LEGISLATIVE COUNCIL

Thursday, 21 March 2019

The PRESIDENT (Hon. A.L. McLachlan) took the chair at 11:00 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. R.I. LUCAS (Treasurer) (11:01): 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

CONSTRUCTION INDUSTRY TRAINING FUND (BOARD) AMENDMENT BILL

Committee Stage

In committee.

(Continued from 28 February 2019.)

Clause 6.

The CHAIR: Honourable members, we are at clause 6, and we are presently considering amendment No. 1 [Franks-1], which has been moved. Minister.

The Hon. S.G. WADE: The ability to progress this amendment might depend on circumstances at the time but, in any event, whilst I did not take the questions on notice last time because I was overly optimistic that we might conclude, minister Pisoni has been very helpful in providing a number of answers. So if it pleases the council, I propose to give a number of answers to questions not taken on notice but nonetheless information relevant to them.

The CHAIR: I cannot see any member objecting, so perhaps we will follow that course.

The Hon. S.G. WADE: The council was last considering this bill on Thursday 28 February. As I mentioned, whilst I was not willing to take questions on notice, the time since then has meant that I have been able to get information from minister Pisoni that might assist the council.

I advise the council that in relation to the question, has Mr Pisoni given any undertakings to employer groups that they will be appointed to the board if this bill passes, the answer is no.

Did minister Pisoni give any undertakings to any member of the Property Council that they would be appointed to the board if this bill passes? The answer is no.

Did minister Pisoni give any undertakings to any member of the Master Builders Association that they would be appointed to the board if this bill passes? The answer is no.

Did minister Pisoni give any undertakings to any member of the Civil Contractors Federation that they would be appointed to the board if this bill passes? The answer is no.

In relation to the question, which unions currently represented on the board did the Minister for Industry and Skills meet with on 21 September, on seeking clarification from the Minister for Industry and Skills I correct the record and advise that on 21 September the minister had two separate meetings, one with the Communications, Electrical and Plumbing Union (CEPU) and another with SA Unions, in which a member of the Australian Manufacturing Workers Union (AMWU) attended unannounced.

The meetings occurred following meeting requests made to his office. At both meetings, training matters were discussed. For the sake of clarity, I am advised that no representative from the CFMEU was in attendance. The minister further confirmed that no meeting request from the CFMEU had been received by his office.

In relation to the question, how will conflicts of interest be managed under the amended legislation, I have been advised that the process will remain as per the current practice. Conflict of interest is addressed in the board charter. At board meetings, conflicts of interest are declared at the outset of the meeting, and if they present during the meeting, members who are conflicted are required to raise the conflict and are excluded from discussion and votes as relevant.

The relevant section of the charter reads:

2.1 Conflict of interest

(a) The board is responsible for establishing a system of identifying, disclosing and managing conflicts of interest that may arise within CITB.

(b) It maintains a conflict of interest register that is updated at each board meeting as and when board members make a new declaration at the meeting.

(c) Board members must:

(i) disclose any personal or business interests that may give rise to actual or perceived conflicts of interest;

(ii) ensure personal or financial interests do not conflict with the member's ability to perform official duties in an impartial manner;

(iii) declare and manage any conflict between personal and public duty;

(iv) advise the presiding member if actual or potential conflicts of interest do arise so that they are managed in the public interest.

(d) CITB staff are obliged to follow CITB's staff code of conduct, and specifically must declare a conflict of interest when participating in decision making where the individual, a family member or a friend has a personal interest in the outcome.

(e) Part 2, section 8, of the Act prescribes both the circumstances and the penalties relating to members' management of conflicts of interest.

The final question, I am advised, was in relation to where details of board members' allowances and expenses will be available. I have been advised that current processes will be maintained. Board members are only entitled to the current prescribed remuneration rate as set by the Department of the Premier and Cabinet.

I have been advised that expense reimbursement occurs only on very rare occasions and, if greater than $100, is recorded in the minutes of the next board meeting and registered accordingly. Board remuneration is captured as an individual line item in the detailed month-end statement of income and expenditure, and is included in the administration expenses in the annual financial statements.

The Hon. C.M. SCRIVEN: My question to the minister relates to the board charter to which he referred: is it envisaged that that board charter will remain in its current form and not have any changes in the foreseeable future?

The Hon. S.G. WADE: I would remind the honourable member of the question that was being posed. The question was: how will conflicts of interest be managed under the amended legislation? The answer I gave from minister Pisoni responded to that question; I can only take it that he expects that the board charter will work in the same way moving forward.

The Hon. C.M. SCRIVEN: Thank you for that clarification. I may need to ask the minister to repeat a little bit of one of his answers from minister Pisoni. In terms of the allowances and expenses, he referred to them only being something that is currently approved by DPC. I just need clarification on that to enable my next question, please.

The Hon. S.G. WADE: Yes, if I could repeat the relevant sentences—and I appreciate the need to clarify, as I was not able to provide this in advance. I have been advised that current

processes will be maintained. Board members are only entitled to the current prescribed remuneration rate as set by the Department of the Premier and Cabinet.

The Hon. C.M. SCRIVEN: The prescribed remuneration rate set by the Department of the Premier and Cabinet: can the minister explain how those amounts are arrived at? I appreciate that this is not necessarily his area of usual jurisdiction but, given that the bill is removing the consultation with the Commissioner for Public Sector Employment, it would be useful for members to understand how the amount that is being outlined is actually arrived at and whether it is binding.

The Hon. S.G. WADE: I am in your hands, Chair, but I wonder if I might answer this question when we go back to the amendment. My understanding is that this is the exact issue that is raised by the Hon. Tammy Franks' amendment, which is the one that is currently before us. I certainly appreciate the need to address that issue, and I will, but I just wonder if we might deal with any other issues that deal with clauses we have done and clauses we are going to do, and then I might address that issue as we go back to the amendment.

The CHAIR: The Hon. Ms Scriven, it is a matter for you and the committee but it seems eminently reasonable.

The Hon. C.M. SCRIVEN: Certainly that is acceptable from the opposition's point of view.

The CHAIR: Perhaps we will proceed with whatever other questions you or any other honourable members have in response to the answers that have been given. The Hon. Ms Franks has moved her amendment and we will probably come back to that. The Hon. Ms Franks may wish to refresh the chamber as to the purpose of the amendment and then the minister can respond. Does that sound like a course of action that we can all agree with?

The Hon. C.M. SCRIVEN: That is certainly acceptable to the opposition, thank you. A further question arising from the responses by minister Pisoni that were given to minister Wade: if expenses are greater than $100—I am clarifying that this is what you said—that would be recorded in the minutes; was that a correct understanding? The minutes, as I understand them, are confidential and therefore not open to any public scrutiny. Can you confirm that if the expenses were $101 or if the expenses were $101,000 that would not be open to public scrutiny because, being recorded in the minutes, it will not result in any opportunity for the public to be aware. Is that correct?

The Hon. S.G. WADE: I am advised that it is not normal practice for this particular board to make its board minutes public, but I would remind the honourable member of another part of my answer which is that board remuneration is captured as an individual line item in the detailed month-end statement of income and expenditure. I expect that that would also not be made public. The answer went on to say that would be included in the administration expenses in the annual financial statements. My understanding is that the annual financial statements would be made public and if you had an extraordinary administrative item one would think that that would draw the notice of both the auditor and members of the public who are interested in CITB.

The Hon. C.M. SCRIVEN: Thank you for that clarification, and I acknowledge that the remuneration would be recorded in those financial statements in that way but expenses specifically would not appear as a separate item. That is my understanding. Can you clarify that, minister?

The Hon. S.G. WADE: I will double-check with my advisers before I answer that but certainly my understanding was that the first part of the statement about the prescribed remuneration is set by DPC, and the second part, in relation to $100 recorded in the minutes, the individual line item in the month-end statement and the administration expenses were all in relation to expenses, not remuneration. However, I will double-check. It is my pleasure to be able to inform the committee that I have not misinformed it, as that is the understanding of my advisers as well.

Far be it from me to spruik the merits of Mr Pangallo's amendment later in the consideration of the committee but if, for example, the minister noticed that there was an extraordinary expenses item in the annual statement, under Mr Pangallo's amendment the minister would be able to require the board to provide him information in relation to that discrepancy, which is not currently the situation.

The Hon. C.M. SCRIVEN: Thank you for that clarification. I think the concerns might not be that the minister would be querying the expense—in fact, quite the opposite—and that it is more appropriate for those who have not been involved in appointing members of the board and perhaps having relationships. For example, just pulling it out of the air, in having the chairman of the fundraising arm of your local branch being appointed to the board, the issue is around potentially questionable deals and questionable arrangements, so it is in the interests of transparency that expenses be able to be identified by those other than the board members, and the minister who has appointed those board members.

The Hon. S.G. WADE: The fact of the matter is that this legislation has a clear opportunity to bring to the attention of any interested stakeholder an issue in relation to expenses because any expense over $100 recorded in the minutes will go into the income and expenditure statement and be reflected in administration expenses. Any member of this chamber, for example, having seen the CITB annual report, may wish to ask questions in this chamber or elsewhere.

The Hon. J.E. HANSON: On this point, I understand—and I may be wrong—that the CITB, while it is not an agency or instrumentality of the Crown, has reporting requirements that are somewhat influenced by Treasury instructions and also the Public Finance and Audit Act. There are various tiers of reporting that come under that. My question is: will you be maintaining your reporting obligations at the current tier, and will that remain at the current tier? From memory, I think tier 2 applies to the CITB.

The Hon. S.G. WADE: I am advised that there are no changes to the reporting requirements.

The Hon. J.E. HANSON: For completeness: so the current reporting requirements would remain—if I am correct. I am willing to accept that I might be incorrect about the exact tier, but the current reporting requirements under the Public Finance and Audit Act and Treasury instructions which apply to the CITB now would remain as they are now?

The Hon. S.G. WADE: I have no advice to suggest that there will be a change there.

The Hon. T.A. FRANKS: I rise to remind members that I have moved an amendment at this point, but I also have some questions that relate both to that amendment and the broader issues. I would like to refresh council members' memories that I have moved:

Amendment No 1 [Franks–1]—

Page 3, line 28—After 'approved by the Minister' insert 'which—'

(a) must be the same for each member of the Board (other than the presiding member); and

(b) must not exceed the maximum amounts determined, as at 1 November 2018, by the Minister under this section (as in force on that date).

As we in this chamber now well know, at this section under 'Allowances and expenses' the current bill proposes to:

…delete 'not exceeding amounts determined by the Minister after consultation with the Commissioner for Public Sector Employment'…

Instead, it merely substitutes:

approved by the Minister

The concerns raised with me by stakeholders have been raised in this debate time and time again, and they are concerns about the intent of how this board will be constituted into the future and whether or not we are seeing employees less respected than employer representatives.

One of the rumours has been that some people have been promised additional moneys and that, potentially, board members may be on an upstairs downstairs two-tiered system of different payments. My first question is, noting that the government has previously responded that it finds a cap on these board payments abhorrent: at the moment, there is a cap on these payments, so what is the difference?

The Hon. S.G. WADE: I take it we are moving on to the consideration of amendment No. 1 [Franks-1]. I am not sure when the honourable member wants to raise her other questions.

The Hon. T.A. FRANKS: Chair, I will be raising other questions as well.

The Hon. S.G. WADE: I just wanted to reassert that in relation to questions that were asked of me in relation to minister Pisoni giving undertakings on appointments, he has advised me that no undertakings have been given that people will be appointed to the board if the bill passes. Considering that I do not know if that question was asked about remunerations—

The Hon. T.A. FRANKS: It was in the last lot of debate. The government's response was, 'Why would we cap things? We don't cap things.'

The Hon. S.G. WADE: I was specifically talking about the assertion about promises made about remuneration, but obviously I cannot address that because that question was not asked. Let me turn to the point about the cap. I am certainly happy to address the policy issue raised by your amendment.

This amendment seeks to regulate the remuneration of board members. The amendment proposed by the government's bill was recommended by the Cabinet Office, following advice that the chief executive of the Department of the Premier and Cabinet has been delegated the authority to assess and recommend remuneration for board members of government-appointed part-time boards and committees. I am advised that that change was made in 2016 before this government took office. The consultation with the Commissioner for Public Sector Employment, as prescribed under the current act, is therefore redundant.

In relation to the issues of whether remuneration should be the same for all members and whether they should be subject to a cap, in relation to the effect of paragraph (a), the government's concern is that the requirement to have a uniform rate may have unintended consequences in circumstances where it is necessary to recognise particular skill sets of a board member compared with other board members. As the Minister for Health, I am aware that in some cases on government-appointed boards, highly sought after board members who can bring particular knowledge or expertise, as distinct from other board members, receive differential payments. It is not uncommon, for example, for board members—and employees, for that matter—to receive recruitment and retention bonuses.

The Hon. T.A. FRANKS: How common is it for those bonuses to be afforded to members of boards at differential rates?

The Hon. S.G. WADE: I am not aware of how common it is. Would you like me to give the response on the cap as well? Sorry, I have omitted to do that.

The Hon. T.A. FRANKS: Yes.

The Hon. S.G. WADE: The effect of the amendment in subparagraph (b) that it 'must not exceed the maximum amounts determined, as at 1 November 2018, by the Minister under this section' would be problematic, in the government's view. It would put a cap on the remuneration of board members from 1 November 2018 and legislative amendment would be required in order to change it.

If the government reviews the circular and changes its policy position to increase the current remuneration for part-time board and committee members, the CITB would not be able to be remunerated consistently with the circular and, therefore, fairly compared with other boards and committees. A date-specific legislative requirement of this nature would be inconsistent with every other South Australian government-appointed part-time boards and committees.

The Hon. T.A. FRANKS: I thank the minister for the clarification and also for re-establishing where we are in this particular debate. Will the government consider, if I split my amendment into parts (a) and (b), moved separately, then treating those matters differently?

The Hon. S.G. WADE: I think the answer is no, because we do not like either of them.

The Hon. T.A. FRANKS: In terms of the minister's responses about wanting to reward outstanding performance on a board by the members who are on these various committees and boards, what action is being taken in terms of the abrogation of responsibility of members of the current board by leaking information to the minister, which I understand, under section 9—Members'

duties of honesty, care and diligence etc, has penalties ranging between $10,000 and $20,000. Has any action been taken to date and what action will be taken where that has clearly contravened the current act? Indeed, I note particularly section 9(4):

> (4) A member of the Board must not, whether within or outside the State, make improper use of his or her position as a member to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the Board.
>
> Maximum penalty: $20,000.

If the minister could answer that, it would be most appreciated.

The Hon. S.G. WADE: My recollection is that, in an earlier set of answers, we explained the provision of information to the minister and I refer the honourable member to those answers. In relation to her interpretation of the word 'recognise' in my earlier answer, that the remuneration can recognise particular skill sets, I understood it to be more in terms of recruitment and retention. Certainly, when I was given that advice, I did not think that the answer was suggesting that there be some sort of reward. This is not a performance bonus; this is, in my view, a recruitment and retention-type issue.

The Hon. C.M. SCRIVEN: The minister has explained his knowledge of differential levels of payment to board members in the health system, and I think it is obvious what that means. Can he explain what types of differential skills might be meriting the differential rates of payment in the building and construction sector?

The Hon. S.G. WADE: I do not have advice on that.

The Hon. C.M. SCRIVEN: So the position of the government is that we may need to offer higher levels of remuneration to different board members, but it is just a general catch-all. I think that is problematic. It is obviously what the government has said, but it is problematic because so much about this bill is pointing to a huge stench. There is a stench over who is appointed under the current act without relevant qualifications and there is a stench over the lack of consultation with stakeholders within the industry and stakeholders on the board.

We have seen that the development of the bill was done by employer groups without any consultation whatsoever with employee groups. One of the answers back today is setting the record straight after it was pointed out by the opposition that the allegations that the minister had met with unions and they did not raise issues about CITB have proved to be wrong because he met only with one union and that was before the introduction of this bill.

While he was off having discussions with employer groups about developing the bill, he met with one of the unions on the board. They had no way of knowing that a bill was in development. Nothing was offered there in terms of consultation. The other unions on the board—in fact, all three—all they received was, after the bill had been introduced, a letter advising of that and saying they could talk to a public servant.

All of this, and this issue around the remuneration and expenses, is certainly very pertinent to the fact that everything will be at the discretion of the minister. Our current minister has shown that he will disregard the law when it comes to appointing someone who does not meet the required experience and expertise under the law. He will now be able to offer different levels of expense payments or remuneration to different board members. All of this is showing that the opportunity for corruption, the opportunity for dodgy deals, is just increased in every aspect of this bill.

For that reason, the amendment of the Hon. Tammy Franks would have some merit in terms of restricting it so that things can be aboveboard and, importantly, be seen to be aboveboard. On that basis, I think there is a lot of merit in the Hon. Ms Franks' amendment.

The Hon. S.G. WADE: The honourable member's logic chain might be credible if it was not based on a fallacy. The fallacy is that the minister appoints board members and their remuneration at his or her sole discretion. My understanding is that all appointments to the CITB would need to go to cabinet. The remuneration would be advised by the Department of the Premier and Cabinet in accordance with the processes of DPC.

If there was any variation that the minister personally sought, it would therefore need to be in the cabinet submission and approved collectively by cabinet. I appreciate that the Labor Party has set itself a goal in terms of filibusters on this and other bills, but a third reading speech like that at a clause I think indicates yet again that this is not working in a constructive way through a bill; this is all about filibuster.

The Hon. J.E. HANSON: My understanding, then, from the answer just given by the minister responsible, is that we are going to have this go past the minister through the cabinet. In terms of the approval of a remuneration, if that is the case, what he is saying is that there will be a cabinet submission required where remuneration is increased. Is that correct?

The Hon. S.G. WADE: Yes; my understanding is that cabinet submissions in relation to appointments need to detail the remuneration intended for the members.

The Hon. J.E. HANSON: Under the current circulars of DPC, about rules where this occurs, my understanding is that, where the minister puts forward that submission, the Department of the Premier and Cabinet has to approve it and then it actually has to go to the Governor to approve the remuneration. Is that correct?

The Hon. S.G. WADE: I do not know whether what I am about to tell you relates specifically to the health portfolio, but in the processes I have been involved in, in the development of cabinet submissions, consultation occurs with DPC, which considers the sort of body that we are involved in. This is an established board, so this is perhaps less relevant to CITB. In a board proposal that I was involved in, DPC was consulted in the development of the cabinet submission.

My understanding is that they have a series of principles against which they can assess what is an appropriate remuneration level for a board of the nature being proposed and that it is then up to the minister, presumably, whether or not they include it in their cabinet submission, but considering DPC will have the opportunity through Cabinet Office to comment on the cabinet submission, the Department of Treasury and Finance will have the opportunity as well. Cabinet would be well aware if the recommendation in the cabinet submission was inconsistent with advice or practice of the government.

The Hon. J.E. HANSON: So I take away from all that that the current process where a cabinet submission—

The Hon. S.G. WADE: It is on the point about Executive Council. Of course, every cabinet submission agreed by cabinet then needs to go to Executive Council so that the remuneration would be in the cabinet submission which Executive Council considers.

The Hon. J.E. HANSON: So where remuneration which is being applied is not recommended by either the CE of the organisation CITB or by DPC—in other words, if it is being set by the minister; and I take your point about there being statutory boards and non-statutory boards, but my understanding is they are both subject to the same rules, where there is some entity of the government being involved, right? So if a decision is made to pay remuneration which, from what you have just said is not in line with what the CE or DPC would normally agree, then a cabinet submission by the minister is required to go to cabinet, whereupon a decision is made. Then, based on current rules, it is approved by the Governor. Is that correct?

The Hon. S.G. WADE: I would respond to that by saying whether it is in accordance with the recommendation of DPC or otherwise, it will be in the cabinet submission. In that regard, the assertion of the opposition that this amendment should be supported because we do not want an individual minister at their own discretion setting remuneration is a fallacy.

The Hon. J.E. HANSON: I appreciate that; however, the approval of remuneration requires a relevant authority to be recognised before any payments can be made. This is how this works. The relevant authority, in the instance where you are not just going to obey whatever the CE or the DPC is going to say, has to be done through the cabinet process. This is what we have set up. This is what would apply to your statutory boards as well, if you choose pay over and above that. So in the case of where remuneration arrangements for boards or committees, including changes to existing arrangements, which is what you are contemplating to occur, is going to occur, then that has to be

approved by the relevant authority. In the instance where there is a cabinet submission, the relevant authority becomes the minister, does it not?

The Hon. S.G. WADE: I do not know where the honourable member is getting this term 'relevant authority', and I do not understand the relevance of the question.

The Hon. J.E. HANSON: It is a governance term. You are a minister; you would have people who are being paid remuneration who are on boards. You would know your own submissions; let me look here for exactly what it is called. If you look at your 'Remuneration for government appointed part-time boards and committees' circular, which would be put out by your cabinet, as it was by the previous government's cabinets, you would find that within that there is reference to certain governance terms. One of those governance terms is 'relevant authority'.

Relevant authority applies where you have a decision-making governance entity. When you are talking about governance, there needs to be someone who has ultimate responsibility for what occurs. When you are changing how that is currently structured—e.g. currently they get paid what everyone else gets paid, so the CE would set that or DPC sets that or someone sets that who is just some governing body, they are the relevant authority.

Where you are changing that to say the minister is going to set it, then you are changing who is the relevant authority. This is a governance term. You will find this standardised across the industry. You will find this in your current governance documents you produce now. The relevant authority here I understand to be the minister, because you are saying the minister is going to make the cabinet submission. That is what you previously said in your last answers. Therefore, what I am after you to confirm is that the minister is the relevant authority when he makes that cabinet submission.

The Hon. S.G. WADE: I would remind the council why the government put up this amendment. The government put up this amendment to remove a redundant clause, which is a reference to the Commissioner for Public Employment, because it is no longer the practice of the government that that part of the state government provides the advice on remuneration. In that sense, the legislative change is not seeking to change practice. The act reads:

> A member of the Board is entitled to receive allowances and expenses not exceeding amounts determined by the Minister after consultation with the Commissioner for Public Employment.

We are proposing to delete 'after consultation with the Commissioner for Public Employment'. That does not reflect the full practice of the government. As the honourable member's questions refer to, the government practices and policies are also housed in policies of the Department of the Premier and Cabinet and also Treasurer's Instructions.

One of the relevant Department of the Premier and Cabinet's policies that is pertinent is PC016—Remuneration for Government Appointed Part-Time Boards and Committees. Clause 7 of that circular relates to approval of remuneration. Clause 7.1 reads:

> Remuneration arrangements for boards and committees, including changes to existing arrangements, must be approved by the relevant authority before any payments to members can be made.

Clause 7.2 states:

> In the case of non-statutory boards, it is the minister who has the authority. For statutory boards, the relevant legislation will specify who has the authority (usually either the minister or the Governor).

I will pause there. I will continue reading the clause. On the honourable member's reference to relevant authority, this act would suggest the relevant authority is indeed the minister. But I stress, this policy goes on to say at clause 7.3:

> A Cabinet submission is required where:
>
> - the Governor is required to approve remuneration; or
> - a decision is made to pay remuneration which has not been recommended by the CE, DPC.

The Hon. J.E. HANSON: Therefore, we are continuing to follow that process; is that correct?

The Hon. S.G. WADE: The clause I just referred to, I understand, is the current form of the DPC circular.

The Hon. J.E. HANSON: I think that is confirming that we are going to continue to follow them.

The Hon. S.G. WADE: It is advising the council that I am not the Premier.

The Hon. J.E. HANSON: I think that demeans the chamber, Mr Chair.

The Hon. S.G. Wade: We did have one premier here once.

The Hon. J.E. HANSON: We did, and nothing says we cannot again. For those following at home, the circular that the minister is reading from is PC016—Remuneration for Government Appointed Part-Time Boards and Committees. I have that in front of me, too. Points 6 and 7 both apply as pertinent points, I think, because what we are talking about is a process. The process does not necessarily start at 7.1. The process could start at 7.1, where you are talking about remuneration arrangements, or it could start at point 6, because it says at point 6.1:

> The responsible minister or agency CE may request a review of the remuneration paid to existing bodies. A written submission must be made to the CE, DPC, which clearly outlines the basis upon which a review is being sought.

Point 6.2 then outlines:

> An increase will generally only be supported where there has been a significant increase in the functions and responsibilities of a board or, in the case of GBEs, a significant change in the financial position of the organisation.

The Hon. Ms Scriven has already asked questions about what might be the reasons where an increase would be sought, so I am not going to go into that, but I do go to whether or not the arrangements around remuneration are going to remain the same as what is outlined in 6 and 7, and whether or not what is currently being proposed—and I do think it is a change of current processes—is to review the existing remuneration or just to apply new approvals. So are you starting at 6 or are you starting at 7, minister?

The Hon. S.G. WADE: I do not want to be sucked in by the member to start speaking on behalf of the Premier, not just the Minister for Industry and Skills, but I would suggest I might be starting at clause 5, which is seeking a remuneration determination. My reading of 6 is that it is more about the changing role and function of an entity, and in clause 5 I might be responding to the individual circumstances of a candidate before me.

Let me make this point: whether it is 5 or 6, what is a recurring feature through this circular is that a number of matters need to be referred to the CE, DPC, in other words the chief executive of the Department of the Premier and Cabinet. In that context, I would bring members back to Approval of remuneration, clause 7, which says in 7.3:

> A Cabinet submission is required where…a decision is made to pay remuneration which has not been recommended by the CE, DPC.

Whatever the circumstances are, my understanding of that circular is that if you differ from the advice you get from CE, DPC, you do not have discretion to act on that alone. You need to take it to cabinet. That is my reading.

The Hon. C.M. SCRIVEN: To summarise, the minister can set the remuneration for the board members. If it is above the amount recommended by DPC, he can take that to cabinet to say that it should be much higher. That will then go to be approved by the Governor, but none of that will be publicly known. Is that correct?

The Hon. S.G. WADE: No, the member is not correct. It is currently standard government practice for the Department of the Premier and Cabinet to produce an annual report tabled in parliament disclosing information about all government-appointed boards and committees across South Australia. The report discloses the members of each board and their individual remuneration.

The Hon. C.M. SCRIVEN: In the interests of transparency, would the government support the individual remuneration being included in the *Gazette* when the members are appointed to the board?

The Hon. S.G. WADE: I do not have any authority to make that sort of undertaking. The member is joining her honourable colleagues' campaign to try to conscript me to be the Premier, and I am going to resist that vehemently.

The Hon. C.M. SCRIVEN: I did not quite hear what that final comment was.

The Hon. S.G. Wade interjecting:

The Hon. C.M. SCRIVEN: So it was not a useful comment—is that what the minister is saying? It does not bear repeating?

The Hon. S.G. WADE: I do not have authority to speak on that.

The Hon. F. PANGALLO: We will not be supporting amendment No. 1 [Franks-1].

The committee divided on the amendment:

Ayes 9
Noes..... 10
Majority..... 1

AYES

Bourke, E.S.	Franks, T.A. (teller)	Hanson, J.E.
Hunter, I.K.	Maher, K.J.	Ngo, T.T.
Parnell, M.C.	Scriven, C.M.	Wortley, R.P.

NOES

Bonaros, C.	Darley, J.A.	Dawkins, J.S.L.
Hood, D.G.E.	Lee, J.S.	Lensink, J.M.A.
Pangallo, F.	Ridgway, D.W.	Stephens, T.J.
Wade, S.G. (teller)		

PAIRS

Pnevmatikos, I.	Lucas, R.I.

Amendment thus negatived.

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

Amendment No 1 [Scriven–3]—

Page 3, after line 28—Clause 6, after its present contents (now to be designated as subclause (1)) insert:

(2) Section 10—after its present contents (now to be designated as subsection (1)) insert:

(2) The allowances and expenses for each member of the Board approved by the Minister under subsection (1) must—

(a) be included in the annual report of the Board prepared under section 17; and

(b) be published on a website maintained by the Board to which the public has access free of charge.

I will refresh the memory of members. This amendment is also to do with allowances and expenses. It would mean that the allowances and expenses for each member of the board approved by the minister, given what just passed, must be included in the annual report of the board prepared under section 17 and be published on a website maintained by the board to which the public has access free of charge.

This goes to the same issues that we have been discussing in terms of transparency and accountability. I note the minister's response in terms of the remuneration being available at the end of each financial year, I think. Perhaps he can just clarify that. This would ensure that it was easily available so that, given there are a number of questions around the transparency and the intent in terms of appointing members to the board who may have a particular will to do the government's or the minister's bidding rather than necessarily in the interests of the entire industry and given that the

changes to the composition of the board make that far more likely, it is important that there is increased scrutiny over the expenses and the remuneration.

This would ensure that the allowances and expenses were easily able to be identified and therefore if there were considerable changes anything that was inappropriate or potentially inappropriate—and remembering that we want to ensure that a minister who is doing the right thing is not suspected of doing the wrong thing, so it is about perceptions as well as what is occurring—that this would enable that to happen. For anyone who sincerely supports scrutiny and accountability, the amendment should be supported.

The Hon. S.G. WADE: The government will not be supporting this amendment. The amendment relates to allowances and expenses payable to each member of the board and it would require that all expenses and allowances for each member approved by the minister must be included in the annual report and be published on a website.

The principal of disclosure is supported by the Marshall Liberal government. We continually seek to promote it within government but we see no reason why the current arrangements in relation to board remuneration are not adequate. It is currently standard government practice for the Department of the Premier and Cabinet to produce an annual report tabled in parliament disclosing information about all government-appointed boards and committees across South Australia. The report discloses the members of each board and their individual remuneration.

The report must also detail whether there were any changes to a member's remuneration and who approved it; for example, whether the approval for the change of a member's remuneration was made by the chief executive of DPC or the minister. Whilst there is no legal requirement for this process to occur, I am advised that I have no reason to believe that the government would discontinue this practice as it has been occurring for at least the past 20 years.

The Hon. F. PANGALLO: I concur with the Hon. Clare Scriven that transparency is important, particularly in positions like this, and we will be supporting the amendment.

The Hon. T.A. FRANKS: The Greens are happy to also support the amendment.

Amendment carried; clause as amended passed.

New clause 6A.

The Hon. F. PANGALLO: I move:

Amendment No 2 [Pangallo–1]—

Page 3, after line 28—After clause 6 insert:

6A—Insertion of section 17A

After section 17 insert:

17A—Reports to Minister

If the Minister requests the Board, by written notice, to provide the Minister with a report relating to any matter relevant to the operation of the Board and this Act specified in the notice, the Board must comply with the request and provide a report to the Minister within the period stated in the notice.

In this new clause 6A, which comes after clause 6, the minister can request reports relating to matters relevant to the board's operations. Previous Crown advice is that, within the act's current framework, the minister does not have the authority to require production of board documents. This amendment addresses that by providing more transparency on the board's actions and performance while giving the minister the ability to monitor its effectiveness in carrying out its responsibilities.

It also would give the minister additional oversight over the board, and I imagine would also include audits of expenditure, etc. There are similar provisions in the SACE Board of South Australia Act 1983, and in the Western Australian Building and Construction Industry Training Fund and Levy Collection Act and Tasmania's Building and Construction Industry Training Fund Act, which both contain powers by ministers to give directions.

The Hon. C.M. SCRIVEN: Will this clause include the ability to request the voting record of members of the board on any particular matter or, indeed, all matters?

The Hon. F. PANGALLO: I imagine it would and it would be up to the minister to make that request, I guess, in the event that he does require the production of documents and minutes.

The Hon. C.M. SCRIVEN: Is it envisaged that the request from the minister would only be specific on particular items or that he would be free, for example, to request that all minutes, all paperwork, all documents to do with any board deliberations would be presented to him?

The Hon. F. PANGALLO: It actually gives him broad powers, so I imagine it would.

The Hon. C.M. SCRIVEN: Can the honourable member explain how he would have confidence that, therefore, members of the board might not be influenced by the minister's individual or ideological views, remembering that this board is supposed to be in the interests of the entire industry; it is not a government board that must exclusively implement the government's agenda, whereas being able to see which member has voted on what when the appointments to the board will now be purely at the discretion of the minister raises real concerns about the ability of board members to be both objective and free from any influence?

The Hon. F. PANGALLO: I could not answer that at this point because, even though there have been some interim appointments made, there will be other appointments made once the legislation passes. I could not answer for the individual board members about what their ideology is or how they would vote.

The Hon. C.M. SCRIVEN: Thank you for that answer, but I think perhaps the honourable member has misunderstood my question. It is not about the individual members who are currently appointed or who might soon be appointed. It is about the principle of whether members of the Construction Industry Training Board will be able to be independent in their advice, independent in voting on any matter before the board, and not be subject to influence by the minister who will be appointing them.

So if every aspect of the board will be able to be provided to the minister on his request, which could be a blanket request saying, 'For the next four years, I want you to provide every item that comes before you,' there is a real risk that they will not be able to be independent because potentially their appointment will then be subject to that same minister. Essentially, they could get kicked off the board if they do not toe his line.

The Hon. F. PANGALLO: I would expect that their decisions would be independent of the minister. I would not envisage that they would be influenced by the minister.

The Hon. T.A. FRANKS: My questions are to the mover of the amendment. Who has been consulted? What were their positions? Who was in support? Who was opposed? Who was agnostic?

The Hon. F. PANGALLO: Thank you, the Hon. Tammy Franks. We have had extensive consultations with stakeholders from across the industry, so we have had extensive negotiations and discussions with them.

The Hon. T.A. FRANKS: In this extensive consultation, who was in support and who was opposed?

The Hon. F. PANGALLO: Sorry, I did not hear that.

The Hon. T.A. FRANKS: Who supports this amendment and who opposes this amendment from the extensive consultation undertaken with stakeholders?

The Hon. F. PANGALLO: We have spoken to the stakeholders and they support this amendment within the building industry. I have not heard from the unions about this at all. But certainly according to the stakeholders I have spoken to across the whole broad section of the construction industry, they are all quite supportive of it.

The Hon. S.G. WADE: I find it surprising that, on one hand, the opposition wants to argue that accountability and transparency are vital and yet it wants to suggest that somehow the minister responsible to CITB has no right to have a transparent and accountable relationship. There are similar powers in relation to boards and committees right through the legislation and I have never

heard it argued that, because a minister has the right to seek information from the board, somehow they are not independent.

The Hon. C.M. SCRIVEN: The track record of the current minister, I think, is what forces questions to be raised around that issue of independence. We need to remember that this is not a government board. This is an industry board. The purpose of the board is to make decisions in the interests of the industry, the whole industry, not simply to implement the agenda of the government of the day. I think that is a point that is constantly being missed in this debate.

This is not a government board. If the minister has pure and unfettered opportunity to appoint whomsoever he or she in the future might wish and then has the opportunity to request every piece of information about how each member has voted, that is far beyond the powers that should be appropriate for a board which is not a government board.

The Hon. S.G. WADE: I would make the point that the honourable member's colleague, the Hon. Mr Hanson, led us into a most interesting consideration of the remuneration and the remuneration processes, which surely make it clear that this is a government board. It is subject to the DPC guidelines, it is subject to Department of Treasury and Finance instructions and it is created by a statute.

It is not some private enterprise union advisory council. This parliament established it and it operates within the framework of the government of South Australia. It was this parliament, through this act, that put a minister over it. It is a government board and in that context—establishing a board or fund that is established by statute and overseen a minister—I think the Hon. Mr Pangallo's amendment is highly appropriate.

The Hon. C.M. SCRIVEN: I draw the minister's attention to section 4(3) of the Construction Industry Training Fund Act 1993:

(3) The Board is not part of the Crown, nor is it an agency or instrumentality of the Crown.

I think I can say that I rest my case.

The Hon. S.G. WADE: I would refer the honourable member to section 11A, which states that the board is a principal adviser to the minister. It is a ministerial advisory board.

The Hon. I.K. Hunter: We are backtracking now.

The Hon. S.G. WADE: No, the fact that it is not a Crown agency is beside the point.

The Hon. I.K. Hunter: You just said it was.

The Hon. S.G. WADE: I did not.

The Hon. I.K. Hunter: You did. The level of this debate is insulting.

The CHAIR: The Hon. Mr Hunter, please. We are in committee. Allow the committee to follow its path.

The Hon. S.G. WADE: The government indicated earlier that if the filibuster was continuing at 12.15, we would seek to adjourn. That is what I seek to do.

The CHAIR: Do not reflect poorly on the operations of the committee, minister.

The Hon. S.G. WADE: Mr Chair, I move:

That progress be reported.

Progress reported; committee to sit again.

INDEPENDENT COMMISSIONER AGAINST CORRUPTION (INVESTIGATION POWERS) NO 2 AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 12 February 2019.)

The Hon. J.A. DARLEY (12:18): I rise to speak on the Independent Commissioner Against Corruption (Investigation Powers) No. 2 Amendment Bill. The bill follows another similar bill that was introduced by the government last year. The opposition had a number of questions about the bill and moved to refer the bill to a committee for further investigation. This was done and the final report made a number of recommendations. The government have accepted most of these recommendations and have included these changes to produce this new bill.

The key aspect of this bill is to give the commissioner the discretion to hold public inquiries for matters relating to misconduct and maladministration. It does not concern corruption matters. Investigations regarding corruption will not be able to be held in public under this bill. The commissioner must be convinced that there is public interest to hold the inquiry in public. I support the idea of allowing the ICAC to hold public inquiries and have done so for a number of years, ever since the commissioner publicly called for the power to hold public inquiries. I commend the work the government did in opposition on this matter but also the work of the Hon. Dennis Hood.

The secrecy provisions in South Australia's ICAC Act are amongst the strictest in the country, and I would have hoped that members in this place take notice of what the commissioner is asking for in terms of legislative reform. After all, the Hon. Bruce Lander is best placed to be able to advise the parliament on which parts of the act are working well and which parts need change and why.

There has been indication previously that, if he had had the ability to hold public inquiries, he would have elected to do so when investigating matters such as the Oakden nursing home scandal and the sale of state-owned land at Gillman. There was clearly a lot of public interest in these matters. Whilst I hope that we will never experience similar misconduct or maladministration again, I suspect I would have rose-coloured lenses on if I believed this would actually be reality.

The interstate open ICAC investigations have exposed alleged corruption matters concerning MPs and senior public officials. In some cases, these have led to criminal charges. Clearly, when elected officials are concerned, there is a public interest in these matters. This bill seemingly fulfils the government's election commitment to move a bill to allow the ICAC to hold public hearings for matters concerning misconduct and maladministration. However, it should be noted that the current commissioner, the Hon. Bruce Lander QC, has indicated that, should the bill pass in its current format unamended, the provisions in the bill would mean he is unlikely to ever hold a public inquiry. As such, after consultation with the commissioner, I have made a number of amendments to the bill.

The bill outlines that parties affected by the commissioner's decision may appeal to the Supreme Court to determine whether the commissioner's decision to hold a public inquiry was properly made. Affected persons can also apply to the person heading the investigation to not disclose or publish information. If the person heading the investigation refuses, this can be appealed to the Supreme Court. The commissioner has raised a concern with these parts, as it may mean that parties that are affected by an open investigation may use the court process to frustrate and delay the investigation.

There is also concern that the commissioner may need to disclose information on which the investigation is being relied upon as part of the court process. In effect, this would render the investigation useless. Having such provisions would seriously make the commissioner reconsider having open investigations. If appeals to the court are made, the process would likely mean that any investigation would be fruitless, and therefore the commissioner would rarely opt to hold an open investigation. In the words of the commissioner, these changes would only give the illusion of open investigations rather than practically allowing for open investigations to occur.

Similarly, the bill requires the commissioner to advise on their website and in a newspaper that they intend to hold a public inquiry. This notice needs to be published 21 days in advance of the commencement of the public inquiry and will need to contain information regarding the subject of the inquiry and why they believe it is in the public interest to conduct the investigation in public.

The commissioner has raised concerns that some of the information that is required to be published will interfere with the investigation, as information that is being relied upon for the investigation will be disclosed. As such, I have filed an amendment, which will give the commissioner the discretion to not disclose certain information if they believe it will prejudice the investigation. As

mentioned before, I have moved these amendments in consultation and on the recommendation of the ICAC commissioner. It will not make the bill perfect, but it will go some way to address the concerns he has raised and at least provide a workable framework for public hearings.

In a briefing on this bill earlier this week, the commissioner made it very clear that, if the bill were to be passed unamended, the whole purpose of the bill—that is, to provide for public hearings—would not be met because he would not be comfortable holding public hearings under these terms. The commissioner went one step further and said, if the opposition's amendments to the bill were to pass, it would severely hinder his ability to conduct investigations privately, too, therefore rendering his office largely ineffective.

As such, I indicate I will not be supporting the opposition's amendments and urge my colleagues to support my amendments to allow the commissioner to do what is intended by this bill—to hold public hearings. I support the second reading of the bill.

The Hon. M.C. PARNELL (12:25): I rise to support the second reading of this bill, which amongst other things seeks to implement the government's commitment to providing the ICAC commissioner with the power to hold public hearings in certain circumstances in relation to maladministration or misconduct.

When this bill first came to us last year, the Greens supported the option for open hearings. However, our support was not absolute. I stated at the time that with increased power and responsibility comes the need for increased accountability. I moved a number of amendments in relation to accountability, and other members did likewise. In negotiations around that first bill it became clear that there was a majority of the Legislative Council that wanted to see the bill more closely examined by a parliamentary committee that had the power to hear from and question witnesses.

If members recall, back in August last year there was a lot of media interest in this issue. We had competing claims among lawyers and other stakeholders as to the merits of the bill and even more fundamental questions about the way ICAC operates under its current laws, let alone any expanded powers. Getting these divergent voices into the room made a lot of sense to me and, while I am not personally a member of the Crime and Public Integrity Policy Committee, I knew that all of us here would have the benefit of the submissions, testimony and, ultimately, the findings and recommendations of that committee.

At the conclusion of that process the government has come back to us with a revised bill, the so-called No. 2 bill. This is where it gets interesting, because the commissioner has made some public statements along the lines that, unless it was amended, he would probably not hold any public hearings. He did not think that the new Liberal bill was workable. Then we have a large number of Labor amendments, and the commissioner came out saying he did not like those either. So neither the tabled bill nor the Labor amendments were the preferred option of the commissioner, with the likely outcome being that there would not be public hearings, at least during the tenure of the incumbent commissioner. In summary, the preferred position of the two major parties was not the preferred position of the commissioner.

Then we have further amendments moved by the Hon. John Darley. These amendments effectively reinstate, in part, the situation that applied in the original No. 1 bill in 2018—in other words, no opportunity to appeal against the commissioner's decision to hold a public hearing. The commissioner has said that that is his preferred model. The Greens' position is that we maintain our original position that the commissioner should be able to hold public hearings into serious or systemic misconduct or maladministration in certain circumstances and subject to appropriate checks and balances in relation to basic legal rights and human rights.

So, depending on how other members in this chamber vote, the final result may be that no public hearings are held, at least under the tenure of the current commissioner, but if that is the situation, well so be it. As the Greens said last year, the ability to hold public hearings should not be unconstrained.

If it turns out that, as a result of the passage of this No. 2 bill as amended, as I believe it is likely to be, there are no public hearings, then I would like the government to revisit their decision in

the last budget to allocate an additional $15 million to the ICAC to facilitate public hearings. If there are not to be any then they do not need that money, but certainly others do. We know that there are other crucial legal services that are being starved of funds. An additional investment of $15 million into community legal centres or the Legal Services Commission would go a long way to meet the unmet need of disadvantaged people in the community for legal services.

We know from the Productivity Commission and other reports in recent years that community legal centres are incredibly efficient and they return far more value to the community than it costs to fund them. Another possible outcome of this bill is that the Ombudsman's office picks up more work, particularly in relation to maladministration and misconduct. If that is the case, then the Ombudsman will require additional funding as well.

I would like to thank the commissioner and also the Attorney-General's staff for providing briefings on this bill. I would like to thank the Law Society for their submission, but I would also like to thank the members of the Crime and Public Integrity Policy Committee for their work in analysing what is a very complex area of law. I made a submission to that inquiry basically urging them to support two amendments that I had put up to the No. 1 bill. Those went to the community's access to information, the right to know. I am pleased to say that both my amendments were accepted. They are included in the government's bill. I do not have any additional amendments to move in the name of the Greens this time around.

I expect the committee stage of this bill will take a little while. There are very complex legal issues to work through, so I am not going to set out now the exact position of the Greens on each one of, I think, over 30 amendments altogether, but we will do that when we get into committee. At this stage, I just want to say that the Greens support the second reading of the bill and we look forward to the committee stage.

The Hon. C. BONAROS (12:31): I rise to speak in support of the Independent Commissioner Against Corruption (Investigation Powers) No. 2 Amendment Bill 2018 second reading. SA-Best strongly believes that to continue to deny the public access to hearings investigating serious or systemic misconduct and maladministration would be a travesty and not in the public interest or, indeed, the interests of justice.

We have a criminal and civil justice system built on the principle that justice should not only be done but be seen to be done by subjecting legal proceedings to public scrutiny. The ICAC, while not a court, should also be able to hold fair and public investigative hearings before a competent, independent commissioner. As identified by Commissioner Lander, open, transparent, public hearings can provide a higher level of procedural fairness and accountability. Indeed, it was SA-Best's position at the last election to allow public hearings to occur, where appropriate.

The second version of the ICAC bill to come before us seeks to strike a balance between an extension of ICAC's powers to conduct public hearings, with additional protections and rights for those being investigated. On a landmark day—28 February 2018 to be precise—Commissioner Lander QC handed down his explosive and extensive report into the shameful Oakden aged-care scandal. We know that this report contributed in no small part to the federal government's decision to hold a Royal Commission into Aged Care Quality and Safety and chose Adelaide as its base.

We also know that private investigations conducted by the ICAC expose just the tip of the iceberg in regard to serious and systemic misconduct and maladministration in respect of the conduct of departmental staff and politicians, as well as the state facility and its staff. Many took extraordinary steps to try to prevent the private ICAC investigation into Oakden from exposing any wrongdoing.

The watershed moment for Commissioner Lander QC regarding the need for open hearings was not only the Oakden aged-care scandal investigation but also, of course, the Gillman land deal. Both investigations involved senior cabinet ministers and former MPs being cross-examined and, in the commissioner's view, found to be wanting. Let us not forget Commissioner Lander's words with respect to those who had responsibility for what occurred at the Oakden aged-care facility, and I quote:

> The extent to which senior persons in positions of authority outside of the Oakden Facility did not know about what was occurring at the facility was breathtaking.

> One might ask rhetorically how, in a modern society, an arm of government charged with caring for some of our most vulnerable citizens could provide such abysmal care over such an extended period of time without intervention. However, the evidence I have received makes it quite clear that, to a large extent, what was occurring at the Oakden facility was unknown to ministers and chief executives.
>
> To me, that is astonishing. They ought to have known.
>
> Nevertheless, each Minister who had responsibility for the Oakden facility is responsible for its failures.

Powerful, disturbing and damning words, and many of us could not agree with them more. Commissioner Lander found the former minister's claims of her involvement in uncovering the shameful goings-on at the Oakden aged-care facility to be inflated and self-serving. The commissioner said that the former minister had tried to take credit for decisions made by others and to exculpate herself from any responsibility. Commissioner Lander was particularly critical of the former minister's behaviour whilst under questioning and provided details of that behaviour.

However—and this is where we get to the nub of the issue—as the hearings were conducted in private, the public and the media were unable to witness such behaviour. Indeed, we cannot really form our own views on that behaviour because we were not there and we could not witness it for ourselves. We are left to shape our views in the context of what the commissioner has expressed in his report. I am not suggesting by any stretch that we should be questioning that, but there is a different level of transparency that comes with public hearings which we did not have the benefit of.

This is a question that I put to the commissioner in one of our briefings with him, in terms of how someone may conduct themselves in a private versus a public hearing. I think it is fair to say that the commissioner agreed with me when I asked whether had the hearings in the Oakden case been conducted in public it would have been unlikely that certain witnesses would have behaved in the way that they did.

We know that the only person who took positive action upon becoming aware of what was really occurring at Oakden, according to the commissioner, was the former chief executive officer of the Northern Adelaide Local Health Network, Ms Jackie Hanson. It was shocking evidence emanating from the Gillman and Oakden inquiries that sparked Commissioner Lander to make a recommendation to the state government to allow the commission to hold public hearings.

That was, I should add, at odds with the previous advice we had all received from the commissioner himself in relation to the first iteration of this bill. Those two cases certainly highlighted where we have come and the need for those open hearings. In certain circumstances, when it is in the public interest to do so, it is essential for public hearings to ensure maximum public accountability and transparency, such that we now have the bill before us.

Labor was keen to avoid open hearings in the Oakden and Gillman investigations. So keen were they that the former premier, Jay Weatherill, maintained during the 2018 election that he still 'respectfully disagreed' with Commissioner Lander about the need to hold public transparent maladministration inquiries, a need the commissioner went out of his way to emphatically re-emphasise in his Oakden report.

However, since the election, I think it is fair to say the opposition has signalled that it is willing to support the change to allow public hearings to occur, again, in certain circumstances. I note on that point that the opposition has filed extensive amendments to the bill. SA-Best sees the benefit of some of those amendments, but rejects those that we would consider as only serving to make public hearings unworkable and, indeed, an impossibility. We will have more to say about that and the Labor amendments during the committee stage of the bill.

There is a fine line between balancing the investigative powers of ICAC and the public interest and the impact that public hearings can have on the reputation, careers and lives of those being investigated and their families, especially when it is found that there is no case to answer. This is, again, something that I discussed with Commissioner Lander in the context of my previous comments about how somebody conducts themselves in private versus how they may conduct themselves in public.

We need to make sure that the ICAC accords individuals with proper procedural fairness. We need to be clear that the ICAC is not a court. It is an investigative body, and we need to have

adequate provisions in this bill so that it does not become investigator, judge, jury or executioner. The ICAC is a body that has extraordinary coercive powers to investigate serious or systemic misconduct, maladministration and corruption. We need to ensure that ICAC acts with the very highest integrity and conduct in all the matters it investigates, whether by public or private hearings.

Public hearings are an important tool in exposing corruption: they must be used carefully and where they are in the public interest. A public inquiry process can also increase the public's confidence, of course, in the integrity of investigations, and would have been of great benefit in the case of the Oakden inquiry particularly.

As politicians, I am sure everyone will agree, our integrity is nothing without transparency. The shame of what occurred with the Oakden and Gillman scandals has proved that, and I echo many of the sentiments just expressed by the Hon. Mark Parnell, especially around the fact that with those public hearings—something, again, that we support unequivocally—comes a greater need for transparency.

In closing, I, too, would like to thank the committee for its inquiry and the Attorney-General and the commissioner and their staff for their briefings. We need to acknowledge that we have referred this bill off to the inquiry, we have asked for them to look at it, and we cannot now ignore the outcomes of that inquiry, so they will need to be taken into consideration during the context of this debate. It is not simply a matter of saying that we do not like the inquiry's outcomes, that we will go back to bill No.1, or whatever the case may be. We have given them a job, and we need to accept that they have done the work and look at those findings closely, and look at the amendments, which indeed reflect those findings, in this place during the committee stage.

I conclude by noting that I will also be moving an amendment to the bill, seeking to insert new clause 15A, which contains amendments to this bill to align with those amendments that were successfully passed in the Public Interest Disclosure Bill 2018. With those words, I support the second reading of the bill.

The Hon. F. PANGALLO (12:41): I rise to speak in support of the Independent Commissioner Against Corruption (Investigation Powers) No. 2 Amendment Bill 2018. It is my view that the bill has benefited considerably from referral to the Crime and Public Integrity Policy Committee, of which I am a member, and which reported to the Legislative Council on 20 September 2018. The committee was well informed by the submissions we received from a wide range of experts, including the Law Society of South Australia, the South Australian Bar Association, the Law Council of Australia, the ICAC commissioner (the independent reviewer), staff, the Ombudsman, private law firms and legal practitioners.

It has always been SA-Best's position, like that of the Marshall government, to amend the ICAC Act to provide for public hearings, but we need to make sure that we strike the right balance between increased transparency and accountability on the one hand and individual rights and protections on the other.

I commend the government for moving quickly to fulfil its election promise to introduce these important reforms to ensure that ICAC can effectively investigate allegations of serious or systemic maladministration, misconduct and corruption in public administration, ensure that ICAC exercises its powers with proper consideration for individual protections, hold our public sector to account and build public trust in government.

Under South Australia's current secretive ICAC laws, all serious or systemic maladministration and misconduct inquiries must be and have been held as closed hearings and covert investigations. It is important to note that the bill has no impact on investigations into allegations of corruption in public administration. Corruption investigations will continue to be conducted in camera. SA-Best believes that this is entirely appropriate. We agree with Commissioner Lander's view that corruption investigations can require covert actions that should not be disclosed during the process. Any resultant prosecution is, of course, handled by the DPP.

While anti-corruption commissioners across Australia have long recognised the power of public misconduct and maladministration hearings to build public confidence in anti-corruption bodies and the integrity of public administration, we remained the only state whose ICAC was unable to hold public hearings. Commissioner Lander has called for ICAC to have the discretion to hold public

hearings to provide a more transparent, timely and accessible environment for our anti-corruption commission to expose serious or systemic misconduct and maladministration. This was not always the commissioner's view but his experiences with the Oakden and Gillman investigations in particular proved the value of public hearings.

This bill gives the ICAC commissioner the discretion to conduct public hearings into serious or systemic maladministration and misconduct where the commissioner can demonstrate that it is in the public interest to do so. Two bodies are charged with the oversight of the ICAC commissioner in the exercise of these powers: the Supreme Court and this parliament.

It is therefore incumbent on us to ensure that the bill provides appropriate oversight of ICAC. The bill incorporates a range of safeguards to give the public confidence that ICAC does not operate beyond its extraordinary coercive powers. Commissioner Lander has made it clear that he wants to retain his coercive powers and discretion to conduct public and private investigations as he sees fit; but as he himself has noted, we are all subject to the law.

In relation to private investigations, ICAC currently has all the powers of a royal commission to investigate serious or systemic maladministration. Where ICAC considers that it is in the public interest to hold a public investigation there will be checks and balances designed to protect the rights of those being investigated, including the ability to appeal to the Supreme Court about the determination to hold a public investigation and questions of jurisdiction.

SA-Best agrees with the South Australian Bar Association and the Law Society of South Australia that it is crucial that comprehensive oversight of ICAC is legislated. An ICAC investigation, especially if by way of public hearings, has the potential to unduly damage a person's reputation and cause them significant harm. A public servant in a public hearing may be identified and named and then found to have no case to answer. We need to remember that a cornerstone of our justice system is the presumption of innocence, as is the right to not self-incriminate. These are preserved in this bill. The right to be represented by a lawyer in a public or private hearing is clarified. Non-publication or suppression orders are also included for practical reasons.

To find examples that illustrate the need for these checks and balances we need look no further than recent events involving ICAC here in South Australia and interstate. In New South Wales former Liberal MP Chris Spence has spoken out about how just being named in the ICAC inquiry was effectively the end of his political career, despite the investigation eventually not proceeding and the Crown Solicitor finding that ICAC had been acting outside its jurisdiction. He described the experience as putting his family through hell.

In February, the 2017 convictions of former New South Wales Labor minister Ian Macdonald and a friend, a former union boss John Maitland, for misconduct of public office involving the granting of a mining lease, were quashed and a retrial ordered. Macdonald was serving a 10-year gaol term, while Maitland was serving six years. Macdonald has called for an immediate inquiry into the way ICAC conducted itself during its investigation, and others.

In South Australia we had the case of Michael King, who was facing charges of failing to act honestly as a public servant following an ICAC investigation. Magistrate McLeod found that warrants issued by the ICAC commissioner were invalid; hence the evidence obtained was inadmissible. The committee and indeed Chief Justice Chris Kourakis were astonished that the commissioner commented on the specific case, noting that he did not agree with the magistrate's decision. This matter is now subject to appeal. As Magistrate McLeod responded, public confidence in the administration of justice comes through due process and that the defendant in any trial must be confident about the integrity of the process.

In another alarming South Australian example, the BioSA chief executive, Jurgen Michealis, was acquitted on charges of abuse of public office. Prosecutor Robyn Richardson commented prior to the court's decision that ICAC made the arrest without obtaining any opinion from the DPP office. Counsel for Mr Michaelis expressed frustration that their client had been on continuing bail for months, unable to work, with his name all over the papers.

In another recent case against two SAPOL officers, the magistrate ruled that the prosecution could not rely on evidentiary materials produced as part of another separate investigation. This case

illustrates the importance of the protections in this bill that prevent ICAC materials being used in other civil and criminal jurisdictions.

As Commissioner Lander told the Crime and Public Integrity Policy Committee recently, ICAC is not a court that determines guilt or innocence. However, it has extraordinary powers to investigate that makes it critical to provide the necessary safeguards against ICAC becoming a 'star chamber', as we have seen happen in other jurisdictions like New South Wales. We do not see the legal protections and safeguards in this bill as a nuisance or a means of frustrating an investigation; we see them as essential counterbalances.

In addition to these provisions, the bill has some other equally important work to do to improve the functioning of ICAC. The bill clarifies the commissioner's powers, resolving the tension between the ICAC Act, which provides jurisdiction to investigate, and the Ombudsman Act and the Royal Commissions Act. The bill still provides the commissioner with the power to compel the production of documents that could otherwise be subject to privilege or public interest immunity, including being able to obtain confidential cabinet documents if certain stringent conditions are met. These provisions are much broader than section 21 of the Ombudsman Act, which was an issue during the Oakden inquiry and used by the former Weatherill Labor government to withhold cabinet consideration about what happened at Oakden.

Finally, the bill also provides a sensible administrative delegation power to the deputy commissioner and/or examiner to conduct an investigation in the event the commissioner is unable to do so. However, we support the Labor amendment that all public hearings are conducted by the commissioner as an additional safeguard in more publicised investigations. As the current federal debate about establishing an ICAC-type commission, led by our federal Centre Alliance colleagues, has highlighted, serious or systemic misconduct, maladministration and corruption need to be exposed to the disinfecting light of day.

ICAC is a body that has extensive powers to investigate serious or systemic misconduct, maladministration and corruption. This bill expands on those powers with a new discretion to conduct public hearings into serious or systemic misconduct and maladministration. As a counterbalance to ICAC's extraordinarily broad powers, this bill must have the appropriate safeguards to make sure that there are the necessary checks and balances on ICAC to give the public confidence that ICAC conducts its investigations in a transparent, accountable and procedurally fair way.

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

Sitting suspended from 12:54 to 14:15.

Parliamentary Procedure

PAPERS

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Determination and Report No. 2 of 2019 of the Remuneration Tribunal—
Remuneration of Members of the Judiciary, Presidential Members of the SAET, Presidential Members of the SACAT, the State Coroner and Commissioners of the Environment, Resources and Development Court

By the Minister for Trade, Tourism and Investment (Hon. D.W. Ridgway)—

Urban Renewal Authority (trading as Renewal SA) Charter

By the Minister for Health and Wellbeing (Hon. S.G. Wade)—

Rules under Acts—
Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013—General

ANSWERS TABLED

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

PRESIDENT'S RULING

The PRESIDENT (14:18): Honourable members, you will recall that during question time yesterday the Minister for Trade, Tourism and Investment, in answering a question from the Hon. Justin Hanson, began his answer by stating:

> I will read the headline of an email, 'The temporary closure of the Kangaroo Island Visitor Centre', from 24 March.

I gave an undertaking to the Leader of the Opposition that I would consider the matter as to whether the minister could be called to table the email from which he quoted. Having considered the matter and explored the practices of other jurisdictions, I provide the following comments. Standing order 452 states:

> A Document quoted from in debate, if not of a confidential nature or such as should more properly be obtained by Address, may be called for at any time during the debate, and on Motion thereupon without Notice may be ordered to be laid upon the Table.

The minister did not indicate at the time that the document from which he was quoting was of a confidential nature and unless the minister now claims that the email from which he has quoted is of a confidential nature, I will call upon the minister to table a printed copy of the document at the earliest possible opportunity.

Obviously, this standing order has been drafted at a time that would not have foreseen the development of a digital technology to the extent that we now experience. However, the minister was, by his own admission, reading from an electronic document in the form of an email. As such, an email could readily be printed and therefore be presented in a form that could be tabled in the council, should it be called on.

In the digital age, these are situations that all houses of parliament are dealing with. An examination of other houses of parliament within Australia reveals that, while there is no strict uniformity in either standing orders or approaches, it is the expectation that should a member quote from a document from a digital device, such as a mobile phone, tablet or laptop and the document be called on to be tabled, the document should be provided in printed form as soon as possible. Members should be aware that when they read from a mobile phone or other mobile device when answering a question or during debate, they run the risk of a member calling on the electronic document they are quoting from to be tabled under standing order 452.

I advise the council that I intend to adopt the following process should a member call for a document quoted from material on an electronic device. I will ask the member to identify the type of electronic document quoted from and whether the document is of a confidential nature. In the first instance, I will give consideration to the member's claim that the document is of a confidential nature. However, if I am unsure as to whether the claim can be substantiated, I will take the matter into consideration and consult with the member and deliver a ruling at a later stage.

Of course, regardless of any ruling from the President, the council, in accordance with standing order 452 and on motion without notice, may order the document to be laid upon the table. Should an electronic document be called on to be tabled, the tabling of a printed version of the electronic document will then be considered as sufficient compliance with standing order 452. There is no provision or requirement within the standing orders for the actual electronic device to be tabled. I ask the Hon. Mr Ridgway if the email to which he referred was confidential.

The Hon. D.W. RIDGWAY: Am I allowed to read it to check?

Members interjecting:

The PRESIDENT: Order!

The Hon. D.W. RIDGWAY: I was waiting for your ruling. I do not believe it is. If it is not—

Members interjecting:

The PRESIDENT: Order! This is a serious matter.

The Hon. D.W. RIDGWAY: They cannot even help themselves.

The PRESIDENT: The Hon. Mr Ridgway, what I propose to do, out of courtesy to you, is that I ask that you provide me with a copy of the email. I will form a view and then advise the chamber on the next day of sitting.

The Hon. D.W. RIDGWAY: Thank you.

The Hon. R.I. LUCAS: Point of clarification, Mr President: is your ruling such that it is in the judgement of the member concerned that it is confidential, or is it your ruling that even if the member claims it to be confidential you as the President have the authority to override the view of the member that it is confidential?

The PRESIDENT: My ruling is such that in the first instance I would be showing courtesy to the member and respecting their advice that it is confidential. Of course, if it is insisted upon by another member, they can seek a motion in the chamber. In the event that assurance is required, then I am happy to review the document and give advice to the chamber. If the chamber is unsatisfied, then they can move a motion to retrieve the document. I have taken the approach of showing initial courtesy to the member to alleviate the chamber from the necessity of another member moving the motion. Does that satisfy your inquiry, Treasurer?

The Hon. R.I. LUCAS: Yes.

Question Time

NATIONAL PARTNERSHIP AGREEMENT ON REMOTE INDIGENOUS HOUSING

The Hon. K.J. MAHER (Leader of the Opposition) (14:23): I seek leave to make a brief statement before asking the Minister for Human Services a question about housing.

Leave granted.

The Hon. K.J. MAHER: It is now a whole year since the minister took office and over the course of that time the minister has told the chamber a number of times that a new NPARIH, or remote Aboriginal housing agreement, is imminent. The current national partnership agreement expired in the middle of last year and we have heard absolutely nothing from the minister about a new agreement to provide housing for Aboriginal people in some of the most remote and disadvantaged areas of our state. Housing is critical; indeed, much else that is important in life flows from adequate shelter. The minister has previously told this chamber that there was still money available from state and, at different times, commonwealth funding.

However, the minister's department told a committee last year that there was no funding available anywhere for any new builds and that there was only a limited amount of funding available for maintenance of remote Aboriginal housing. I understand the minister may be visiting remote communities in the near future, particularly in the APY lands. I am currently in the middle of contacting community leaders in remote Aboriginal communities once again to let them know about the Liberal government's failure and this minister's failure in securing any new funding or making any contribution to their housing needs.

My question to the minister is: is there anything else the minister would say to community leaders in Pukatja, in Pipalyatjara, in Nepabunna, or indeed right across South Australia, about her government's failure to secure any federal funding and her government's choice not to put in any further funding for housing and remote Aboriginal communities? What is the minister going to do about this lack of funding, and has there been any offer from the commonwealth?

The Hon. R.I. LUCAS (Treasurer) (14:25): I take the question on behalf of my colleague because, in recent months, I have had the responsibility, on behalf of the government, to negotiate with commonwealth treasurers, finance ministers and other ministers as well in relation to this most important issue. I think it's fair to say that the state government was in very strong opposition to the

terms of the offer the commonwealth government had made to us through late last year and early this year.

It reached the stage where, sometime early last month, with the agreement of the government, I wrote back to the appropriate federal minister and indicated that we were not prepared to accept the offer that the commonwealth government was making and that, if that was the nature of the offer, we would refuse to sign the agreement, bearing in mind, of course, that there is a federal election looming some weeks away.

All went quiet for a number of weeks, but late yesterday afternoon my office was contacted by a staff member of the federal Minister for Finance who indicated the federal government was prepared to talk further about its position in relation to remote housing. I don't propose to put the terms of what was canvassed in terms of an improved offer to the state, but it was an improved offer in a number of particular areas. I have given authority to my office to further negotiations with federal officers and the federal minister.

I have indicated that we would want to see a written letter of commitment from the federal minister and the terms of any proposed national agreement. I am hopeful, but I am always cautious in these particular negotiations until I see the equivalent of the colour of their eyes, that is, a letter or a firm offer from the minister or a proposed agreement with which we can agree in terms of the particular detail.

One aspect which has engaged other state and territories in terms of their negotiations with the federal government has been whether or not any payments from the federal government in relation to this are HFE exempt. If, for example, the commonwealth government—as it has done in the case of Western Australia and in the offer it made to the Northern Territory—makes a one-off payment to the state or territory, the issue of whether or not you lose GST money under the HFE formula is an important issue as well.

I am pleased to update the house, at least in broad terms, that after rejecting the commonwealth's position, after a number of weeks there was the first sign of life, perhaps, in terms of an improved offer from the commonwealth government yesterday. As soon as we are in a position, hopefully, to conclude arrangements, either myself or the minister will be in a position to share further information with the public and with the parliament.

NATIONAL PARTNERSHIP AGREEMENT ON REMOTE INDIGENOUS HOUSING

The Hon. K.J. MAHER (Leader of the Opposition) (14:29): Supplementary arising from the answer: do the Minister for Human Services' departments have any role whatsoever in these negotiations?

The Hon. R.I. LUCAS (Treasurer) (14:29): The Minister for Human Services' department and indeed the minister herself has been a key player in terms of the negotiations over a long period of time. The commonwealth government, in a number of areas in terms of national agreements, not just in terms of remote housing but, as my ministerial colleagues will know, the health agreement, the education agreement; the former commonwealth treasurer and now Prime Minister and the current commonwealth Treasurer have a view that, in significant funding agreements between the commonwealth and the state, the treasurers should be taking the lead role in relation to the negotiations of many of the agreements—not all of them, but many of the agreements.

That was certainly the case in relation to the health agreement and the education agreement. It has turned out to be the case in relation to the remote housing agreement. There was a particular interest the current Prime Minister and former treasurer and the current Treasurer both had in this particular agreement, and treasurers were involved in the discussions between the commonwealth and the state.

NATIONAL PARTNERSHIP AGREEMENT ON REMOTE INDIGENOUS HOUSING

The Hon. K.J. MAHER (Leader of the Opposition) (14:30): Further supplementary: is the Treasurer aware that the minister concerned agreed to a verbal offer of a one-year matched funding agreement at a meeting with the Premier and the federal indigenous affairs minister, and has the minister's misstep hindered negotiations?

The Hon. R.I. LUCAS (Treasurer) (14:30): I can assure the—

Members interjecting:

The PRESIDENT: Leader of the Opposition! The Treasurer is trying to respond to your question, and you are showing him a discourtesy by having an argument with someone else in the chamber.

Members interjecting:

The PRESIDENT: Order! I am calling you to order, Leader of the Opposition.

Members interjecting:

The PRESIDENT: Leader of the Opposition, it is not helpful for me to listen to the answer from the Treasurer to your own supplementary when you are arguing with someone across the aisle. Treasurer.

The Hon. T.J. Stephens: Why don't you go outside and have a conversation with yourself?

The PRESIDENT: That does not help me, the Hon. Mr Stephens.

Members interjecting:

The PRESIDENT: I'm asking for silence. Was I unclear to the Liberal backbench as well?

The Hon. K.J. Maher interjecting:

The PRESIDENT: Leader of the Opposition!

The Hon. R.P. WORTLEY: Point of order: why is it, when the Treasurer himself has told this council that the minister was heavily involved in negotiations, that he has taken the question instead of the—

Members interjecting:

The Hon. R.P. WORTLEY: Why is it?

Members interjecting:

The PRESIDENT: Have the government benches finished trying to give me gratuitous advice while seated?

The Hon. K.J. Maher: Chuck him out.

The PRESIDENT: You're not assisting me either. The Hon. Mr Wortley, despite your wisdom, that was not a point of order. In fact, that was a question. Feel free, later, if you are on the whipping list, to ask that question of the Treasurer.

The Hon. K.J. Maher: Supplementary—

The PRESIDENT: No, there is not a supplementary. The Treasurer hasn't answered your original supplementary. Treasurer, please continue.

The Hon. R.I. LUCAS: I have almost forgotten what the supplementary question was. But, no, my colleague the minister has been an invaluable contributor right through this process in terms of the detail of these negotiations. As the Treasurer, the aggregate financial figures, the high level financial negotiations—those sorts of issues are issues of which I can have some oversight. In terms of the detail of agreements and what needs to be done with the funding and all of those sorts of issues, I am indebted to my ministerial colleague and her hardworking personal staff and departmental staff as well.

NATIONAL PARTNERSHIP AGREEMENT ON REMOTE INDIGENOUS HOUSING

The Hon. K.J. MAHER (Leader of the Opposition) (14:33): Supplementary question arising from the answer and the fact that the Treasurer gave the answer: has the Treasurer had discussions and counselled the Minister for Human Services over her lack of empathy in the way she answered questions yesterday, and is that why she is no longer allowed to answer these sorts of questions?

The PRESIDENT: Leader of the Opposition—

Members interjecting:

The PRESIDENT: The Hon. Mr Stephens, stop getting so excited; it's distracting me. Leader of the Opposition, I am ruling that out of order, because that—

Members interjecting:

The PRESIDENT: I do not need encouragement from the government benches—was nowhere near related to the original answer. The Hon. Ms Scriven, please show the Leader of the Opposition how it is done.

JOYCE REVIEW

The Hon. C.M. SCRIVEN (14:34): I seek leave to make a brief explanation before asking a question of the Minister for Trade, Tourism and Investment regarding the Joyce review.

Leave granted.

The Hon. C.M. SCRIVEN: On 6 March 2019, the Premier announced machinery of government changes as a result of the findings of the Joyce review into investment and trade. The report outlines machinery of government changes, making more changes to the newly formed Department for Trade, Tourism, and Investment. My questions to the minister are: were you across the detail of the review and the changes? Why did the Premier not bother to include you in this announcement? Or to put it another way, where the bloody hell were you?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:34): I thank the honourable member—

Members interjecting:

The Hon. D.W. RIDGWAY: Mr President, they are going to test—

The PRESIDENT: They are in silence now. Continue.

The Hon. D.W. RIDGWAY: I was across the detail of the Joyce review—a very good review that it is. It is transformational, I expect, for South Australia. If the honourable member actually looked at what's going on, she would understand that I was actually in Japan opening a trade office, getting on with growing our state's economy. The review was commissioned by the Premier, endorsed by cabinet and released by the Premier. I am across the detail. I was in Japan and Korea, and I will enlighten the chamber further this afternoon on some of the activities in Korea. It's a good review. The cabinet has endorsed it and the government is working through the process of implementing it.

JOYCE REVIEW

The Hon. C.M. SCRIVEN (14:35): Supplementary: given the minister has said he is across all the detail, how much did the report cost?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:36): As I said earlier, it was commissioned by the Premier. The Premier commissioned it; his department commissioned it. On the detail of the content of the report, if it pleases the member, if I am able to bring back a cost and if it is not confidential, then I will bring back a cost to Mr President.

JOYCE REVIEW

The Hon. C.M. SCRIVEN (14:36): Supplementary: how many days was Steven Joyce in Adelaide as part of this review? How did Mr Joyce travel to Adelaide? Who paid for that travel?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:36): It is interesting there were three or four supplementaries there, Mr President.

The PRESIDENT: I am glad you can count, the Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: I met personally with Mr Joyce, I think I can recall, on three occasions, but I don't know if he had a lengthy amount of consultation. I'm sure members, if their IT skills are better than they were, say, a few months ago, have downloaded a copy of the report, where

they would see all the different people and different groups he consulted with. I don't know exactly how many days he was here in Australia. I will again take those matters on notice and see if I am able to bring back a reply to the honourable member.

JOYCE REVIEW

The Hon. C.M. SCRIVEN (14:37): Further supplementary: will the minister advise how many jobs will be lost from his department as a result of this review?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:37): I thank the honourable member for her question. We are still working through all the machinery of government changes. I don't expect any jobs to be lost from my department throughout this. Some will transfer. Those negotiations are still going on at a chief executive level. The first tranche of changes will be implemented by 1 April and the final ones by 1 June. I don't believe there will be any losses from my department.

JOYCE REVIEW

The Hon. C.M. SCRIVEN (14:37): Further supplementary: when will staff be advised of the changes that might affect them directly in terms of either losing their jobs or being transferred elsewhere?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:37): The first tranche will be in place by 1 April. It is a digital watch—can I just check the date?

The PRESIDENT: Do so at your own risk, the Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: I could table my watch. It will go flat. It won't be much use to you.

The PRESIDENT: Just don't quote from anything on it.

The Hon. D.W. RIDGWAY: How do I use the date if I'm not allowed to quote from it? Oh, I can see it over there near the Hon. Mr Wortley's head. It is 21st, so it is about 10 days away before the first tranche will be in place.

JOYCE REVIEW

The Hon. C.M. SCRIVEN (14:38): A further supplementary to clarify: is the minister saying that staff will be advised on 1 April but not before?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:38): That's something that is being worked through at the chief executive level at the moment. That is my understanding, that those implementations will be in place on or about 1 April.

SA PATHOLOGY

The Hon. E.S. BOURKE (14:38): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding SA Pathology?

Leave granted.

The Hon. E.S. BOURKE: During Tuesday's question time, the minister made a statement regarding the PwC report on SA Pathology, and I quote:

> I as minister have received the report. I will, in due course, take a submission to my cabinet colleagues and then the government will have a position on this report.

My question to the minister is: did the minister present the PwC report to cabinet at today's meeting and, if not, when will the minister provide a copy of the report to cabinet? Can the minister advise if the Hon. Jamie Briggs from PwC has been involved in the PwC SA Pathology report?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:39): In relation to the advice I gave earlier in the week, that is still my advice. It's not my intention to reveal what has happened in cabinet but, as I said earlier in the week, I am preparing advice for cabinet. My department and I are still preparing advice for cabinet.

SA PATHOLOGY

The Hon. E.S. BOURKE (14:39): Supplementary: can the minister please advise, as I stated in the original question, if the Hon. Jamie Briggs from PwC has been involved in the PwC SA Pathology report?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:40): I am not aware. I am happy to take that on notice.

SA PATHOLOGY

The Hon. E.S. BOURKE (14:40): Further supplementary: can the minister please advise why the completion date, which was due on 4 March, and the original draft report due in February, was not met?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:40): I can't validate what the honourable member is saying. The honourable member's question earlier this week was in relation to when I received the report. I was not making any broader comments and certainly, as my honourable colleague minister Lensink says, it's a day long past since I trust anything the Labor Party asserts in questions.

SA PATHOLOGY

The Hon. E.S. BOURKE (14:40): Further supplementary: can the minister please confirm what date was published in the contract for the report to be provided, both a draft report and also the final report of SA Pathology?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:41): I am happy to take that question on notice.

GREEN HYDROGEN

The Hon. T.J. STEPHENS (14:41): My question is to the Minister for Trade, Tourism and Investment. Can the minister update the council about his engagement with Japan and Korea on the opportunities arising from green hydrogen?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:41): I thank the honourable member for his ongoing interest in the renewable energy sector, particularly the hydrogen sector. On Tuesday, I was able to inform the council about the exciting opening of our North Asia trade office in Tokyo, which I attended as part of a broader business mission to the Asian region. Incidentally, at the same time, the Premier was releasing the Joyce review back here while I was busy overseas.

As outlined on Tuesday, the North Asia trade investment office will also cover Korea, which I was lucky enough to visit after our Japan leg. One of the sector priorities of our business mission was exploring the opportunities related to the development of a global hydrogen economy. Both Japan and Korea have signalled a strong desire to decarbonise their economies while still maintaining their economic growth trajectories and meeting the energy needs of their households and industries. They are doing this through a detailed hydrogen strategy. A key component of that is the development of a global hydrogen supply chain.

The federal government, along with state counterparts, has seen the opportunities and is collectively driving a national hydrogen strategy to capitalise on these opportunities. Credit where it is due, the previous government commenced the process of developing a South Australian hydrogen strategy, and the Marshall government is keen to further progress the strategy. In fact, it is now in the hands of a government that actually understands renewable energy and wants to progress particularly the hydrogen strategy.

Let me be clear: this is a long-term opportunity. A significant amount of technical innovation and global infrastructure and investment will be required before we see any significant trade occurring. Since the South Australian strategy was launched in September 2017, the world has moved on considerably. I was fortunate enough to hear from some of the key players in both Japan and Korea. I was able to visit a hydrogen refuelling station in Tokyo and ride in a Toyota Mirai. There are currently around 3,000 hydrogen vehicles on the road in Japan, and they have an ambitious

target to scale up to 40,000 by 2021. These will need to be supported by at least 80 refuelling stations across Japan by this state.

It is interesting to note that if you look at this chamber here, all 22 members of us, there are two of us who actually took an interest in hydrogen some 15 years ago and visited the hydrogen bus trial in Perth, Western Australia, those being the Hon. Terry Stephens and myself. At the time the minister in Western Australia said that apart from the Hon. Robert Hill, great South Australian senator that he was, who funded that project, the only other two MPs in the entire nation to visit it were the Hon. Terry Stephens and me. That was 15 years ago, before, I might add, all the members right the way around to here were even elected. We have had a longstanding interest and commitment to hydrogen. The next stage of our journey—

The Hon. J.E. Hanson: How were we meant to go if we were not MPs? How were we meant to go? I am not here yet. What's the logical point?

The PRESIDENT: The Hon. Mr Hanson, feel free to ask that question when I give you the call.

The Hon. D.W. RIDGWAY: The next stage of our journey was a meeting with the Green Ammonia Consortium. This is where South Australia has a real competitive advantage. We have some unique locations with abundant solar and wind resources that can be used to split water into hydrogen and oxygen, known as electrolysis. An interesting development in the last 48 hours is: a researcher at Stanford University has been able to take hydrogen straight from sea water without having to desalinate it. So I think there is some very exciting news to come. Of course, we can power all this with the wonderful supply of renewable energy we have on the West Coast.

Japan is looking to use ammonia as a carrier technology to transport hydrogen. We were keen to hear about the plans of this consortia to see how South Australia can potentially be a part of this process. We then moved on to Korea, where I met with the deputy minister for energy and resources, Mr Young Joo; he emphasised the Korean government's commitment to developing a hydrogen economy and saw many opportunities for South Australia and Korea to realise a shared vision.

I also then met with H2 Korea, a consortia of Korean companies that are looking to develop a liquid hydrogen export supply chain. The group of companies that make up the consortia are looking to make significant investments in renewable energy, port infrastructure and shipping technology across the globe. The two countries present an amazing long-term opportunity for the state and the nation. I was privileged to take the next step on this exciting journey. I have no doubt that this opportunity will provide highly skilled jobs in the future for South Australians, and position our state for investment and export-led growth over many years and decades to come.

EYRE PENINSULA FREIGHT

The Hon. F. PANGALLO (14:45): I seek leave to make a brief explanation before asking the Minister for Trade, Tourism and Investment, representing the Minister for Transport, a question regarding the Eyre Peninsula rail network and Eyre Peninsula freight strategy.

Leave granted.

The Hon. F. PANGALLO: It was recently announced that the multinational grain handling group Viterra would cease using the Eyre Peninsula rail network to move grain. More than 30 people will lose their jobs when Viterra's contract expires on 31 May, but the decision is also expected to increase B-double truck movements on local roads in the broader region by about 30,000 a year. The current road infrastructure, linking the state's vital Eyre Peninsula and West Coast regions to the rest of the state and country, was not built and has not been upgraded to take such a significant influx of new heavy traffic.

Our federal Centre Alliance colleague, Senator Rex Patrick, and Centre Alliance's candidate for the federal seat of Grey, Andrea Broadfoot, have been pivotal in campaigning on this issue, and have called on the state government to urgently release the Eyre Peninsula freight strategy. The strategy was co-funded by the government and Genesee & Wyoming Australia, the operators of the soon to be defunct rail line, in 2017. This was to investigate options to keep the rail line open and to

ensure that as many as possible grain trucks were kept off the roads. The report was handed to minister Knoll last year. My question to the minister is:

1. When does the minister plan to release the Eyre Peninsula freight strategy?

2. Why has there been such a significant delay in releasing it?

3. Has the minister been requested by his federal colleagues to delay its release because it may damage the re-election prospects of the current federal member, Liberal Rowan Ramsey?

The Hon. J.E. Hanson: Who?

The Hon. F. PANGALLO: Rowan Ramsey.

4. Did the state government engage in negotiations with Viterra and GWA in a bid to get it to renew its contract with GWA?

5. Is the state government currently in talks with Viterra and GWA in a bid to get it to reverse its decision?

6. Does the minister have concerns about the impacts on road users of the additional 30,000 B-double truck movements in the region per year?

7. What budget is allocated for road infrastructure spending and traffic management on Eyre Peninsula to upgrade and maintain roads on Southern Eyre Peninsula?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (14:48): I thank the honourable member for his question and his ongoing interest in regional South Australia. Before offering to respond to those questions, I recall in this place, I think when the Hon. Patrick Conlon was minister for transport, that a scheme was set up by the former state government and levied grain growers (and put taxpayers' money into it as well) to refurbish and rebuild that rail network.

It seems very typical of things that happened in the last 16 years, because probably only about 13 years ago that particular rail network, after spending taxpayers' money and growers' money, having levied $2 or $5 a tonne—I don't recall the exact figure—from the grain growers, not much over a decade later it is not fit for purpose. I think it is symptomatic of a lot of the things that happened in the previous 16 years while we had a Labor government.

In relation to all of the honourable member's questions which were quite technical and quite detailed, I will refer them to my very hardworking and capable colleague the Hon. Stephan Knoll in the House of Assembly and bring back a reply.

The PRESIDENT: Will honourable members remember to call members of parliament, federal and state, by their seats.

PARLIAMENT HOUSE STAFF ENTERPRISE AGREEMENT

The Hon. J.E. HANSON (14:50): My question is to the Treasurer. Will the Treasurer advise the chamber the reason behind ruling out back pay for staff employed under the Parliament (Joint Services) Act 1985, in fact the staff who keep the building running, while approving back pay for ministerial staff? Will the Treasurer categorically rule out no back pay as a negotiation tactic with other government enterprise bargaining agreements?

The Hon. R.I. LUCAS (Treasurer) (14:50): I am happy to take the question on notice. I am not sure what he means and perhaps outside the chamber the member could explain what he means by 'back pay'. If he is alluding to the fact that in some way the government as an employer owes people money and they have not paid them and they need to be paid back pay, then I would be interested to know if he could give me further details of that particular claim and I will be happy to have them investigated.

In relation to ministerial staff, up until now the government has adopted the same process that the former Labor government adopted for 16 years, which was essentially that executives were evidently for some reason in the Public Service given whatever their pay rise was generally some time towards the end of the calendar year. Through some convention—no law—the former

government then applied the same level of salary increase to the broad ministerial staff. Some staff were given more significant increases than the average, or the normal, but generally that was the rule of thumb that was used.

When we came to government our legal advice was that, through the structure of the contracts that ministerial staff had, a similar process was required to be followed. It is unlikely that we will continue that process in the future as new contracts are structured for ministerial staff. I would hope also that in relation to executives the convention of the former Labor government would not need to be followed as well; that is, if the government of the day decides to make a pay increase to executives it would be whenever the government of the day makes that particular decision rather than, in essence, making it retrospective to an earlier date. We did inherit some of the practices of the former government and we hope that we will be able to improve some of those practices as they relate to executives and ministerial staff.

In relation to the parliamentary staff and the issues that the honourable member has raised, as I said, if he is prepared to give me any further claims about back pay not being paid then I am prepared to have them investigated. If what he is actually talking about is whether or not future salary increases are made retrospective as opposed to back pay, then there is a current enterprise bargaining negotiation going on between representatives of the government and representatives of employees. I think, as a former prominent union heavy or union boss, he would understand that enterprise bargaining negotiations generally are best not conducted in the public arena in relation to the details unless we get to the stage where there is an inevitable breakdown.

PARLIAMENT HOUSE STAFF ENTERPRISE AGREEMENT

The Hon. J.E. HANSON (14:53): Supplementary, and I ask for some latitude from the Chair as there is some confusion about the nature of back pay. Back pay is a negotiation tactic that exists where you would have a period of time between when the previous agreement has ended and when you sign your new agreement.

Members interjecting:

The PRESIDENT: Are we all finished? As much as I enjoy a general discussion seated on the standing orders, as I listened to the member he is just trying to give the person who is going to answer the question some clarity before he asks his supplementary. Please ask your supplementary.

The Hon. J.E. HANSON: My supplementary is, first of all: I understand that the Treasurer is going to take my question on notice; is that correct?

The Hon. R.I. LUCAS (Treasurer) (14:54): I will in part take it on notice. I have answered the bulk of the question already. I am happy to, outside of this particular arena, have a quiet discussion and get a further explanation from the member as to what he actually means by 'back pay'. As I explained in my response, if he means in essence making a pay offer and then making it retrospective in terms of a payment, then my answer to the question is: there is an enterprise bargaining negotiation currently going on, and I don't propose to publicly canvass the government's position or, indeed, the employee's position at this particular stage.

If, however, he is making an allegation that the government hasn't made a payment and that there is a legal entitlement to back pay to be paid to some staff, then I will seek that further information outside the chamber from him and have it investigated. But I am not taking it on notice. If I have interpreted the question as being as I suspect it might have been intended, then I don't propose to take it on notice. I have given my answer.

PARLIAMENT HOUSE STAFF ENTERPRISE AGREEMENT

The Hon. T.A. FRANKS (14:55): Supplementary: with regard to those same negotiations with parliamentary staffers, on what grounds can the government claim to be bargaining in good faith if they have rejected the provision of flexible work arrangements to support breastfeeding and the provision of access to both support facilities for breastfeeding and, indeed, lactation breaks?

The Hon. R.I. LUCAS (Treasurer) (14:56): I don't propose to go into the details of the discussions that government negotiators have had with individual staff. I don't accept the premise of the member's question until I take further advice from the government negotiators.

PARLIAMENT HOUSE STAFF ENTERPRISE AGREEMENT

The Hon. T.A. FRANKS (14:56): Supplementary: why do staff of this place and our electorate offices not already have entitlements to breastfeeding provisions as we celebrate the 125th anniversary of suffrage in this state?

The Hon. R.I. LUCAS (Treasurer) (14:56): Some of those questions might be best addressed to the presiding members and the Joint Parliamentary Service Committee, I suspect, depending on the detail. I am responsible for wage and salary negotiations—sorry, I am not personally. The government and its negotiators are responsible for wage and salary negotiations.

Members interjecting:

The Hon. R.I. LUCAS: The provision of facilities in Parliament House, with great respect to the Hon. Ms Franks, are not something I as are a mere Treasurer in the state government have control over. The provision of facilities in Parliament House is quite properly the purview of the President of this particular chamber, the Speaker of another chamber and the Joint Parliamentary Service Committee in relation to what goes on and what facilities are provided in Parliament House. I know the limitations of my power and I certainly don't intend to intrude into the rightful province of the presiding members and the parliament.

The PRESIDENT: The Hon. Mr Hanson, a further supplementary?

PARLIAMENT HOUSE STAFF ENTERPRISE AGREEMENT

The Hon. J.E. HANSON (14:57): Just a clarification: is the Treasurer telling me he thinks it is appropriate that I ask the President and not him my question?

The PRESIDENT: The Treasurer is not going to respond. The Hon. Ms Lee.

HARMONY DAY

The Hon. J.S. LEE (14:58): My question is directed to the Minister for Human Services about Harmony Day. Can the minister please inform the chamber about the background and significance of Harmony Day?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:58): I thank the honourable member for her question and her personal commitment to multiculturalism in South Australia. Harmony Day is celebrated annually on 21 March throughout Australia. It began in 1999, coinciding with the United Nations International Day for the Elimination of Racial Discrimination. Each year, it is marked by people coming together and participating in local activities.

The message for Harmony Day is 'Everyone belongs'. It is about community participation, inclusiveness, celebrating diversity, respect and belonging. Communities themselves decide how they would like to come together to mark the occasion. Some have morning teas, others organise a fair and some celebrate by dressing in national costumes. Since 1999, a wide variety of groups, including sports organisations, community groups, local government, churches, schools and businesses, have staged more than 77,000 Harmony Day events.

I understand that honourable members hosted a Harmony Day morning tea this morning, attended by the honourable member, the member for Reynell, the Premier and many members of parliament from this chamber and the other place. Also in attendance was the chair of SAMEAC, Mr Norman Schueler, with other SAMEAC members; the Multicultural Communities Council of SA CEO; Dr Niki Vincent; and other invited guests.

This week, of course, both houses moved a condolence motion about the Christchurch mosque attacks. This morning leaders from the Islamic Society and the Ahmadiyya Muslim Community joined the Harmony Day morning tea to appreciate that we all stand with them in solidarity and to reaffirm our commitment to a harmonious multicultural society and condemn any racism, extremism or terrorism.

Might I add, too, that there is a vigil this evening at Elder Park for the victims of the Christchurch mosque attacks at 7.45pm, which is jointly hosted by the Premier and the Lord Mayor. Harmony Week is an opportunity to consider the many benefits South Australia gains from its

culturally and linguistically diverse communities. Benefits include job creation, improved skill levels, the introduction of new skills and networks, and improved economies of scale. The economic advantages are many. Our diverse communities link us strongly with the rest of the world and increase our competitiveness in this global market.

Harmony Week is an opportunity for all South Australians to celebrate our diversity while working to remove barriers that still exist in our community. This year, 2019, is the 20th anniversary of Harmony Day celebrations in Australia and is also the United Nations International Year of Indigenous Languages.

KANGAROO ISLAND HEALTH SERVICES

The Hon. T.A. FRANKS (15:01): I seek leave to make a brief explanation before addressing a question to the Minister for Health and Wellbeing on the topic of the potential health outcomes as a result of the impact of drilling in the Great Australian Bight, with particular regard to access to health care on Kangaroo Island.

Leave granted.

The Hon. T.A. FRANKS: The population of Kangaroo Island already has to often travel off-island to access health services beyond those that can be provided by the local GPs. While the Royal Flying Doctor Service provides transport in emergency situations, hundreds of islanders travel via ferry every single month for essential health care, including time-sensitive services such as radiology, chemotherapy and dialysis.

However, as we would all be aware in this chamber, with the current proposal for Equinor to drill in the Great Australian Bight, residents currently feel uncertain that there is no clear plan for the provision of reliable and timely health care in the event of a spill. If there was a spill, a capping stack would have to come from Singapore. This would take quite a significant amount of time, in which case, as we know, we could see Kangaroo Island isolated. Logically, there could be an impact on the ability of ferries and other vessels to operate normally, and it could potentially isolate this small island, causing significant health impacts. My questions to the minister are:

1. What work has been undertaken to ensure there are emergency management plans specific to the needs of Kangaroo Island should there be such an isolating incident, be that the Great Australian Bight being drilled or otherwise?

2. Is that emergency plan the domain of the local health network or of someone else within SA Health?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:03): I thank the honourable member for her question. I am not aware of any work. I will certainly have to take that on notice and bring back the answer.

KANGAROO ISLAND HEALTH SERVICES

The Hon. T.A. FRANKS (15:03): A supplementary: given that the current emergency planning policy expires in June this year, and we may see drilling in the bight in summer this year, will it be the province of the local health network to take up that planning or will it be SA Health?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:03): As I said, I will take that on notice.

NU SKIN

The Hon. T.T. NGO (15:03): I seek leave to make a brief explanation before asking a question of the Minister for Trade, Tourism and Investment regarding Nu Skin.

Leave granted.

The Hon. T.T. NGO: The minister has previously noted in this place that he has met with representatives of a US cosmetic multilevel marketing firm called Nu Skin. How many times have you met with Nu Skin or any related entity, both in opposition and as minister? Were you briefed by the SATC or DTTI about the company prior to your meetings as minister?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:04): I thank the honourable member for his question in relation to Nu Skin. I will answer part of it to start with. I never met with Nu Skin prior to becoming minister; so in opposition. In fact, I didn't even know the name Nu Skin prior to that. I have met with Nu Skin. My recollection is twice overseas, in China, in the last 12 months and once when they visited Adelaide.

There was a project in combination with the Adelaide Convention Bureau and Tourism Australia to attract what they call incentive or reward visits to places like Australia. These types of companies have been to Sydney, the Gold Coast and the Great Barrier Reef. South Australia put a proposal jointly with and supported by Tourism Australia. The Convention Bureau were the ones doing the bidding, so I was involved. As I said, in my recollection—I will double-check my diary—I think it was two times I met with them and once they came to a site visit here where I met with them.

We are waiting for decisions to see whether they may choose Adelaide to be a destination they would like to come to to celebrate one of their incentive visits. What they do is bring their top sales people to destinations like Sydney, the Gold Coast, the Great Barrier Reef and places like Adelaide. They bring thousands of people. We had Perfect (China) and Joy Main here in the last couple of years and they brought about 1,000 people, in my recollection. They stayed for three or four days and enjoyed the great hospitality, food and wine and experiences that we have here. It is often the way that companies reward their top sales people. We are waiting to see whether Nu Skin arrive.

NU SKIN

The Hon. T.T. NGO (15:06): Supplementary question: prior to your meetings, were you made aware of Nu Skin's regulatory breaches relating to deceptive marketing and illegal product sales?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:06): No.

NU SKIN

The Hon. T.T. NGO (15:07): Another supplementary: did the minister do some due diligence before seeking business or a private meeting?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:07): I wasn't briefed about any potential breaches by Nu Skin before the meetings with them. I received a briefing that we were meeting with them and they were a company that would bring a large number of people if we were successful to win the bid. The bid was put on by the Convention Bureau and I played a very small role in that bid, supported by Tourism Australia. I wasn't briefed and only became recently aware that there are some breaches that may have happened in China, but are nothing to do with our bids or any briefings that I have had.

NU SKIN

The Hon. T.T. NGO (15:07): Looking at the minister's glowing skin—he keeps rubbing his forehead—have you ever received any products from Nu Skin? If yes, can you tell the house what it was?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:08): I wish they had given me some hair restorer, because it might have worked. I don't recall—again, I will check the gift register. I do travel, as you know, quite a lot and I have a number of tea sets and things that have been on the gift register. I don't recall getting anything from Nu Skin, but I will check. Sadly, as members can see, if it is meant to be beauty enhancing, it is certainly not working for me if I was using it.

The Hon. T.J. Stephens: No, it's from the inside out.

The Hon. D.W. RIDGWAY: Maybe I am healing myself from the inside out, perhaps, Mr President.

The PRESIDENT: Leader of the Opposition, a supplementary?

NU SKIN

The Hon. K.J. MAHER (Leader of the Opposition) (15:08): The minister said that he has become aware, I think in his words, of certain breaches of this company in China. Can he outline what he has become aware of?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:08): I am not exactly across the detail of it. I think—

Members interjecting:

The PRESIDENT: Order! Allow the minister to answer.

The Hon. D.W. RIDGWAY: Do you think they want me to answer or are they just going to keep interrupting me?

The PRESIDENT: Please continue your answer, the Hon. Mr Ridgway.

The Hon. D.W. RIDGWAY: As I said, I recall maybe meeting them twice in China and once here. There has been some media coverage in China, I think, around some regulatory breaches that the Chinese government is investigating. As I said, it was a bid put together by the Convention Bureau and Tourism Australia. We participated in the bid, and I don't know where those investigations by the Chinese government are in relation to those breaches. I suspect the only information available has been a small amount in the media. If it pleases the member opposite, I will see other information I can bring back for him.

NU SKIN

The Hon. K.J. MAHER (Leader of the Opposition) (15:09): Supplementary question: I appreciate the minister's undertaking to bring information back. Can the minister inform us, to the best of his knowledge, who informed him of these certain regulatory breaches in China to which he refers?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:10): I will have to double-check exactly when I became aware, but it was a very minor newspaper article, I think. I will double-check and bring that information back for the honourable member.

The PRESIDENT: The Hon. Ms Scriven, a further supplementary.

NU SKIN

The Hon. C.M. SCRIVEN (15:10): Is the minister aware of breaches in the United States in addition to China?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:10): No, Mr President.

HOSPITAL BEDS

The Hon. J.S.L. DAWKINS (15:10): I seek leave to make a brief explanation before asking a question of the Minister for Health and Wellbeing regarding hospital demand.

Leave granted.

The Hon. J.S.L. DAWKINS: Having experienced firsthand our parliamentary systems at both a commonwealth and state level, I have seen what a difference it makes when governments cooperate rather than engage in public bickering. Will the minister update the council on how the state government is working with the federal government to ensure that our respective health programs complement each other?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:11): I thank the honourable member for his question. The member is right to point out the issue of the interaction of commonwealth and state programs. One area where we have seen a commonwealth program having a negative impact on the public health system in South Australia is in the rollout of the National Disability Insurance Scheme. I have spoken on a number of occasions about the issue of long-stay

patients in South Australian hospitals, who are waiting for their next step on the NDIS journey but who are waiting in limbo because of the complexities of the interaction of the health system and the NDIS program.

Staying in hospital for an extended period of time is associated with a series of negative health outcomes in addition to the isolation from family and loved ones. It comes at a substantial cost to the South Australian taxpayer, who foots the bill for acute beds occupied by long-stay patients. It also impacts on our emergency departments, as other patients might be waiting for the bed occupied by a long-stay patient.

However, rather than choosing to go down the road of the previous Labor government, chest beating grandstanding, the Marshall Liberal government has been working constructively with the Morrison Liberal government to deliver better results for South Australia. Recently, federal health minister, Greg Hunt, and I announced a joint $8 million pilot program specifically addressing long-stay patients who are clinically ready for discharge.

It is a great example of the improved outcomes that can be brought about by a better and more collaborative approach. The pilot will take a three-pronged approach: it will establish six hospital liaison roles in Adelaide's three tertiary hospitals, it will fund temporary placement of patients whose discharge has been delayed, and it will involve the setting up of a dedicated team to provide oversight of the supply of care to patients.

At the commencement of the project, there were approximately 70 general patients and 39 mental health patients who were waiting for appropriate community care. The project will focus on discharging 40 of these long-stay patients before 1 July and ease pressure on the system during the winter period. To put this in context, one of the patients who is being helped through this program was waiting 393 days for their care in the community; that is 393 days beyond the end of their acute care. They spent more than a year waiting for the next step on the journey. The impact of that on the patient, and on the patients in the emergency department, is clear.

The announcement of a joint program by minister Hunt and myself shows the clear and demonstrable benefit to South Australians delivered through collaboration between the Marshall and Morrison Liberal governments. It adds to the $30 million committed by the Morrison Liberal government towards a reactivation of the Repat, the $10 million towards the emergency department upgrade at Mount Barker, the $20 million for drug and alcohol services in South Australia and the additional aged-care places, particularly important with an ageing population. Where the former government chose to pick a fight to get a headline, the Marshall Liberal government will continue to collaborate with the federal government to deliver real improvements for South Australian health services.

LYMPHOEDEMA SERVICES

The Hon. C. BONAROS (15:14): I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing a question about support for lymphoedema sufferers.

Leave granted.

The Hon. C. BONAROS: Lymphoedema is a chronic condition that causes painful swelling, often in the limbs, which is estimated to affect over 2,300 people in South Australia. For reasons unknown, SA is the only state in Australia that doesn't have a garment subsidy scheme or dedicated public service for sufferers of lymphoedema—a scheme that is. The minister has previously said:

> …the Marshall Government is mindful of the health need for a compression garment subsidy scheme and is developing a business case and looking for funding solutions.

My question to the minister is:

1. How long has the government been developing a business case for a compression garment subsidy scheme, and when can South Australians expect to see the implementation of such a scheme in this state?

2. Can the minister provide detailed information as to the range of high-quality services available to sufferers that he has previously referred to in correspondence, and in particular referral pathways?

3. Will the minister agree to a roundtable meeting with members of the Lymphoedema Support Group of South Australia to discuss both the issues of therapy funding and a compression garment subsidy scheme?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:16): I thank the honourable member for her question, and I appreciate the interest in the lymphoedema compression garment subsidy issue. I have had a number of meetings with government members, correspondence, and I acknowledge the honourable member's interest. Only yesterday, at the request of a government member, I met to discuss this scheme.

The honourable member quite rightly highlights that South Australia is the only state that doesn't have a lymphoedema compression garment subsidy scheme, and I think that is a damning indictment of the former Labor government. Whether it is endometriosis, whether it is a lymphoedema compression garment subsidy scheme, whether it is a whole range of women's health issues and broader health issues, South Australia lags behind other states and territories.

I think the honourable member adverted to the issue of how long the business case was under development. All I can say is: I don't know when it started, but it certainly started before this government came into office. I was aware that a business case had been worked on—sorry, of the former government claiming they were working on a business case for some time before the election.

In terms of the work being done in SA Health, I have received a business case and a briefing. The briefing raises a number of issues that I will need to consider in the context of the business case, and I will continue to work with my department on that.

The PRESIDENT: Supplementary, the Hon. Ms Bonaros.

LYMPHOEDEMA SERVICES

The Hon. C. BONAROS (15:17): Just on to the last question: will the minister agree to a roundtable discussion with the advocacy groups on this very issue?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (15:18): I am happy to do that. Actually, thanks for giving me a supplementary because it gives me an opportunity to indicate that not only have government members in this government lobbied me on this issue but I even had the experience of the federal minister lobbying me on this. He, too, was gobsmacked that we could be the only state in Australia without a lymphoedema compression garment subsidy.

I know that Greg Hunt knows as well as I do that not only have we inherited services that are poor compared to other states and territories, we have also inherited a health system that is far more expensive, that is both financially and in a service sense facing significant sustainability challenges. We will do what we can to recover services and we will do what we can to recover financial sustainability. The first step will be to look at the business case and see what is possible. In terms of meeting with the group, I am more than happy to meet with the lymphoedema group the honourable member refers to. If she was happy to host a meeting, I would be happy to be part of it.

The Hon. R.P. Wortley: You might be hiring Greg Hunt as a consultant soon.

The PRESIDENT: The Hon. Mr Wortley, you have the call. I was distracted by your interjection.

TRANSPORT SUBSIDY SCHEME

The Hon. R.P. WORTLEY (15:19): My question is to the Minister for Human Services; that is, of course, if the Treasurer allows her to answer the question.

The PRESIDENT: Don't inject the question with—

The Hon. R.P. WORTLEY: Has the minister made any direct written representations to the Minister for Transport, asking for the South Australian Transport Subsidy Scheme to be guaranteed?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:19): I thank the honourable member for his question because it gives me the opportunity to reiterate a number of facts in relation to this matter. It was the former government that signed the bilateral agreement on the NDIS and cashed out the transport scheme.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Leader of the Opposition, just let the minister answer the question. It is showing gross disrespect to the Hon. Mr Wortley, who has waited patiently to ask this question. He spent hours drafting it. I would like to hear the minister's answer.

The Hon. J.M.A. LENSINK: The former Labor government cashed out the South Australian transport scheme to the NDIS. Really, some of their questions should be redrafted to, 'Minister, are you fixing Labor's mess?' The answer to that is yes.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Leader of the Opposition, I call you to order. The minister does not need your gratuitous advice. I would like to hear her answer out of courtesy, as I said, to the Hon. Mr Wortley. Minister, please answer the question.

The Hon. J.M.A. LENSINK: Thank you, Mr President. The answer to the question is yes, we are fixing Labor's mess. Labor did not put funding in perpetuity for the cohort who are transitioning because people are transitioning to the NDIS. As I outlined yesterday, transport is a component of plans—

Members interjecting:

The PRESIDENT: Are we finished? Leader of the Opposition, I really would like to hear the minister's answer without your commentary.

The Hon. J.M.A. LENSINK: In addition to the transport component that people may have in their plans, my understanding is they may also be able to use their core supports from their plans. In terms of the vouchers that people have access to, regardless of the number of vouchers that they may have in their possession at the moment, if they applied prior to June of this year they will be entitled to receive another book of 80 vouchers, which will certainly see them through for the next six months. I think it is very disappointing that the Labor Party has been, once again, using vulnerable people as pawns for their own purposes.

Members interjecting:

The Hon. J.M.A. LENSINK: The Labor Party—

The PRESIDENT: I was just waiting for them all to finish. Go on, minister, if you feel you wish.

The Hon. J.M.A. LENSINK: The Labor Party do like to use vulnerable people as pawns. We have seen that with the Strathmont pool. We see that in the way that they use—

Members interjecting:

The PRESIDENT: Leader of the Opposition, please.

The Hon. J.M.A. LENSINK: —the non-government sector. In fact, the member for Waite gave a rather excellent speech this week outlining a range of ways in which the Labor Party and particularly the member for Hurtle Vale has been using non-government organisations and vulnerable people as pawns for her own purposes. We have been assiduously working on this. The Hon. Stephan Knoll and I have been working on this matter for some months.

Members interjecting:

The PRESIDENT: Leader of the Opposition, I don't need your commentary. I'm trying to listen to the minister.

The Hon. J.M.A. LENSINK: If I can just remind members, I was asked yesterday whether I had had discussions with the Hon. Stephan Knoll, and the answer to that is yes. It is a matter that is primarily within his jurisdiction because he is responsible for the transport scheme, and we have been working together on it to assist people through this situation.

INTERNATIONAL STUDENTS

The Hon. D.G.E. HOOD (15:24): My question is to the Minister for Trade, Tourism and Investment. Can the minister advise the council of how the government is working with our education providers to grow the international education industry?

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment) (15:24): I thank the honourable member for his ongoing interest. Before I start that question, earlier this week I was asked a question about the people who accompanied me on the trip to Japan and Korea. I gave a couple of names, which were correct, but I said I would get the other names because I didn't think I could do the pronunciation justice.

The others accompanying me were Ms Junfeng Zhu from the Department for Trade, Tourism and Investment, and Ms Judith Kottmann from the Department for Trade, Tourism and Investment. Also, up there on a fuel cell—for those opposite me, that is to do with hydrogen—conference from the Department for Energy and Mining were Mr Richard Day and Mr Owen Sharpe, who stayed on after the important work they were doing with that department to assist me in my meetings with officials around hydrogen in Japan and Korea.

The PRESIDENT: For future reference, I would prefer if you did that either on the next sitting day or at the end of the question time. Please continue with your answer now.

The Hon. D.W. RIDGWAY: Thank you, Mr President. I thank the honourable member for his question. It has been 12 months since the Marshall Liberal team won government and already the international education industry is full of optimism and praise for our new government's ambition and positive attitude to this critical industry. According to the latest ABS data, international education remains the state's second-largest export industry, bringing in $1.62 billion, and in 2018 we saw a record 37,990 students welcomed to South Australia. This is a growth of some 6.5 per cent on the 2017 enrolments. It is no coincidence that our first year of government has seen such growth, as we have been working tirelessly to fulfil our election commitment to grow the industry.

We have increased funding to StudyAdelaide, as promised. We have doubled the Student Ambassador Program, as promised. We have established an international student work internship business experience program (AEWEN), as promised. Through these fulfilled commitments we have grown more international student enrolments in our state, as promised.

Another initiative was to establish the Ministerial Advisory Committee for International Education (MACIE). Through MACIE, my department and I have been in dialogue with universities and our key international education institutions on further measures that would attract more international students. Listening to industry, undoubtedly the single most effective measure the South Australian government could take to grow international students is an improved and fairer pathway to residency.

To fulfil our state's need for population growth, graduating international students are in many ways an ideal solution. In addition to paying their taxes, international student graduates are highly skilled and highly motivated to start their careers in our great state. They become ambassadors for South Australia in their home country, driving tourism from family and friends, as well as creating new markets for South Australian goods and services. That's why, earlier this month, Immigration SA introduced new measures to encourage our highest-performing international students to remain in South Australia post graduation and to deliver fairer state-sponsored requirements for those graduates who already have deep and long-term connections with our state.

In addition to these state measures, we have been working closely with the federal Liberal government on other policy measures. Announced yesterday is the new federal policy measure which will reward international students studying outside the largest Australian capital cities such as Melbourne and Sydney. South Australian universities and higher education institutions will be able to offer their international students an extra year of post study work rights.

This is a real game changer and something our universities have been crying out for for many years, as it closes the gap for international students wishing to apply for permanent residency in our state post graduation. Together with our new state measures, these changes bring a spotlight onto South Australia, making the state even more attractive for prospective international students.

This is a fabulous example of the Marshall Liberal government listening to industry, making changes and successfully advocating for our state at a national level to deliver what the industry needs. Our renewed advantage over other Australian states will undoubtedly drive further recruitment growth in international student numbers in South Australia, creating more jobs and growing a stronger economy.

The PRESIDENT: It is too late for a supplementary, the Hon. Mr Ngo. You can have the opportunity at the next question time in the subsequent sitting weeks.

Bills

CONSTRUCTION INDUSTRY TRAINING FUND (BOARD) AMENDMENT BILL

Committee Stage

In committee (resumed on motion).

New clause 6A.

The CHAIR: We are considering the amendment of the Hon. Mr Pangallo, amendment No. 2 [Pangallo-1], which has been moved by the honourable member.

The Hon. C.M. SCRIVEN: I want to remind honourable members of the contributions made just before we adjourned, which was where the minister representing the relevant minister in the other place talked about this board being a government board. He referred to section 11A, which says that the board acts as a principal adviser to the minister. That, of course, is true, but I would point out to members that there are a further 12 functions of the board, and I remind members of the fact that this is not an instrumentality of the Crown.

Therefore, what was said by the minister is quite illustrative of the intention of the government, which clearly is to change the nature of the board, and that does reveal the real reason for many of the changes in this bill, which is to ensure that the board is carrying out the agenda of the government of the day, rather than necessarily what is in the best interests of industry. However, be that as it may, we are currently looking at the Hon. Mr Pangallo's amendment, and I have nothing further to ask or comment on that.

The Hon. S.G. WADE: It is interesting that the filibuster continues. We are going back to comments made before question time. I will address the points the honourable member is making. Clearly, a board that is established by statute and appointed by the minister can be rightly characterised as a government board. I did not say that they are the lapdog of any government program.

The Hon. C.M. Scriven: But that is what you want.

The Hon. S.G. WADE: Sorry, I would like to make my comment, as I allowed you to make yours. The point is that, because of the fact that moneys go into a fund that needs to have appropriate governance, the parliament of this state has thought the matter is so important that it has legislated for it and it has given the minister a role. I think the minister, in discharging his or her responsibilities in relation to the board, is entitled to have appropriate information.

The Hon. Mr Pangallo rightly pointed out that this is not unusual. As I understood the Hon. Frank Pangallo's advice to this chamber, two similar boards in other jurisdictions have a similar power. That being the case, I think it reinforces the point I was making, which is that this is not a board over which it is inappropriate for a minister to have a flow of information.

The Hon. T.A. FRANKS: For the benefit of your wise counsel, sir, I indicate the Greens will support the Pangallo amendment. In this case we have had no representations opposing the Pangallo amendment, although I am somewhat concerned that we still do not know who really does support it by their specific titles and representative roles. However, seeking advice, you would imagine, is not something that will do harm. So, in this particular instance, we will support the amendment.

The Hon. C.M. SCRIVEN: For the record, I point out that the opposition is also supporting the amendment, notwithstanding our concerns about how it may be misused in the future. However,

I do acknowledge that the intent of the Hon. Mr Pangallo is no doubt for increased accountability, so we will not oppose this amendment.

The Hon. J.A. DARLEY: For the record, I will be supporting the Hon. Frank Pangallo's amendment.

The Hon. S.G. WADE: I note, for the chamber's sake, that, in terms of the efficient discharge of duty, if we are going to spend so much time attacking a clause that you then support, it has all the hallmarks of a filibuster.

The CHAIR: Minister, it is not appropriate that you criticise the considerations of the chamber.

The Hon. C.M. SCRIVEN: Mr Chairman, may I just ask a question, as I have only been in this place—

The CHAIR: No, feel free to ask a question.

The Hon. C.M. SCRIVEN: Is scrutiny and questioning of an amendment, regardless of whether the final outcome will be supported or otherwise, not appropriate for a bill?

The CHAIR: Members in committee can ask as many questions as they so choose. There are some limitations in extreme circumstances, I hasten to add, in the standing orders. I do not want to give you a blank cheque. Are there anymore comments or questions on the Hon. Mr Pangallo's amendment, because I propose to put it to the committee?

The Hon. T.A. FRANKS: I have a question of the mover because there is not a specified minimum time limit for which the board is given to comply with the request: why was that the case?

The Hon. F. PANGALLO: I imagine that the minister could ask either at any time or annually whether he needs to see any documentation or any minutes. It will be up to the discretion of the minister.

The Hon. S.G. WADE: I would like to seek some advice on that if I could.

The Hon. T.A. FRANKS: I had a question for the mover of the amendment with regard to that. Should the minister, he or she, request the information under the provisions here will there be any penalty applied for noncompliance? What will be the recourse that the minister will have?

The Hon. F. PANGALLO: I cannot answer that, if there is one, but I imagine that they would need to comply with some existing framework within the way that the board operates.

The Hon. S.G. WADE: As I understood your earlier question, the Hon. Mr Pangallo, it was 'What's the time frame?' I sought advice and my understanding is that the written notice referred to in the Hon. Frank Pangallo's amendment could include a statement as to time frame, 'I want the reports or the minutes or the what have you within a certain time.' If the minister, he or she, was putting in an unreasonable time frame there may well be a dispute. However, my understanding is that you would expect the minister, he or she, to give a reasonable time frame and for that to be accepted by the board.

The Hon. T.A. FRANKS: This is now with regard to the Hon. Frank Pangallo's amendment but it is now to the minister representing the minister. What are the penalties for noncompliance where a minister would direct the board to provide this information? What would be the process for the board should it not wish to comply with the direction?

The Hon. S.G. WADE: I thank the honourable member for her question and, for the benefit of Mr Pangallo and the house, the advice I have received is that if the board failed to comply with a request there might be at least two possibilities. The two possibilities that we have thought of are that the government might take the board to court and my understanding is that the process is mandamus; in other words, asking the court to require the board to provide the documents in the report. They are the words used in the amendment. The court would then presumably say whether that was appropriate or not and they would presumably specify a time frame.

The other consequences relate more to the board and its discharge of its duties. All board members are required to discharge their duties under the act and, if the board failed to do that, it may well have consequences for the ongoing tenure of the board, is my understanding.

New clause inserted.

Clause 7.

The Hon. C.M. SCRIVEN: Just for my clarification, we are looking at clause 7, amendment of section 21, so this an opportunity for questions about that to the minister; is that correct?

The CHAIR: Yes, that is correct.

The Hon. C.M. SCRIVEN: This amendment deletes the requirement for any changes in the rate of levy to be approved at a meeting of the board at which at least one person—under sections which are now going to be deleted if this bill passes—representing employee associations and one person representing employer associations are present, so that will be deleted. Can the minister clarify whether the board will be involved in setting any changes to the rate of levy or will it simply be that they will be made by regulation and, therefore, the minister can do that without recommendation from the board?

The Hon. S.G. WADE: I am advised that any change in the rate of the levy will affect the building industry and construction industry more broadly, and the government would expect the board to be involved in consultation with stakeholders, and those stakeholders would include the previously prescribed employer and employee organisations so that they have an opportunity to have their views considered.

The Hon. C.M. SCRIVEN: Why, then, is the legislative requirement that the change to levy must be on the recommendation of the board being removed?

The Hon. S.G. WADE: The government does not regard that as the impact of this clause. We see it as consequential to the amendments to the composition of the board.

The Hon. C.M. SCRIVEN: I fully accept that that was probably the intent but I am querying whether there has been an unintended consequence of therefore meaning that a change to the levy can be made through regulation by the government without that being made on recommendation of the board. Notwithstanding the minister's previous allegations of filibustering, this is actually a serious concern, and I am wondering whether the government may wish to adjourn and reconsider that particular aspect before continuing. It is just a thought that the minister might want to consider.

The Hon. S.G. WADE: It is simply not our reading. I am not going to express a view as to whether or not the opposition is involved in filibustering. All I am going to say is that we have had due time for consideration. The honourable member is reading into the act, as it is proposed to be amended, things that are clearly not there. Let's do our job. Let's get on with this bill.

The Hon. C.M. SCRIVEN: I will ignore the comments because they are not appropriate for my question. If this clause passes, the act will then read:

> The rate of the levy is 0.25 per cent of the estimated value of building or construction work, or such other percentage not exceeding 0.5 per cent of that value as the regulations may prescribe.

That is all it will say. There will be no recommendation from the board required for that to be changed through regulation; that is my understanding. If I am incorrect, I am happy to be corrected, but there will be no legislative requirement. I am taking that that is not the intent necessarily of the government, which was the reason for my question and possible suggestion.

The Hon. S.G. WADE: Thanks for clarifying that because I think what I would suggest to the honourable member is that the honourable member has misread the bill as it is applied to the act. Could I draw honourable members' attention to clause 7 on page 3 where it states:

> Section 21(2)—delete 'approved at a meeting of the Board at which at least one person appointed by the Governor under section 5(1)(c), and at least one person appointed by the Governor under section 5(1)(d), are present'

The consequence of agreeing to that amendment is that the current section 21(2) would remain. It would not be deleted. It would merely be shortened and would stop at the word 'Board' second appearing. That being the case, it would read:

A regulation must not be made for the purposes of subsection (1) except on a recommendation of the Board approved at a meeting of the Board.

The Hon. C.M. SCRIVEN: I am simply trying to understand. If that is the situation, that would certainly allay my concerns, but I am reading that it states:

delete 'approved at a meeting of the Board at which at least one person…

Does that not mean that it will no longer say—

The Hon. S.G. WADE: Yes, sorry. Thanks for clarifying that. I have actually misquoted. It stops at 'the Board' first appearing, but it still has to be on the recommendation of a board and the recommendation of the board would have to be done at a meeting. Thanks for clarifying that. My initial advice was truncated.

The Hon. C.M. SCRIVEN: Thank you for that clarification. I am now happy with that clause.

Clause passed.

New clause 7A.

The Hon. F. PANGALLO: I move:

Amendment No 3 [Pangallo–1]—

Page 3, after line 32—After clause 7 insert:

7A—Substitution of section 38

Section 38—delete the section and substitute:

38—Review of amendments to Act by Construction Industry Training Fund (Board) Amendment Act 2018

(1) The Minister must, as soon as practicable after the third anniversary of the commencement of the *Construction Industry Training Fund (Board) Amendment Act 2018*, appoint an independent person to carry out an investigation and review concerning the amendments made to this Act by the *Construction Industry Training Fund (Board) Amendment Act 2018*.

(2) The investigation and review under subsection (1) must include the following matters relevant to the amendments made to this Act by the *Construction Industry Training Fund (Board) Amendment Act 2018*:

(a) the effectiveness of the Board in the exercise of its functions and powers;

(b) the attainment of the objects of this Act.

(3) The person appointed under subsection (1) must present to the Minister a report on the outcome of the investigation and review within 6 months after the person's appointment.

(4) The Minister must, within 12 sitting days after receipt of a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

This is a review after three years of the act and replaces the redundant section 38 review provision to consider the new changes in this act. Again, it is another element of oversight and it requires the minister to appoint an independent person to conduct any investigation arising from the start of the Construction Industry Training Fund (Board) Amendment Act, giving the minister and the Department for Industry and Skills the ability to evaluate the legislative changes.

The Hon. S.G. WADE: I indicate that the government will be supporting this amendment. The amendment will require the minister to appoint an independent person to carry out an investigation and review concerning the amendments arising from the commencement of the legislative changes. That will be required to be undertaken as soon as practicable after the third anniversary. This amendment will enable the minister and the Department for Industry and Skills to evaluate the effectiveness of the legislative changes to strengthen the board composition.

It causes me to reflect on the history of this act and previous reviews. The former Labor government received a review on the act, as I understand it, in 2004, and here we are in 2019 discussing issues that were left unaddressed after that. It is important to have reviews and it is also important to read them. The former Labor government did not take the opportunity to reform this area.

I will also be interested to see whether the opposition, for the sake of consistency, is going to take the opportunity to demonise the Minister for Industry and Skills and say, 'How could they trust him to appoint an independent person?' or perhaps the argument about what is an independent person, because the invested interests in this area are so entrenched that there is no such thing as an independent person. Considering the need for this council to process this efficiently, I will not muse on those issues.

The Hon. C.M. SCRIVEN: I am quite surprised that the minister would cast such aspersions on his ministerial colleague in the other place. I had no intention of raising either of those matters in regard to this clause. I would just point out that the review to which the minister in this place is referring recommends a number of things that his government is not supporting. Unless we are going to—

The Hon. S.G. Wade: It was 15 years ago.

The Hon. C.M. SCRIVEN: One would ask why the current government is not perhaps doing their own review.

The Hon. S.G. Wade: She is trying to provoke me for a filibuster. I will not be provoked.

The ACTING CHAIR (Hon. D.G.E. Hood): Order!

The Hon. C.M. SCRIVEN: The minister objected earlier when I made a brief interjection. I will put on the record that he is making lengthy interjections—most discourteous, I would have thought. One would have thought that if the government was so keen on a review, then maybe they would have done one before introducing legislation, but what we see instead is it shows only that they will work with one particular part of the sector in this particular case and engage with them in the development of the bill but not with other parts of the sector. My question is to Mr Pangallo and it is just a brief question. Was there a particular reason you chose three years and the third anniversary for a review?

The Hon. F. PANGALLO: Thank you, the Hon. Ms Scriven. Just going by recent legislation that we have passed, it seems to be the going figure of three years. Of course, by then, who knows who will be in government. In three years' time it may well be Labor and you will have an opportunity to review the act and appoint an independent person.

The Hon. S.G. WADE: I just wonder, Mr Pangallo, whether you might hope that there might be a government action on a review within 15 years?

The Hon. F. PANGALLO: Well before that.

The Hon. T.A. FRANKS: I rise to indicate that the Greens will be supporting this amendment, as we often support review clauses. I note that the government has accepted this review clause, which is something that I am not as accustomed to in this place, and I welcome that. However, before the government gets too excited, I do note that a review done 14 or 15 years prior is actually no longer relevant to the status of the situation today. That was the Greens' contention and indeed we maintain our contention that this bill is inappropriate. We will be opposing the bill outright but we do welcome that independent review, which will be far more timely and hopefully far more independent.

The Hon. S.G. WADE: I take the point on relevance but I do not agree with the suggestion by the Hon. Ms Scriven that the government needed to do a review before it amended an act. We amend lots of acts without doing a review. I certainly welcome a post-implementation review because this is significant change and we want to make sure that we are doing the best we can by the construction industry.

The Hon. J.A. DARLEY: For the record, I will be supporting the Hon. Frank Pangallo's amendment.

The Hon. C.M. SCRIVEN: And, for the record, the opposition will be also supporting this amendment.

New clause inserted.

Remaining clause (8), schedule and title passed.

Bill recommitted.

Clause 4.

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

Amendment No 1 [Scriven–1]—

Page 3, after line 14—Clause 4, after its present contents (now to be designated as subclause (1)) insert:

(2) Section 5—after subsection (6) insert:

(6a) However, if—

(a) the office of a member of the Board becomes vacant before the expiry of the term of appointment specified in the member's instrument of appointment; and

(b) a person had been appointed to be the deputy of that member,

the person who had been appointed to be the deputy of the member may act as a member of the Board in respect of the vacant office—

(c) for the balance of the term of appointment referred to in paragraph (a); or

(d) until a person is appointed to the vacant office under this section,

whichever first occurs (and a reference in this Act to a member of the Board will be taken to include, unless the contrary intention appears, a reference to a person acting as a member under this subsection).

The Hon. S.G. WADE: On behalf of the government, I indicate that the government will support this amendment. This amendment ensures that deputy members' positions do not cease upon a member's position becoming vacant. The amendment will enable a deputy member to act as a member of the board in respect to the vacant office for the balance of the term of appointment or until a person is appointed to the vacant office. It is the view of the government that the amendment will facilitate the orderly conduct of the business of the board.

The Hon. F. PANGALLO: SA-Best will be supporting the amendment.

Amendment carried; clause as amended passed.

Bill reported with amendment.

Third Reading

The Hon. S.G. WADE (Minister for Health and Wellbeing) (16:00): I move:

That the bill be now read a third time.

The council divided on the third reading:

Ayes 10
Noes..... 9
Majority..... 1

AYES

Bonaros, C.	Darley, J.A.	Dawkins, J.S.L.
Hood, D.G.E.	Lee, J.S.	Lensink, J.M.A.
Pangallo, F.	Ridgway, D.W.	Stephens, T.J.

AYES

Wade, S.G. (teller)

NOES

Bourke, E.S.	Franks, T.A. (teller)	Hanson, J.E.
Hunter, I.K.	Maher, K.J.	Ngo, T.T.
Parnell, M.C.	Scriven, C.M.	Wortley, R.P.

PAIRS

Lucas, R.I.	Pnevmatikos, I.

Third reading thus carried; bill passed.

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

Introduction and First Reading

The Hon. S.G. WADE (Minister for Health and Wellbeing) (16:05): Obtained leave and introduced a bill for an act to amend the South Australian Public Health Act 2011.

Second Reading

The Hon. S.G. WADE (Minister for Health and Wellbeing) (16:06): I move:

That this bill be now read a second time.

The South Australian Public Health (Early Childhood Services and Immunisation) Amendment Bill 2019 that I introduce to parliament today is the first of two no jab no play bills that will be introduced to state parliament.

The first phase of the government's no jab no play policy aims to improve the ability to prevent and control outbreaks of vaccine preventable diseases in early childhood services. The bill requires parents and guardians to provide immunisation records to their child's early childhood service, and gives the Chief Public Health Officer the power to request those records. In the event of an outbreak of a vaccine preventable disease at an early childhood centre, the bill will allow the Chief Public Health Officer the power to exclude a child from the centre. This will provide our public health officers with more support to prevent and contain a dangerous outbreak.

Most other states have the ability to exclude unimmunised children from an early childhood service when an outbreak is occurring. While these measures will help reduce cases of vaccine preventable disease and improve our ability to respond, we are continuing to consult on further measures to improve overall vaccination rates. Immunisation is one of the most effective strategies to protect children and adults against serious diseases. Immunisation is also one of the most cost-effective health interventions and is supported by the World Health Organization and all levels of government in Australia. Immunisation saves lives and protects lives.

Although immunisation coverage in South Australia is very good, in most areas it falls short of the national aspirational immunisation coverage target set at 95 per cent. State-wide immunisation coverage in South Australia in the assessed age groups is between 86.83 per cent and 95.83 per cent, depending on the group.

Increasing immunisation rates for children under five to as close to 100 per cent as possible is critical to ensure herd immunity and protect children and adults from highly infectious diseases. Some children are unable to be immunised for medical reasons, such as immunosuppression or severe allergy. These potentially vulnerable children are provided with a circle of protection against most vaccine preventable diseases if other children are fully vaccinated.

The commonwealth enacted no jab no play legislation in 2015 to improve vaccination coverage. The no jab no play act directly impacts parents who receive the Family Tax Benefit Part A supplement, and the Child Care Subsidy. Under the no jab no play act, parents are still able to send incompletely immunised children to early childhood services, but they are unable to receive the usual government benefits.

New South Wales, Victoria and Queensland have enacted no jab no play legislation. Both New South Wales and Victoria require parents or caregivers to provide evidence that the child is fully vaccinated for age prior to enrolment in early childhood services. Queensland legislation permits early childhood education and care services discretion regarding whether or not they will allow attendance of undervaccinated children.

Western Australia has recently commenced regulations to require caregivers to provide their child's Australian Immunisation Register statement upon enrolment in child care, kindergarten and school. This is the first step of Western Australia's proposed three-part process. The second part, which will require children to be fully vaccinated for age to be eligible for enrolment in child care and kindergarten, is currently undergoing consultation. The third part of the proposal will involve policy initiatives aimed at improving childhood vaccination coverage.

The Marshall Liberal government is committed to improving South Australia's overall immunisation coverage and reducing pockets of underimmunisation. The government is going to consult on the best model for South Australia. Our starting point is to legislate to exclude children from early childhood services if they are not vaccinated. We are not considering the Queensland model.

The other two models, New South Wales and Victoria, differ. Victoria provides a greater range of exemptions, for example, if the child is descended from an Aboriginal or Torres Strait Islander or the child is in the care of a parent who is the holder of a health care card, pensioner concession card, gold card or white card or the child was a multiple birth.

An issue that will need to be considered is if the role of preschool childhood education in maximising beneficial health and development outcomes for children during their school years is supported by strong evidence. The Royal Australian College of Physicians highlights the importance of affordable and accessible early childhood education, raising concerns that lack of access to early childhood education is highly detrimental, especially from 3 to 4 years of age and especially if compounded by financial vulnerability.

The South Australian Child Development Council has provided in principle support for the measures, which focus on improving immunisation coverage rates, recognising the complexity of the issues around no jab no play legislation and the potential impact on human rights such as the child's right to health and education. The council cautioned against the blunt nature of such a policy instrument, which might violate some of the core principles of the United Nations Convention on the Rights of the Child.

Given the complexities of the issues, this government has determined to adopt a two-step approach. This bill is the first step. The government bill seeks to take the opportunity to facilitate a swift public health response to vaccine-preventable disease outbreaks ahead of full implementation of a no jab no play policy, pending further evaluation and consultation.

Under the second phase of no jab no play, it is proposed that children must be appropriately immunised on an immunisation catch-up program or be exempt for medical reasons in order to enrol or attend early childhood care services. The government will now go to community consultation on a further South Australian bill on that aspect.

The government will shortly release a discussion paper which will draw on input received and assessments of the impact of interstate legislation. We want to ensure we get our laws right. We are committed to protecting children and believe that South Australia should have the best childhood immunisation rates in the nation. I commend the bill to members and seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of South Australian Public Health Act 2011

4—Insertion of Part 12A

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

Part 12A—Immunisation and Early Childhood Services

96A—Interpretation

This clause defines key terms used in the measure. For the purposes of the measure, an *early childhood service* is defined as a service for the education or care (or both) of a child under the age of 6 years but does not include the following services:

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

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

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

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

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

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

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

(h) a service comprising out of school care;

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

(j) care provided to a child under the *Children and Young* People (Safety) Act 2017;

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

Immunisation record is defined as any of the following:

(a) an extract, or extracts, from the Australian Immunisation Register under the Australian Immunisation Register *Act 2015* of the Commonwealth;

(b) a document of a kind approved by the Chief Public Health Officer;

(c) a certificate in writing issued by the Chief Public Health Officer.

96B—Requirement to provide immunisation records to service provider

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

The clause further provides that a provider of an early childhood service must take reasonable steps to ensure that the parent or guardian of a child complies with the requirements to provide the records and must also keep a copy of all records provided to the provider under the clause.

96C—Provision of information to Chief Public Health Officer on outbreak of vaccine preventable disease

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

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

(b) immunisation records relating to each child referred to in paragraph (a) provided pursuant to clause 96B(1); and South Australian Public Health (Early Childhood Services and Immunisation) Amendment Bill 2019

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

(d) any other prescribed information.

If the Chief Public Health Officer requires the provision of information under the clause then the information must be provided within 24 hours and a maximum penalty of $30,000 applies for a failure to comply.

96D—Exclusion of children from premises on outbreak of vaccine preventable disease

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

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

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

The clause provides for service of a direction of the Chief Public Health Officer on the person responsible for the provision of an education or care service at the specified premises and also on the parents of a child specified in the direction.

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

96E—Exemptions

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

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

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

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

An exemption under this clause may—

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

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

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

A person who contravenes or fails to comply with a condition of an exemption imposed under this section is guilty of an offence and a maximum penalty of $2,500 applies.

Debate adjourned on motion of Hon. E.S. Bourke.

CRIMINAL LAW CONSOLIDATION (FOSTER PARENTS AND OTHER POSITIONS OF AUTHORITY) AMENDMENT BILL

Second Reading

The Hon. R.I. LUCAS (Treasurer) (16:14): I move:

That this bill be now read a second time.

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

Leave granted.

The Bill amends the *Criminal Law Consolidation Act 1935* (CLCA) to address an issue that has been identified which may impact on the ability to prosecute foster parents and residential care workers for sexual abuse of children in their care in certain circumstances.

The *Children's Protection Law Reform (Transitional Arrangements and Related Amendments) Act 2017* (Children's Protection Law Reform Act) passed Parliament on 28 November 2017. It made necessary transitional and consequential amendments to a range of legislation as required to commence the *Child Safety (Prohibited Persons) Act 2016* and the *Children and Young Person (Safety) Act 2017* (the Children and Young Person Safety Act).

Amongst other things, the Children's Protection Law Reform Act inserted a definition of 'approved carer' into section 5 of the Criminal Law Consolidation Act referencing the Children and Young Person (Safety) Act, and purported to insert the term 'approved carer' after the term 'foster parent' in sections 49, 50, 57 and 63B of the CLCA. Those provisions include a list of who is considered to be in a 'position of authority' for the purpose of prosecuting certain sexual offences involving a child of or above the age of 17 years of age. These amendments were proclaimed to commence on 22 October 2018.

However, shortly prior to the introduction of the Children's Protection Law Reform Act into Parliament, the *Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017* amended sections 49, 50, 57 and 63B of the CLCA, with the result that the internal numbering of those provisions was changed. Unfortunately that change was not picked up before the Children's Protection Law Reform Act proceeded through Parliament.

Consequently, the intended amendments to sections 49, 50, 57 and 63B of the CLCA were unable to take effect on 22 October 2018 so the sections continue to refer only to a 'foster parent' and do not refer to an 'approved carer'; while the insertion of the definition of 'approved carer' did commence on 22 October 2018.

There is now a concern that, due a change in the terminology used in the context of the Children and Young Person (Safety) Act to refer to approved care rather than foster care within South Australia that this could impact on the interpretation of the term foster parent in the CLCA.

That is, a court *may* apply an interpretation of the provisions, such that a person who has, since 22 October 2018, been made an approved carer under the Children and Young Person Safety Act is not regarded as a foster parent for the purpose of the CLCA. This would mean an approved carer would not be considered to be a person in a position of authority in relation to a child who has been sexually abused.

The impact of being found to be in a 'position of authority' in those provisions is to extend criminal liability to include situations where the child is 17 years old where criminal liability would otherwise only arise if the child was under 17 years of age. Accordingly, if this interpretation were applied, the ability to prosecute foster parents for sexual abuse of children aged 17 years old in their care would be impacted.

The risk of this occurring is considered to be very low. In the absence of a legislative definition, a court would ordinarily be expected to continue to interpret the definition of a 'foster parent' according to its ordinary meaning, rather than by reference to the Children and Young Person (Safety) Act.

Prior to the proposed amendments, the term 'foster parent' was not defined in the CLCA, whether by reference to relevant child protection legislation or otherwise. The section referring to 'foster parent' also references 'parent', 'step-parent' and 'guardian'. It is clearly directed towards a person acting *in loco parentis* of the child, irrespective of the formality of the arrangements. It is therefore expected that the type of care provided by an approved carer would be interpreted to be within the meaning of care provided by a foster parent in any event.

However, to ensure that there is absolutely no ambiguity about whether that should be the case, the government has brought this Bill to address that risk.

Since identifying this issue, there has been further consideration of the amendments which were initially intended by Parliament by the Children's Protection Law Reform Act.

The existing term 'foster parent' in the CLCA has a broader application than the proposed substituted term 'approved carer'.

However, to remove any doubt about whether an approved carer is intended to be regarded as being in a position of authority in respect of the relevant CLCA provisions, it is intended to clarify that the term foster parent *includes* (but is not limited to) an approved carer. The Bill also specifies that a person in whose temporary care a child is placed pursuant to s 77 of the Children and Young Person (Safety) Act is included.

It is the Government's view that this will ensure that all approved and temporary carers are clearly captured as being in a 'position of authority' in the CLCA provisions, while ensuring that the broader application of the term foster parent that previously applied, continues to apply.

Out of an abundance of caution, these amendments have been drafted with retrospective operation, so that they will be taken to have commenced on 22 October 2018—being the date that the original amendments were intended to take effect. In the event that any relevant offending has occurred since this date, retrospective application of the Bill will put beyond doubt that any such offending is intended to be captured by the relevant provisions.

In the course of preparing this Bill to address this drafting issue, a further 'gap' in the categories of people who are defined to be in a position of authority was identified.

As noted above, the 'position of authority' provisions effectively extend criminal liability in situations where the cut off age for regarding a person as a child would have been 17 years old (being the age of consent in SA). That is, it extends criminal liability for people who are in a position of authority in relation to the child if the child is between 17 and 18 years of age.

The categories setting out who is in a position of authority includes teachers, social workers and health workers providing services to the child, and those who provide religious, sporting, musical or other instruction to the child (amongst other categories). Obviously, it also includes 'parent, step-parent, guardian or foster parent'. However, people who work in children's residential facilities are *not* currently specified to be in a 'position of authority' in these provisions. Clearly, they should be. We are fixing that.

There are two types of children's residential facilities established under child protection legislation. These are:

- Facilities established under section 36 of the *Family and Community Services Act 1972* These are established and operated by the Department for Child Protection; and
- Facilities licensed under s105 of the Children and Young Person Safety Act. These are predominantly non-government departments.

Both of these types of facilities are staffed predominantly by employees who are not social workers (such as youth workers and other ancillary staff). These employees provide rotational care and services for children and young people who reside in the facilities. These people are unlikely to fall within the definition of 'foster parent'.

Accordingly, the government has determined that it is appropriate to separately provide for this category of person as being in a 'position of authority' in each of sections 49, 50, 57 and 63B of the CLCA. A similar provision already exists in respect of people providing services in correctional institutions and youth training centres; this inclusion is therefore consistent with the existing approach to protecting vulnerable children in institutional environments and will ensure that those who might prey on our vulnerable young people are able to be held to account.

Mr President, I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law Consolidation Act 1935

4—Amendment of section 5—Interpretation

This clause inserts a definition of 'foster parent' into section 5 of the principal Act to reflect changes to terminology made by the children's protection law reform exercise.

5—Amendment of section 49—Unlawful sexual intercourse

This clause amends section 49 of the principal Act to include the specified persons as people who are in a position of authority in respect of a child.

6—Amendment of section 50—Persistent sexual abuse of child

This clause amends section 50 of the principal Act to include the specified persons as people who are in a position of authority in respect of a child.

7—Amendment of section 57—Consent no defence in certain cases

This clause amends section 57 of the principal Act to include the specified persons as people who are in a position of authority in respect of a child.

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

This clause amends section 63B of the principal Act to include the specified persons as people who are in a position of authority in respect of a child.

Debate adjourned on motion of Hon. E.S. Bourke.

CRIMINAL LAW (HIGH RISK OFFENDERS) (PSYCHOLOGISTS) AMENDMENT BILL

Second Reading

The Hon. R.I. LUCAS (Treasurer) (16:15): I move:

That this bill be now read a second time.

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

Leave granted.

Today I introduce a Bill to amend the Criminal Law (High Risk Offenders) Act 2015.

The Bill is intended to assist to alleviate some of the delays currently being experienced in providing forensic psychiatrist reports to the Supreme Court under the High Risk Offenders Act and the *Sentencing Act 2017*.

High risk offenders are those imprisoned in respect of a serious sexual offence or a serious offence of violence. In this State, high risk offenders also include persons with a history of terrorist offences.

The High Risk Offenders Act allows the Attorney-General to make application to the Supreme Court for a high risk offender to be subject to an extended supervision order on their release into the community from a term of imprisonment. On breach of such an order, the high risk offender may be liable to a continuing detention order being made against them by the Court.

The Supreme Court requires a report from a 'legally qualified medical practitioner' before it can make an extended supervision order, for example, a forensic psychiatrist with appropriate expertise.

Similarly, under the *Sentencing Act 2017*, the Supreme Court must be provided with at least two reports from legally qualified medical practitioners on whether an offender is unable or unwilling to control their sexual instincts before the Court can order that the person be detained in custody indefinitely under that Act.

Within South Australia there is a small pool of psychiatrists who specialise in criminal matters, and are qualified to undertake these forensic assessments for the courts. These psychiatrists work in the Forensic Mental Health Service within SA Health, and undertake these assessments in addition to their full-time clinical workload. In addition, these same psychiatrists also prepare reports for the Courts in South Australia about whether a person is mentally incompetent to commit an offence or mentally unfit to stand trial. Given the various demands on these psychiatrists, it can lead to delays in these assessments being prepared for the Court.

Since the Government became aware of this issue, we have been working with both the Courts and Forensic Mental Health Services to better understand the reasons for these delays and develop solutions that may help to address the issue.

I will now turn to the key aspects of the Bill, this Bill amends the High Risk Offenders Act to enable registered psychologists to provide the reports required under that Act.

The change sought to the High Risk Offenders Act will assist to alleviate the long delays currently experienced in the provision of reports under that Act in respect of high risk offenders and also under the *Sentencing Act 2017* when reports are required to be provided to the Supreme Court in respect of persons alleged to be unable or unwilling to control their sexual instincts. However, this Bill does not propose to amend the *Sentencing Act 2017* to permit registered psychologists to provide reports under that Act in respect of persons alleged to be unable or unwilling to control their sexual instincts.

Although the *Sentencing Act 2017* is not proposed to be amended to permit the use of registered psychologists to provide such reports, the changes proposed to the high risk offenders legislation are likely to have a beneficial indirect effect in respect of reports from psychiatrists under the *Sentencing Act 2017*. The use of registered psychologists under the higher-volume high risk offenders legislation will reduce reliance on psychiatrists for those purposes and allow psychiatrists to focus more on the preparation of reports under the *Sentencing Act 2017* in respect of persons alleged to be unable or unwilling to control their sexual instincts. It is important to note that these forensic psychologists will be doing this work under the supervision of a Consultant Psychiatrist to ensure the integrity of these reports is maintained.

Beyond these legislative measures, and soon after hearing of the potential delays in this pool of professionals, the Attorney-General began working on a range of measures designed to streamline the psychiatric court assessment process. This reform includes the establishment of a diversion service in the Magistrates Court. This service will consist of registered nurses also overseen by a Consultant Psychiatrist. These registered nurses will be responsible for providing advice to the court on potential matters that could be dealt with without requiring a forensic assessment from a psychiatrist, such as those where the defendant has a documented mental health condition.

Based on work the Attorney-General has undertaken with Forensic Mental Health Services, we will introduce a new, more competitive remuneration rate for forensic psychiatrists. The Clinical Director has indicated that this will

attract a greater number of suitably qualified professionals to undertake assessments for the court, including those from interstate.

It is anticipated that these measures, coupled with the legislative reform, will lessen the workload for forensic psychiatrists—freeing them up to dedicate more time to those matters that require specialist attention, thereby addressing the delays in these assessments being prepared for the courts.

Agencies are working toward a March 2019 implementation date for the diversion service in the Magistrates Court and the new remuneration rate for psychiatrists.

I commend the Bill to Members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of Criminal Law (High Risk Offenders) Act 2015

3—Amendment of section 4—Interpretation

This clause defines a prescribed health professional for the purposes of the Act, which will include both medical practitioners and psychologists (definitions of which are also included).

4—Amendment of section 7—Proceedings

This clause amends section 7 to refer to prescribed health professionals (rather than just medical practitioners).

5—Amendment of section 21—Inquiries by health professionals

This clause amends section 21 to refer to prescribed health professionals (rather than just medical practitioners).

Debate adjourned on motion of Hon. E.S. Bourke.

STATUTES AMENDMENT (LIQUOR LICENSING) BILL

Second Reading

The Hon. R.I. LUCAS (Treasurer) (16:16): I move:

That this bill be now read a second time.

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

Leave granted.

Today the Government introduces the Statutes Amendment (Liquor Licensing) Bill 2019 to make two amendments to legislation to support the ongoing implementation of the review into the *Liquor Licensing Act 1997* conducted in 2016 by the Hon Mr Tim Anderson QC.

As Members would be aware, in 2017 the former Government commenced the Liquor Review Act, giving effect to recommendations of the Anderson Review.

Notably, the Act as now passed makes provision for new licence classes for liquor licensing, in an attempt to streamline the current licensing process. These licences will be transitioned in November 2019.

The Act as currently stands makes provision for transitional changes in respect of conditions attached to current licenses.

In undertaking a tidying up review of the current licence classes before the new licences commence, the Commissioner for Liquor and Gaming noted that there are currently irrelevant or obsolete conditions placed upon licences, which realistically are of a planning or environmental consideration rather than a liquor regulation consideration.

Such conditions include that:

- No garbage or refuse (including empty bottles and cans) is to be moved from inside the premises to outside storage bins between the hours of 11.00pm and 7.00am of the following morning.

- This type of condition is usually either copied from a Development Approval or imposed through conciliations. It is to be removed as it does not relate to the sale and supply of liquor and is a Council matter.
- The licensee shall ensure all rubbish, including broken glass, broken beer bottles/stubbies/cans are removed from the nearby streets adjacent/across the road from the licensed premises.
- This type of condition is almost always imposed as a result of conciliation with adjacent residents. However, it is to be removed as it does not relate to the sale and supply of liquor and it concerns areas outside of the licensed area (i.e. adjacent streets) and therefore cannot actually be enforced by the Liquor and Gambling Commissioner.
- Exit lights, operating from an independent power source are required above all exits, including the exit at the northern end of Foyer 2 adjacent to the Restaurant. The above mentioned exits are to remain all to be opened without the use of a key while the premises are open to the public.
- This condition is to be removed as it does not relate to the sale and supply of liquor. Matters such as exit lights are an issue dealt with by local Councils at the planning stages.
- The entry/exit points to smoking areas or outdoor licensed areas remain closed except when in immediate use by patrons entering or leaving the areas.
- This condition is to be removed on the basis that it is a condition for the purpose of reducing noise to adjacent residents. In line with Mr Anderson's comments that noise issues should be dealt with by Councils, these conditions are being removed.
- Conditions regarding outlaw bikie gangs
- Many different versions of this condition exist in pieces of legislation. It is proposed that the conditions be amended so that they are consistent across all licences. This will provide clarity to licensees and to enforcement agencies.

The removal of these conditions through this Bill accords with Mr Anderson's recommendations, however failed to be included in the now Act when passed in 2017. The Government understands that this had been the original intention as Mr Anderson had specifically recommended that the Commissioner be provided with the absolute discretion to add, substitute, vary or revoke any existing conditions needed as a result of these reforms.

The proposed amendments will ensure that the Commissioner is provided with that discretion.

In terms of how this will operate legislatively, the Bill amends Schedule 2 Clause 5 of the *Liquor Licensing (Liquor Review) Amendment Act 2017*.

This contains a transitional provision that permits the Liquor and Gambling Commissioner to 'substitute, vary or revoke' a condition of a licence during the transitional period. However, this provision as drafted applies only where the condition was imposed under existing Part 3 Division 2 of the *Liquor Licensing Act 1997* whereas a significant number of conditions were imposed outside Part 3 Division 2, including under section 43 of the *Liquor Licensing Act 1997*.

The amendment will therefore enable the Commissioner to exercise the powers to substitute, vary or revoke any condition to which a liquor licence is subject, not only those imposed under Part 3 Division 2.

Practically, the Liquor and Gambling Commissioner will include a condition on all licences which states that the licensee is required to comply with any development and planning approvals and any relevant orders of the licensing authority. This will ensure that licensees remain aware of their obligations under planning or local council requirements.

Consequentially, the Bill also amends the *Statutes Amendment (Attorney-General's Portfolio) Act 2018* to commence section 7 of that Act immediately, as had been the original intention.

Section 7 of the Portfolio Act amends the proof of age provisions of section 115 of the *Liquor Licensing Act 1997*. Members may be aware the Portfolio Act was assented to on 27 November 2018. Section 7 restores the position that previously existed whereby proof of age could be requested by the occupier or manager of licensed premises or an agent or employee of the occupier.

Section 7 had been intended to commence immediately on Royal Assent being given to the Portfolio Act. However, the commencement of section 7 was inadvertently linked to the commencement of section 22 of the Liquor Review Act, which the Government does not propose to commence until November 2019.

This Government has prioritised reducing red tape and streamlining Government departments.

These amendments will no doubt assist in the smooth transition from the former licensing scheme to the new classes in November 2019.

I commend the Bill to Members and I seek leave to insert the Explanation of Clauses in Hansard without my reading it.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Amendment provisions

These clauses are formal.

Part 2—Amendment of Liquor Licensing (Liquor Review) Amendment Act 2017

3—Amendment of Schedule 2—Transitional provisions

This clause makes technical amendments to clause 5 of the transitional provisions set out in Schedule 2 of the *Liquor Licensing (Liquor Review) Amendment Act 2017*. The technical amendments clarify that the provisions of clause 5 apply to all conditions of existing licences whether imposed under a provision of old Part 3 Division 2 of the *Liquor Licensing Act 1997* or any other provision of that Act.

Part 3—Amendment of Statutes Amendment (Attorney-General's Portfolio) Act 2018

4—Amendment of section 2—Commencement

This clause makes a technical amendment to the commencement provision of the *Statutes Amendment (Attorney-General's Portfolio) Act 2018* so that section 7 of that Act is brought into operation on the commencement of this measure.

Debate adjourned on motion of Hon. E.S. Bourke.

INDEPENDENT COMMISSIONER AGAINST CORRUPTION (INVESTIGATION POWERS) NO 2 AMENDMENT BILL

Second Reading

Adjourned debate on second reading (resumed on motion).

The Hon. R.I. LUCAS (Treasurer) (16:17): I rise on behalf of the government to thank honourable members who have made a contribution to the second reading of the ICAC bill. This has had a fairly long history, upon which I do not intend to further expand, but I do wish to make some comments at the close of the second reading debate.

Whilst in opposition, on at least a couple of occasions I put my views in relation to the operations of the ICAC in South Australia on the public record. As you would know, Mr President, my views were plainly expressed at the time and are part of the public record. Obviously now, as a member of a collective cabinet and government, I will continue to discuss the issues as they relate to the ICAC within the confines of the cabinet process. I bring that perspective to this debate today.

What I will say is that I have always been a very passionate supporter of the need for an ICAC or a corruption fighting body, a body devoted to fighting corruption in our jurisdiction, and that remains my view. I think it is fair to say that the former Labor government (the current Labor opposition) has not been, over the passage of time at varying stages, a forceful or strong supporter of, first, the existence of an ICAC and in more latter times in terms of the current operations of the ICAC.

As we are about to enter the committee stage of this particular debate, I think it is important for crossbench members and in particular newer crossbench members to view the very significant amendments being moved by the Leader of the Opposition within that particular prism. That is, that the Labor Party, the former Labor government, has come from a background, firstly, of not supporting an ICAC in South Australia at all and have continued to raise significant questions about the operations, firstly, of the prospect of public hearings for ICAC, and I think some of the amendments need to be closely scrutinised given that that has been their perspective.

When one looks at the evidence from the commissioner, which he has made available publicly, I think it is a salutary lesson or a warning that perhaps some of the amendments the Labor opposition are moving are, in essence, part of reverting to type—if I can put it that way—in terms of trying to hamstring the operations of the ICAC in South Australia.

To that end I want to refer to a letter—and I understand a similar letter, although I have not seen it, was sent to the Leader of the Opposition after he tabled his amendments—that was sent to the Attorney-General on 19 February 2019 from the commissioner. It is a very long letter and I do not propose to read all of it but I think it is important as we enter the committee stage and consider some of the Labor Party amendments to just remember these key parts of the warning that the commissioner has given in relation to some of the amendments. The letter states:

> I think most of the Maher Amendments are misconceived and misunderstand the difference between a trial process and an investigation. They also ignore the public interest in the ICAC identifying, investigating and preventing misconduct and maladministration in public administration.
>
> If the proposed amendments were to be passed by the Parliament the ICAC's powers in relation to investigations into misconduct and maladministration would be almost entirely emasculated.
>
> Although I think the ICAC Bill has serious flaws for the reasons I have expressed to you in the letters mentioned above, if Parliament were to accept the Maher Amendments not only would the ICAC not be able to carry out investigations in public but I think ICAC would not be able to carry out any investigations into misconduct or maladministration.
>
> It is not clear whether the purpose and objects of the amendments are to prevent the ICAC investigating serious or systemic misconduct or maladministration at any time but if that is the purpose and objects, and that is the will of the Parliament, then I suggest the whole of the ICAC Act would need to be reconsidered.

I think that one can be no more definitive than that. The commissioner is saying that if the amendments being moved by the Hon. Mr Maher are to be accepted by the committee we are about to hold, he is saying that in his view the entire act will be emasculated, almost entirely emasculated to use his exact words, and that the whole of the ICAC Act would need to be reconsidered.

He is saying that this is not just applying potentially to whether or not they are public hearings; he is saying that the impact of the passage of these amendments would mean that there would not, and I quote him exactly, 'I think the ICAC would not be able to carry out any investigations into misconduct or maladministration'—not public hearings but just not carry out any investigations into misconduct or maladministration.

There is a heavy decision-making load on the committee that we are about to have and particularly to members of the crossbench as to whether or not they are going to heed the warnings of the commissioner in relation to the operations or the potential impact of these amendments, if passed, on the operations of the ICAC. To be fair to the Hon. Mr Maher, I should quote one other sentence where the commissioner says:

> I do not intend to comment upon Amendments 6, 7, 11, 12, 15 and 16 all of which are policy decisions for the Parliament.

The commissioner seems to have categorised the Maher amendments into two categories: regarding six of them, of about 30 I think there are, he says he is not going to provide any comment on and that they are ultimately decisions for the parliament, but he has certainly not only categorised but characterised the nature of the other amendments in no uncertain fashion.

Then, very briefly, one other section in relation to one of the more critical amendments—I will quote at the close of the second reading—is in relation to amendment No. 24 from the Hon. Mr Maher, which is the proposed insertion of new clause 8A. The commissioner says:

> If clause 8A were to be included in the ICAC Bill, and be enacted, the ability of the ICAC to carry out any investigation into serious or systemic misconduct or maladministration could be compromised because most persons subject to allegations would avail themselves of the rights contained in clause. 8A(1)(b) to avoid the consequences of their alleged misconduct or maladministration becoming known by refusing to participate in the investigation.
>
> It would mean that a public officer who might have engaged in the most egregious misconduct or maladministration would have the right to refuse to participate in an investigation to the extent that that person could refuse to produce relevant evidence to the investigation and thereby frustrate the investigation.
>
> The amendments would, in practical terms, render the coercive powers contained in the Schedule to be no more than requests for voluntary cooperation. In practice there would be little utility in having the coercive powers at all.

There are strong words of criticism included in the quite lengthy letter from the commissioner in relation to the amendments that we are about to consider in the committee stage. In closing the

second reading, I urge members of the committee, for the work they are about to do, to take heed of the warnings of the commissioner of the potential impact if this committee in this chamber ultimately chooses to support the bulk of the amendments being moved by the Leader of the Opposition.

Bill read a second time.

Committee Stage

In committee.

Clause 1.

The Hon. K.J. MAHER: I will make a quick contribution to clause 1 in relation to some of the comments that we have heard, particularly from the Leader of the Government. I think it needs to be placed on the record that the Leader of Government very cleverly insulated himself from criticism, given some of his strident comments previously against the ICAC, now as a member of cabinet. I will not use cheap shots and repeat some of the criticisms the Leader of the Government has made here against the workings and what ICAC does, but he has been a fierce critic of the ICAC and its operations in the past.

I should just point out the Leader of the Government mischaracterises Labor's view about ICAC. The undeniable fact is it was the former Labor government, the Weatherill Labor government, that introduced ICAC. They introduced the legislation. They established the ICAC. So to suggest that Labor have never been supporters of ICAC is patently and utterly false, given Labor were the ones who introduced ICAC.

The other thing I will place on record at clause 1—and I think it was a point made by the Hon. Mark Parnell—is that based on the bill that we see before us, the No. 2 ICAC bill, the current commissioner has said (I do not have his exact words here) that it is unlikely he will hold a public hearing based on the Liberal government bill in any event.

The Hon. M.C. PARNELL: I will also be brief but I think this is probably the best opportunity for me to put on the record the approach the Greens will be taking to the suite of opposition amendments. Again, I would reflect on what the minister said. The first point he made was in relation to the historic hostility that the Labor Party had to ICAC. It is probably not over-egging the pudding to say that they were dragged kicking and screaming into here to legislate. But as the Leader of the Opposition says, they ultimately did legislate but it was with some reluctance. Ultimately, the history shows that they did it; that's fine.

The second point that I would note is that, given the Labor Party was in government for the whole of the time that ICAC has been in existence, it has only been their administration that has been subject to inquiries by ICAC, and certainly a number of their people have had adverse reflections. We also need to keep in the back of our mind that there is some historical baggage that comes with the Labor Party's approach to this.

But if that is all it was, some apparent revenge that the Labor Party was wreaking onto the legislation and the commissioner for past embarrassment, then we would not have that much truck with what the opposition was doing. The clear point is that it is not just the opposition that is saying these things. We have the Bar Association, the Law Society and the various witnesses who gave evidence at the Crime and Public Integrity Policy Committee. So I am not being driven in my approach by what the Labor Party alone says. I am looking at the evidence from other stakeholders as well. We will touch on that when we get to each individual clause.

The second thing that I would say in response to the Treasurer's close of the second reading is regarding his reference to Commissioner Lander's letter. If I can paraphrase it, the commissioner is saying that, if all these amendments get through, there is probably not much point in my doing any maladministration or misconduct inquiries. That is effectively what he is saying.

That raises an interesting question, which other witnesses at the Crime and Public Integrity Policy Committee raised as well, which is a bigger question than the one before us now, and that is: where is the line? Where do we draw the line between what the ICAC does and what the Ombudsman does, for example? We know that over the last couple of years there has been—and it might be too

strong to call it 'turf war', but there have been difficulties with understanding the demarcation. Which body is best to do what type of inquiry? What should be the powers of each body?

I understand that there is an inquiry currently underway. One of the Labor amendments mandates a further inquiry, or maybe that will be the same inquiry, I do not know. But I think that bigger question of, 'Where does jurisdiction lie?' is going to come back to us at some point. That is not to detract from this bill. We will deal just with this bill.

The third and final point that I would make that colours the Greens' approach to this is that Commissioner Lander has gone to great lengths in a number of his letters to the Attorney-General and the Leader of the Opposition, pointing out the difference between an investigation and a prosecution.

He points out that they are fundamentally different processes and therefore the rules that apply should be fundamentally different. Where I think the commissioner does not get that quite right is that when you have your investigation in public, it does attract to it more of the characteristics of a prosecution in court. You know the old saying: if it looks like a duck, smells like a duck, quacks like a duck and waddles like a duck, it is probably a duck.

To the layperson in the street, these public hearings will not be that much different to a situation where a person is in open court being tried for a criminal offence. Sure, the lawyers understand that it is actually maladministration or misconduct rather than a criminal trial, but it is going to look the same. It is going to be people under the spotlight and in the glare of public light.

The approach that the Greens have taken to this is that those amendments that relate to open hearings and that deal with things like procedural fairness, rights to lawyers, rights to silence and those things that would be an automatic part of a criminal trial really do also belong in public ICAC hearings as well. That is the approach we have taken.

The net result of that will be there are some but not all of the Labor Party amendments that the Greens will be supporting. We think they have over-egged the pudding in a couple of cases, but there are some other ones that we will support and we will work through those as we get to them. I just thought I would put on the record that that is the general approach that the Greens have taken to this bill and these amendments.

The Hon. C. BONAROS: It is not often that we find ourselves in a very similar position to the Greens, but on this occasion we do. I think it is important to note that we are not being guided in this instance by the opposition but rather by those bodies and stakeholders that the Hon. Mark Parnell has alluded to, the issues they have set out and the issues that have been set out in the inquiry report.

The Hon. Mark Parnell has canvassed this as well, but I do just want to touch on one of the points made by the Treasurer, in relation to the opposition's amendments, about no longer having public hearings if this bill goes through, and particularly, and more specifically, if the opposition amendments go through. I will refer to the letter of the commissioner dated 31 October 2018 which talks specifically about the government's bill, not the opposition's amendments, and in which the commissioner makes it very clear that under that bill, as proposed by the government, I quote:

> In circumstances where conducting the investigation in private carries no such risks—

the risks that have been outlined in that letter—

> it is difficult to foresee circumstances in which a Commissioner would determine that it was in the public interest to hold a public inquiry. It may well be such that circumstances never arise. I myself cannot presently think of circumstances in which I would consider it in the public interest to hold a public inquiry knowing that by doing so the investigation could encounter the risks mentioned above.

He also makes similar comments specifically in relation to the appeal rights, not inserted by the opposition but inserted by the government. I think it is a little bit of a stretch to suggest that the opposition and the crossbench will somehow be responsible for the lack of public hearing; something that we in SA-Best have supported unequivocally if this bill goes through in an amended form. If this bill goes through in its original form, the commissioner is going to have precisely the same concerns and his potential unwillingness to hold those hearings in public will still apply.

The Hon. R.I. LUCAS: The Hon. Mr Parnell's contribution reminds me that there are a couple of issues he raised in the second reading and has repeated in his comments on clause 1 that I should have responded to in my reply to the second reading. Can I say that the Hon. Mr Parnell's position that he put in the second reading and has repeated at the start of clause 1 is, I think, an entirely reasonable proposition and one that is able to be argued.

There are important jurisdictional questions between the jurisdiction of the Ombudsman and the ICAC and I think reasonable people can come to different positions and reasonably argue them. In terms of the legislation ultimately agreed to by the former government and all of us who were there at the time, including the Hon. Mr Parnell and myself, we need to accept responsibility for where we thought we drew the line last time.

Since then, there have been questions raised. In the Hon. Mr Parnell's second reading he raised the issue of where the line should be drawn. Is it where it was—the current act—or should it be moved? That is certainly something that reasonable people might have discussions about, whether it be in a parliamentary committee, this parliament or in the forums of government such as the cabinet. Do we confirm the current arrangements, which we all entered into and voted for or, with the experience of hindsight, should the line be drawn in a different place? I think that is a debate worth having.

I obviously cannot today come before parliament with a view any different to the view we all supported originally. The honourable member has not yet suggested a different line to be drawn other than raising the question that maybe there is a question. I think he did raise the issue that maybe, in that case, as the Ombudsman has argued on the public record, some of the resources that have gone to the ICAC commissioner should be diverted to him.

The issue of resources is an issue that the honourable member raised that I did not respond to. I had it quickly checked. The $15 million figure to which he has referred, in broad terms is around about $7 million over four years in terms of operating expenses, and it eventually evens out at about $2 million a year extra per year. So it is not $15 million ongoing; $7 million of the $15 million is actually operating expenses and, ultimately, it is about $2 million a year extra.

I cannot give you a disaggregated breakdown. I cannot give you a breakdown of the $2 million, but some of that was an argument from the ICAC commissioner irrespective of the issue of public hearings that, in terms of his workload and the work that he was doing and undertaking, he needed additional resources, and some of what was, 'If I'm going to do public hearings'—one or two, or whatever it was—'I need additional resource.'

So not all of that $2 million is due to public hearings. If he does not do public hearings in the future, and that was the end result of the passage of legislation, and he says, 'I'm not going to do any public hearings,' then it certainly would not be $15 million and it would not be $2 million; it might be some component of the $2 million that might be able to be withdrawn and either provided to—and I noted the budget bid from the Legal Services Commission, and others, but it would be a redivision of public integrity body functions if you were actually saying the ICAC commissioner is not going to do certain things and the Ombudsman is going to do other things, and you might redefine the resources between those two particular bodies.

The other approximately $7 million or $8 million of the $15 million is investing or capital works expenditure. Again, I cannot give you breakdown, but not all of that was in relation to providing a venue for public hearings. Part of it was a rejigging of the accommodation of the Ombudsman and his officers and the ICAC officers in their particular building. If there was to be no public hearings, I am not sure whether or not we already have this venue for public hearings, but if it has not occurred and it eventuates that we are not going to have public hearings, then we would be able to stop that particular element of the expenditure. However, my recollection is that the other elements of the investing expenditure did relate to a rejigging of the office space for the Ombudsman and the ICAC commissioner as well.

The final point is in response to the Hon. Ms Bonaros. I accept the fact of the criticism of the commissioner about the government's second bill. The Hon. Mr Parnell highlighted that in his second reading contribution. The important point that I wanted to make in relation to the elements of the letter from the commissioner was that the commissioner is saying, 'There's one level of criticism, that

is, I might not be willing to hold public hearings,' and that is just an issue of whether or not there are public hearings. What he has said in relation to the Leader of the Opposition's amendments is that, 'Not only wouldn't I have public hearings; I probably wouldn't do any maladministration or misconduct hearings in private, or in public.'

That is a considerable escalation of the concern that the commissioner has. I acknowledge, as the Hon. Mr Parnell has indicated, that there is one level of concern he has with the government bill and with the Labor amendments, that is whether or not, when you are having a misconduct or maladministration hearing, you can have it in public or in private.

The commissioner has a criticism of the government bill and he has a criticism of the Labor amendments, but members should acknowledge or understand that the commissioner's concerns about the Labor amendments go much further than whether or not they are public hearings. He is actually saying the end result of these amendments would be, 'I, as the ICAC commissioner, don't believe, in public or in private, I would be able to hold any misconduct or maladministration hearing; that is, an Oakden or a Gillman, or those sorts of things; I wouldn't be able to do them. It's not whether or not they are public or private; I just wouldn't be able to do them.'

Now, he did do Gillman, he did do Oakden, but he conducted them as private hearings, not in public. But he did do them. What he is actually saying is, 'If you support these amendments, I'm not going to be in a position to do a Gillman inquiry or an Oakden inquiry,' or a range of other inquiries that he might envisage.

Clause passed.

Clauses 2 to 7 passed.

Clause 8.

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

Amendment No 1 [Darley–1]—

Page 4, line 22 to page 5, line 42 [clause 8, inserted sections 36B and 36C]—

Delete inserted sections 36B and 36C

My first amendment will delete new sections 36B and 36C, which both relate to appeals to the Supreme Court. Section 36B would allow for people to make application to the Supreme Court if they think the commissioner does not have jurisdiction to investigate or if they think the commissioner's decision to hold a public inquiry was not properly made. Section 36C relates to applications to the Supreme Court that a person can make to prohibit the publication or disclosure of certain information.

The commissioner wrote to the Attorney-General last year with regard to these provisions. These letters have since been made publicly available. In them the commissioner expresses his concerns about sections 36B and section 36C. Essentially, there is concern that these appeals could be used to frustrate or delay the investigation. Investigations may need to be suspended pending the outcome of an appeal. This could lead to a protracted investigation which could negatively affect people.

The commissioner has also expressed concern that evidence which is being relied upon in the investigation will be disclosed through the appeal process. This could hinder investigations, as information that would not ordinarily be disclosed would have to be revealed. I understand there is conjecture on these amendments but believe the commissioner is in the best place to be able to determine whether amendments we consider in this place will help or hinder the ICAC to be able to do their job.

As such, I have listened to the commissioner's concerns and move this amendment in line with his comments. The primary purpose of this bill is to allow for open hearings, as the commissioner deems appropriate. The commissioner has made comments that if the bill is passed unamended it would essentially render the open hearings provisions ineffective. No commissioner would risk their investigation for the sake of holding an open hearing, notwithstanding the fact that it is greatly in the public interest.

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

Amendment No 1 [Maher–1]—

Page 4, lines 35 and 36 [clause 8, inserted section 36B(1)]—

Delete 'a public officer or public authority' and substitute 'any person'

I inform the committee that amendment No. 2 [Maher-1] is consequential, so I will not be proceeding with amendment No. 2 [Maher-1] if amendment No. 1 [Maher-1] fails. I also indicate that the opposition will not be supporting the Hon. John Darley's amendment. The opposition will then, effectively, be supporting what the government has put in place in their second bill but with the [Maher-1] amendment.

The government's bill reflects recommendation 2 of the Crime and Public Integrity Policy Committee in relation to allowing an appeal to determine the commission's jurisdiction. What our amendment seeks to do is to give full effect to that recommendation. The recommendation reads in part:

…that the Bill be amended to provide that, where the power of the Commissioner to conduct a public inquiry is in question, the Commissioner, a public officer, a public authority, or any of the persons given written notice as per this recommendation, be conferred with a right to apply to the Supreme Court…

The government's bill as drafted gives that right to a public officer under clause 8, 'a public officer or a public authority'. We are deleting 'public authority' and using 'any person', but that is then limited to what is already in the bill: any person that may be affected by the investigation may 'determine the question and make any orders necessary to give effect to the determination'. So we are in effect supporting what the government is doing but giving full effect to the CPIPC recommendation.

The Hon. R.I. LUCAS: I rise to address both amendments. I will do them sequentially. The government opposes the amendment from the Hon. Mr Darley for the following reason. The amendment would delete proposed sections 36B and 36C. These provisions, subject to the clarification I will set out in a moment, were inserted in order to address parts of recommendations 2 and 3 of the Crime and Public Integrity Policy Committee report so as to provide for express rights to challenge a decision of the commissioner to conduct a public inquiry and to refuse an application for suppression under clause 3 of schedule 3A. The government has accepted these recommendations of the parliamentary committee and so will not support this amendment.

Section 36B(1)(b)(i), which provides that the Supreme Court may determine the question of whether the commissioner has the jurisdiction to conduct an investigation, is modelled on section 28 of the Ombudsman Act and was proposed to be included by ICAC bill No.1 to facilitate the replication of the powers of the commissioner to conduct an inquiry in the ICAC Act rather than using the powers of an inquiry agency. This provision would also be removed by amendment No. 1, and this change is not supported.

I will also address amendment No. 1 from the Hon. Mr Maher. In doing so, I will give a quite lengthy detailed reason for opposing this particular amendment. I propose to do so to outline the Attorney-General and the government's position in relation to the package of amendments, of which this is the first from the Hon. Mr Maher. I hope it will expedite the proceedings of the committee in that I will not repeat the explanation for each of the subsequent clauses as we debate them.

The government opposes this amendment and all the amendments in [Maher-1] as the honourable member's amendments relate to the same set of guiding principles. I propose to make a general statement of the government's reasons for opposing the amendments as a whole in this clause.

The intention of the government's bill is to provide for the commissioner to determine to conduct a public inquiry into misconduct or maladministration in public administration while also consolidating the ICAC's powers in the ICAC Act without reference to the ICAC exercising the powers of an inquiry agency. It has not sought to vary, extend or interfere with the conduct of the investigations beyond the provision for public hearings and consequential changes.

The proposed amendments in [Maher-1] fundamentally change that and the nature of the inquiry to be conducted by the ICAC, whether in public or private. The amendments provide for vastly different procedures the ICAC would be required to comply with if exercising the powers of the inquiry agency in the present act.

The opposition's amendments also move well beyond the recommendations of the Crime and Public Integrity Policy Committee in its report of last year. The honourable member in his second reading contribution states that the amendments seek to treat a hearing, if a public hearing, much more akin to a trial where a defendant is before the public eye and receiving publicity about the proceedings that are occurring.

An ICAC inquiry into misconduct or maladministration in public administration, even if held publicly, is not a trial; it is an investigation. These inquiries differ from proceedings in courts or tribunals. They are inquisitorial rather than adversarial, designed to discover facts that may lead to further action being taken. There is no issue to be decided. No person appearing at an examination has a case to pursue. There are no parties, there is no defendant or accused, there is no power to find anyone guilty of an offence, to award a payment of compensation or adjust the legal rights of anyone.

As stated by the ICAC in his letter of response to the honourable member's amendments, the purpose of the investigation is to obtain evidence by observation, obtaining documents and interviewing witnesses for the ultimate purpose of the decision-maker in finding facts and making a decision as to whether or not the person or agency under investigation has engaged in the conduct the subject of the allegations.

The amendments proposed in [Maher–1] would see the operations of the ICAC in relation to misconduct and maladministration inquiries well out of step with other inquiry agencies and anticorruption bodies. Inquiry bodies are generally not bound by the rules of evidence or other practices or procedures that apply to a trial. Neither the Ombudsman nor the Coroner is bound by the rules of evidence. A royal commission is not bound by rules of evidence. They may inform themselves on any matter as they think fit and may act without regard to technicalities and legal forms. All equivalent anticorruption legislation provides similarly so that the inquiry is carried out as informally and as effectively as possible, according to the circumstances and situation, and can inform itself outside the rules of admissibility.

The amendments would remove a level of flexibility and thoroughness that is an essential part of an investigation. It has a different purpose to a trial. As also stated by the ICAC in his letter, if a matter were to be referred to the Ombudsman by the ICAC, the Ombudsman would continue to investigate the conduct, exercising all the powers of a royal commission.

Amendment No. 24 [Maher–1] provides that a person against whom allegations are made of potential misconduct or maladministration in public administration would be entitled to refuse to participate in the investigation. This would apply to both public and private investigations, as would a number of the amendments. As stated by the ICAC, this provision would seriously compromise the ability of the ICAC to carry out any investigation into serious or systemic misconduct, as most persons subject to allegations would avail themselves of this right. The coercive powers in schedule 3A would be useless.

In the words of the ICAC, if the proposed amendments were to be passed, the ICAC's powers in relation to investigations into misconduct and maladministration would be almost entirely emasculated. In his view, not only would the ICAC be unable to carry out investigations in public, the ICAC would be unable to carry out any investigations into misconduct or maladministration. He further states that the whole of the ICAC Act would need to be reconsidered if the parliament desires to make such changes. It is clearly not in the public interest to frustrate these inquiries in the manner as provided in the proposed amendments.

In addition to the proposed amendments that would fundamentally change the nature of the inquiry, some of the further amendments would stymie or significantly disrupt the progression of the inquiry, as the examiner would no longer retain the control of the direction of the investigation or the release of information and evidence, for example, allowing a legal practitioner representing a person at an examination to cross-examine any witness on any matter, which previously would have been at the discretion of the examiner.

Parties giving evidence would also be entitled to call and present evidence relevant to the investigation, including by calling witnesses or presenting evidence by affidavit, which could result in lengthy tactical delays to an inquiry that the examiner would be powerless to control.

Some of these proposed amendments would also apply to hearings held in private. As stated by the ICAC in his response, amendments of this nature would take the control of investigation out of the examiner's hands, and extend and make an investigation more complicated. It would not allow the examiner to control cross-examination, which would subvert the whole process. The examiner already has the ability to conduct the investigation as he or she sees fit, and parties can make submissions to the examiner should they consider further information, investigation or examination to be of assistance to the investigation. It is not clear why this discretion should be removed from the role of the examiner.

A further proposed amendment would see that, where a person is summoned to appear at a public examination, the ICAC must ensure that at least 28 days before the date appointed for the examination the person is provided with a disclosure statement setting out a summary of the allegations that are the subject of the investigation, a description of the evidence or information that has been obtained by the ICAC and a list of other people to be examined.

In relation to each other person to be examined, the disclosure statement would need to set out why the person is being examined and the general nature of the matters in relation to which the examiner intends to question the person. The ICAC has referred to this amendment as so onerous as to make the task impossible. The ICAC has also expressed on previous occasions the potential detriment and prejudice to the investigation should he be required to disclose information that he wishes to withhold for the forensic benefit of the investigation, including an order to prevent witness collusion or concoction of evidence.

It is unclear why amendments are necessary that would make the conduct of an inquiry so inflexible. For example, under the proposed amendments, a determination to hold a public inquiry could occur before witnesses are summoned or examined, and if a determination to hold a public inquiry was revoked the schedule would apply as if the matter were conducted in public. By nature, an investigation will evolve and matters previously unaware to the investigator will be made known. In the interests of a thorough investigation, the flexibility of the ICAC to change the course of the inquiry is essential.

One of the primary objects of the ICAC Act is to achieve an appropriate balance between the public interest in exposing corruption, misconduct and maladministrative in public administration and the public interest in avoiding undue prejudice to a person's reputation. The government's bill requires that the ICAC must be satisfied that it is in the public interest to hold a public inquiry.

There is a public interest test in the bill, which lists certain matters that the ICAC must take into account when determining when it is in the public interest to undertake a public inquiry. This does not limit the matters that the ICAC may consider. There is also a common law duty to act fairly, according procedural fairness in administrative decisions affecting rights, interests and legitimate expectations, subject only to an express contrary statutory intention.

The law is clear that procedural fairness will not be found to be excluded unless parliament has expressed a very clear intention to do so in the statute. There is no such contrary statutory intention in the bill or the act. The ICAC stated in his evidence to the committee that the requirements of procedural fairness apply to ICAC investigations in relation to misconduct and maladministration, and he would regard them as continuing to apply following the proposed amendments in the first ICAC bill.

Additional protections were then included in the ICAC bill at the request of the committee, such that a clarification provision has been included in clause 6 of schedule 3A so as to make absolutely clear that a person is not required to answer a question, provide information or produce a document or thing if the answer or production would tend to incriminate a person of an offence. Clause 8 of schedule 3A already provided that statements made in an investigation in response to notices issued by the person heading the investigation are not admissible in evidence.

Appeal processes were set out in the bill at the recommendation of the committee. As well, judicial review is available at common law, without any express provision for it in the act, and provides the court with a supervisory role over the decisions of administrative decision-makers like ICAC to ensure decisions are properly made. A review would be available, for example, where an examiner unreasonably refused to hear an application for the hearing to be closed or if the decision to have an

open hearing was one that no reasonable examiner would make in all the circumstances and the decision personally affected the person.

The opposition's amendments are inconsistent with the intention of the ICAC bill, and will fundamentally change the nature and operations of the ICAC in relation to inquiries into misconduct and maladministration in public administration. The government, therefore, opposes amendments Nos 1 to 29 [Maher-1]. The government fought tooth and nail for the ability to hold public hearings; the now opposition has vehemently opposed such transparency consistently, and these amendments are no different.

This bill has had nothing but delays and hold-ups from those opposite, desperate to ensure the independent commissioner can never hold a hearing in public and ensuring that horrors like Oakden are again swept under the rug and kept behind closed doors. I urge, on behalf of the government, those on the crossbench to see sense and uphold the decision of the South Australian voters who voted in a new government for public hearings, accountable government and transparency.

The Hon. M.C. PARNELL: I am certainly not going to address the whole range of matters the minister has just gone through, which actually go to all of the 30 or so amendments that we have to deal with, but I want to focus just for now on the two amendments that have been moved and that are before us. First, Mr Darley's amendments seek to effectively remove the proposed new sections 36B and 36C. The Greens will not be supporting those amendments; we support those provisions in the bill as they are drafted.

In relation to Mr Maher's amendment in relation to what we might call an appeal to jurisdiction, he seeks to expand the range of people who can make such an appeal, including an appeal against the whole concept of holding a public hearing, to any person, rather than just the limited range that is in the bill as drafted. The range of people in the proposed new section 36B who can bring such an appeal are the commissioner herself or himself, a public officer or a public authority that may be affected by the investigation.

When you actually dig down and have a look at who those people are it is a very long list of people. They are included in schedule 1 of the original act, the Independent Commissioner Against Corruption Act. It includes all members of parliament, for example, who are public officers. There is a whole range of senior public servants, local councillors—in fact, there is effectively a two and a half page list of people who can actually bring these appeals.

My feeling is that in relation to those types of appeals I am happy for it to be limited to the people in the bill, that is the commissioner, public officer or public authority. However, I make the point that the real evil that the Greens are keen to overcome is unfair damage to reputation. The way that problem is addressed is in the next section, section 36C, where witnesses or other people can actually challenge the failure of the commissioner to suppress their evidence or the insistence of the commissioner on hearing their evidence in public. That is the sort of direct consequence that we want people to be able to deal with through appeal.

Having said that, we talked about unfair damage to reputation but in this jurisdiction there will be a lot of very fair damage to reputation as well. There will be people whose reputations do not deserve to survive because of what they have done. However, because we are going to be potentially doing this in public then there need to be a lot more checks and balances because, as people have pointed out, you can be on the front page of the paper every day with a litany of things that has been suggested to you that you have done wrong—they might not be criminal but you will be on the front page every day and by the time you are vindicated some time later it is relegated to page 17—but 'You'll never work in this town again.'

There are serious reputational issues at risk and so for those reasons the Greens will not be supporting the first of the opposition's amendments but, because we are not supporting Mr Darley, we are keen to keep section 36C in place and we think that most of the evils that we want to overcome can be dealt with by the bill as drafted.

The Hon. C. BONAROS: For the record I, too, would like to indicate that on behalf of SA-Best we will not be supporting the Darley amendments which reject the appeal rights which are

in the bill, and we also will not be supporting the Maher amendments, which go a lot further in terms of who is able to appeal, and broadens that scope from public officer or public authority to any person.

The only comment I will make because I think the Treasurer and the Hon. Mark Parnell have canvassed this quite well, is in relation to those amendments and the appeal rights generally and the opposition to appeal rights. I mean this with the greatest of respect to the ICAC commissioner who I know everybody holds in high regard, but it is this parliament that is going to determine what this bill will ultimately look like and not the commissioner.

I think a very good case has been made by everybody here, by the inquiry and by the stakeholders who have provided input into this bill as to why it is—in terms of transparency, checks and balances, as the Hon. Mark Parnell has alluded to—that we need appeal rights. For that reason, we will be supporting the government's proposed amendment in that regard.

The CHAIR: Does any other honourable member have a contribution? I am going to put a question that says that all words down to but excluding 'a public officer' stand as printed. So if you support the opposition's amendments, or you oppose the Hon. Mr Darley's amendments, you will vote in the affirmative, because with the motion being successful it simply provides that the words that are already in the existing bill stay.

If you support the Hon. Mr Darley, you will vote in the negative. If you are supporting the government, the government will vote in the affirmative as well. It just will not support in the affirmative the second question I will put, which is amendment No. 1 [Maher-1]. Again, if you support the Leader of the Opposition's amendments and/or if you support the government's bill, you will vote in the affirmative because simply the motion being put is that the existing words in the bill stand as printed. If you support the Hon. Mr Darley, you will vote in the negative.

Question agreed to; the Hon. J.A. Darley's amendment negatived.

The CHAIR: Unless any other honourable member has a contribution, I intend to put amendment No. 1 [Maher-1] to the committee. I put the question that this amendment be agreed to.

The Hon. K.J. Maher's amendment negatived.

The CHAIR: We now have amendment No. 2 [Maher-1]. I think the Leader of the Opposition indicated to me that that may be consequential. Could you indicate for the benefit of *Hansard*?

The Hon. K.J. MAHER: For the benefit of *Hansard*, I will not be moving amendment No. 2 [Maher-1]. It is consequential on the amendment which has just been lost.

The CHAIR: We now come to amendment No. 3 [Maher-1].

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

Amendment No 3 [Maher–1]—

Page 5, before line 10 [clause 8, inserted section 36C]—Before inserted subsection (1) insert:

(a1) A person given notice by the Commissioner under Schedule 3A clause 2(2b) may appeal to the Supreme Court against the Commissioner's decision to hold the public inquiry.

I indicate again that there follows consequential amendments; that is, amendments Nos 4, 5, 6 and 7 [Maher-1] are consequential on amendment No. 3 [Maher-1] so if amendment No. 3 [Maher-1] fails, I will not be proceeding with the following four amendments. In speaking to this amendment and the ones that are consequential, what we are attempting to do is to give effect to a submission from the South Australian Bar Association in relation to appeal rights.

This is particularly in relation to appeal rights that flow-on from the consequences of an amendment that comes much later at amendment No. 18, so amendment No. 3 [Maher-1] are appeal rights that flow-on from amendment No. 18. We think this is a sensible amendment that gives appeal rights and, for the reasons that people have spoken about, the need for appeal rights previously.

The Hon. R.I. LUCAS: For the reasons I outlined in my lengthy explanation earlier, the government is opposing this particular amendment as well.

The Hon. M.C. PARNELL: This is where it starts getting a bit complex but, in effect, what the Maher amendment does, is that it expands appeal rights against public hearings to those potential

witnesses who were given direct notice of the fact that a public hearing was to be held. The Greens are not convinced that that direct notice provision adds a great deal to the bill. We note that there are already website advertisements, there are already newspaper advertisements, and there is 21 days' notice, I think it is.

Our view is that everyone who needs to know about it is going to know about it—the people who work in that workplace, work colleagues—and it is very difficult to imagine circumstances where people potentially involved in these hearings will not know about it. So it is consistent with our position that we do not need that extra level of direct personal notification of potential witnesses, bearing in mind that they will get it wrong, and they will leave people out for sure. If we are not supporting the direct notification, it does not make any sense to give those people a special appeal right. So for those reasons, if it makes sense, the Greens will be opposing this amendment.

The Hon. J.A. DARLEY: For the record, I will be opposing amendment No. 3 [Maher-1].

The Hon. C. BONAROS: If it assists the chamber, for the record, SA-Best will be opposing this amendment.

Amendment negatived.

The Hon. K.J. MAHER: I will put formally on record now, as I foreshadowed, that I will not be moving amendments Nos 4, 5, 6 and 7 on [Maher-1] as they are consequential on the amendment that has just been lost. I move:

Amendment No 8 [Maher-1]—

Page 5, after line 36 [clause 8, inserted section 36C]—After inserted subsection (5) insert:

(5a) An appeal under this section will be by way of rehearing.

This clarifies what sort of an appeal is going to be held if a decision is appealed. There are a number of ways that the Supreme Court could hear the appeal. They could hear the appeal just based on the merits of the decision-making process. They could hear the appeal by way of a rehearing that is taking into account the same evidence that the commissioner took into account when making his decision or it could be an appeal de novo, in effect a complete and other relook at the whole decision taking into account fresh evidence.

What we have done is we have taken the middle road. I think there were submissions to the Crime and Public Integrity Policy (CPIP) Committee that it should be even further than what we are suggesting in an appeal de novo. We have elected to put it in here by way of a rehearing.

The Hon. M.C. PARNELL: My first inclination when I saw this was that it might be unnecessary. However, on reflection, I think it makes sense to clarify the nature of the appeal. As the member has pointed out, you have a spectrum. At one end of the spectrum all the court would do is have a look at whether the commissioner took into account all the things that they were supposed to. If that is just to tick a box, you do not assess whether the commissioner got it right or not. You just ask, 'Did the commissioner put her or his mind to this?' If the answer is yes, that is enough. That is one end of the spectrum.

The other end of the spectrum would be that if the person forgot to present a whole lot of evidence to the commissioner the first time round and had a finding against them, they can dig up a whole lot of new evidence and they can have another go with new evidence as well. So that would be the hearing de novo.

As the minister said, he has pitched it in the middle. I do not think this is as important an amendment as a number of the others we will be considering, but because it has the effect of clarifying the nature of the appeal. I think that is worth doing to give that guidance to the Supreme Court, so we will be supporting this amendment.

The Hon. R.I. LUCAS: I am not sure whether I have indicated our position, but I should place it on the record if I have not. The government is opposing this particular amendment as well.

The Hon. J.A. DARLEY: I will be opposing this amendment.

The Hon. C. BONAROS: Our position on this, and I take note of what the Hon. Mark Parnell has just said, is that the court usually decides this issue. Hearings would be by way of a rehearing, so I am not sure that it is entirely necessary to make that clear in the legislation itself. I think that is a given and it is a decision that will be taken by the Supreme Court. On that basis, we do not intend to support the amendment.

Amendment negatived; clause passed.

Clause 9 passed.

Clause 10.

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

Amendment No 9 [Maher–1]—

Page 6, lines 20 to 22 [clause 10, inserted section 39A(3)]—

Delete '(but the validity of the exercise of a power cannot be questioned on the ground of contravention of the operating procedures)'

I might indicate that amendment No. 9 [Maher-1] is consequential on the more important amendment that does the work, which is amendment No. 10 [Maher-1]. I might speak to them both; in effect, I am actually speaking to amendment No. 10, as that is the amendment that does the work here.

What these two amendments do is talk about the fact that the ICAC is required to publish standard operating procedures but, having published those, there is nothing that can be done for a contravention of them. They have no force and no effect if they are merely published somewhere and then have no operation or ability for anyone who is aggrieved if you deviate from them at all.

What this amendment seeks to do, if there is a contravention of the operating procedures in the exercise of the commissioner's power, is enable a person adversely affected by that exercise of power to apply to the Supreme Court for a remedy. It will be up to the Supreme Court to decide, firstly, if there has been a contravention of those powers. It will also be up to the Supreme Court to decide, effectively, if that person has standing—that is, has been adversely affected by the contravention of those powers—and then it will be up to the court to decide if that person has been actually adversely affected and to make such orders as the court thinks fit.

We think this is a reasonable amendment. If there are procedures that the commission themselves has set down as to what they ought to do and how they ought to do it, there ought to be consequences that flow from not doing what they have set down for themselves as standard operating procedures. This gives the Supreme Court the jurisdiction to make those decisions about what remedies may be in place for someone adversely affected.

The Hon. R.I. LUCAS: For the record, the government is opposing this amendment and also the attached amendment No. 10.

The Hon. M.C. PARNELL: I certainly understand the position that the Leader of the Opposition is coming from. His point, basically, is that if the act is going to include a section that requires the commissioner to prepare standard operating procedures, then there should be some consequence of failure to comply with those procedures.

Having accepted that as a basic principle, part of the dilemma we have here is that those operating procedures could become quite detailed. There could well be very minor departures from them that are of no great consequence at all but that result, effectively, in an automatic right to appeal. I know the member said standing would have to be satisfied, but the sort of people who are there as witnesses are going to have standing; that is not a problem.

I am not going to support this amendment. I do not know if the Treasurer can go back to those extensive notes he read before, but I am pretty sure what I heard him say, and what I thought was the case, is that regardless of whether we write in here any particular legal right for a person to go to the Supreme Court alleging a breach of process, the general powers of judicial review would continue to apply.

If someone felt that they were really hard done by or that procedures were not followed, then whether this amendment is in or not, that person, if their interests are affected, would have the power to go to court. That is my understanding of it and I am pretty sure that is what the minister read out before. He may be able to clarify that, but if my understanding of that is correct, I do not think we need this and the Greens are not inclined to support it. If the minister tells me that I have that entirely wrong, then we might revisit it.

The Hon. R.I. LUCAS: The member has accurately reflected the advice I placed on behalf of the government. What he has just said is accurate.

The Hon. J.A. DARLEY: I will be opposing amendment Nos 9 and 10 [Maher-1].

The Hon. C. BONAROS: I think it is important to highlight that there will still be opportunity for judicial review, but I think, as has been pointed out, the operating procedures could be quite detailed and inconsequential in some respects, and there will be the issue of standing. Especially given the broad nature of the amendment, because it does refer to any person adversely affected, the last thing we want in this bill is to create a lawyers' picnic. There is a very real concern that that is the path that we will go down by accepting the amendment, so for those reasons we will not be supporting the amendment.

Amendment negatived.

The Hon. K.J. MAHER: I formally place on the record that I will not be proceeding with amendment No. 10 [Maher-1]. I move:

Amendment No 11 [Maher–1]—

Page 6, line 26 [clause 10, inserted section 39B(2)]—Delete 'The' and substitute:

Subject to subsection (2a), the

Amendment No 12 [Maher–1]—

Page 6, after line 28 [clause 10, inserted section 39B]—After inserted subsection (2) insert:

(2a) If the Commissioner determines to conduct a public inquiry for the purposes of an investigation into misconduct or maladministration in public administration, the Commissioner must head the investigation.

Like the last two amendments, No. 11 is consequential on No. 12, so I will speak to amendments Nos 11 and 12 together and again take the vote on amendment No. 11 as a test for the issue that both of them deal with. Amendments Nos. 11 and 12 are reasonably simple. I am sure the Treasurer will correct me if I am wrong, but this may have been one in which the commissioner himself said that this is a matter for parliament and passed no judgement on it. So this is not one that I think members, and particularly the crossbench, should feel they are going to slight the commissioner by not supporting. This is one where he is not coming down and holding meetings or putting pressure on anyone to vote in a particular way. This is one where the commissioner has allowed a free conscience vote, which is good.

This amendment in its essence says that, if there is to be a public inquiry held, the commissioner must head that inquiry. We support public inquiries being held but I think, for some of the reasons that have been outlined, particularly by the Hon. Mark Parnell, with that great inquiring ability and the potential harm to people's reputation comes a need for proper protections to be put in place for individuals. We think that the commissioner is in the best position to make sure a public inquiry is held fairly, so we are moving an amendment that, if it is a public inquiry, the commissioner must hold that inquiry.

The Hon. M.C. PARNELL: I think most people's expectation would be that, if it is one of these very rare events where a public inquiry is warranted, the commissioner herself or himself will want to do it themselves. This makes it clear that they must. I do not think anyone is suggesting that the work experience kid might be given this particular gig. I think it will have a certain gravitas and it is important that the nominated commissioner handles the hearing, so the Greens will be supporting these two amendments.

The Hon. J.A. DARLEY: I indicate I will be supporting the opposition's amendments.

The Hon. C. BONAROS: I indicate that we will also be supporting the amendments. I was not going to go down this path but, given that the opposition leader has made reference to it, I will. I think it is unfair to describe the meetings that have taken place with the commissioner as ones where pressure has been applied, because that is certainly not the case. The commissioner has conducted himself as you would expect the commissioner to conduct himself. He has provided us with information regarding the bill and the amendments, and he has simply provided guidance as to what he thinks is workable and unworkable.

There will be many decisions that we make today that he will not like, but they are decisions that we are making. For the record, I want to confirm that there was absolutely no pressure placed on anybody, I would say, who attended the briefings with the commissioner in terms of what decisions we ought to be making. I think it also fair to say that the commissioner did not have a view to express on probably amendments Nos 11 through to 16, I think it was. Just for the record, I make those remarks.

The Hon. R.I. LUCAS: I am nothing if not a realist. I recognise the majority in the chamber. For the record, the government formally opposes the position, but I will make two or three brief comments. To answer the question from the Hon. Mr Parnell, it is correct: this was one of the ones that the commissioner has indicated he believed was a matter of policy for the parliament. I think the Hon. Ms Bonaros indicated that.

Whilst I was not actively engaged in any discussions on this bill with the commissioner, can I also share the views the Hon. Ms Bonaros has just put on the public record and distance myself from the comments made by Leader of the Opposition in relation to the commissioner's position. Ultimately, it is the commissioner's prerogative to indicate what he believes will be the impact of any legislative amendments we might make.

If he as the commissioner thinks it will result in no public hearings, either under the government bill or under the government bill with the Maher amendments, or if he also thinks that if the government bill was to be passed with the Maher amendments not only would there not be public hearings but there would potentially be no private hearings into misconduct or maladministration, it is entirely his position and prerogative to inform members of parliament of what will happen in his view—he is the commissioner—if we make the particular changes. So I do share the views of the Hon. Ms Bonaros, and I do not share the views placed on the public record by the Leader of the Opposition.

The Hon. K.J. MAHER: I might just rise, before we vote on this, to place on the record, if I have mischaracterised events that have occurred—and I accept that I was not at those meetings, so the Hon. Connie Bonaros is in a much better position to properly characterise those, and I accept her characterisation of them.

Amendments carried; clause as amended passed.

Clauses 11 to 15 passed.

New clause 15A.

The Hon. C. BONAROS: I move:

Amendment No 1 [Bonaros–1]—

Page 10, after line 19—Insert:

15A—Amendment of section 57—Victimisation

(1) Section 57(6), penalty provision—delete '$10,000' and substitute:

$20,000 or imprisonment for 2 years

(2) Section 57(8), definition of *detriment*, (a)—delete paragraph (a) and substitute:

(a) loss or damage (including damage to reputation); or

(aa) injury or harm (including psychological harm); or

(3) Section 57—after subsection (8) insert:

(9) For the purposes of this section, a *threat* of reprisal may be—

(a) express or implied; or

(b) conditional or unconditional,

and in any proceedings dealing with an act of victimisation (including proceedings for an offence against subsection (6)) it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

This amendment involves an increase to the penalty for victimisation, recognising the gravity of breaching those provisions, and bringing those penalties in line with the victimisation offence in the Public Interest Disclosure Bill. The amendment also broadens the scope of the definition of 'detriment'. Whilst we note that the list is inclusive and not exhaustive, SA-Best remains of the view that it is of benefit to broaden the scope of loss or damage to include damage to reputation and that injury or harm includes psychological damage.

The amendment also clarifies the meaning of a threat for the purposes of the victimisation offence. The amendment clarifies that a threat to cause detriment need not be express or unconditional but may also be implied or conditional. In addition, it is not necessary for a person seeking an order to prove that he or she actually feared that the threat will be carried out. As noted, the amendment contains provisions which were successfully passed in the Public Interest Disclosure Bill last year. As such, I trust that the majority of members will see fit to pass the amendments of this bill, as they did last year, to align those provisions relating to the victimisation offence.

The Hon. M.C. PARNELL: The Greens will be supporting this amendment.

The Hon. J.A. DARLEY: I will be supporting this amendment.

The Hon. K.J. MAHER: For the record, the opposition will be supporting the amendment.

The Hon. R.I. LUCAS: I am a realist. The government's formal position is to oppose it, but I recognise the will of the committee.

New clause inserted.

The CHAIR: We now come to amendment No. 13 [Maher-1]. Can I just alert members that, whilst the Leader of the Opposition is seeking to insert a new clause 15A, it is a completely different clause and seeks to effect different amendments. If it is agreed to, the renumbering of clauses will occur automatically.

New clause 15A.

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

Amendment No 13 [Maher–1]—

Page 10, after line 19—Insert:

15A—Insertion of section 62

After section 61 insert:

62—Review of Act by Crime and Public Integrity Policy Committee

(1) Without limiting section 15O of the *Parliamentary Committees Act 1991*, the Crime and Public Integrity Policy Committee of the Parliament (the *Committee*) must inquire into and consider the operation of the whole of the *Independent Commissioner Against Corruption Act 2012* (as amended by the *Independent Commissioner Against Corruption (Investigation Powers) No 2 Amendment Act 2018*).

(2) Without limiting the matters that may be considered in the inquiry under this section, the Committee must inquire into the effect (if any) that the operation of the *Independent Commissioner Against Corruption Act 2012* has had on the functions, operations and effectiveness of State law enforcement and integrity agencies.

(3) The inquiry under this section must be completed by 31 July 2020.

(4) For the purposes of the *Parliamentary Committees Act 1991*, the inquiry under this section will be taken to be a matter referred to the Committee under this Act.

(5) In this section—

State law enforcement and integrity agencies—the following are State law enforcement and integrity agencies:

(a) South Australia Police;

(b) the Ombudsman;

(c) the Auditor-General;

(d) any other agency or instrumentality of Crown, or holder of an office established under an Act, whose functions consist of or include law enforcement, or the investigation of matters related to public integrity.

I know that the Crime and Crime and Public Integrity Policy Committee is already doing a review on these terms. This may well not be needed, but I move it and seek support for it. I think it is a worthwhile review to be conducted and it does no harm, even if they are already doing it, to have it in there to make sure it is done.

The Hon. R.I. LUCAS: The government is opposing this. I think the honourable member in moving it sort of gave three-quarters of the reasons why. It is already being done. One of the problems with actually having it in here is it places a time limit upon which it actually has to be concluded, and it relates to the new provisions of the act.

I am advised that, if the parliament ultimately passes it—and this has to go through our house and potentially other discussions in another house and maybe even between the houses—by the time it is actually instituted, etc., how long it will actually be operating before July 2020 is an interesting point in and of itself.

My understanding is the current review that is being conducted is broad. It is not limited in terms of its time. It can produce interim reports and a number of reports, if it wishes to do so, as part of its normal purview. But the main part of the argument is it is being done anyway, so I just do not see that there is a purpose of actually putting it in the legislation. For those reasons, we are opposing it.

The Hon. K.J. MAHER: Just before other people have a crack at it, I do take into account some good points—and I will not say this often—that the Treasurer makes. We are keen to have it in there, but this is one, as it goes between the houses and comes back, particularly with the points he has made on time limits, we are keen to revisit. So we are not completely fixed that this is how it should be and we will not reconsider changes to it as it comes back to this house.

The Hon. M.C. PARNELL: I will help the Leader of the Opposition. He does not even need to do that. The reason it is important to keep this in is that the committee, as I understand it, of its own volition has undertaken an inquiry. There is no reason why, of their own volition, they might not abandon it. This requires them to do it.

Certainly in terms of the date, it will give them basically a year, effectively. Provided they report something within that year, their obligation is satisfied. I note the careful attention of the Chair of that committee. As long as, if this provision passes, the committee remembers to associate its existing inquiry with this provision, if it goes through, then it will satisfy it. Otherwise, someone might say, 'Well, they have to actually start a new one under this section and do it all again.' That would be silly. You might as well rebadge the committee's inquiry as under this section. It does no harm being there. In fact, it is a guarantee that that work will continue, although I have no reason to suspect that it would not anyway.

The Hon. C. BONAROS: For the record, once again I accept the comments made by the Hon. Mr Maher, but I think, for the reasons just outlined, it is important that this provision be inserted in the bill. As such, we will be supporting it.

The Hon. J.A. DARLEY: I indicate that I will be opposing this amendment.

New clause inserted.

Clause 16.

The CHAIR: Honourable members, I need to alert you to a drafting correction, which will not take you away from the debate. For the purposes of being complete, clauses 16 and 17 are out of order. We will deal with them in the order that appears in the bill before us, but they will be reversed in the reprint.

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

Amendment No 14 [Maher–1]—

Page 10, after line 30—After subclause (1) insert:

(1a) Schedule 4, clause 3(1)(a)(i)—after subsubparagraph (B) insert:

and

(C) if any determination was made by the Commissioner to conduct a public inquiry—whether the determination was properly made (in accordance with Schedule 3A clause 2);

This is a reasonably simple amendment. The ICAC reviewer has a range of functions in relation to reviewing the operations of ICAC. Given that in this bill we have public inquiries as a new function of ICAC, the amendment simply says that the ICAC reviewer inquires into whether those determinations were properly made.

The Hon. R.I. LUCAS: The government is opposing this amendment. In addition, the government is of the view that this would impose an inappropriate requirement on the schedule 4 reviewer, particularly in circumstances in which the Supreme Court has heard and determined the matter in the first instance. The reviewer is already required to consider in his or her review whether undue prejudice to the reputation of a person was caused, and may examine any other particular exercises of power by the commissioner.

As raised by the ICAC in his letter, this additional requirement would impose a very onerous obligation on the reviewer to consider all the material available to the commissioner in making a determination to conduct a public inquiry. It is not clear what would be achieved by the amendment.

The Hon. M.C. PARNELL: I think this amendment falls into the category of overreach that I mentioned before. I think the minister is correct. It may well have been that the question of the appropriate exercise of the power has been agitated uphill and down dale, including in the Supreme Court, and to then have the reviewer have to look at it again I think is probably unnecessary; at least, to specify it in the act I think is unnecessary.

I make the point that people who are unhappy have that right of appeal. We have now included that in the bill, so the idea of the reviewer having to go back and revisit it when no-one was unhappy and no-one appealed I think is probably unnecessary. My understanding of the nature of schedule 4 is that there is probably an overriding power in there that if the reviewer felt that things had gone terribly awry, the reviewer would have the ability to report on that without this provision. We will not be supporting it.

The Hon. J.A. DARLEY: For the record, I will not be supporting this amendment.

The Hon. C. BONAROS: For the record, we do support this. I acknowledge the comments that have been made, but we do see this as a bit of a safety net. I appreciate that some of those decisions may have already gone to appeal and whatnot, but there may be issues, just in terms of the process and the steps that have been taken during one of these inquiries, and therefore a reviewer will be able to look at those and ensure that all the appropriate steps have been taken. Again, it acts as a bit of a safety net, and for those reasons we will support it.

The Hon. M.C. PARNELL: I did not quite get to this before I stood up before, but I do note that the powers of the reviewer under schedule 4 are effectively unlimited. It says that without limiting the matters that may be the subject of a review, the reviewer may examine any particular exercises of power by the commissioner or the office.

So an unlimited power already exists. There are two ways that can go: one is, as the Hon. Connie Bonaros has said, that it does no harm, they can do it anyway, but this actually makes

the reviewer do it. The reviewer might not think it is appropriate—I am happy to leave it to the reviewer to decide whether or not this is a particular power they want to review. That is my justification for saying that it is not necessary but, again, I think we have bigger fish to fry later, but all these views are valid.

Amendment negatived; clause passed.

Clause 17.

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

Amendment No 15 [Maher–1]—

Page 11, lines 23 to 26 [clause 17, inserted Schedule 3A, clause 1, definition of *examiner*]—

Delete the definition of *examiner* and substitute:

examiner means—

(a) in relation to a public inquiry—the Commissioner; or

(b) in relation to any other investigation into misconduct or maladministration in public administration—

(i) the Commissioner; or

(ii) the Deputy Commissioner; or

(iii) an examiner appointed by the Commissioner.

Amendment No 16 [Maher–1]—

Page 11, after line 26 [clause 17, inserted Schedule 3A, clause 1]—

After the present contents of clause 1 (now to be designated as subclause (1)) insert:

(2) An examiner appointed by the Commissioner must be a legal practitioner.

This is not strictly consequential on the successful passage of amendment No. 12, where the committee determined that the commissioner must head a public inquiry, but it follows on from that. With the commissioner heading a public inquiry, the bulk of the work of an inquiry in public will be the examinations, so this just makes it abundantly clear that not only does the commissioner head the inquiry but when those examinations are taking place the commissioner must be, for public inquiries, the examiner.

The Hon. C. BONAROS: It is my understanding that amendments Nos 15 and 16 are as a result of the passage of amendment No. 12 and as such, given our support of amendment No. 12, for the record we will support amendments Nos 15 and 16.

The Hon. M.C. PARNELL: The Greens are supporting amendments Nos 15 and 16.

The Hon. J.A. DARLEY: I will be supporting amendments Nos 15 and 16.

The Hon. R.I. LUCAS: I am a realist: whilst we are opposing it, I accept the will of the majority.

Amendments carried.

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

Amendment No 17 [Maher–1]—

Page 11, lines 30 and 31 [clause 17, inserted Schedule 3A, clause 2(1)]—

Delete 'if the Commissioner is satisfied that it is in the public interest to do so' and substitute:

subject to subclause (2)

Amendment No 18 [Maher–1]—

Page 11, line 32 to page 12, line 6 [clause 17, inserted Schedule 3A, clause 2(2)]—

Delete subclause (2) and substitute:

(2) The Commissioner may not conduct a public inquiry unless the Commissioner determines, on reasonable grounds, that—

(a) there are exceptional circumstances; and

(b) it is in the public interest to hold the public inquiry; and

(c) the public inquiry can be held without causing unreasonable damage to a person's reputation, safety or wellbeing.

(2a) For the purposes of subclause (2)(b), the factors the Commissioner may take into account in determining whether or not it is in the public interest to hold a public inquiry include, but are not limited to, the following:

(a) the possible extent of the misconduct or maladministration in public administration being investigated;

(b) the seriousness of the misconduct or maladministration in public administration being investigated;

(c) the benefit of exposing to the public, and making it aware of, the misconduct or maladministration in public administration.

(2b) At least 28 days before a public inquiry is commenced, the Commissioner must provide to each person that the Commissioner thinks might reasonably be expected to be required to give evidence in the inquiry, written notice—

(a) specifying that the Commissioner intends to conduct a public inquiry; and

(b) identifying the matter that is to be the subject of the public inquiry; and

(c) setting out the basis on which the Commissioner has determined that it is in the public interest to conduct the public inquiry; and

(d) inviting the person to make submissions to the Commissioner, within a reasonable period specified in the notice, in relation to the determination to conduct the public inquiry.

This needs to be read in conjunction with amendment No. 18, which is consequential, so I will speak to amendments Nos 17 and 18 together, as I have for a couple in the past. This gives further effect to not only recommendations of the CPIP Committee but to some of the recommendations and evidence that was before the CPIP Committee.

What this does, amongst other things, is import, largely from Victoria, the grounds on which the commissioner may hold a public inquiry. If it is in the public interest to do so I think it is the only ground that is currently in the bill as to whether it should be considered to be a public inquiry. There are a number of things the commissioner must consider in his decision as to whether it is in the public interest but they are subordinate to the public interest and merely make up elements of what the legislation as it currently stands says is in the public interest.

What we say here is that, yes, one of the criteria should be that it is in the public interest. Another criteria that is separate from, and not subordinate to, the public interest is 'can be held without causing unreasonable damage to a person's reputation, safety or wellbeing', and also that there are exceptional circumstances. That is one part of this amendment.

The other main part of this amendment is a requirement that, if there is a public inquiry, at least 28 days before the inquiry has commenced the commissioner must provide to each person the commissioner might reasonably expect to be required to give evidence written notice specifying certain things. One of the criticisms the commissioner has made is: what happens if, during the course of an inquiry, there are further witnesses who may come up that were not known about at the start? The very simple answer to that is that it would be covered because this only applies to notices being given to persons the commissioner thinks might reasonably be expected to be required to give evidence to the inquiry.

In those cases where as you are going along some new things come up and you want to have new witnesses, if you did not reasonably know at the time you started that you should have given that person notice then this section does not have any work to do and does not apply.

The Hon. R.I. LUCAS: As I understand it, the Hon. Mr Maher has spoken to both amendments Nos 17 and 18. Certainly the government's position in relation to amendment No. 18, and even more strongly when we come to amendments Nos 24 and 29, we see as the more significant amendments that the Leader of the Opposition is seeking to move. My advice is that

amendments Nos 24 and 29 are the ones principally which would lead the commission, if they were passed successfully, to take the view that not only would he not have public hearings but he would not be able to have private inquiries into misconduct and maladministration.

The commissioner feels very strongly about amendment No. 18 and so, too, does the government in relation to placing overly onerous requirements and potentially problematic requirements in relation to the way that he would need to go about his task in terms of inquiries into misconduct and maladministration. In my lengthy earlier statements to Maher amendment No. 1, I outlined the government's reasons why we are strongly opposed.

I will need to take advice in a minute as to whether we see a testing of the committee's views by way of division potentially on amendment No. 18. I am not sure whether it is more appropriate to do it on No. 18 or No. 17; No. 18 is the one which is substantive as we see it, although the Hon. Mr Maher has spoken to them as a package. I would highlight the fact that if we were unsuccessful on the voices we would test the will of the committee by way of division on clause 24 as a fundamental test of the potentially differing views in the chamber on that critical issue as well.

The Hon. M.C. PARNELL: I will speak to amendment No. 18 but amendment No.17 is consequential so I am effectively speaking to both. Amendment No. 18 has two main aspects, as the Leader of the Opposition has pointed out. One is to put on a pedestal, if you like, the idea of exceptional circumstances as being a standalone test in addition to the other things that the commissioner must take into account, such as whether it is in the public interest and whether the inquiry can be held in public without causing unreasonable damage to a person's reputation, safety or wellbeing.

My assessment is that with the amendments that we are passing, the ones we have passed to date, there will not be public hearings unless there are exceptional circumstances; in fact, if we take the commissioner at his word there will not be public hearings at all. I am nervous about having exceptional circumstances as a standalone criteria. I do not know what it means. It would be a very difficult thing, I think, to define and that means that it will be difficult to defend and that means that it will very likely be subject to legal challenge. We already have appeal rights that are in here and the big test there will be in relation to the weighing up of public interest and private interest. I do not support that part of amendment No. 18 that seeks to put the concept of exceptional circumstances on a pedestal as a standalone criteria.

The second part of amendment No. 18 relates to the personal notification to potential witnesses. As I said in relation to an earlier amendment, the commissioner is already going to be advertising on the website and in the newspaper. The vast majority of people who are likely to be called are going to know about it, so I do not think that this personal invitation process is necessary, I think it just adds an unnecessary level of complexity.

I have tried to think of some examples where it might be valid; for example, where a person has left the employ of a government agency and they are grey nomading around North Queensland or something and do not read *The Advertiser* and, heaven help us, some people still do not read the *Government Gazette* or look at the commissioner's website. But, if we are going to be fair dinkum about it, I think people who know about it are going to know about it. They have the opportunity to appeal and I do not think we need to have an extra provision that requires direct notification of anyone who might reasonably be expected to be required to give evidence. So on both parts of amendment No. 18, the Greens will not be supporting it, and we will not be supporting amendment No. 17, which is consequential.

The Hon. J.A. DARLEY: For the record, I will not be supporting amendment No. 18 and, consequently, not amendment No. 17 either.

The Hon. C. BONAROS: Once again, I think the Hon. Mark Parnell has hit the nail on the head. In terms of the notification requirements, they are extremely onerous. They do apply to any person who the commissioner thinks might reasonably be expected to be required to give evidence. That could be a potentially extensive list and then, of course, we have the issue of exceptional circumstances not being defined and being placed above the primary threshold test that we currently have, and that we are all probably very familiar with in terms of the public interest test. So our position

would be to continue to support the public interest test above all else and not support the amendment proposed by the opposition.

Amendments negatived.

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

Amendment No 2 [Darley–1]—

Page 12, line 7 [clause 17, inserted Schedule 3A, clause 2(3)]—Delete 'At least' and substitute:

Subject to subclause (3a), at least

Amendment No 3 [Darley–1]—

Page 12, after line 16 [clause 17, inserted Schedule 3A, clause 2]—After subclause (3) insert:

(3a) The Commissioner is not required to include matter in a notice under subclause (3) if the Commissioner is of the opinion that inclusion of the matter may prejudice the investigation or unduly prejudice the reputation of a person.

I indicate that I am speaking to Darley amendments Nos 2 and 3 together as they are related. The bill currently outlines that 21 days prior to a public inquiry the commissioner must publish information such as the subject and the basis for the public inquiry. My amendment will clarify that in the publishing of this notice, the commissioner is not required to disclose any information that they feel would prejudice the investigation or the reputation of a person.

The commissioner is concerned that the mandatory requirement to disclose certain information may influence the recollection of a witness or that evidence may be destroyed, altered or fabricated. This amendment will give the commissioner the discretion to be able to withhold information if they believe releasing it may prejudice the investigation or individuals.

The Hon. R.I. LUCAS: For the benefit of the committee, the government supports amendment No. 2 [Darley-1] and amendment No. 3 [Darley-1] which he has just moved. The bill currently proposes at clause 2(3) of schedule 3A that at least 21 days before a public inquiry is commenced, the commissioner must publish, on a website, and in a newspaper, a written notice stating the commissioner's intention to conduct a public inquiry, identifying the matter that is to be the subject of the public inquiry and setting out the basis on which the commissioner is satisfied that it is in the public interest to hold a public inquiry.

The provision in the bill proposes to address the concerns identified by the Crime and Public Integrity Policy Committee and its reasons for part of recommendation 2, which would require the commissioner to provide written notice to affected parties. The government has taken a different approach with its amendment but still addressing the fundamental concern that persons affected have adequate notice.

The amendments being moved by the Hon. Mr Darley will provide that the commissioner is not required to include the matter in a notice if the commissioner is of the opinion that the inclusion of the matter would prejudice the investigation or unduly prejudice the reputation of the person. The government will not oppose this change on the basis that it clarifies that the commissioner need not prejudice the investigation or reputations through the content of the published notice.

The Hon. K.J. MAHER: I rise to indicate that the opposition will not be supporting the amendment.

The Hon. M.C. PARNELL: When I looked at this amendment, I wondered whether it was necessary. The minister read out the things that need to be published in the advertisement and I cannot see in that list anything that is going to require the commissioner to publish prejudicial information. It is pretty basic stuff.

Firstly, the commissioner has to say, 'I am going to hold a public hearing,' and that is all he has to say. Secondly, he has to say what it is about, the subject matter, the agency and that it is maladministration in this area or that area. He is not going to be putting all the detail in the ad in the paper. Thirdly, he has to set out the basis on which the commission is satisfied that it is in the public interest. Well, it is in the public interest because it is a government agency and there is lots of public money involved.

I cannot see the commissioner being bound by this provision to prejudice her or his own inquiry. I think the commissioner will be able to safely publish without having to shoot herself or himself in the foot, so I do not think the Hon. John Darley's amendment is necessary.

The Hon. C. BONAROS: We also do not support the Darley amendments. Following on from what the Hon. Mark Parnell has said, it creates an issue whereby information may be left out that would otherwise be included, and that is of concern. For those reasons, we will not be supporting the amendment.

Amendments negatived.

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

Amendment No 19 [Maher–1]—

Page 12, after line 24 [clause 17, inserted Schedule 3A, clause 2]—After subclause (5) insert:

(6) The Commissioner may not make a determination to conduct a public inquiry for the purposes of an investigation in accordance with this clause if witnesses have already been examined, or summoned to appear before an examiner, for the purposes of the investigation.

(7) The Commissioner may, at any time, revoke a determination to conduct a public inquiry and may continue the investigation in private (however, in such a case, this Schedule will apply in relation to any witness examinations conducted for the purpose of the investigation as if the examinations were being conducted in public).

Again, it is not strictly consequential but it does flow from amendments we have previously passed today. It says that when a determination is made to hold a public inquiry, it needs to be made before witnesses are examined. This makes sense, given the amendments we have passed which have different requirements on the examination if it is a public or a private hearing, particularly on the fact that it must be the commissioner themselves doing the examinations at a public hearing.

It would be an odd thing if you started an inquiry and then changed the conditions that the inquiry was being held under by virtue of the amendments we have already passed. There are further amendments to come in the very near future that might differentiate the way a public hearing or a private hearing is held. We think this is a sensible amendment that essentially has all the examinations being conducted under the same scheme and rules.

The Hon. M.C. PARNELL: Whilst the Greens will be supporting some of the later amendments that distinguish the way public and private hearings are held, we are not supporting this particular one because it prevents the commissioner from swapping, for example, from a closed hearing to an open hearing.

The scenario that I can envisage would be when the commissioner in a closed hearing hears the first couple of witnesses, falls off her chair with the gravity of what has been presented and decides, 'I really need to do this in public.' Of course, if they form that conclusion, then all those checks and balances we have already agreed on—the ad, the appeal rights—all kick in. It is not as if they somehow evaporate simply because it started as a closed hearing and morphed into an open hearing, so I want to give the commissioner that discretion to change it.

It would be rare that they would do it, but I think keeping that option open is sensible. As the commissioner has often said, it is an inquiry and, until you have started your inquiry, you do not know what you are going to find. If they do find something where it is clearly in the public interest for it to be opened up, then I want the commissioner to have that power. We will be opposing this amendment.

The Hon. R.I. LUCAS: For the reasons outlined at the outset, the government will be opposing this amendment.

The Hon. C. BONAROS: I do not think that we need to say any more than 'Oakden' in relation to this inquiry as a reason why it ought to be opposed. The situation that has just been highlighted again by members is that the commissioner will be limited in swapping to a public hearing if witnesses have already been examined in private investigations and the investigation has already commenced.

As I understand it, the commissioner will be able to swap to a private hearing from a public hearing, but then the public hearing protections will apply to the private hearing; that is the other issue. We have already said that some of those protections will not apply in the case of private hearings but, again, I think that Oakden is the only illustration we need as to why the commissioner ought not be limited in his powers in the way that is being proposed by the opposition.

The Hon. J.A. DARLEY: I will be opposing amendment No. 19 [Maher-1].

Amendment negatived.

The Hon. K.J. MAHER: I indicate that amendment No. 1 [Maher-3] is also filed as amendment No. 20 [Maher-1]. I indicate that I will not be moving amendment No. 20 [Maher-1] but I will be moving amendment No. 1 [Maher-3]. I move:

Amendment No 1 [Maher–3]—

Page 13, lines 23 to 27 [clause 17, inserted Schedule 3A, clause 4]—Delete clause 4 and substitute:

4—Procedure and evidence

(1) Subject to this Schedule, the person heading an investigation may conduct the investigation as they see fit, provided that they act in accordance with the principles of procedural fairness.

(2) In the case of a public inquiry, an examination of a witness must be conducted in accordance with the rules of evidence and the practices and procedures applicable to a witness giving evidence in summary proceedings in the Magistrates Court.

(3) For the avoidance of doubt, nothing in this clause affects any other requirement to act in accordance with the principles of procedural fairness for the purposes of this Act or any other Act.

This amendment provides that, where there is a hearing that is either a public or a private hearing, the principles of natural fairness apply. This is something that I think the commissioner has stated almost certainly applies, in the commissioner's view, to public or private hearings in any event, so it does absolutely no harm to make it absolutely certain.

The third part of the amendment makes it very clear, for the avoidance of doubt, that nothing in the clause affects any other requirement to act in accordance with the principles of procedural fairness. It ensures that procedural fairness applies to hearings where the commissioner has said it probably applies in any event, and it specifically says that nothing is taken away by saying that procedural fairness applies to those principles.

In regard to the second part, in the case of a public inquiry where examinations of witnesses have taken place, we have already had amendments successfully passed that those examinations must be conducted by the commissioner, given the importance this committee has attached to public hearings, the gravity of the hearings and the potential damage that could be done to a person's reputation. So when the commissioner is conducting public hearings—and this is only for public hearings—the rules of evidence and the practices and procedures applicable to witnesses giving evidence in summary proceedings in the Magistrates Court apply.

For absolute clarity, I point out that in the amendment that I am moving the rules of evidence and the Magistrates Court summary proceedings practices and procedures do not apply to private hearings; this is only for public hearings.

The Hon. R.I. LUCAS: For the record, the government opposes this particular amendment as well. I am advised that there are two separate issues, broadly, in this, namely, that subclauses (1) and (3) generally cover the same issue. The Leader of the Opposition has characterised, in broad terms, the view of the commissioner, as I understand it, in a not unreasonable way, that is, that it is potentially not of significance in terms of the way he might administer the legislation. However, subclause (2) is significant in the commissioner's view and in the government's view as well.

I placed on the record earlier the government's concerns. This would be one of the key provisions that would lead the commissioner, if it were successful, not to hold a public hearing. For those members who are supportive of public hearings of the ICAC, subclause (2) of this particular provision, on the basis of the evidence the commissioner has given, would indicate this would be

one provisions that would lead him to come to a conclusion to say he would not have a public inquiry or public hearing.

For members, in considering whether or not they support the whole of clause 4, it is a mixture of two things. Clauses 4(1) and 4(3), even in the Leader of the Opposition's view, do not really add much to the current situation, but clause 4(2) is significant in and of itself. Therefore, members will need to be aware, if they are going to support this amendment, that this is one of the amendments that will lead the commissioner to make a judgement that there will not or might not be public hearings of ICAC, should it be successful.

The Hon. M.C. PARNELL: I informed the Leader of the Opposition some time ago that the Greens were not going to support amendment No. 20 [Maher-1]. The reason for that is that we did not feel that the Magistrates Court rules of evidence ought to apply to private inquiries and investigations. This amendment that has come back now, amendment No. 1 [Maher-3], fixes that problem and makes clear that the rules of evidence apply only to public hearings.

I appreciate fully what the minister has said. The commissioner has said that this a serious problem and it would go to the commissioner's assessment about whether it is worth doing a public hearing. I completely understand that but, as I said before, I am not persuaded by this idea that just because it is an inquiry it is that much different to a trial held in a public court. They are very similar creatures in terms of the way they are perceived by the public and also in relation to the damage that can be done to reputations.

I see that this amendment will probably weigh on the commissioner and make it less likely, rather than more likely, in some cases, that a public hearing be held. Thereby, it fits the exceptional circumstances test that the opposition was keen to get inserted before. I do not think we need to insert it; I think this does part of that. I do not want to pretend that we have somehow misunderstood this, but I think that public hearings are such a significant issue that it is not unreasonable for the rules of evidence to be required to be applied. If the commissioner is determined not to apply the rules of evidence, then the commission can have the hearing in private and they are bound by the lesser standard of procedural fairness. The Greens will be supporting this amendment.

The Hon. C. BONAROS: We accept that ICAC is not a court, but public hearings, as we have just heard and as I am sure we all know, are in reality more akin to trial conditions. As the opposition leader has indicated, this amendment is limited to public hearings and does not apply to private hearings, so there is always the choice if the commissioner is concerned in terms of holding these hearings in private.

I will just point to a number of cases that we have seen. The one that comes to mind first is the Cunneen case. There has been a lot of commentary about people being effectively annihilated in some of these inquiries. It is not something that we necessarily talk about openly, but there has certainly been media coverage of a number of inquiries that have taken place here and of the Cunneen one interstate, which would indicate that these are conducted very much like a trial. Therefore, the rules of evidence should apply when those cases are conducted in public.

We understand what the commissioner has said, but I think it is also worth noting here the very strong advice that we have received from the Law Society and the bar. Both have been extremely strong in their views, both in relation to procedural fairness and in relation to rules of evidence applying when those matters are considered in public hearings.

Just in relation to procedural fairness, I think the Law Society's submission pretty much covers it when they say that it is one matter to not be bound by the rules of evidence and procedure, but it is quite another to conduct a hearing as one thinks fit and regardless of those rules. Again, we are talking about public hearings. Whilst I respect the views that the commissioner has put forward in relation to those, again, we were not attracted to the first version, but given those changes have been made and this is applicable only to those cases that are heard publicly, then it is our position that we ought to have procedural fairness enshrined in the legislation and that rules of evidence ought to apply as well.

The Hon. F. PANGALLO: I concur with what the Hon. Connie Bonaros has just said and also the Hon. Mark Parnell. We have to understand that public hearings of ICAC are taking this to a whole new level. It should be about protecting the rights and reputations of those accused. You have

to take that into serious consideration when you are having a public hearing. We do not know what goes on in a private hearing. We do not know how the commissioner conducts himself. We do not know what happens to the accused. It is all very secretive. In a public situation, it is entirely different.

It was the view of the committee, after the first bill was referred to the committee, and it is enshrined in some parts of this legislation, that procedural fairness needs to be accorded and the accused need to be provided with an opportunity to be able to defend themselves, even if it means adopting the rules of evidence.

I do not know why the commissioner is against that. What is wrong with having the rules of evidence apply to the public hearing? I do not understand that. One of the witnesses to the inquiry was Michael Abbott QC. He gave us an insight of what can happen in a hearing. His description was that it is a trial by ambush. This is what we do not want in a public hearing situation, where suddenly the accused will be almost ambushed without having any due consideration of their rights and the rules of evidence.

We need to bear in mind that consideration to reputational damage should be paramount in this situation, which is why we support amendment No. 20.

The Hon. J.A. DARLEY: For the record, I support amendment No. 1 [Maher-3].

Amendment carried.

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

Amendment No 21 [Maher–1]—

Page 13, after line 27 [clause 17, inserted Schedule 3A]—After clause 4 insert:

4A—Right to present evidence at public inquiry

A person who gives evidence as a witness in a public inquiry is entitled to call and present evidence relevant to the investigation (including by calling witnesses or presenting evidence by affidavit) and to make submissions to the person heading the investigation.

This amendment relates only to public hearings and it provides that witnesses who have given evidence are entitled to call their own witnesses. Again, this goes to much of what was being spoken of in the last amendment. Public hearings are quite a big step to take, where people's reputations are on the line. It allows people who feel that they need to have their reputation restored because they have been unfairly maligned to do that by the possibility of calling their own witnesses.

The Hon. C. BONAROS: As the opposition leader just indicated, this applies only to public inquiries. I think it is a natural extension of the previous amendment that we have just agreed to that, if you are going to hold these inquiries in public, if the rules of evidence and procedural fairness are going to apply, then you would assume also that those individuals who are before the commissioner would have the ability to call witnesses and to give evidence and present evidence, perhaps in support of them. Certainly, that is a natural flow from the previous amendment that we have just moved in terms of having those rules of evidence and procedural fairness apply. For those reasons, we support amendment No. 21.

The Hon. R.I. LUCAS: For the record, I did address this in the earlier comments that I made at [Maher-1]. The government position is to strongly oppose this amendment.

The Hon. M.C. PARNELL: To assist the committee, because it is getting on, I am going to put on the record now that we will be supporting Maher amendments Nos 21, 22 and 23. I will speak more about 24 when we get to it. They relate to the ability of people to present their own evidence, to have their lawyers, to have their lawyers present when other witnesses are giving evidence. These are a suite of procedural protections that we think should apply in public hearings. So we will be supporting amendments Nos 21, 22 and 23.

The Hon. J.A. DARLEY: I will be supporting amendment No. 21 [Maher-1].

The CHAIR: Given the late hour, can I have an indication from members whether they are supporting amendments Nos 22 and 23, as the Hon. Mr Parnell has done?

The Hon. C. BONAROS: SA-Best will not be supporting amendment No. 22 but we will be supporting amendment No. 23.

The CHAIR: Given that there is a divergence of views, I will put the question that amendment No. 21 [Maher-1] be agreed to.

Amendment carried.

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

Amendment No 22 [Maher–1]—

Page 13, lines 29 to 35 [clause 17, inserted Schedule 3A, clause 5(1)]—

Delete subclause (1) and substitute:

(1) The person heading an investigation into misconduct or maladministration in public administration—

(a) must allow a person who has been called as a witness by another witness in a public inquiry held for the purposes of the investigation (in accordance with clause 4A) to appear at the public inquiry as such a witness; and

(b) may, if satisfied that special circumstances exist, allow any other person to appear at any public inquiry held for the purposes of the investigation or to otherwise make submissions for the purposes of the investigation despite the fact that the person has not been required to give evidence at an examination.

Amendment No 23 [Maher–1]—

Page 13, after line 42 [clause 17, inserted Schedule 3A, clause 5]—After subclause (3) insert:

(3a) A person who is required to give evidence at an examination held as part of a public inquiry may also be represented by a legal practitioner at any other examination of a person held for the purposes of the public inquiry.

When being drafted, we considered this consequential—and I think parliamentary counsel is nodding their heads—on the passage of the previous amendment in terms of how to give effect to the previous amendment. In drafting, it is consequential, but the material in paragraph (a) is the new bit that has been added to make sure that, when a witness is called by another witness to give evidence, they are entitled to appear at the proceedings. It gives effect to the previous amendment. There are furious nods from those who I think can help out with that.

The Hon. C. BONAROS: That is the case, yes. We will support amendments Nos 21 through to 23.

The Hon. J.A. DARLEY: I am also supporting amendments Nos 21, 22 and 23.

Amendments carried.

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

Amendment No 24 [Maher–1]—

Page 15, after line 7 [clause 17, inserted Schedule 3A]—After clause 8 insert:

8A—Right to refuse to participate in investigation

(1) If allegations of potential misconduct or maladministration in public administration are made against a person and an investigation is to be conducted under this Act in relation to the matter—

(a) the person heading the investigation must (without derogating from clause 4 of this Schedule), ensure that the person is aware of those allegations before any power is exercised under this Schedule to compel the person to attend an examination, answer a question, provide information or produce a document or thing; and

(b) the person against whom the allegations have been made is entitled to refuse to participate in the investigation (despite any other provision of this Act).

(2) A person who intends to refuse to participate in an investigation may give notice in writing of that intention to the person heading the investigation and, on giving such notice, the

person may not be required to attend any examination, answer any question, provide information or produce a document or thing under this Schedule.

(3) The fact that a person has refused to participate in an investigation in accordance with this clause is not admissible in evidence against the person in any civil or criminal proceedings in any court.

This amendment, in effect, gives a person the right to not participate in an investigation. This is very similar to what happens in investigations conducted in criminal matters by the police but more particularly in what happens in trial conditions. At an investigation stage by police, an accused can refuse to answer any questions they choose. They can choose to not answer a particular question, they can answer some questions. They have the right to not answer questions.

When it comes to the trial process, of course the defendant can refuse to give evidence in their own defence. That happens frequently, but at trial, if you do not give evidence in your own defence, obviously you cannot put forward things that may be favourable to you. We do not think this is unreasonable. In the criminal justice system, every day of the week people are charged, prosecuted and convicted. This is not a hindrance to the truth being found and for verdicts being reached in the criminal justice system. Given the gravity of what may occur with someone before a public hearing, we think this is a reasonable amendment.

The Hon. R.I. LUCAS: As I indicated, the government strongly opposes this particular provision and will, if we lose it on the voices, test it by way of division because this is fundamental to the bill. This is the key test clause for the commissioner's view that this does not just impinge on the issue of whether or not you have public hearings. If this amendment passes, to all intents and purposes he is saying that you may as well revisit the whole ICAC; that is, it would destroy the whole purpose of having an ICAC, he would not be able to have a private or a public hearing into misconduct or maladministration issues. So, Mr Chairman, this is fundamental. I hope it loses on the voices, but if it does not, we will seek to divide.

The Hon. C. BONAROS: Can I start by saying that SA-Best has always taken a position very strongly in terms of fostering the right to refuse to participate. I think the example that I was thinking of, when I was trying to think of less significant legislation, was the Natural Resources Management Act and when we sought to include these provisions. We are dealing with something, I would say, a lot more significant in this instance.

However, sadly, I think the opposition will be disappointed to hear that we will not be supporting this amendment because, as the Treasurer has pointed out, it effectively diminishes the role of the ICAC entirely. I think it is also very important to point out that the amendment that is being proposed does not just mean that it is the person who is being investigated who can refuse: it is absolutely anybody involved who can refuse, and that is very concerning.

I think it is also important to note that we do have the right to not self-incriminate. If you are prosecuted as a result of an investigation by the commissioner, your right not to participate will kick in, so that is an important consideration. The material, of course, provided through ICAC, will not be able to be used to incriminate an individual in those circumstances. So whilst generally we would say, yes, we agree with the sentiment expressed by the opposition leader in terms of retaining the right to refuse, in this instance it really diminishes the commissioner's powers to such an extent that I think it renders the investigations fruitless. On that basis, we will be supporting the government and opposing the amendment proposed by the opposition leader.

The Hon. J.A. DARLEY: I indicate that I will be opposing amendment No. 24 [Maher-1].

The Hon. M.C. PARNELL: I will see where the numbers lie with this one, but I will just point out that there are two related protections: there is the right to not incriminate yourself, or the right against self-incrimination, which is in the bill—so you do not have to answer those questions—and then there is the more general right of silence or the right not to participate.

As the Leader of the Opposition pointed out, the criminal justice system functions quite well with both of those rights being in place—the truth is still found out, but people are not obliged to participate if they do not want to. Whether that is a defendant not giving evidence on their own behalf or other witnesses not wanting to participate, it is not necessarily a barrier to justice being served.

The Greens are inclined to support this amendment, but we can see that the numbers are against us. What I would say in relation to the right against self-incrimination is that it can be illusory because, unless it is accompanied by the right of silence, questions that you answer, or are forced to answer, that might not directly incriminate you, can, through a backdoor method, result in you losing the right against self-incrimination, so the two things are linked together.

The Hon. K.J. MAHER: Taking into account some of the debate that has occurred, I understand the reluctance of some members to support something that applies to both public and private investigations, given the commissioner's view that, if it applies to both public and private investigations, the commissioner says that effectively that might stuff up doing any investigations at all.

I might seek to move this in an amended form to put a further clause 4 in that would read, 'This clause only applies if a public inquiry is to be conducted for the purpose of investigation.' It would be a little like we did before, thereby limiting this, so if it is a private investigation, you do not have the right not to participate, but if it is a public investigation, much more akin to a trial process, which a lot of the discussion has been about, you do have the right not to participate. So do I seek leave, Mr Chairman?

The CHAIR: Just bear with me, Leader of the Opposition. If we are going to proceed, Treasurer, I am going to have to come out of committee for the motion.

The Hon. R.I. LUCAS: If the leader is going to move an amendment on the run like that, then I think we would report progress. If we were going to vote on this particular provision and leave it to between the houses, then we only have a few more amendments to do, and I would like to proceed.

The Hon. K.J. MAHER: I would not mind testing it in the amended form. We might be able to test it quickly.

The Hon. R.I. LUCAS: But if you are going to move an amended form, I do not propose that this committee should address an amended form on something as important as this without the opportunity to take advice in relation to the issue. So if that is your proposal—I presume you are intending to do that—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: The government would like to consider its position and put an argument if it is likely to pass—

The Hon. K.J. MAHER: I hear you. I am suggesting SA-Best might have a view. If they are inclined not to support the amended form, then we can just keep going on.

The Hon. C. BONAROS: Yes, but our position would be not to support the amendment even in its amended form.

Sitting extended beyond 18:30 on motion of Hon. R.I. Lucas.

The CHAIR: We are now at amendment No. 24 [Maher-1], which has been moved by the Hon. Kyam Maher. Do you wish to move your further amendment, Leader of the Opposition?

The Hon. K.J. MAHER: No.

Amendment negatived.

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

Amendment No 25 [Maher–1]—

Page 15, lines 13 and 14 [clause 17, inserted Schedule 3A, clause 9(2)]—Delete subclause (2)

This is consequential on the successful passage of amendment No. 20 earlier. Sorry, it would have been consequential if certain other events had happened earlier in committee; it is no longer needed, so I will not be moving amendment No. 25 [Maher-1].

The CHAIR: So do you seek leave to withdraw?

The Hon. K.J. MAHER: Yes, sir.

Leave granted; amendment withdrawn.

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

Amendment No 26 [Maher–1]—

Page 15, lines 22 and 23 [clause 17, inserted Schedule 3A, clause 9(3)]—

Delete ', so far as the examiner thinks appropriate, examine or cross-examine any witness on any matter that the examiner considers' and substitute:

examine or cross-examine any witness on any matter

This comes about as a result of evidence given to the Crime and Public Integrity Policy Committee. It removes the restrictions placed on legal representatives examining witnesses and is broadly in line with some of the other amendments we have passed about the rights of people and their legal representatives.

The Hon. R.I. LUCAS: The government opposes the amendment.

The Hon. M.C. PARNELL: The Greens support it.

The Hon. J.A. DARLEY: I will be opposing this amendment.

The Hon. C. BONAROS: We are opposing this amendment.

Amendment negatived.

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

Amendment No 27 [Maher–1]—

Page 15, after line 24 [clause 17, inserted Schedule 3A, clause 9]—After subclause (3) insert:

(3a) A legal practitioner representing a person at an examination has—

(a) the same rights in examining and cross-examining witnesses and making submissions to the person heading the investigation; and

(b) the same professional obligations,

as if the legal practitioner were representing the person in summary proceedings in the Magistrates Court.

This amendment allows legal practitioners representing persons at an examination having the same rights in cross-examination as they do in summary proceedings in the Magistrates Court. Importantly, we think, it also imposes the same professional obligations.

The Hon. R.I. LUCAS: The government opposes the amendment.

The Hon. C. BONAROS: We are supporting this amendment.

The Hon. M.C. PARNELL: Supporting.

The Hon. J.A. DARLEY: I will be opposing the amendment.

Amendment carried.

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

Amendment No 28 [Maher–1]—

Page 15, after line 31 [clause 17, inserted Schedule 3A, clause 10]—After subclause (1) insert:

(1a) Before issuing a summons under subclause (1), the examiner must be satisfied that it is reasonable in all the circumstances to do so.

(1b) The examiner must also record in writing the reasons for the issue of the summons.

(1c) A summons under subclause (1) requiring a person to appear before an examiner must—

(a) set out, so far as is reasonably practicable, why the person is being summoned and the general nature of the matters in relation to which the examiner intends to question the person; and

(b) specify whether the examination will be conducted in public or in private,

but nothing in this subclause prevents the examiner from questioning the person in relation to any matter that relates to an investigation into misconduct or maladministration in public administration.

This amendment requires additional requirements for a summons that is issued in relation to a public inquiry. Again, it comes about particularly as a result of submissions to the CPIPC and evidence taken at the CPIPC, so that a person has an understanding of why they are being summonsed and what will be put to them.

The Hon. R.I. LUCAS: The government opposes the amendment.

The Hon. C. BONAROS: We will be supporting this amendment.

The Hon. M.C. PARNELL: Support.

The Hon. J.A. DARLEY: I will be opposing it.

Amendment carried.

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

Amendment No 29 [Maher–1]—

Page 16, after line 4 [clause 17, inserted Schedule 3A]—After clause 10 insert:

10A—Disclosure requirements for public examinations

If a person has been summoned to appear at a public examination for the purposes of an investigation into misconduct or maladministration in public administration, the Commissioner must ensure that, at least 28 days before the date appointed for the examination, the person has been provided with a disclosure statement setting out—

(a) a summary of the allegations that are the subject of the investigation; and

(b) a description of the evidence or information that has been obtained by the Commissioner for the purposes of the investigation; and

(c) a list of the other people to be examined in the course of the investigation and, in relation to each such person, information as to why the person is being examined and the general nature of the matters in relation to which the examiner intends to question the person.

This amendment applies only to public hearings. I appreciate that the fact that it only applies to public hearings has been an issue for members in determining their support for some of these amendments. I think the Treasurer has previously outlined that the commissioner had thought that some areas that applied to public and private hearings could mean that it makes it very hard for the commissioner to hold any inquiries. I want to make it clear that this applies only to public hearings.

There has been discussion during the committee stage about the difference between public and private hearings. I think a good analogy was made in the criminal justice process that private hearings are more akin to a police investigation. That is, they happen behind closed doors and rules of evidence do not apply. In addition, as was the point raised by the Hon. Mark Parnell, a person's reputation has a much greater chance of being damaged in the public eye, appearing for days on end on the front page of newspapers when allegations have been made, whether or not they are sustained at the end of a public hearing.

As with a police investigation, a private hearing will not be affected by this. A private hearing does not have these disclosure requirements. What this does mean, however, is that at a public hearing, which we have discussed a number of times and I think correctly characterised is much more like a criminal trial, there are certain requirements for disclosure. At all trials, particularly criminal trials, there are onerous requirements on the prosecution to provide details of what is being alleged

so that a person of interest—and in the case of a criminal trial, once it gets to that stage, a defendant—has some idea of the case that is being put against them in order to defend themselves.

What this does is require—again, only if it is a public hearing—that certain information be provided, particularly a summary of the allegations that are the subject of the investigation, a description of the evidence or information that has been obtained, and a list of the other people to be examined.

This is no more onerous at all than the disclosure that prosecutions are required to make at a criminal trial. It gives someone who is the subject of a public investigation a reasonable chance to make sure that they can defend themselves against the allegations that will be put to them publicly. As the Hon. Mark Parnell pointed out and I will reiterate, they might end up being run on the front page of newspapers, leading new stories, on the TV every night. It puts them in a position where they can have a reasonable chance of defending themselves.

It is possible, without this amendment, that you could be surprised by what is put to you at these hearings without any possibility of knowing these allegations and without any possibility at the time of having any way of defending yourself. We do not allow that at criminal trials because it has been deemed unfair, over the centuries that the legal system has developed, to do that sort of trial by surprise ambush, so we think it is only reasonable that in this case, at a public hearing and a public hearing only, there is that basic level of information that is provided to someone.

The Hon. R.I. LUCAS: Again, this is an important amendment and the government strongly opposes it. I just want to quote the four paragraphs from the commissioner's letter so that, if members do support this, they understand what it is that they are supporting. The commissioner says:

> This proposal is extraordinary. It would impose upon the Commissioner an obligation that would be so onerous as to make the task impossible.
>
> Moreover it would forewarn every witness about any matter that the witness might be examined upon for the purpose of the investigation.
>
> Apart from all of the other proposals in the Maher Amendments which would hinder an investigation into serious or systemic misconduct or maladministration this proposal alone if it were adopted would mean that no Commissioner could proceed to hold a public hearing because the purpose of the hearing would be thwarted by the obligation included in clause 10A and the investigation would become so burdensome as to make it impossible to continue with that investigation.
>
> The proposal is not only directed to the person of interest but any witness most of whom are summoned to assist in an investigation into the conduct of someone else.

For those reasons, the government is strongly opposing this. As I said earlier, this is one of the key amendments that, if members support it, they need to do so in the clear knowledge of what the commissioner has said and the high likelihood that it will mean the end of any public hearings, other than in name only, in terms of potentially being there.

The Hon. M.C. PARNELL: I took very seriously what the commissioner had to say in relation to this amendment, as the Treasurer has just read out. It does impose very onerous obligations on the commissioner ahead of summonsing witnesses to a public hearing. Depending on how advanced the hearing is, the amount of information would vary a great deal. A witness who was called very late in the piece presumably would be given hundreds of pages of documents showing the evidence that had already been called to date.

Whilst I have said that a public hearing is more akin to a criminal trial than a behind closed doors investigation, I have never said that they are identical. Whilst I appreciate what the Leader of the Opposition is saying, that in a criminal trial, before the trial starts, the whole package of witnesses and issues at stake is all resolved beforehand and then you start, this is still an investigation and in the early stages a whole lot might not be known about what went on. That is why they are having an investigation.

The Greens certainly do not want to put such obstacles in the way of public hearings so that they can never be held. The commissioner has made his views very clear on this. We have put—I do not call them obstacles—what I would call reasonable protections for witnesses, whether they be persons of interest, persons who might be thought to have committed maladministration or

misconduct or whether they are other witnesses, but I think this does take it too far. I am comfortable with the protections that we have already this afternoon built into the legislation, so the Greens will not be supporting this amendment.

The Hon. J.A. DARLEY: I will be opposing this amendment.

The Hon. C. BONAROS: We, too, took very seriously the concerns raised by the commissioner. Perhaps this is a question for the opposition leader more than it is a comment. The disclosure requirements, as I understand them, are a summary of the allegations, not the full details of all the allegations. It is a description of the evidence; it is not all the evidence that is to be provided. It is a list of witnesses who will be examined, but that list, as I understand it, is not necessarily exhaustive and may not preclude further witnesses from being called. I think that they are three important points.

The opposition leader has said that it may not catch anybody by surprise. Well, I think it certainly could because, as I read these clauses, they are not exhaustive and there is scope for the commissioner, for instance, to call further witnesses. If I am correct, that list does not necessarily include everybody who will be called. Again, it is a description of the evidence that is sought to be obtained by the commissioner and a summary of the allegations. If the opposition leader could address that as a question, that would assist.

The Hon. K.J. MAHER: I can answer that quite quickly. I think that the honourable member has accurately surmised the purpose of this. This is not as onerous as a criminal trial. I agree with the Hon. Mark Parnell insofar as this is not identical to a criminal trial and these requirements are not identical to the full disclosure you have to make at a criminal trial. I think that is where the Hon. Connie Bonaros is correct. This is a lesser burden than would be required at a full-blown criminal trial, recognising that it is not exactly like a criminal trial. It is descriptions and summaries, rather than particularised allegations and the complete list of evidence and transcripts.

The Hon. M.C. PARNELL: A question for the Leader of the Opposition: if there were some deficiency in this disclosure, would that give a witness the right to seek to end the entire inquiry? For example, if the summary of the allegations was incomplete, if the description of the evidence was incomplete or if the list of other witnesses to be called was incomplete—not because there was a new witness but because, for some reason, they just left someone off—would any or all of those give a summonsed witness the right to challenge their summons or challenge the entirety of the open hearing?

The Hon. K.J. MAHER: I do not think I will give a complete answer, but I will give what I suspect is the answer. I think that the commissioner has said previously that he considers that he is subject to judicial review. Being subject to judicial review, and having made a decision about the summary or the description of evidence, my guess is that it would be open to someone who feels that they have been adversely affected to take action, as they could for any decision from any other part of the act as it stands or any part of the bill as we are considering it. My guess is that this would be no different. If they could show detriment, they might be able to have a remedy, but it would be no different from anything else in this bill if the commissioner is right and the decisions that he makes are subject to judicial review.

The CHAIR: The Hon. Ms Bonaros, I am not sure whether you indicated your intentions. Maybe I did not hear it.

The Hon. C. BONAROS: Our intention was to support this amendment, given what I have said. I am a little bit nervous about supporting things based on guesses, with all due respect. They might be educated guesses, but I am a little bit concerned that we might need further clarification in relation to this provision. Perhaps the Treasurer could assist in that regard.

The Hon. K.J. MAHER: I think it is lost.

The Hon. R.I. LUCAS: The numbers are not there anyway.

Amendment negatived; clause as amended passed.

Schedule and title passed.

Bill reported with amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (18:50): I move:

That this bill be now read a third time.

Bill read a third time and passed.

RAIL SAFETY NATIONAL LAW (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

Introduction and First Reading

Received from the House of Assembly and read a first time.

CONSTRUCTION INDUSTRY TRAINING FUND (BOARD) AMENDMENT BILL

Final Stages

The House of Assembly agreed to the amendments made by the Legislative Council without any amendment.

At 18:53 the council adjourned until Tuesday 2 April 2019 at 14:15.

Answers to Questions

MURRAY-DARLING BASIN ROYAL COMMISSION

In reply to **the Hon. T.A. FRANKS** (12 February 2019).

The Hon. R.I. LUCAS (Treasurer): The Attorney-General has advised the following:

It is not intended for the report to be tabled.

CRUISE SHIP STRATEGY

In reply to **the Hon. K.J. MAHER (Leader of the Opposition)** (13 February 2019).

The Hon. D.W. RIDGWAY (Minister for Trade, Tourism and Investment): I have been advised:

The 2018-19 cruise season commenced in October 2018 so every visit of the season occurred after the March election.

Cruise lines typically finalise their itineraries between 12 and 18 months in advance of the departure date. For the 2018-19 cruise season South Australia expects to welcome 84 ships to our shores across three ports—Adelaide Outer Harbor, Pt Lincoln and Kangaroo Island.

The double-digit growth of cruise ship visits to South Australia over the past few years has been attributed to the dedicated work of the South Australian Tourism Commission (SATC) team and its key industry partners.

The South Australian Cruise Ship Strategy 2020 was launched by the state government in July 2018.

The strategy identifies five strategic objectives which will be key to meeting our 2020 cruise industry target of 100 ship visits to South Australian ports and anchorages generating $200 million for our state economy.

Since the launch of the strategy in July 2018, the government has announced a new cruise destination to add to our state's portfolio, with three visits to Wallaroo scheduled in December 2019 and January 2020.

The SATC team is finalising next season's (2019-20) schedule and is working with cruise lines on itineraries for the 2020-21 and 2021-22 seasons.

FREEDOM OF INFORMATION

In reply to **the Hon. M.C. PARNELL** (27 February 2019).

The Hon. R.I. LUCAS (Treasurer): The Premier and the Attorney-General have provided the following advice:

Changes were recently made to the way that investigative agencies access cabinet documents. As part of these changes the Auditor-General, subject to the approval of the Premier, will be permitted access to cabinet submissions and attachments to cabinet submissions.

The government recently released Premier and Cabinet Circular PC047—Disclosure of documents to investigative agencies which more comprehensively outlines these changes.

In relation to the question as to whether the government will consider providing increased access to cabinet documents through legislative changes to the Freedom of Information Act, the Attorney-General has advised that the Attorney-General's Department is currently undertaking a comprehensive review of all aspects of the Freedom of Information Act 1991, including the provisions relating to access to cabinet documents.