups prefer the use of that term. However, modern awards have a very specific purpose relating to the condition of employees of labour hire providers. The term 'on-hire' is merely a lay term used to describe a typical labour hire arrangement. It is not a well-understood term, and we think that adopting it in this bill where it does not appear elsewhere does not provide any greater clarity about who is or who is not a provider of labour hire services.

The Hon. T.A. FRANKS: The Greens remain opposed to the Brokenshire amendment. While we have sympathies for why it was brought before this place and we also have the same concerns and reservations about a bill brought before us without the clarity that it should have had in the first round—the government does have some blame to take with that matter—the government has been responsive. The government has also, with the supports they have through the machinery of government, provided a definition that we think both addresses the concerns and does not create further confusion.

The CHAIR: I put the question that subclause (1), inserted by the Hon. R.L. Brokenshire, stand as part of the bill.

The committee divided on the question:

Ayes 9
Noes..... 10
Majority..... 1

AYES

Brokenshire, R.L.	Dawkins, J.S.L.	Hood, D.G.E.
Lee, J.S.	Lucas, R.I. (teller)	McLachlan, A.L.
Ridgway, D.W.	Stephens, T.J.	Wade, S.G.

NOES

Darley, J.A.	Franks, T.A.	Gago, G.E.
Hanson, J.E.	Hunter, I.K.	Maher, K.J. (teller)
Malinauskas, P.	Ngo, T.T.	Parnell, M.C.
Vincent, K.L.		

PAIRS

Lensink, J.M.A.	Gazzola, J.M.

Question thus disagreed to.

The CHAIR: The Hon. Mr Brokenshire, we have a sticky problem here in regard to a consequential amendment. We are trying to work out how we get it reinserted in this paragraph.

The Hon. R.L. BROKENSHIRE: Given the vote, I will withdraw that. It was consequential, I understand, so I withdraw that.

The CHAIR: Can you move that paragraph (d) be reinserted?

The Hon. R.L. BROKENSHIRE: I move:

That paragraph (d) be reinserted.

Amendment carried; clause as further 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) (20:15): I move:

That this bill be now read a third time.

The Hon. R.I. LUCAS (20:16): I have a brief contribution to the third reading. As we indicated at the second reading, we believe this legislation is a dog's breakfast and albeit the government has endeavoured through five separate sets of amendments, over a period of days, to try to improve the dog's breakfast, it nevertheless remains a dog's breakfast.

It is a fair indication, as the Hon. Tammy Franks has indicated, that the government did not consult properly, widely and appropriately, in the first instance, with all the relevant stakeholders and for those reasons there was widespread opposition. Clearly, the government heard some of that and were in a position, frankly, where if they wanted to get the legislation through the Legislative Council and get the votes to support it, they needed to continue to move amendments.

I suspect it is a world record of amendments being moved by the government to one of its own bills in the Legislative Council, as we reach the potential final three days of the sittings this year for this parliament. It will be a world record the government will keep for itself for a while, where it moves five separate sets of amendments to its own legislation.

Nevertheless, for the reasons we outlined in the second reading, the Liberal Party's position is that we are still implacably opposed to the legislation. As we outlined in the second reading, we acknowledge that rogue operators exist in the industry and that there are widespread provisions at both the federal and state level that, if appropriately used, can clamp down on the rogue operators within the industry. They should be cracked down on and the workers should be protected using the existing provisions. For those reasons, we will be voting against the third reading of the bill.

The Hon. D.G.E. HOOD (20:18): Very briefly I indicate that the Hon. Mr Lucas has enunciated our position very well. We also indicate that we will be opposing the third reading. We have had representation from all of the main industry groups and I am sure they have contacted all of the other members of this place arguing their case. We are persuaded by those groups, and I am talking specifically about Business SA, the Australian Industry Group, the HIA, the NBA and others that have indicated strong opposition to various aspects of this legislation. For that reason, and others, we do not support the third reading.

The Hon. T.A. FRANKS (20:18): The Greens reiterate our support for the bill. In my second reading contribution, I noted that when the Deputy Premier introduced the bill he noted that it would

need amending in the upper house, that he put the bill out for consultation and that yes, it was not a perfect process, but we will not let an imperfect process be the enemy of the good, and the bill does very much good. It basically serves people who have working conditions very far from those that we enjoy in this place, people who are the most marginalised and vulnerable and exploited in our community and, as parliamentarians, it is our role to do something about that. This bill does do something about that. The bill does not wait for the perfect to come along and bemoan the injustice while arguing the crossing of the t's and the dotting of the i's.

I think the Hon. Rob Lucas was over-egging the pudding a little by saying that I had grave reservations. I would not call this a dog's breakfast. I would indeed call this a fine day's work where the Legislative Council did its job and worked constructively to improve a bill that will do very good for this community.

The Hon. J.A. DARLEY (20:19): I indicate that I will be supporting the third reading of the bill.

The Hon. K.L. VINCENT (20:20): Having already spoken on this bill, I do not intend to go on at any length, except to say that we have before us an opportunity to protect exploited workers, as others have already said, after a terrible exposé, and I think it is beholden to each of us to act on that opportunity. I am not going to pretend that the way this has been done is perfect, but again I do not think that we could let procedure stand in the way of a good outcome, particularly when we are talking about vulnerable exploited workers.

Given that the Master Builders Association has come together with other groups with whom they are not exactly as thick as thieves, shall we say, that indicates that there is broad support for the bill and that we have finally reached a point where it is acceptable. Therefore, we need to waste no further time in proceeding with it, so the Dignity Party will be supporting the third reading of the bill.

The house divided on the third reading:

Ayes 10
Noes..... 9
Majority..... 1

AYES

Darley, J.A.	Franks, T.A.	Gago, G.E.
Hanson, J.E.	Hunter, I.K.	Maher, K.J. (teller)
Malinauskas, P.	Ngo, T.T.	Parnell, M.C.
Vincent, K.L.		

NOES

Brokenshire, R.L.	Dawkins, J.S.L.	Hood, D.G.E.
Lee, J.S.	Lucas, R.I. (teller)	McLachlan, A.L.
Ridgway, D.W.	Stephens, T.J.	Wade, S.G.

PAIRS

Gazzola, J.M.	Lensink, J.M.A.

Third reading thus carried; bill passed.

CHILDREN'S PROTECTION LAW REFORM (TRANSITIONAL ARRANGEMENTS AND RELATED AMENDMENTS) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 15 November 2017.)

The Hon. A.L. McLACHLAN (20:26): I rise to speak to the Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Bill 2017. This bill was tabled by the Attorney-General in the other place on 14 November and was debated and passed on the same day at the government's request. The bill is now before us in this chamber. The bill seeks to amend a number of acts relating to the care and protection of children in our state. It makes a number of transitional and consequential amendments as a result of the Child Safety (Prohibited Persons) Act 2016, the Children and Young People (Oversight and Advocacy Bodies) Act 2016 and the recently passed Children and Young People (Safety) Act 2017.

Neither of the child safety or prohibited person acts contained transitional arrangements or the consequential amendments related to other extant acts in order for both acts to commence operation. This bill therefore needs to pass in order for the acts to commence operation. For example, such amendments include transitional provisions that will enable DCSI screening checks to still be recognised for the purposes of the Child Safety (Prohibited Persons) Act to ensure persons already cleared by the unit are not required to reapply for the same check. This will cover three years from when the check was obtained.

The bill also requires persons wanting to be registered as a teacher through the Teachers Registration Board to have undertaken a working with children check and be found, through that process, not to be a prohibited person. The bill will ensure that a person will only be required to apply for the check at the time a person applies for their initial registration or renews their registration after three years. This will, in turn, enable the introduction of this new regime to be staggered and hopefully manageable. Other prescribed persons will be able to rely on their current criminal history check for a period of three years or when their accreditation expires. After that period of time, they will then be required to apply for a working with children check.

The Liberal Party is supporting the bulk of these amendments. However, there are a number of other amendments contained in the bill that are not strictly transitional or consequential, but which seek to refine technical issues that the government claims will improve the overall functioning of the various pieces of legislation involved in the care and protection of children.

It is the Liberal Party's view that adequate consultation with relevant stakeholders on these additional areas of reform has not occurred. Given the amendments are not urgent, in our view, in order for the relevant acts to commence operation, we have come to the conclusion that they should be dealt with separately, at a later time, subject to the usual scrutiny and consultative process. For the benefit of honourable members, I will mention the particular areas of the bill to which I am referring.

Firstly, part 5, clauses 39, 40 and 41: these involve amendments to the Births, Deaths and Marriages Registration Act to establish a separate scheme for the changing of a child's name when that child is under the guardianship of the chief executive. These amendments will empower the chief executive to change a child's name upon application of the child's guardian or on the chief executive's own motion. I understand that this request is not uncommon in situations where a child is under long-term guardianship and desires to share the same surname as the guardians, thus feeling more a part of the family unit.

The second tranche of amendments that we are opposing is part 10, clauses 49 to 51, referring to amendments to the Children and Young People (Safety) Act to relieve the obligation to prepare case plans for all children who are in care. Instead, it limits it, via regulation, to those who may only be at risk. The obligation should be made clear in the act and should not be put into regulations. This is the view of the Liberal Party.

Also, the Liberal Party is not inclined to support part 10, clause 55. This clause prescribes that it is an offence to employ someone in residential facilities unless they have undergone psychometric or psychological assessment. The chief executive has the power to determine an appropriate assessment. In our view, this should be considered and consulted upon, especially who should determine the assessment and related costs to both government and non-government agencies.

We are also inclined not to support part 10, clause 58. This is a very significant amendment that provides that no liability in tort attaches to the Crown, the minister, the chief executive or any other employees of the department for the negligent acts of an employee who is responsible for the operation, enforcement or administration of the safety act. This was not contained within the Nyland royal commission recommendations and therefore, in our view, requires further considered examination and consultation.

This is not to say that the Liberal Party is necessarily opposed to some amendments. After mature reflection, given the urgency of the bill and that there is a large stakeholder group and that our framework for looking after children has been considered by many as a failure in this state, we feel that measured action should be taken and those particular provisions should not be rushed through the two chambers of parliament. Otherwise, the Liberal Party supports the second reading and supports the bill.

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) (20:33): I thank the honourable member for his contribution. This is an important companion piece to the legislation we have previously passed. I look forward to this progressing smoothly through the committee stage, with the comments the honourable member has made.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. A.L. McLACHLAN: For the benefit of the minister and honourable members, I do not have any comments until we get to the clauses which the Liberal Party has difficulty with. The first one is part 5, clauses 39, 40 and 41. As I have indicated in relation to most of those clauses, the Liberal Party does not potentially have any philosophical objections but wishes for the opportunity to consult and have mature reflection.

I do have some comments and questions for the minister in relation to part 10, clause 58. I indicate that part 5, clauses 39, 40 and 41 the Liberal Party will be voting against; part 10, clauses 49, 50 and 51 the Liberal Party will be voting against; part 10, clause 55 the Liberal Party will be voting against; and part 10, clause 58 we will be voting against, but I would like to explore the context and the implications of clause 58.

Clause passed.

Clauses 2 to 38 passed.

Clause 39.

The Hon. A.L. McLACHLAN: The approach I was planning to take is that I would like to understand the member's position on clause 39 and then I would take clause 39 as a test for clauses 40 and 41, even though they are not necessarily technically consequential.

The ACTING CHAIR (Hon. D.G.E. Hood): Does the Hon. Mr McLachlan want to outline his party's position?

The Hon. A.L. McLACHLAN: I have already indicated our position, the fact that we are opposing the clause. We think there should be greater consultation and mature reflection, so we will be opposing this clause. For the benefit of members, given where we are at this time of night, if clause 39 passes I would accept the fact that honourable members, unless they indicate otherwise, would be supporting the government in clauses 40 and 41.

The Hon. K.J. MAHER: I can indicate that it might be useful for those on the crossbench weighing up which way they wish to vote on this to know that this is, I am advised, a request from the Department for Child Protection to add clarity and to remedy a request that I am advised comes in only about twice a year for the chief executive to change a child's name. It is not something that

happens often but, when the other bill passed, it was a request from the department to allow this to happen for clarity and to make this circumstance, which does not happen all that often, easier to do.

The Hon. T.A. FRANKS: The Greens indicate that we will be supporting the government's original intention with the changing of children's names. I hope that provides clarity to the committee.

The Hon. J.A. DARLEY: I will be supporting the government's intention in this bill.

The ACTING CHAIR (Hon. D.G.E. Hood): For the record, I understand the Australian Conservatives are also supporting the original printing of the bill. The Hon. Ms Vincent, do you have a contribution to make?

The Hon. K.L. VINCENT: Since there is already a majority, I will vote with the government.

Clause passed.

Clauses 40 to 48 passed.

Clause 49.

The Hon. A.L. McLACHLAN: Consistent with my recently delivered second reading speech, we will be opposing clauses 49, 50 and 51. Again, we think that aspects of these provisions need to be further socialised in the group of stakeholders that have a keen interest in this area and work in this area. We also feel that some of these concepts regarding the preparation of plans need to be further articulated in the body of the act rather than in regulation.

The Hon. K.J. MAHER: Unsurprisingly, I rise to encourage the chamber to support the retention of these provisions in the bill. My advice is that these are in there at the request of the department so that the provisions relating to case plans are in the act rather than in an instrument like regulation. This was at the request of the department so that the issues to do with case plans are put in the act rather than left for another instrument like regulations, which is why we support this.

The Hon. T.A. FRANKS: I would appreciate it if the Hon. Andrew McLachlan could unpack the impact of removing this clause and explain why and, in terms of the consultation that the opposition has had with stakeholders, which stakeholders would support this measure?

The Hon. A.L. McLACHLAN: I thank the honourable member for the question. There are no particular stakeholders that have advocated for this. This is a view formed by the shadow attorney, having reviewed the legislation. My understanding and my instructions are that it is our view that the effect of the amendments is that they relieve the obligation to prepare case plans for all children who are in care and instead limits it to those who may be at risk.

The Liberal Party is not saying that it is necessarily opposed to the amendments, but it would seek to have greater consultation during the process. Honourable members have to make a decision as to whether they support the government and have these provisions going forward. We do not feel they need to be passed through at this time, but I am not going to stand in the chamber either and violently argue against them.

Clause passed.

Clauses 50 to 57 passed.

Clause 58.

The Hon. A.L. McLACHLAN: I seek some clarity around this clause and where it came from and what it is seeking to do. For example, if a child is under the care and supervision of an employee of the department and that child committed damage to property, if this clause comes into effect, does this mean that the state in effect will not be liable? Does this clause exist in other jurisdictions?

The Hon. K.J. MAHER: Whether it exists in other jurisdictions, we have not done a comprehensive comparative analysis of the bills in other jurisdictions, but I think I can provide quite sufficient clarity about the reason for this clause. During the passage of the Children and Young People (Safety) Act 2017, there was an opposition amendment that deleted the following from the safety act. The deletion was that no civil liability attaches to the Crown, the minister, the chief

executive, a child protection officer or any other person for an act or omission in good faith in the performance or exercise or purported performance or exercise of functions or powers under this act.

Section 236 of the Family and Community Services Act 1972 (FACS Act) currently states that no liability in tort attaches to the minister or an employee of the department in respect of an act or omission on the part of a child under the guardianship of the minister or the chief executive or of whom the minister has custody under the act, unless the act or omission occurs while the child or person is acting as the servant or agent of the minister or that employee and within the scope of his or her employment or authority as such.

This bill now simply copies the existing section 236 of the FACS Act and updates it to include the chief executive, given that the safety act now confers this function on the chief executive and the Crown. The Crown has been included, as in the absence of that blanket immunity clause there is the possible argument that the Crown would nevertheless be vicariously liable for neglect in the acts of an employee.

Clause 58 in this bill effectively preserves the status quo in the FACS Act by providing that immunity in respect of the tort acts of children under the guardianship or in the custody of the chief executive, except in cases where the child under the guardianship is acting as the agent or servant of the chief executive—that is, as an employee—in which case the usual rules will apply in relation to vicarious liability. Clause 58 is not a blanket immunity, as was originally quoted in the safety act, but is limited to tortious acts of children under the guardianship or custody of the chief executive.

The Hon. A.L. McLACHLAN: If it is limited to tortious acts—and I am just trying to explore the scope of it—what about a non-tortious act? For example, as to a criminal act which causes damage, will the Crown take responsibility financially for the damage resulting from a criminal act of a child who was in its care and let's say negligently, recklessly and indifferently allowed the child to be unsupervised?

The Hon. K.J. MAHER: My advice is yes, they would take responsibility in those circumstances.

The Hon. A.L. McLACHLAN: In this case, when we are defining plain tort, if someone in the care found themselves in circumstances where they were not supervised and committed an act of negligence, then the state or the Crown could not be forced to be given compensation. Is that correct? I will rephrase it. We have gone through criminal liability, so we are going into tortious acts. If a child was under the care and supervision, and the supervision somehow failed, therefore whilst under the care of the state the child committed a tortious act—for example, committed an act of negligence, and I am just grappling with how to define one—then this provision would be triggered and the state would not be liable.

The Hon. K.J. MAHER: My advice is that that is correct, as the honourable member has outlined.

The Hon. A.L. McLACHLAN: I do not have any further questions, and I thank the minister for his advice, at this time of night, in trying to distinguish between criminal and tortious liability. It is not easy, even in the morning. The Liberal Party's instructions to me are to continue to oppose this clause, so if I could have an indication from honourable members about whether we have the numbers for opposition I would be very grateful.

The Hon. T.A. FRANKS: The Greens will not be supporting the opposition's intent.

The ACTING CHAIR (Hon. D.G.E. Hood): That is a double negative, so I think that is a positive.

The Hon. J.A. DARLEY: I indicate that I will be supporting the intention of the current bill.

The ACTING CHAIR (Hon. D.G.E. Hood): Are there are any other contributions? I understand the Australian Conservatives will also be supporting the bill as printed.

The Hon. A.L. McLACHLAN: I do not have any more contributions. The Liberal Party will be supporting the third reading.

Clause passed.

Remaining clauses (59 to 153) and title passed.

Bill reported 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) (20:52): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (EXTREMIST MATERIAL) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 14 November 2017.)

The Hon. M.C. PARNELL (20:53): I will be brief in relation to the second reading component of this bill. The intent of the bill is certainly something the Greens support. The classic example usually presented is in relation to a person who might be in possession of bomb-making material, a precursor event, if you like, to an act of terrorism, and the question has rightly been asked whether the law is sufficient to charge that person with an offence that is, effectively, a precursor offence to an act of terrorism. Most of us get that; we understand it and we want our law enforcement authorities to be able to capture people before they commit terrorism offences rather than afterwards.

Having said that, there are some serious questions that need to be asked in relation to this bill, and I am grateful to the Law Society for writing to all members of parliament and setting out some of their concerns. There is a danger that bills like this, whilst they have every good intention and whilst they will have the general support of the parliament, may result in overreach and may result in unintended consequences.

The Law Society's submission makes the point that the criminal penalty that is being created here is in relation to being in possession of or having collected certain information, rather than whether it is the intent of the person that that material or information be used for terrorism. To use the Law Society's own words, they say that the effect of the insertion of section 83CA of the Criminal Law Consolidation Act, if enacted as drafted, would be to potentially render non-terrorist related activities terrorism and its participants terrorists.

The society suggests that if such a provision is to be included in the Criminal Law Consolidation Act, the offence should contain an element of intent or purpose; for example, a person who collects or possesses such information 'for a purpose connected with the commission of an act of terrorism'. The Law Society is taking a fairly standard and traditional approach to the criminal law, which suggests that a criminal intent is required as well as a criminal act.

In relation to the amendments to the Summary Offences Act, the Law Society raises an interesting issue about the definition of extremist material. They note that this is material that a reasonable person would understand to be directly or indirectly encouraging, glorifying, promoting or condoning terrorist acts, or seeking support for or justifying the carrying out of terrorist acts. It also extends to material that a reasonable person would suspect has been produced or distributed by a terrorist organisation.

Part of the challenge we have there is that we have a reasonable person test that is expected to modify a range of material, which most of us would find inoffensive or excusable. A few of us have been talking about this bill tonight, and I mentioned that I have quite an extensive collection of patriotic ballads from various conflicts, starting with the Irish Rebellion of 1798, right through to more recent conflicts. In fact, I told the anecdote of a certain former Labor minister—who may or may not have been called Patrick Conlon—who, in the members' refreshment room very late one night, was singing in full voice the ballad of Roddy McCorley.

Roddy McCorley was a terrorist. Roddy McCorley failed to understand that the British occupation of his country was in fact a very legitimate act that should have been supported. In fighting for the freedom of his people, he engaged in terrorist activities. For his trouble, he was hanged by the Bridge of Toome, as the ditty goes. It might sound as though I am being flippant, but my point is that I also have friends who are military enthusiasts and who have a great deal of material that they have collected.

A lot of the activity in the Boer War, in the late part of the 1890s, is generally regarded as guerrilla warfare, terrorism. The difference between a terrorist and a freedom fighter is who wins. If they won they were freedom fighters and if they lost they were terrorists, and they remained such. Some of this material would be generally out there, generally regarded as being of historical interest. Some people might even have an unhealthy interest in it. We see Neo-Nazis on the television glorifying some of the awful atrocities of the Second World War. I do not think that anyone is suggesting that whatever those people might be doing is directly involved in terrorism. It might be offensive, it might be something that is an affront to right-thinking people, but is it a terrorist-related activity?

The Law Society does question whether the scope of the bill is correctly pitched. Similarly, they raise questions about the exemption, if you like, or the defence, and that is the defence of legitimate public purpose. The bill does not specify how that exemption might apply. The Law Society, for example, says:

> …the Bill does not specify…where religious texts stand. A number of international crimes classified as terrorism involved perpetrators invoking religious doctrines to justify their acts.

It goes on to give a couple of concrete examples:

> The provision has the potential to criminalise the activities of local, non-government, diaspora, friendship, and advocacy, organisations, which are not connected with terrorism. For example, it has the potential to criminalise the activities of local organisations which support the creation of an independent state for the Kurdish people, or Palestinian people, respectively.

Whilst these concerns are important, and the Greens share them, ultimately the intent of the bill is one that we strongly support. We want to make sure that the police have the ability to ping people and to prosecute them when they have material that is clearly aimed at terrorism, whether it is bomb making or other material, but the Law Society's position is also defensible. In conclusion they say:

> 19. The provision does not look at the intent of the individual but rather what a 'reasonable person' would suspect and then, applies a narrow view of legitimate public purpose. There is a real danger that both offences created under this Bill will apply to people who are not about to commit an act of terrorism.
>
> 20. The Society does not support the Bill in its current form and would urge the Government and the Parliament to consider the redrafting of the Bill to address the issues raised above.

I wanted to put that briefly on the record. I know it is getting late in the piece and a large number of bills need to go through. The Greens share the concerns of the Law Society, but we will allow the bill to pass because we do not want to be seen to be nitpicking, and the overall intent of the bill is one that we support. We want our law enforcement authorities to be able to intervene early in the life cycle of radical extremists and to get people before they commit acts of terrorism.

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) (21:02): I thank honourable members for their contributions and their indications of support for the bill. I might just put a few matters on the record that might help the very speedy committee stage.

The opposition in the other place raised questions about the need for this legislation in South Australia when not all other jurisdictions have created comparable equivalent offences. In response to this, the Attorney-General arranged for senior officers from South Australia Police to provide a briefing to the opposition to explain their view for the need for this legislation and its objective to address conduct that has a known radicalising effect on susceptible people and, in doing so, to aim to prevent radicalisation and stop the progression to more extremism.

The Attorney-General explained during the debate on this bill in the other place that COAG is now investigating a proposal for the creation of a similar commonwealth offence in relation to the possession of extremist material, not requiring a connection between the dealing in extremist material and a terrorist act. I am informed that this was discussed by COAG after the development of this bill was already underway.

The strong preference of SAPOL and of the government was not to delay the introduction of these offences in South Australia to await the outcome of a potentially lengthy COAG process. That said, this does answer, to an extent, these questions. The recent announcement out of COAG indicated that it is very likely that there may be a similar commonwealth offence in due course. If and when that happens, the South Australian government can look at the implications of any commonwealth offence for South Australia and respond accordingly.

Another area that was raised by the opposition is the potential expansion of police powers. It is true that the bill will allow police to investigate and enforce those lower-level offences relating to conduct that is short of actual terrorism but nonetheless deemed to be unacceptable and dangerous conduct because of the radicalising effect of the extremist material. In the case of instructional material, it is high risk in terms of encouragement to commit a terrorist act. It is also possible that in investigating these lower level offences police may uncover evidence of a specific terrorist intention.

This bill does not create any new police powers. Existing police search powers will apply on reasonable suspicion of commission of the offence. The bill will enact powers for courts in proceedings for these offences to order forfeiture of extremist material and equipment used in the commission of the offence; for example, computers and the like. Equivalent powers already exist in the Summary Offences Act in relation to the indecent filming and sexting offences in part 5A of that act.

It is also proposed to introduce the same forfeiture provisions in relation to child exploitation material as part of the Statutes Amendment (Child Exploitation and Encrypted Material) Bill currently before the Legislative Council. The government considers these types of offence analogous in that respect. Reference has also been made, I think by the Hon. Andrew McLachlan, to comments made by the Law Society on the bill and in particular the notion that there should be an element of intent or purpose included in the offences, so that they do not apply to people who are not about to commit an actual act of terrorism.

The policy intent of this bill however is specifically to target conduct prior to the actual formation of an intent to commit or facilitate a terrorist act on the basis that collection or dissemination of extremist material in itself presents a risk in terms of radicalising susceptible people to the point where eventually they may form the intent to commit a terrorist act. The lower penalties attaching to the offence in the bill, as compared to the commonwealth terrorism offences, reflect the fact that these are lower level offences in this way. Again, I thank honourable members for their contribution to the second reading stage of the bill.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. M.C. PARNELL: I have a quick question to the minister exploring an issue that I raised in my brief second reading contribution, and that is in relation to extremist material. These are the amendments to the Summary Offences Act. The test is whether a reasonable person would understand the material to be directly or indirectly encouraging, glorifying, promoting or condoning terrorist acts or seeking support for or justifying the carrying out of terrorist acts.

I can understand that if we are talking about current issues—someone who was glorifying the activities of ISIS for example or Al Qaeda, things that are fresh in our memory—you can see that that is part of a radicalisation process and you would want to try to nip that behaviour in the bud. However, I did use—not facetiously but legitimately—examples of historical people who hark back to the good old days of the IRA or activities of terrorism. Perhaps a classic example is Nelson

Mandela. My recollection is that he went to gaol for blowing up electricity infrastructure. From memory, I think that was—

The Hon. D.W. Ridgway: Well, we have blokes doing it in this state—blowing up electricity infrastructure.

The Hon. M.C. PARNELL: I think that was—

Members interjecting:

The Hon. M.C. PARNELL: Anyway, focus.

Members interjecting:

The CHAIR: Order!

The Hon. M.C. PARNELL: My question is: is it the minister's understanding that these laws are targeted towards people who encourage, glorify, condone or justify terrorist activities that are in the current realm, rather than historic terrorist activities?

The Hon. K.J. MAHER: I thank the honourable member for his question and his reliving of some of the last century's great struggles. My advice is that the offences are not intended to capture material related to political dissent falling short of terrorism as it is defined. This is reflected by reliance in the drafting of the offences on the use of the term 'terrorist act' as defined in the Commonwealth Criminal Code. The definition of 'terrorist act' for the purpose of the offences expressly excludes an action or threat of action that is advocacy, protest, dissent or industrial action which is not intended to cause death or serious physical harm, nor to endanger life, nor to create a serious risk to public health or safety. That is the definition in the Commonwealth Criminal Code.

The Hon. M.C. PARNELL: I accept that and I do not need to pursue it further. I just make the point that Nelson Mandela is that classic example where he was convicted of being involved with people who were blowing stuff up. In the definition from the commonwealth law that the minister read out, whether there were people injured or killed as a result of that, I do not know; it happened a little bit before my time. I do not need to pursue it any further. The minister has put on the record that political activism is not covered. I just make the point that there can be a line and, as I almost facetiously said before, whether you are a freedom fighter and a hero depends on whether you are on the winning side of history or whether you remain a terrorist.

The Hon. A.L. McLACHLAN: I would like to thank whoever in the Attorney-General's Department wrote the minister's second reading summing-up because, obviously, after four years the Attorney-General's Department is used to all the things that I am interested in. I have them well-trained after four years in this parliament, have I not?

I would like clarity, and I suspect I know what the answer will be—it may have been addressed in the second reading summing-up but I did not quite hear it—in relation to religious texts because that is a major feature of the Law Society's letter. I would just like clarity around the concern that religious texts could come under this and I think we are looking, for the benefit of Hansard, to have that articulated.

The Hon. K.J. MAHER: I thank the honourable member for his question. He is quite right: the Attorney General's Department is well-equipped to respond to all the things the honourable member is interested in—the complete unabridged work of Keats, for example, that he is so fond of quoting. The advice that I am getting—and it seems to be the correct way to explain it—is to do it in the same manner as it was explained, in terms of the definition under the Commonwealth Criminal Code, as it relates to Mark Parnell's question, and I think the Hon. Mark Parnell's contribution probably applies to this in terms of religious material.

It is not included if it is an action or threat of action that is advocacy, protest, dissent or industrial action which is not intended to cause death or serious physical harm, nor to endanger life, nor to create a serious risk to public health and safety. I am sure that in different places around the world there will be those who would justify, as we have seen for many, many centuries, the commission of their offences and their terrorist acts based on their understanding of how they prosecute their religion. If it falls into that definition that we have adopted from the Commonwealth Criminal Code, then it forms a terrorist act as defined in this act as well.

The Hon. A.L. McLACHLAN: If I understand that correctly—because I want to specifically address this Law Society concern—my understanding of that answer, and I am not challenging it, is that a religious text, such as the Koran or a Bible, of themselves will not constitute material which this bill would be seeking to cover.

The Hon. K.J. MAHER: I do not have a very specific answer. I am not familiar with every line in the Koran or, in fact, the King James version of the Bible, or any other Bible for that matter. However, I reiterate the point that it is already a definition that is used and can be used to prosecute under the Commonwealth Criminal Code.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill reported 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) (21:15): I move:

That this bill be now read a third time.

Bill read a third time and passed.

STATUTES AMENDMENT (EXPLOSIVES) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 16 November 2017.)

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) (21:16): I thank honourable members who have contributed to the debate on this bill. As has been pointed out, the bill amends the Criminal Law Consolidation Act 1935 and the Summary Offences Act 1953 to ensure that the penalties for the possession and use of improvised explosive devices are commensurate with the seriousness of the risk posed by the reckless and malicious use of these devices.

In second reading contributions the honourable and gallant Andrew McLachlan asked why it was necessary in this bill to have a specific search and seizure power in relation to explosives, as opposed to being able to rely on existing powers that currently support police works in this field. My advice is that the new search powers were sought by SA Police after much consideration. They reflect the fact that explosives, like firearms, pose a very significant risk not just to public safety but to police, and that in order to investigate and manage these incidents safely police investigators require specific powers to enter, search and seize that can be exercised without delay.

The government acknowledges that there is some overlap with powers currently available to police, such as the use of general search warrants under section 67 of the Summary Offences Act, general powers to stop and search and detain, and common law powers to seize evidence. That said, the government is of the view that there is a justifiable need for these additional powers, particularly when urgent action is required.

General search warrants are not held by all police officers and are not always readily available. For example, a police officer in a country town may identify a situation requiring immediate attention rather than waiting several hours for a general search warrant. Alternatively, police may attend a domestic violence incident, where they may see evidence of an improvised explosive device but, unlike a situation with firearms, police cannot enter and deal with the explosives until the arrival of a general search warrant, which may be hours away. In the meantime, the offender may well be disposing of evidence or preparing more explosive devices to use against the victims or police.

Explosives are, by their very nature, unstable and can degrade very quickly. Delays in finding, treating and managing them can result in the substance degrading to such a state that it

becomes far more unstable and much more dangerous to manage. The need to wait hours for a general search warrant puts both the investigating officers at the scene and the public in the vicinity at significant risk. We view that such risk is unacceptable.

The new search powers ensure that police can manage an incident involving explosives without delay and lessen the risk to police and to the public. Again, I thank honourable members for their contributions and look forward to the committee stage momentarily.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. A.L. McLACHLAN: I flag to members that I will be moving amendments that will insert a review clause and requires the collection of data, and I will probably come to that a bit later. I would like to raise some questions regarding part 3, if I may, because I only have one section of the bill which interests me, and that is search provisions at 72D. I thank the minister and the staff who assisted him with the second reading summation, which answered many of my questions. I am seeking clarity around section 72D(2), which provides:

> (2) The Commissioner may direct that property seized by a police officer exercising search powers under this section in relation to a suspected explosives offence (seized property) be destroyed, whether or not a person has been or is to be charged...

Subclause (8) provides that subsection (7), which relates to compensation in the event that property has been seized, does not apply. I would like some explanation as to the purpose of that clause. If my reading of that clause is correct then, if the commissioner directs seized property be destroyed, and the suspicion is later proven to be unfounded and there is no conviction, it seems to me—and I may have misunderstood it—there will not be the ability to receive compensation. What is the policy motivation around that?

The Hon. K.J. MAHER: I thank the honourable member for his question. I may not answer this in particularly elegant terms, but I am advised that the policy rationale behind that is, under subsection (2), that the property seized under this bill is thought to be dangerous material. If it is that dangerous that it cannot be reasonably removed and stored then it can be destroyed. If it is that dangerous that you cannot store it in order to possibly return it later, then that is the reason why compensation will not be payable: you have had something so dangerous that it has given rise to the need to destroy it, rather than to remove it and store it.

The Hon. A.L. McLACHLAN: I accept that scenario in those circumstances, but there could be a variety of other circumstances as to why the commissioner would make that order. For example, the commissioner could make the order under this, because it is not restricted in the discretion of the commissioner to order the destruction, so I am not challenging the nature of that clause.

For example, he could have considerable intelligence that there is a terrorist threat. This person is possibly held under suspicion, and a wise commissioner would order immediate destruction of the associated materials so that the threat is immediately extinguished. No-one would criticise the commissioner in those circumstances. But in the wash-up, if the suspicion proved unfounded, even in those circumstances I understand that they would not be entitled to compensation. As long as the commissioner makes this decision, regardless of their grounds, no compensation is payable. Is that correct?

The Hon. K.J. MAHER: As the honourable member has set out the circumstances, yes, that is correct.

The Hon. A.L. McLACHLAN: I am not seeking a response. I just make the comment that it is a very broad discretion and quite an arbitrary policy decision not to provide compensation than it could otherwise be, but that is probably a personal view since the Liberal Party is supporting the bill, and tonight I am voting with my tribe. I have no other questions in relation to the clauses. I will be seeking to move some amendments which, given the broadness of the discretions in relation to the search powers, require the collection of data and a review in three years ordered by the Attorney-

General. I ask honourable members to give consideration to the merits of those proposed further amendments.

The Hon. K.J. MAHER: For the benefit of the chamber, to aid with the consideration of this, I can indicate that there are two amendments in relation to review clauses.

The Hon. A.L. McLACHLAN: Three.

The Hon. K.J. MAHER: Three amendments in relation to—

The Hon. A.L. McLACHLAN: One is about tabling the report. They are all related.

The Hon. K.J. MAHER: There are two amendments in relation to review clauses and one amendment in relation to tabling the report. It is the government's intention to support those three amendments.

Clause passed.

Clauses 2 to 5 passed.

New clause 5A.

The Hon. A.L. McLACHLAN: Since I have the government with me—I had to say that because it does not often happen—I move:

Amendment No 1 [McLachlan–1]—

Page 5, after line 20—After clause 5 insert:

5A—Review

(1) The Attorney-General must undertake a review of the operation and effectiveness of the amendments effected by this Part.

(2) The review required under this section must commence not later than 3 years after the commencement of this Part.

(3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

The Hon. K.J. MAHER: These are good amendments. We love them. We will support them.

New clause inserted.

Clause 6.

The Hon. A.L. McLACHLAN: I move:

Amendment No 2 [McLachlan–1]—

Page 8, after line 4—After inserted section 72E insert:

72F—Annual report on explosives powers

The following information must be included in the annual report of the Commissioner under section 75 of the *Police Act 1998* (other than in the year in which this section comes into operation):

(a) the number of occasions on which the search powers under section 72D were exercised during the period to which the report relates; and

(b) the number of occasions on which property was seized as a result of the exercise of those search powers and the nature of the property seized; and

(c) whether any persons were charged with explosives offences (within the meaning of section 72D) in connection with the exercise of those search powers; and

(d) any other information requested by the Minister.

Amendment carried; clause as amended passed.

New clause 6A.

The Hon. A.L. McLACHLAN: I move:

Amendment No 3 [McLachlan–1]—

Page 8, after clause 6—After clause 6 insert:

6A—Review

(1) The Attorney-General must undertake a review of the operation and effectiveness of the amendments effected by this Part.

(2) The review required under this section must commence not later than 3 years after the commencement of this Part.

(3) The Attorney-General must prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

New clause inserted.

Title 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) (21:29): I move:

That this bill be now read a third time.

Bill read a third time and passed.

CIVIL LIABILITY (TRESPASS) AMENDMENT BILL

Introduction and First Reading

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

PASSENGER TRANSPORT (MISCELLANEOUS) AMENDMENT BILL

Introduction and First Reading

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

STATUTES AMENDMENT (DRUG OFFENDERS) BILL

Introduction and First Reading

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

LINEAR PARKS (MISCELLANEOUS) AMENDMENT BILL

Final Stages

The House of Assembly agreed to the bill without any amendment.

STATUTES AMENDMENT (DRINK AND DRUG DRIVING) BILL

Final Stages

The House of Assembly agreed not to insist on its amendment No. 7 to which the Legislative Council had disagreed. The House of Assembly insists on its amendments Nos 3 to 6. The House of Assembly has, in lieu of its amendments Nos 1 and 2 to which the Legislative Council had disagreed, made the alternative amendments indicated by the following schedule:

House of Assembly's Amendment No. 1

Amendment No. 1 [Police-1]—

Clause 10, page 8, lines 10 to 17 [Clause 10(1), inserted subsection (1)]—

Delete 'attend an assessment clinic for the purpose of submitting to an examination to determine whether or not the applicant is dependent on alcohol unless the applicant satisfies the Registrar, on the basis of the report of an approved assessment provider or such other evidence as the Registrar may require, that the applicant has successfully completed a prescribed alcohol

dependency treatment program not more than 60 days before the date of application for the licence' and substitute:

submit to an examination by an approved assessment provider to determine whether or not the applicant is dependent on alcohol

House of Assembly's Alternative Amendment to its Amendment No. 1—

Clause 10, page 8, lines 10 and 11 [clause 10(1), inserted subsection (1)]—

Delete 'to attend an assessment clinic for the purpose of submitting to an examination' and insert:

to submit to an examination by an approved assessment provider

Clause 10, page 8, lines 14 to 17 [clause 10(1), inserted subsection(1)]—

Delete 'the applicant has successfully completed a prescribed alcohol dependency treatment program not more than 60 days before the date of application for the licence.' and substitute:

—

(a) the applicant has successfully completed an alcohol dependency treatment program not more than 60 days before the date of application for the licence; and

(b) the applicant is not dependent on alcohol.

House of Assembly's Amendment No. 2

Amendment No. 2 [Police-1]—

Clause 10, page 9, lines 2 to 9 [Clause 10(1), inserted subsection (2)]—

Delete 'attend an assessment clinic for the purpose of submitting to an examination to determine whether or not the applicant is dependent on drugs unless the applicant satisfies the Registrar, on the basis of the report of an approved assessment provider or such other evidence as the Registrar may require, that the applicant has successfully completed a prescribed drug dependency treatment program not more than 60 days before the date of application for the licence' and substitute:

submit to an examination by an approved assessment provider to determine whether or not the applicant is dependent on drugs

House of Assembly's Alternative Amendment to its Amendment No. 2—

Clause 10, page 9, lines 2 and 3 [clause 10(1), inserted subsection (2)]—

Delete 'to attend an assessment clinic for the purpose of submitting to an examination' and substitute:

to submit to an examination by an approved assessment provider

Clause 10, page 9, lines 6 to 9 [clause 10(1), inserted subsection(2)]—

Delete 'the applicant has successfully completed a prescribed drug dependency treatment program not more than 60 days before the date of application for the licence.' and substitute:

—

(a) the applicant has successfully completed a drug dependency treatment program not more than 60 days before the date of application for the licence; and

(b) the applicant is not dependent on drugs.

GENETICALLY MODIFIED CROPS MANAGEMENT REGULATIONS (POSTPONEMENT OF EXPIRY) BILL

Final Stages

The House of Assembly agreed to the bill without any amendment.

HEALTH PRACTITIONER REGULATION NATIONAL LAW (SOUTH AUSTRALIA) (REMOTE AREA ATTENDANCE) AMENDMENT BILL

Final Stages

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

Ministerial Statement

DISABILITY REFORM COUNCIL

The Hon. P. MALINAUSKAS (Minister for Health, Minister for Mental Health and Substance Abuse) (21:36): I table a copy of a ministerial statement on the Disability Reform Council for the Minister for Disabilities from the other place.

At 21:37 the council adjourned until Wednesday 29 November 2017 at 11:00.