LEGISLATIVE COUNCIL

Thursday, 14 May 2020

The PRESIDENT (Hon. T.J. Stephens) 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

COVID-19 EMERGENCY RESPONSE (FURTHER MEASURES) AMENDMENT BILL

Second Reading

Adjourned debate on second reading.

(Continued from 13 May 2020.)

The Hon. K.J. MAHER (Leader of the Opposition) (11:02): I rise to speak on this bill and indicate I will be the lead speaker for the opposition but there will also be a contribution from the Hon. Clare Scriven in particular. The opposition has supported all reasonable measures to protect the health of the community and support the recovery of the economy. In making this commitment, we must, as legislators, also apply scrutiny and help to improve legislation that has been drafted under pressure and in short time frames.

This is the sixth piece of legislation that the government has introduced that in some way has a connection to or is a response to the current COVID-19 emergency, and the opposition has supported each and every one. This began with the amendments to the Public Health Act and the Coroners Act along with a $15.3 billion Appropriation Bill. This is now the third piece of legislation related to the COVID-19 Emergency Response Act and these have introduced sweeping powers under the Emergency Management Act while also making temporary and permanent changes to a range of other legislation.

Across the range of emergency bills, the opposition and the crossbench have offered amendments and, with a few exceptions, these have received welcome bipartisan support. However, as with the other five pieces of legislation, so far there has been almost no consultation with external stakeholders and, in many cases, actually no consultation at all. The opposition and the crossbench have been provided briefings, often sometimes on the day of or the day before they need to vote on the bill. This has been one of the more disappointing parts of the last 2½ months.

The government continually talks about going through unprecedented times and the need to do things differently, but it has been reflected in a lack of consultation that has all too often been the hallmark of legislation in this place. Despite parliament only having been given a couple of days to consider the bills, briefing has revealed that the government has signed off on some proposals the day before when previous bills have gone through and waited at times up to six days to seek the assent of the Governor.

The scrutiny applied to emergency bills by the crossbench and the opposition has uncovered flaws in various pieces of legislation, and we have been able to make some improvements. Much of

this could have been achieved before the bills reached the parliament, even with the brief discussions or short consultation.

While of course needing to respect the processes of the government, with cabinet processes and party room processes, it is almost incomprehensible why there has not been a greater degree of openness and cooperation. The opposition and the crossbench have demonstrated time and time again that we are taking a constructive and supportive approach to helping manage this emergency. While we hope that further emergency measures will not be needed, if they are the opposition extends an invitation to the government to do things a little bit differently.

The government could come to the opposition even before cabinet processes start, to outline the areas they are looking to change, take legislators into their confidence and talk about what needs to be done before there is a final completed signed-off piece of legislation that has gone through the cabinet and the Liberal Party party room later that Monday. They could come to the opposition and crossbench and say, 'We are looking at making reforms in the area of commercial leases, in the area of trainees and apprenticeships. This is the direction we are heading in. Have you any concerns or proposals?' That presumably could be done a week or two before the final legislation is completed, and that would go a huge way to alleviating some of the problems that we are seeing.

We have amendments filed, some this morning, and I will flag that there is another amendment in the final stages, to do with commercial leases, that should be ready within the next 15 minutes or so, which the opposition will file. I would have very much liked that to have been filed two or three days before we considered this bill. Unfortunately, the way the government has dealt with this in the consultation means that it is impossible to do so. It puts many of us at a huge disadvantage in being able to properly scrutinise the bill and being able to think about amendments.

I would suggest to the government if there are future emergency measures, talk early. Let us know what you are planning to do, and then there will not be amendments on the morning, amendments as we are going through the bill. I would not be surprised, as was the case in the lower house, if there were further amendments from the floor as we are considering it. The way the government has conducted it means it lends itself to that practice.

We have asked the government for explanations about some of the changes that have been made in this and other bills. Sometimes the government has offered the explanation that one organisation or another has asked for this change as the only reason. In other cases, the only explanation the government has offered for not doing something is that others have not done it. It is not the standard we should expect and it is not the standard we should set in the future. In an emergency more than ever, we need to be conscious of unintended consequences and make sure that when we are giving extraordinary powers to individuals and to government and organisations we get it right.

We have seen that some of the decisions of this government have left some of the most vulnerable workers high and dry, in terms of casual nurses without shifts, in terms of those in the performing and other arts sectors who work in government-owned enterprises who cannot access JobSeeker payments, and in terms of legislation that both the Labor Party and the Greens have put forward to protect workers who are on the front line, to make it easier to access workers compensation. They have not been taken up, yet we are expected to fall in and support—as we have done and as we will continue to do, because it is the right thing to do—measures during this emergency.

This bill expands on a range of earlier provisions. In this bill, we are replacing the elements of the act that deal with commercial tenancies to support the implementation of some of the elements of the National Cabinet Mandatory Court of Conduct—SME Commercial Leasing Principles During COVID-19, which is a national code that was agreed to, I think, right back in March. I will have a bit more to say about it later in the second reading speech.

The bill extends the effect of some regulations that are made under current emergency arrangements, and we will have questions about the nature and the effect of that during the committee stage. It expands the flexibility for the Community Visitor Scheme and the Chief Psychiatrist, and I note there have been amendments made by the shadow health minister, the member for Kaurna, Chris Picton, in the other place that the government has accepted.

It allows for increased direct interventions in the electricity market. It clarifies powers for authorised officers under the Emergency Management Act to remove children from premises. It provides for the suppression of traineeships and apprenticeships until January 2021, and my colleague the Hon. Clare Scriven will have more to say about those provisions. It makes two changes to development legislation, the first to increase the threshold referral from $4 million to $10 million and removes the need for consultation; and the second removes the need for concurrence of the local council for certain developments. It is noted that the bill involves a mixture of both temporary and permanent measures, the latter of which will obviously require a higher level of consideration before it becomes law.

I want to briefly reflect further on the first measure I outlined—that is, commercial leases. This bill completely repeals the previous section regarding commercial tenancies that was agreed in this place on 8 April. The new section outlines detailed areas in which regulations may be made but does not provide any meaningful guidance to landlords and tenants who have been crying out for that certainty. The government has provided a draft copy of regulations but these fundamentally deal with process matters rather than giving any guidance for outcomes or how those outcomes might be arrived at.

Whilst mediation is required under these draft regulations either party can refuse to engage in this process. The only recourse after that is to go to court and that may take months and come with huge costs. If the matter goes to court, the draft regulations say that the court must have regard to a range of matters but none are provided greater weight than others. This creates almost an unreasonable risk that a stronger party to a lease—whether that be a landlord or a tenant in the commercial situation—could more easily prevail in a court setting.

For parties who engage in the process in good faith there is a lack of clarity about what default or standard outcomes could be or the method of arriving at them. The opposition believes we should have clearer guidance. It is nearly six weeks since the Prime Minister published the mandatory code on commercial leases and we think businesses in South Australia deserve more guidance and better than what we are seeing in the act and the suggested regulations.

I will foreshadow how we are looking to deal with that. As I said, there is an amendment that is minutes away from being finalised. That provides, within the legislation, a little bit of guidance. The Code of Conduct for Commercial Leasing principles COVID-19 makes it clear that proportionality is to be the primary consideration—that is, the rent reduction being proportionate to the loss of turnover from the business concerned. The national cabinet mandatory code of conduct for small/medium enterprises commercial leasing principles during COVID-19 makes it very clear that that is the basis on which you can start to work out how a loss of rent might be apportioned—that is, the proportionality, a proportionate basis as a result of the commercial disruption caused to the tenant.

The amendment that we will have very shortly circulated seeks to include that in the legislation, to say that as far as possible that is the starting point for determining these leases. That gives some guidance, some certainty and a starting point for how you might negotiate the issue of commercial leases. We think that is good for both landlords and tenants, to have some idea as to how it might be started, but it also leaves flexibility for all the things that are in the regulations to also apply, and I think shows more faith with the national mandatory code.

That having been said, I am sure we will, as we did last time, work together in a very cordial and civil manner to try to resolve some of the areas around the edges. I reiterate that the opposition stands firm in its support of making sure that those who are keeping us safe have both the powers and protections they need to do so.

The Hon. C.M. SCRIVEN (11:14): I will speak briefly at this stage and then have more to say when we are going through the specific aspects in the committee stage. The emergency response amendment bills have been, obviously, implemented in terms of the current pandemic that we have. The opposition has been very cooperative with most if not all of these changes that have happened in both this current bill that we are considering, as well as in previous bills; however, it has been on the basis that this is for the period of the COVID-19 emergency only.

Nearly all of the legislation is based on an end date of 30 September, at this stage; however, what we have seen in this current bill is attempts to make some changes that will last much longer

than that, specifically to January 2021. I think that flies in the face of the agreements that have been made, the understandings, the principles that this is for the emergency period only and that is currently until 30 September. This interacts with a number of aspects, particularly federal assistance packages that have been announced by the federal government, which end on 30 September, such as the JobKeeper arrangements. We have seen quite strong statements in the media this week that this will not be extended.

In terms of training and skills and apprentices and trainees, we need to ensure that we are looking at the overall holistic situation that people who are apprentices or trainees will find themselves in. As I said, I will say more about this in the committee stage, but that is the basic principle that we need to bear in mind. The opposition is generally supportive of the proposed measures contained within the bill in general, but we do have some specific concerns. I understand that the Hon. Mr Parnell has filed amendments in terms of some of the planning aspects and I have filed an amendment in terms of the Training and Skills Commission.

We have had contact from a number of group training organisations, talking about the difficulties within the industry to ensure that apprentices and trainees receive sufficient on-the-job training. Employers have had to renegotiate with group training organisations. There has been a period of huge uncertainty and difficulty for employers as well as for trainees and apprentices. If there are disputes relating to an employment contract of an apprentice, they are dealt with through the Training and Skills Commission.

The question we are asking is: why does the opportunity to suspend a contract of training need to be up until January 2021? This matter was debated a few nights ago in the other place and the member for Lee unsuccessfully attempted to have the date made consistent with the other COVID-19 legislation to 30 September 2020. Our concern, particularly in regard to the proposed date, is twofold: one is that consistency, which I have already referred to, and secondly, it is that thousands of apprentices and trainees across South Australia would potentially be left with zero economic support by any level of government after that date if their traineeship or apprenticeship is suspended.

By 30 September, support that apprentices and trainees currently have access to via their employer, such as the JobKeeper payment, others the wage subsidy payment, Coronavirus Supplement payment, and the federal economic relief package, will have all concluded—they will have all concluded. Minister Pisoni in the other place has acknowledged that there is support in place for apprentices up until that date, but he also acknowledged that there is no other support in place for them after this date. There is no direct state government support for apprentices and trainees from 30 September until January, unlike other states where bodies such as their construction industry training board or funds or the equivalent bodies have offered direct support for trainees and apprentices in the industry. In South Australia we have not even had that.

We have had some answers back from the government, and I do thank them for that. There were answers to questions raised in the other place and also some that were raised in the briefing, which, as the Hon. Mr Maher has already mentioned, was only given late Monday afternoon for legislation being introduced on Tuesday. Some of that does refer to the issue of whether apprentices and trainees whose contract of training has been suspended will be able to access JobSeeker, and I will say more about that during the committee stage, as I think that the information provided by the government is not complete.

Minister Pisoni in the other place said that by agreeing to these changes it would allow apprentices and trainees to look for other temporary work in the three-month period between 30 September and 1 January, but surely it must be clear to everyone that that is a very naive assumption. This state is projected to hit double-digit unemployment in the very near future, and the likelihood of a suspended apprentice or trainee finding other work in that period will be most unlikely.

The suggestion goes against the principle that minister Pisoni says he is committed to, which is trying to ensure that there is a continuing relationship between the employer and the apprentices and trainees. We do not want to send a message to apprentices and trainees that they will not be supported, that they are not being helped, that they are on their own. The opposition does not support that kind of approach. We want to ensure that they are afforded protections.

We have also had concerns raised with us from employee representatives about the potential to misuse this piece of legislation so that apprentices and trainees will be extremely disadvantaged. That is why we think the suspension should be in line with the COVID-19 emergency declaration period. If there is a need to extend it, then we can certainly come back and in this place debate it again and can certainly move emergency legislation, as has happened here this week with very short notice, to further that date if it is required.

But the government has not explained why it is required, and therefore we will be urging the government to accept our amendment and ensure the suspension period is consistent with the COVID-19 emergency declaration period.

The Hon. F. PANGALLO (11:21): I rise to speak in support of the second reading of the bill and, like the opposition, we certainly had concerns about the rush to get this bill passed through parliament. It is one of those things that I find disturbing, when legislation is thrust before crossbenchers and others to make a hasty decision when you have not had time to properly absorb what is contained in it. I echo the Hon. Kyam Maher's comments about the lack of time to absorb the actual impacts of these measures and determine areas that perhaps need improvement. You need time to analyse and see whether they are going to be workable.

Another disturbing aspect, which I believe the Hon. Mark Parnell will address, is trying to sneak through permanent planning changes in what you would call an omnibus bill. Again, you have to ask why this should not be dealt with elsewhere in another piece of legislation, or at another time, rather than be thrown in with the COVID-19 emergency measures that have been thrust before us today.

The Hon. Kyam Maher also highlighted some amendments in regard to commercial leases and how it appears to fall short of the national cabinet's mandatory code of conduct. This has also been pointed out by the Law Society and, like them, I can foresee problems with the mediation process, creating backlogs and delays in the system before there is a resolution to it. The Law Society has rightly pointed out that there needs to be a proper adoption of the national code. Apparently, they wrote to the government on 8 May, calling for the government to adopt the code in South Australian law. It does not appear that this is happening.

It appears also that there is a variance from the national code in regard to deferring the payment of rent, and I will refer to that letter from the Law Society, particularly one point where they point out that:

> Furthermore, pursuant to Regulation 9(5)(e) the Court has the power to 'defer the payment of rent under an effective lease for a specified period not exceeding 24 months from the date on which the Order is made'.

The Law Society says that this appears to deal with deferred rent and says that it is contrary to the provisions of the code, which stipulates that deferred rent be recouped over at least 24 months. I guess that is something we can address during the committee stage. The Law Society also believes that some of the regulations do not satisfactorily reflect the code. I will read from their letter by their Chief Executive, Stephen Hodder. Under the subheading, 'Proper adoption of the Code', it states:

> Overall, the Society considers the Regulations do not satisfactorily reflect the Code. As currently drafted, it is not clear as to whether the Government wants parties to a commercial lease to either follow all or some of the rent relief principles set out in the Code.

The society submits that this should be made much clearer, that is, by the suggested amendments they have made to the regulations that were sent to the government. It should also not be left to parties to analyse the factors the Magistrates Court may have regard to; rather, the principles set out in the code should be fully adopted in the regulations to provide clarity with respect to negotiations between parties, rent relief and the relevant proportionality principles to be taken into account.

Essentially, what the Law Society is saying is, 'You have rushed it. You should have consulted and perhaps you would have been able to come up with something that was going to be infinitely more workable.' I will point out that my colleague the Hon. Connie Bonaros has amendments and she will go through those in her address.

The Hon. C. BONAROS (11:26): As we have said before, this bill is the result of exceptional circumstances and exceptional circumstances do call for exceptional responses. This is another

example of that. I echo the sentiments of other members. We have all made a very genuine effort to pass every piece of legislation that has been put before us in very tight time frames. It is legislation that otherwise would have taken perhaps weeks to consider. We do not have that benefit, given the nature of the bill and COVID-19 in particular, in this instance.

But it does appear that this has created a bit of a catch 22. If we do not pass the legislation, those caught up by the legislation could potentially be left in the dark until we sit again and have ample opportunity to consider them. If we rush it through, we obviously run the risk of making errors. That is not a good way to make law and we have said that over and over in this place, but these are not normal circumstances. We know that.

Obviously, we support the second reading of the bill. There have been a number of concerns that have been canvassed by members already. The Hon. Mark Parnell and the Hon. Tammy Franks have also raised concerns, which will be canvassed shortly. I do not intend to go over all those now, because I think we will be dealing with these in some detail during the committee stage of the debate, but I think it is worth pointing out for the record, as my colleague just did, the submission that has been provided to us in time by the Law Society, which has taken the time to ensure that we are all equipped with as much material as it can provide us with in the time available.

I note that there are amendments on file. I note that there are amendments being filed as we speak. I note that I have just received an amendment. My initial glance at that amendment would suggest that it is probably in line with the Law Society's submission. I may be completely wrong, because I have not had the opportunity to read it in detail as yet, but what I would urge the government to do at this point is to continue to work collaboratively with us and work through these issues.

If there are serious concerns that have been raised, particularly in relation to the commercial leases, particularly in relation to whether or not we are following the mandatory code of conduct as we should be or whether we are leaving things out of this legislation that could otherwise be incorporated, then I would urge the government to give appropriate consideration to those amendments in light of the feedback that we have received, particularly from the Law Society.

They have gone to some length to point out that they think this bill and the proposed regulations do not go far enough in terms of the code. They do not go far enough in terms of reflecting the code and addressing uncertainties for parties trying to negotiate commercial leases during COVID-19. The Law Society have made it clear that they think the regulations need to be amended. They say that needs to be done to direct the parties to negotiate and agree upon relief in accordance with the code. We know from the briefing we have received that some of the provisions in the code have not been included in this bill.

I will make the point, Mr President, because I think it is important not just for you but for all members, that we are leaving a great deal of what we are dealing with to regulations. We are relying heavily on regulation-making powers. I just make the point for all members that I already have a number of meetings scheduled today, tomorrow and next week with ministers and their staff in relation to regulations that were made under previous COVID-19 bills, and that is because some of them fall short of what we agreed to in this chamber. Obviously, they are the subject of consideration by the Legislative Review Committee. I will obviously not discuss that because I cannot, but I make the point because when we are relying on regulations, we are also relying on the government to get it right.

It would appear in some instances that there are questions that have arisen. There are questions that I have raised from when we first received those regulations and the reports. Most concerning is the fact that the advice that we have received back to date, not through the committee process—I will not speak to that process—but through the briefings, has been inconsistent. The advice that we received back from the Attorney's office in relation to the coverage of those regulations, initially, was that what we thought was problematic was not a problem at all. Up until the briefing that we had on Monday or Tuesday—I cannot remember which day it was—the advice remained that there was no problem with the regulations.

Later that day, that advice changed. In relation to the specific instruments that I have been alluding to, it does appear that there is a problem with them insofar as sunset clauses are applicable,

so I have now taken it upon myself to meet with those ministers and their staff to ensure that those clauses reflect what I think and what I am sure other members would think was agreed to in this place. That is the problem with relying on not only rushed legislation but also then rushed regulations. I am grateful to those ministers and their staff and the government, who have accepted that there are issues with the regulations and are working with us to address those.

I will not speak to all the issues. I note again for the record that there are amendments under the Planning, Development and Infrastructure Act that do not appear to be necessary in here and are questionable. There are obviously issues in relation to training and skills development, which the Labor Party has taken on board, and there are also issues I would say in relation to the savings and transitional provisions, which I have just canvassed in terms of the expiry dates and the sunset clauses that apply to them. Specifically, they are that, if a regulation is made under the COVID bill, then obviously it will expire. If it is made under a separate piece of legislation, then it is not clear that it will expire come the September date that we have set a sunset clause for.

I note also, in relation to the removal of children, that the Hon. Tammy Franks asked a question during the briefing about the extent of the consultation that took place. The guardian and Commissioner for Children and Young People have been consulted but the Aboriginal Legal Rights Movement have not. We have raised questions, and the Hon. Tammy Franks raised several questions. I think we got some understanding around the issue of what a place of residence is intended to be under the bill and the sorts of situations where a child is likely to be removed and placed back in their place of residence, as opposed to away from their place of residence. These are the sorts of things that we have been trying to work through in the very short time available to us.

It also is important to note those clauses because I think it gives rise to questions around custody agreements, particularly cases where there are no formal custody agreements. We know that the courts have been inundated during COVID-19 with applications regarding custody agreements. We know that they have now had to implement a fast-tracking system to ensure that those applications can be considered in a more appropriate time frame. When we have provisions that relate specifically to the removal of children and very little clarity around formal custody agreements, then that does also raise some level of concern.

There are lots of issues which we will have to work through in the next few hours, I suspect. Again, I just make the point to the government that we have all come here in good faith and agreed to work collaboratively with the government to get these changes through because we are talking about exceptional circumstances, we are talking about unprecedented passages of legislation. I would urge them very strongly to consider the amendments that are being put on the table and the reasons for those amendments, particularly in light of the feedback, albeit limited, that we have received and the problems that have been brought to our attention by those very limited means of consultation that have taken place, particularly with the Law Society.

With those words, I indicate that SA-Best supports the second reading of the bill but we will be giving due consideration to all of the amendments filed by honourable members.

The Hon. T.A. FRANKS (11:37): I rise as one of two Greens who will be speaking to the COVID-19 Emergency Response (Further Measures) Amendment Bill today. As other members of this council have outlined—although I note with the exception of a government spokesperson on this bill—we are facing another rushed piece of legislation. For those playing at home, we were offered briefings on this bill sight unseen either on Monday or Tuesday. Most members of the crossbench attended a briefing on Tuesday morning just before the parliamentary week commenced, and here we are two days later debating the bill.

The bill has ostensibly claimed to be putting into place some of the national decrees, but it has a range of other measures as well. It is definitely an omnibus bill. I know my colleague the Hon. Mark Parnell will be discussing at length, no doubt, commercial leases and those aspects. I have focused on my parts of the portfolio of the bill and raised some concerns in the briefing about schedule 2, the provision under 25A—Removal of children, which states:

> 25A—Removal of children
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> (1) Without derogating from section 25, an authorised officer may, for the purpose of ensuring compliance with any direction under that section, remove a child from any premises, place, vehicle

or vessel to a place of residence of the child or to a hospital or quarantine facility, as the authorised officer thinks fit (and may, in doing so, use such force as is reasonably necessary).

(2) In this section—

child means a person under 18 years of age; place of residence includes, in the case of a child who is in the custody, or under the guardianship, of the Chief Executive under the Children and Young People (Safety) Act 2017, any place directed by that Chief Executive.

My initial question was: why are we doing this? What is the need for the police to have additional powers to remove a child under the age of 18? To that, the response on Tuesday morning and followed up in writing was, 'The police want it. The police have asked for this and they want it.' The following questions were: why do they want it? What do they want to do? How do they propose to implement this? What is the need for this new measure identified under the pandemic? To date, we are still waiting for a why.

As the Hon. Connie Bonaros mentioned, I also asked who had been consulted in regard to the particular provision. I was told SAPOL was consulted, which is unsurprising given they want it. Certainly, one would have imagined the question that might have been asked in that consultation is why they want it, but so far, we do not have that really substantial level of detail. One would imagine that question would have been asked far earlier in the process than at a crossbench briefing on Tuesday morning. We were also told, though, that the guardian and the children's commissioner have been consulted about this provision, so my first question to the government is if they can please provide the response from that consultation process because we have not seen that as yet.

A group that was not consulted and that I spoke to this morning is the Youth Affairs Council of South Australia (YACSA). Their immediate concern, as we have been raising under this pandemic, was that children often are not safe at home. Children are often not in their place of residence because there is violence in their family home or sexual assault and abuse. I would like the government to respond how they have accounted for those concerns raised by YACSA and to explain why they did not talk to YACSA about this particular provision.

As somebody who grew up in a family where the home was not safe, under this pandemic, if I was still a teenager, I would have my physical safety at risk right now from provisions such as this. Is the government really purporting that a child's safety is to be put at risk by enabling excessive police powers to remove them back to a place of residence that may well not be a safe place?

We will cover further questions that were put on notice to the government when we get to that particular amendment. I note that they have been circulated in writing and I hope that they have also been circulated to the Labor members as well as the crossbench in terms of the response to further questions on that police removal power.

YACSA quite rightly also raised why is the prescribed precinct power not adequate if, for example, as I suggested on Tuesday, the government and the police are perhaps concerned about skate parks, gatherings outside schools after school or at the Rundle Mall Mall's Balls outside the newly opening shops? Perhaps this is the issue that we are seeking to remedy here.

In terms of the powers, one assumes that they are in regard to gatherings, but if the government could clarify that because it certainly has not been made clear to date what exact need the police have to remove children. Is it only from public places? Has some other need been identified? If this is pretty much a playground, skate park, Burnside pump track type of provision, then where has it been proven that, in fact, these children are gathering in dangerous numbers?

I note that in schools, we do not mind children gathering without social distancing, and I note that as they leave schools, they will be gathering in large numbers to catch the bus or the train home, possibly to get on the Gawler line and again to possibly break the directions on social distancing and gathering through no fault of their own. There has been no explanation why suddenly the police need these extraordinary powers applied to children. For the government to bring this before us in a rushed way with no consultation provided other than that the police want it is not only inadequate, it is reprehensible.

I have sought to delete that clause in an amendment to this bill, and I say to the government that if it is necessary then bring it back in three weeks' time with the appropriate consultation done, with the evidence that shows it is required, and then we can have a reasonable and rational

discussion with the government in this place. I am sure that all members would facilitate that. Do not have a lend of this parliament by rushing this sort of legislation through when you have not identified a clear need for it.

Another area about which I have some questions for the government and that I would like to highlight today is the human biosecurity emergency declaration impact on the South Australian community, with particular attention to Davenport community. Davenport Aboriginal community is just a couple of kilometres outside Port Augusta. Both myself and the Hon. Kyam Maher, in a previous incarnation of this debate in one of those other rushed bills, raised our concerns that Davenport community was not consulted before coming under the Biosecurity Act and the extreme provisions of restriction that that entails.

Imagine if in the suburb of Burnside suddenly people put up fences and there was a penalty of $63,000 if you went to the wrong side of the street, but nobody had even bothered to tell you that this was going to happen. You woke up one day to have bollards and a boom gate and 24/7 patrols at the end of your street, and no consultation was done to find out whether or not you needed to get your kids to the other side of that road to go to school, whether you had health needs, whether you had a heart condition, whether you needed dialysis, or how you were going to get food from the local grocer.

In that community, there is no school, there is no store and there are no ongoing health services. It is a very different community from that, for example, of the APY, which is far more self-contained, but what was seriously concerning was the lack of consultation with the residents who live in that community about their day-to-day needs and their day-to-day lives.

I am very pleased to see that the Davenport Community Council has actually lifted the restrictions and requested to be removed from the Biosecurity Act. They posted on 12 May (Tuesday) that until they have official notification from the state government, while the Biosecurity Act has been requested to be lifted, the community continues to remain closed until they have that certainty.

My second question for government—and I have flagged this with the Minister for Health and Wellbeing, so it is not unexpected—is to outline what process applies now. My understanding is that the state government now has to contact the federal Minister for Health, Greg Hunt, and make a request. I note that already two communities in South Australia have successfully removed themselves from the Biosecurity Act, so it is not that this is unprecedented. In fact, this will be the third community to remove themselves from the Biosecurity Act.

But where is that process? Has the state government contacted the federal Minister for Health? How long will the approval take for that federal determination to be made? At the moment, Davenport residents had written petitions, and had in many numbers from many families—not just one family, but many families—expressed a range of concerns about how they were to access the basics of life. It was even to the point that they could not get their mail, let alone food, education or health services, or attend their jobs.

In fact, I know of at least two community members who have lost their jobs as a result of this particular restriction being imposed from on high without consultation, by the community council agreeing with the state government's request. Could the government outline where that process is up to and put it on the record for the community residents of Davenport, who are now wondering whether or not they are subject to a $63,000 fine if they leave or enter their community under the inappropriate provisions that applied just a week ago?

It has been deeply disappointing that there are not lines of communication that are made clear by the government. I briefly addressed this yesterday in my matter of interest speech. I have been contacted by various human rights groups, including the Human Rights Law Centre based in Sydney, because they are concerned about some of the South Australian directions or lack of directions coming from the State Coordinator.

In other states, a contact detail for the State Coordinator or their equivalent is readily available. However, there are no direct contact details for the State Coordinator available on any of the sa.gov.au COVID websites. When I rang the COVID hotline last week after some great confusion and being told I should look at the website and then the person looking at the website themselves

and saying, 'Oh, yes, you're right; it's not on there,' I was told to ring 13 1444 because that is the non-emergency police number and, of course, the police commissioner is our State Coordinator.

This is entirely unacceptable. I note that when I made that point it was then suggested to me that I perhaps contact the police minister Corey Wingard. I found this also an unacceptable proposition. Then the manager took on the call and promised me that she would escalate this to the committee that addresses these issues with the COVID hotline and that my issue would be taken with urgency to that committee and I would be contacted. I gave my mobile phone number and I am still waiting for a contact detail for the State Coordinator to raise concerns about his directions.

There are no accountability measures being put in place here. I note that the website itself had broken links to the absolute basics: to definitions, for example, of what was deemed to be essential. Given we are now in a world where 'essential' looms large in our lives in terms of our movements and activities, the fact that when you clicked on the link for the website and could not see what was deemed essential should be ringing alarm bells for this government about how well they are implementing their emergency response. I do not doubt that people are working incredibly hard but we do not have the same level of scrutiny happening that the New South Wales government ensured and has put in place. We do not have the same level of accountability that other states have implemented.

As the Leader of the Opposition noted, I think this is the sixth bill but certainly the third rushed bill that we have seen. If we do not have those levels of accountability and transparency then really our patience and our trust will start to wear very thin. Those basics need to be in place to ensure that these extraordinary powers that we keep being asked to provide for, that already have been approved—in fact, the last piece of legislation allowed the suspension of any particular law of this state. Why they are not being done in a more transparent way through directions is certainly a question that begs to be answered.

Our patience is wearing thin. For what purpose do the police need to remove a child? That has not been established or responded to. I look forward to not fulsome answers, because people keep misusing the word fulsome in this and the other place, but frank answers to that question, honest and transparent and truthful answers to that question, and a response as to why it is not accommodated for in other pieces of legislation that already apply, and why it is necessary. It is the most basic question a parliament can ask when a government introduces a law: why are we doing this? And the answer should be provided.

With that, I look forward to the committee stage. I certainly have significant concerns that we are not engaging in good practice with lawmaking in this place. I note that we are rushing this bill through this week because in fact just last week the government issued a new sitting schedule, so we have put this upon ourselves by now having a longer period of time between this sitting week and the next. If this bill was so necessary, why did we not keep the additional sitting weeks that were to come?

The Hon. M.C. PARNELL (11:54): I, too, rise to support the second reading of this bill. I will start by associating myself with the remarks of my colleague the Hon. Tammy Franks in relation to improvements that we believe should be made to the process in relation to these emergency bills. Some similar comments were made by the Leader of the Opposition and I think both honourable members are on the mark. We have bent over backwards to suspend our usual processes, to put other work aside, to prioritise these bills and yet what we see is when we dig deep we find the government actually did have the capacity to talk to us much earlier in the process than they did.

At the risk of being seen to be too much of a pedant, I did note that it was only after contributions on this bill had commenced that the copies were distributed in the chamber. Certainly, we had electronic copies two days ago, but I am just making the point that in normal circumstances no-one would accept the fact that debate could commence on a bill without the bill actually being distributed in the chamber. These are remarkable times—unprecedented; I think I have heard that word a few times—and we are bending over backwards to assist because we are here to act in the best interests of the state.

Whilst I have not formalised my personal decision-making matrix and the Greens have not formalised one, I do not think these will be contentious, but the way I look at this bill, as other bills

that relate to the COVID-19 pandemic, the first thing I am looking for is: does the bill and every part of it have a genuine connection to the pandemic? The subsets of that question are: do the measures in the bill help keep the community safe? Do the measures help people to get through this crisis economically? Does the bill help in the recovery of communities and the economy? Does the bill involve necessary economic stimulus?

The Greens, as other parties, have been supportive and we have been constructive and have allowed these bills to go through with minimal changes. As more than one member has said, in normal times we would not do this, but we are doing it in the best interests of the people of South Australia. However, despite our willingness to suspend usual processes, we are not going to suspend our scrutiny of this legislation to the extent that we can in the time available. If we were to take any other position, there would be very little reason for parliament to even sit. We will do the best we can with these bills in the time that is available to us.

As other members have said, what we need to look for as we are scrutinising this bill and others is unintended consequences. We are looking for examples of overreach and, in my case in particular, I am looking for examples of where the government is actually pursuing another agenda under the guise of COVID. Sadly, I think this bill contains some elements of that latter point, that there are some things in here which are more reflective of a broader government agenda than they are directly necessary or relevant as a response to COVID.

I want to speak briefly in relation to just one aspect of the bill now—we will have more to say in committee—and that is the bits that relate to the planning system. What I will say is that I am going to tone my remarks down a little bit from what I had originally prepared to say because I did have the advantage of a brief chat with the planning minister in the corridor as my colleague the Hon. Tammy Franks was on her feet and he indicated that the government was supporting some of my amendments. The Hon. Clare Scriven has indicated to me that the opposition is supporting some of these amendments as well, so I will not labour those points, but I will go through why I have moved the amendments that I have.

I will do them in detail in the committee stage, but just now, briefly, they relate, in the main, to section 49 of the Development Act. This is basically a pathway for approving development that has changed a bit over the years and now, in my view, no longer resembles its original purpose. The heading of that section is 'Crown development', and the rationale goes like this: if the government wants to do things, then surely the government should be able to do them without having to go through the same assessment pathway as a person wanting to built a rumpus room or a garage.

In other words, government projects should be treated differently and should in fact get special treatment. So the regime for section 49, if the government wants to develop something, the decision-maker is the Minister for Planning and the Minister for Planning is not obliged to follow the same planning rules that everyone else does. If the Minister for Planning wants to make a decision on a government project that is completely at odds with the planning rules that everyone else has to comply with, the minister can do that. That is section 49.

If you are in government you might say, 'Hear, hear, that's how it should be; it's a government project, we're just going to do it, and we're not going to let the planning scheme, zoning or anything like that stand in our way.' The reason I say that section 49 has changed is that over the years the government has vacated the field in relation to a lot of areas that were traditionally only ever done by the government. A classic example, raised here often, is the power network.

The power network used to be that the government made the electricity at a government-owned power station, the government transmitted the electricity on publicly-owned poles and wires to the cities, towns and regions and the government then distributed that electricity through publicly-owned poles and wires, and in fact the government dealt with you as a customer through a publicly-owned energy retailer. Everything from whoa to go was in the public realm.

Now, of course, we see that the government has almost entirely vacated the field, and each part of that process is now in the hands of the private sector. But, what that has meant for section 49 is that over the years various governments have said, 'Well, when we say "Crown development", we don't mean that the Crown actually does the development itself, but it is sort of anything the Crown

used to do in the past.' Provided there is a government department that is prepared to sponsor, if you like, a private project, then that will also get the benefit of this fast track section 49 process.

So people look at section 49 of the Development Act (I am sure most people sleep with it under their pillow, as I do) and they would see the heading 'Crown development', and they would say, 'Oh, that is just government projects; we understand that they get special treatment.' But I can tell you that new fossil fuel-fired power stations are dealt with under section 49. There was some private railway works I remember 10 years ago in which I was involved; they were all done under section 49.

A private company dredging the commons so that bigger ships can come in were all processed under section 49, not because they were government projects (they were private projects), but because that was the sort of thing the government used to do, and they have extended that privilege of special treatment to these private companies.

So section 49 is important, and the important aspect of section 49 is that, even though the minister makes the final decision, even though no-one is allowed to appeal against anything the minister decides, what we must hang on to is at least the ability for people to engage in the process with their submissions, with their comments, and we must also maintain their right to eyeball not the final decision-maker—you can always eyeball the minister, if you can get an appointment—but eyeball the State Planning Commission who is, if you like, the gatekeeper between the applicant and the decision-maker.

The right to go along to a hearing: I went to a hearing a couple of years ago up at Mallala with a new gas-fired power station being proposed—lots of other residents came as well. So, we have to hang on to those rights: the right for the public to engage and also the right for the local council to engage. These are government or private developments, nearly always in our local council area, yet what the government was proposing in this bill was to say, 'Well, you don't even need to consult with the local council—they're just not part of the process any more, let's just rule them out,' and that was completely unacceptable.

So I put a number of amendments forward. I will talk to them in detail later, but one of them was—and this was a compromise the Greens were prepared to accept—that, if the government is worried that these projects take too long to process and to assess, why do we not look at the time frames rather than trying to rule out local councils altogether?

The government was concerned that these projects are sent to local councils and local councils have two months to decide whether they want to make a comment or not. In normal circumstances that might be quite reasonable. These are often very large projects. They are often very complex. But if the government is worried about two months being too long, let's trim that.

My amendment trims it down to 15 business days. I did not pluck that figure out of the air. The government was not proposing to interfere with public consultation for which the time period is 15 business days. So, in other words, if you reduce the council's consultation period from two months to 15 business days—the public already has 15 business days—the council is consulted simultaneously with the general public and you have absolutely lost nothing. In fact, you have gained one and a bit months—two months down to three weeks, effectively You have saved five weeks.

The minister has told me the government is prepared to accept that. The opposition is accepting it. I do not need to go any further. That is a good outcome. The importance is that, by leaving the local council in the process, what the act says is, if the local council is really unhappy with one of these private or public Crown developments, the local council's concerns must be put before the minister. The minister must have regard to the fact that the local council does not like this project. It does not mean the minister cannot ignore them. The minister can, but the minister at least has to consider their submission.

The other thing that is important—and I might check this with the clerks later—is a provision that says that, if a local council does not like a project and tells the minister, 'We don't like this project' and if the minister says, 'Well, thanks very much, but I disagree with you. I'm going to approve this project anyway,' the fact of the council's disagreement must be tabled in parliament.

I do not recall having seen one for a very long time, so I do not think it happens that often, but I will check and see. It is possible that, when ministers give notices and lay papers on the table, there are some snuck in there. I do not recall seeing one for a very long time. But it is an important part of the checks and balances because what it says is that this parliament will be told if the Minister for Planning is approving projects that the local council is dead against. At least we get that information. We have the ability then to ask questions about it.

Another aspect of my amendments that has not found favour with the minister, and I suspect not with the opposition as well, is the threshold for public and council consultation. The threshold for these projects—as I said, they are mostly government projects, but a lot of private projects are in there as well—has been $4 million and $4 million makes sense because that is the threshold for the Public Works Committee. They have to consider all government projects over $4 million, so it makes sense that that is the threshold for section 49 of the Development Act.

The government is proposing to raise that to $10 million, so, in other words, in a worst-case scenario, any private project that has the support and sponsorship of a government department that is valued at, say, $9½ million, can be approved by the minister without seeking any input from the public or from a local council. Basically, that is the worst-case scenario under this bill because they are increasing the threshold from $4 million to $10 million.

When we asked in the briefing what particular projects the government had in mind for effectively fast-tracking under this regime, the response we got back was that there was no list but there were a few projects. I think they identified these because they thought, 'Who could possibly disagree with them?' They were some performing arts centres at some schools. I guess they fell into the category of shovel-ready projects and the government assumed, 'Who could possibly object to a performing arts centre at a school?' I had a quick look at the public register. The ones I found were: one at Para Hills High School in Salisbury, one at Hamilton Secondary College in Mitchell Park, and one at the Ocean View P-12 College in Taperoo. They were the ones that I found.

Again, I do not know the merits of those projects. I am a great lover of the performing arts. They sound like they are possibly great projects. But what I would just remind members of is that the last time we had a stimulus program that involved schools, there was funny business afoot. There is one example I remember. If members recall, school halls were the poster child of the recovery. 'We're going to build school halls.'

There was one school, a private school, that had wanted to build a hall for some time. Their plans were inappropriate: they were too close to the neighbours, they did not have the support of the community and they did not have the support of the local council. So, what did they do? Having had their application rejected, they just waited until the stimulus package kicked in and then, all of a sudden, under the fast-track arrangements they got their building. That is the sort of problem that we need to make sure we avoid.

The other aspect of my amendments relates to another section of the Development Act, section 35, and this is in relation to types of developments that are called 'noncomplying'. I have given examples in the past. No offence to the good people of Burnside, but if you want to build an abattoir in the residential streets of leafy Burnside, quite rightly that project would be classed as noncomplying; it is not something that was envisaged in the development plan. Similarly, if you want to build a 20-storey skyscraper at Seaton, it would be noncomplying. It is not something that has been envisaged, it is not something that people want, so it is a noncomplying development.

Under the current rules for noncomplying developments that are being approved by a government agency like the SA Planning Commission, the local council has to agree. There is a concurrence provision. It says, 'You can't build one of these things that is completely out of the imaginings of the planning scheme. It is not something that's ever been envisaged. We're not saying that you can't build anything that is not noncomplying, but you've got to have some checks and balances,' and the main check and balance is the local council has to agree.

It may well be, with some of these projects, that they are good projects and they deserve to be supported; they just have not found their way into the planning scheme because no-one thought that anyone might want to do that in that location. So not all noncomplying developments are bad,

but at least you have to go through more checks and balances to make sure that they are appropriate before they are built.

What this bill seeks to do is remove that ability for the councils to provide concurrence, but it does not just move it for the duration of the pandemic; it removes it forever. It is a permanent change to our planning laws that writes out local councils from the process—they now no longer have a role in decision-making—and it does that forever. That falls into the category of overreach. We know it is ideological because it is a regime that in maybe less than a year will be coming in anyway as part of the new planning system because of the new planning and development act.

Councils basically said to me, 'Well, we lost that debate a little while ago.' Well, I am keen to hang onto it for as long as we can because I think, with noncomplying developments, you should have that local council requirement for concurrence. I understand the government is not supporting that one. I will doublecheck with the opposition on that one. It does clearly fall into the category of ideological opposition on the back of COVID that I do not think merits support in this bill. So that is the third of my amendments.

The other thing that I might say at this stage, just in passing and in conclusion, is that the test that I outlined before about the lens through which we look at these acts is also the lens through which we examine regulations. Later on this afternoon, when we get to the appropriate time on the *Notice Paper*, I will be moving to disallow some development regulations that fall into the same category, in my view, of overreach.

I do not need to say any more than that now—that is a matter for later on—but I will be giving notice today of an intention to move disallowance of some further planning regulations that I think fall into the category of overreach. With those remarks, I will be supporting the second reading of this bill.

The Hon. R.I. LUCAS (Treasurer) (12:15): I thank honourable members for their contribution to the second reading of the bill and I acknowledge, to use a word the Hon. Mr Parnell used, the unprecedented nature of both the pandemic and our parliamentary processes as we consider yet another COVID-related emergency piece of legislation.

One specific issue the Hon. Mr Parnell referred to is the late arrival in the chamber of the bill for our debate. The explanation for that, I understand, is that whilst we did have electronic copies a couple of days ago it was actually amended in the House of Assembly and had to go off to the printer. I think the amendments moved by the opposition and agreed to in whole or in part by the government had to be incorporated into the government's original bill. That is the explanation the clerks have provided me with.

In addressing the bill, I say at the outset that, given the complexity of the legislation as consistent with the omnibus bill or the COVID (1) bill, if I can refer to it that way, where it traversed a whole range of different areas, in terms of the committee stage of the debate it may well assist if we can compartmentalise questions, debate and consideration of amendments, etc., into the various sections of the bill.

I know in a number of the bills we have had an all-in in clause 1 and then sometimes in part replicated that debate as we have got to the specific operational clause. It is entirely within your hands, Mr President, as Chair of the committee, and also those of members of the committee, but I think that might assist the process, which may well take us some time today. It is ultimately up to you as Chair and to members of this chamber. I will be responding on behalf of the government based on advice from differing offices, so it will be easier if they come in chunks; that is, for those that relate to the planning area I will need somebody with some knowledge of planning, or certainly someone with more knowledge than I have of planning, and similarly with the other areas.

I understand there is one area where another minister will come down to respond. I think the Hon. Ms Franks has had a discussion with the Minister for Health in relation to some issues that she has raised. The Minister for Health has indicated that as long as we can sort out a particular time that is of convenience to the Hon. Ms Franks, the committee stage process and to the Minister for Health in terms of his daily public commitment—although that might be earlier today—he will come down and handle those specific questions the Hon. Ms Franks has in relation to Davenport. As I understand it, he has had some detailed involvement with the issues that are of importance to the

Hon. Ms Franks and, indeed, some other members as well. With that exception, I will handle the other questions.

In relation to the bill that is before us, acknowledging the shortness of time that all members have had to consider what is important legislation, from the particular area where I have had the greatest involvement, which is of course the commercial leases area, I place on the public record that there is extraordinary pressure building in the community for a resolution via the parliament on this particular issue of commercial leases, from both the landlords' viewpoint and from the tenants' viewpoint, as well as from a range of other stakeholders: banks, financial institutions and, indeed, others as well. The government will not be in a position to *Gazette* the regulations, which will provide the rules, until (or if) the parliament passes the legislation before us.

So the structure of the bill, as I will highlight later, is consistent with what is occurring in most other jurisdictions. That is, the parliament gives a broad regulation-making power and the operative sections of the short-term commercial leasing arrangements in New South Wales and Victoria and some other jurisdictions have essentially been packaged into regulations. That gives the capacity for quick and flexible response, if it is required on occasions, to amend a regulation or regulations if there happens to be a particular issue. Given that we are two months into what was originally estimated to be a six-month emergency period potentially, time is obviously of the essence. Whilst that may or may not be as critical in some of the other aspects of the bill—and we can have that debate—on the issue of the commercial leases, there is considerable pressure.

At the outset, I agree with the comments of the Hon. Ms Franks, I think it might have been, or the Hon. Mr Parnell—and that is perhaps not surprising given my great sympathies with the Greens and their views on some issues—that it is incumbent upon the government to answer the question as best as it can as to why we have introduced various provisions. I do not disagree with that as an essential principle. In the end, whether the majority of the parliament agrees with the reasons for that is entirely a decision for the majority of the parliament, but I accept the threshold principle that has been established by one of the two members of the Greens. That is, if the government is trying to put something in there in terms of emergency legislation, it should at least give an explanation as to why it is urgent and cannot be considered at a later stage.

In relation to the commercial leasing provisions, I put now and will put again later that there is a very powerful case as to why that has to be resolved because there is already considerable pressure from landlords, tenants and others to resolve exactly what the rules are going to be so that the Small Business Commissioner, who I have had regular conversations with, can have his riding instructions in terms of how we might resolve ongoing issues of dispute. So I accept the threshold principle that was established. It is for the government to at least put on the record the reasons why something has to be resolved now, and then it is ultimately up to the parliament as to whether it accepts that as a sufficient justification or not.

In relation to the commercial leasing provisions, I want to address comments in relation to that because, from my viewpoint, as I said, it is the most critical area with which I have had association over recent times, together with the Attorney-General and many other areas. The first point I would make in relation to this area is a point I made briefly earlier, and that is that the structure and approach we are adopting is the structure and approach that is being adopted by a majority of other jurisdictions—that is, a broad power within the act and then the operative provisions being actioned through actual regulations.

What I can say is that there are still two other jurisdictions, the Labor government in Western Australia and the Labor government in Queensland, which are still wrestling with this whole area. They have gone out to a consultation period and they are still to resolve what their final position will be by way of legislative change or regulatory change in those particular jurisdictions. But what the Western Australian Treasurer has confirmed to me and all other treasurers and, to be fair, the former Queensland Treasurer confirmed to me on behalf of the Queensland government—and as I think members are probably aware, there has been a recent change in terms of the holder of that position in the Queensland parliament.

Every state and territory Treasurer—Labor and Liberal, even including the two who have still not brought down their position but they nevertheless agreed with this premise—has agreed that they

will not be implementing the national mandatory code that was announced by the Prime Minister. That is, every jurisdiction, state and territory, Labor and Liberal, has indicated that they will not be implementing the national mandatory code word for word.

They have all indicated, as indeed we have, that they sought to adhere to and honour the essential elements of it. New South Wales has said they 'seek to give effect to'. One other jurisdiction has said similar words to us—that is, 'have regard to' the national code—but every state and territory treasurer, including the two Labor treasurers who have still not finalised their position, has nevertheless agreed with the view that they would not be implementing the national code as it was announced by the Prime Minister.

I note that I have had correspondence from the Leader of the Opposition on behalf of the Labor Party that they supported the national code and wanted it implemented. I indicated that the government had a different view. I note also that a number of members have quoted the correspondence from the Law Society. They have indicated their belief that the national code should be implemented. I suspect they are probably coming from the position that this was announced by the Prime Minister, and they may well have an understanding or an expectation that all jurisdictions were implementing the national code word for word. I do not know that to be the case. I can only take the letter as it has been written, but it nevertheless says the government should be implementing the national code.

I will address in greater detail during the committee stage our views in relation to aspects of the Law Society letter, because that has been quoted by others, but I think the areas where they have disagreed with what the government is doing are on the premise that we should be implementing the national code as it has been announced. As I said, that is not an unreasonable position for them to have adopted. I make no criticism of that, but I just think that members need to be aware that the government, for the reasons that I will outline, together with every other state and territory government, decided that whilst we will have regard or give effect to the essential elements of it, there are some provisions that in our collective view are impractical and incapable of implementation.

I will give one simple example to the lawyers in the congregation. It talks about binding mediation. I am not a lawyer, as I often say, but I have no understanding of what binding mediation is. Mediation, to me, is an attempt by an honest broker to resolve an issue between two conflicting parties. Ultimately, if you cannot mediate a result, someone then has to make a decision. A binding mediation, depending on how you want to interpret 'binding mediation'—and I do not know—seems to be a contradiction in terms.

The national code requires binding mediation. It makes specific reference to small business commissioners or their equivalents, all of whom, in most jurisdictions are, I assume, a bit like ours, where the Small Business Commissioner has the power to mediate and seek to resolve and may well have the power to demand documents, etc., but in terms of disputation between parties, seeks to resolve the issue.

The process that we are suggesting here—and most of the other jurisdictions are doing the same—is not to use the mediator to make binding decisions. In essence, you have to go through the mediation process if you cannot reach an agreement, but ultimately if you cannot have the Small Business Commissioner, or the equivalent in each other jurisdiction, you have to go somewhere else to have a final decision taken, in our case the Magistrates Court. In a number of other jurisdictions they use a similar court. Some of them use the equivalent of our SACAT, for example, as the decision-making body that makes the final decision.

We think that whilst it is inconsistent with the national code, it makes much more sense in terms of trying to resolve commercial leasing disputes. In the first instance, we wholeheartedly agree with the Prime Minister and the national cabinet. Hopefully, a large majority of landlords and tenants in good faith will negotiate an acceptable arrangement between themselves. If that cannot occur, there is a requirement to go through a process of mediation, in our case the Small Business Commissioner, and we can talk about that. However if, ultimately, the Small Business Commissioner cannot resolve the dispute, someone has to make a decision, and the structure we are proposing is the Magistrates Court for a decision.

As I said, most of the other jurisdictions that have publicly announced their position have headed down a similar path. There is not a binding mediation with a decision coming out of the Small Business Commissioner. Ultimately, if one of the parties refuses to engage with the Small Business Commissioner or their equivalent, in our case the Small Business Commissioner will issue a certificate that says that one of the parties has refused and in the end it will have to be resolved in the Magistrates Court. We hope they will be few and far between, but that is entirely possible.

The second point I think we have to bear in mind is that we have had, as a government, strongly differing views about how these issues ought to be resolved. One of the facts that we have to accept is there are poorly behaved landlords but there are also some poorly behaved tenants. Sometimes the poorly behaved tenants may well be very big corporate entities. The point that some landlords have made to us is, 'Don't just assume that it's the landlord in the dispute that always has the power.' It may well be that a big corporate giant—and this is public, Solomon Lew had a range of outlets that he just closed down, a whole series of his tenancies right across Australia. I am not sure where it is now but at varying stages he just refused to pay any rent for a six-month period and basically said, 'Hey, we're all closed down and we're not going to pay any rent.'

There are some cases, of the Solomon Lew type, that may well be up against a very big landlord, an equally big corporate giant, but in many cases their outlets may well be in smaller suburban shopping centres where the landlord may well be a small or medium-sized entity or a landlord where he or she may well own just the one premise or a small number of premises. We have to bear in mind that the power imbalance is not always that the landlord is much more powerful than the tenant. In some cases they are equal, but in other cases the tenant has much more power in terms of these negotiations than the landlord.

That is one of the other factors that all state and territory governments have recognised in why they have moved away from the rigid and defined certainty that seemed to be evident in the national code. There is a view, which we agree with in South Australia, as a government, that there is a power imbalance but it is not always one sided, and it is impossible in legislation to dictate a one-size-fits-all provision which covers all the circumstances.

The other example of that which I will give again comes back to the Law Society's submissions to us in relation to proportionality, and it is the subject of the amendment that the Hon. Mr Maher has flagged on behalf of the Labor opposition in terms of proportionality. There was a view from the Prime Minister and the national cabinet in what came down that there was a sort of automatic proportionality between the loss of turnover and the loss of rent and the impact on the landlord and, therefore, in some way if there has been a 50 per cent loss in turnover, there should be a 50 per cent reduction in the rent—some sort of automatic proportionality—or it should be given very significant weight in the nature of the amendment that the opposition is flagging with us.

Anybody here who has either been a tenant or a landlord, or has had experience with it, will know that there are literally thousands and thousands of different arrangements in relation to leasing arrangements. A landlord may well be the oft-mentioned mum and dad investor from last year who has accumulated a number of properties over a period of time, no longer has any debt or mortgage arrangements in relation to it and is relying on that income as their sole or significant source of income upon which they live from year to year.

On the other hand, there will be some landlords who are significantly mortgaged to their bank or financial institution in terms of how they are financing their particular property. The notion that a 25 per cent or 50 per cent reduction in turnover automatically transposes in all cases, or in most cases, to a 50 per cent reduction in rent, and therefore a 50 per cent reduction in net income, is fanciful because there are all these different arrangements in relation to the financial arrangements which back the landlords and the leasing agreement.

The Property Council and a number of other individual landlords have produced to the government and to others who are interested in this particular debate examples of where a 25 per cent reduction in turnover leads to a more than 50 per cent reduction in net income to the individual landlord. So there is no direct proportionality at all—25 per cent/25 per cent, 50 per cent/50 per cent. They have produced evidence, which clearly demonstrates in examples that they have produced that you just cannot assume that a 25 per cent reduction in turnover should

automatically transfer into a 25 per cent reduction in rent and that 25 per cent reduction in rent would only mean a 25 per cent reduction in net income for the individual landlord.

As I said, in certain circumstances, if you use that proportionality principle, it is more than double the impact on the net income of the particular landlord, depending on how they are financed and depending on how they are structured. We can go into a lot more of those sorts of details during the committee stage, but I flag that example prior to the lunchtime break in question time, because those members who are interested in them—and we obviously will not be supporting the amendment being moved by the Leader of the Opposition in relation to the proportionality for those reasons, the reasons that I am giving. But I think members need to just think through the issue of, in essence, the pre-eminence of the principle of proportionality as espoused in the national code and its applicability in relation to trying to settle sensibly a whole range of different circumstances in South Australia.

It is our view that the Small Business Commissioner is well aware of the national code and that the Small Business Commissioner, if he has to come in to try to mediate these particular disputes, can take into account that particular guideline. He is not mandated to, he is not required to, but he can take it into account. But he has the absolute flexibility to look at the different circumstances and if he is convinced that the use of proportionality would mean a massively bigger reduction in the net income of the landlord, he is not required to follow that particular principle, and he does not have to use the device—and actually I think in the Labor Party's amendment it is not really the Small Business Commissioner, it is the Magistrates Court—and that it is only in exceptional circumstances that you should be able to deviate from the proportionality principle.

With great respect to the Prime Minister and to the national cabinet, we just do not think that the practical implications of proportionality have been properly thought through in terms of trying to resolve these particular disputes. The reality is, it is the states and territories that have to implement commercial lease legislation. It is not an issue that the federal government have an active engagement in; nevertheless, the national cabinet saw this is a critical issue, and it is, and the Prime Minister drove a particular view in relation to it.

We are adhering to essential elements of that, so things like if there is to be rent relief through the process, 50 per cent of that should be by way of waiving rent and 50 per cent of it should be deferred. It is true to say that the national code says that it should be for a period of no less than 24 months. We have taken a different view from that: we believe a period of up to 24 months, and allowing the Small Business Commissioner and/or the Magistrates Court to work within those provisions.

A period of not less than 24 months is pretty tough on some small mum and dad landlords. If, ultimately, the decision that comes down from the Small Business Commissioner or the magistrate is—let us say they are going to lose $10,000 rent a month (or whatever it is) and $5,000 they have to give up as a waiver, that is, they do not get it at all, and the other $5,000 they do not get back for at least two years because it is deferred, then what does the mum and dad investor do for two and a half years? They have lost that particular amount.

That is why we think that saying to the Small Business Commissioner and the magistrates that they have a period of up to 24 months is a much more sensible course of action. The Small Business Commissioner or the Magistrate's Court can say, 'Okay, you're a landlord, you're sufficiently well set up to be able to defer this up to 24 months.' In some other cases the landlord may well be able to make a persuasive case that says, 'Look, I'm going to be bankrupt in six months; if I've got to give up 50 per cent of my rental income, and I've got to defer the other 50 per cent for no less than two years, I'm going to be bankrupt.' It is that sort of flexibility we think that the mediator, through the Small Business Commissioner, should have to say, 'Okay, in that circumstance it will be six months.'

In another circumstance it might be up to two years, and we think that is a reasonable compromise, but, yes, the Law Society highlights that as where we are differing from the national code. I think we should just accept the fact that we are different from the national code and we need to, in essence, agree with where we are differing from the national code, or not. We are not going to be implementing the national code because we think some aspects of it are impractical and are incapable of quick resolution of what are going to be, potentially, a significant number of ongoing disputes between the parties.

There are a couple of other aspects of the national code that we are not choosing to implement. There is one that requires the ongoing appointment of, in essence, an advisory committee, the codes administration committee. We are not aware of whether any other jurisdiction is doing that as well. We are essentially two months into hopefully no longer than a six-month emergency period; we need to get on with it. This parliament needs to make a decision one way or another whether it supports the government's attempt at a reasonable compromise in relation to these issues, and then allow the Small Business Commissioner and the Magistrate's Court to get about the difficult task of resolving most of these issues.

Another committee that opines on the merits or otherwise of what is going on whilst we are trying to resolve these particular issues, particularly given that we have potentially only up to another four months, then that in our view does not make sense to incorporate that and we have not incorporated that. Again, that is something we have not picked up in the national code.

There are a small number of other areas where we have not picked up the elements of the national code, but there are a significant number of elements of the national code that we have picked up: that is, not allowing tenants to terminate leases; the code applies to 30 September or implements the national code arrangements; rental waivers; and the 50 per cent issue is very significantly implemented in this proposed package that we have.

Regarding the issue of no fees, interest or other charges should be applied with respect to rent waived, we have adopted that in respect of rent deferral. Landlords must not draw on a tenant's security for non-payment of rent—we have adopted that. The tenant should be provided with an opportunity to extend the lease for an equivalent period of the rent waiver or deferral period—we have adopted that. Landlords agreeing to a freeze on rent increases, except in certain circumstances—we have adopted that. Landlords may not apply any prohibition on levies, any penalties, if tenants reduce opening hours—we have adopted that.

One of the other ones that was heavily contested—and I should refer to this—is limiting this coverage to tenancies with a less than $50 million turnover. We have adopted that. That was quite controversial. The Property Council, to be fair, wanted that $50 million figure. They believe that $50 million figure might be appropriate in the bigger jurisdictions of New South Wales and Victoria but that in South Australia we should reduce it because we are much smaller in terms of the size of our tenants and landlords. We are not as big as the Sydney and Melbourne arrangements.

On the other hand, we had other stakeholders who wanted to increase the $50 million to an even higher figure, perhaps as high as $100 million. In the end, we accepted the national code compromise of $50 million. We accepted the national code compromise that, where you have a big related corporate grouping, which might have 100 separate outlets throughout the country, each of which would be less than $50 million but they are part of one particular corporate grouping, that is excluded from the provisions of this.

That would be, for example, a Solomon Lew-type arrangement, where they are not able to claim protections against eviction, for example, for each of their separate 100 tenancies around the nation because each of them happens to be less than $50 million because clearly they are part of one group. They are above $50 million. They therefore do not get the protections under this particular legislation.

But franchise arrangements consistent with the national code are included. So, if you are a separate franchise arrangement and you are under a $50 million turnover, you are protected in this particular arrangement. That was a recommendation in the national code. Whilst we had arguments not to accept that as well, we have, in the end, accepted that particular aspect of the national code. As I said, we have not accepted the issues in relation to binding mediation, whatever that meant, in the national code. We have implemented the process that I outlined.

There is one remaining point in relation to the issue of commercial tenancies that I should have related. I was talking about the fact that proportionality is not as easy as perhaps the national code would have led us to believe; that is, a 25 per cent reduction in turnover may well lead to a 50 or more per cent reduction in net income for a landlord if that 25 per cent reduction in turnover had to be transferred into a 25 per cent reduction in rent relief on the proportionality principle.

The other issue in relation to that—and again a number of landlords have provided their own details—is in relation to banking covenants or debt covenants. These are issues of interest coverage ratios, which some members would be very familiar with, and loan devalue ratios, which banks place upon landlords in terms of the borrowings that they have.

What a number of these examples show is, if you follow the proportionality principle—that is, the 25 per cent reduction in turnover means you have to reduce your rent by 25 per cent and it means that, in some circumstances, because of the way they are structured it leads to a 50 per cent or 100 per cent loss of their net income—in many cases these landlords are saying that they will breach their debt covenants with the banks. Their ICR (interest coverage ratio) will drop below the requirement of the bank or, if the valuations change—and we have already seen valuations change in banking institutions—their LVR drops below the LVR. In those cases, the banks at the end of the six-month period will be able to foreclose on those particular landlords.

They are the sorts of circumstances that we believe the Small Business Commissioner and the Magistrates Court should take into account. That is, the landlord in that particular experience is going to be able to say, 'Hey, this is where I am.' Those landlords—and the Property Council also supports them—say, 'Look, if you actually, in the national code, require the banks to in essence adjust their financial arrangements with the landlord consistent with what you are requiring of the landlord, then it might be a more defensible position.'

Of course, the bank's situation, which the commonwealth government and others have overseen, is that they have deferred repayments, which has been good, but in the end all of the repayments still have to be made. Eventually, the banks have a legal capacity to collect all of their deferred loan repayments at a particular stage after the six-month period has expired. If what we do during the six months means that the debt covenants that these landlords have, such as the ICR (interest coverage ratio) or the LVR (loan to valuation ratio), are breached, then the banks have the capacity, if they so choose, to foreclose.

It is another important issue for members in this very complicated area. I think my plea to members is that we should, in the first instance, use good faith negotiations between the landlord and the tenant. But then if that does not resolve the issues, we leave the responsibility with the Small Business Commissioner and the Magistrates Court to resolve, bearing in mind all of these complicated, different arrangements.

It will depend, as I said earlier, on whether or not the landlord has had to take out significant loans to finance their investments or, in a different set of circumstances, you have a mum-and-dad investor who owns all of them but nevertheless is still relying on every bit of rental income they can get to survive on, or not; and then you have a whole variety of differences in between.

For us as a parliament, whether we say, 'Okay we've got to legislate a national code because the national code says this is what you should do; it should be proportional,' or for the amendment that the Labor Party wishes to consider, 'Yes, you should follow it, however in exceptional circumstances you can move away from it,' we think it is not just exceptional circumstances.

We think there is myriad of examples right across the board and the flexibility of allowing the Small Business Commissioner or Magistrates Court to resolve issues, to look at the individual circumstances and to resolve them, is the best way to go. It sounds better, it sounds easier, if we in the parliament say it is directly proportionate, or indeed something else; that is, we say, 'This is it, you just do it this way and you go way and resolve it in those ways.'

All I can alert members to is that if that ultimately was to be what came out of the parliament, we would have very significant issues in terms of trying to resolve the individual arrangements of thousands of landlords and tenants in terms of trying to seek a resolution to what are complex issues. With that, I will conclude. We will pass the second reading because I think everyone has indicated support, and I will propose that we adjourn the committee stage until after—

Members interjecting:

The Hon. R.I. LUCAS: I think everyone has indicated they are supporting the second reading. Then I will seek leave to suspend so that we can have the lunch break and question time and resume after question time.

Bill read a second time.

Sitting suspended from 12:55 to 14:15.

Ministerial Statement

SCHWARZ, MR R.G.

The Hon. R.I. LUCAS (Treasurer) (14:15): I seek leave to make a ministerial statement on the subject of Mr Robert Schwarz.

Leave granted.

The Hon. R.I. LUCAS: This is unusual, and I think it is the first time I have ever done it as a minister, but I wanted to make a ministerial statement today to pay tribute to an outstanding public servant who sadly passed away earlier this week, Mr Robert Schwarz. Due to the unusual circumstances we are living in with COVID-19, it will be impossible for many of us who would like to pay tribute to him either at his funeral or memorial service to acknowledge his outstanding contribution, so I have sought leave to make this statement to place on the public record a little of the history of Robert Schwarz.

Rob Schwarz was nominated in 2017 and awarded the Public Service Medal in the Australia Day Honours, reflecting his achievements in public finance. Part of the public attribution read as follows:

> Mr Schwarz has been an outstanding public servant throughout his long career and he has consistently performed at the highest level. He has demonstrated leadership and innovation across a diverse range of public finance policy issues, both at the state level and in the national arena. He combines an in depth understanding of both technical and policy aspects of issues with a strong commitment and passion for sound policy development and implementation.
>
> Of particular note is his work in relation to Horizontal Fiscal Equalisation (HFE). His depth of knowledge and intellectual capacity have earned him the respect of his colleagues which was evidenced through his selection to work on the GST Distribution Review nationally. He was also highly influential in the policy and financial modelling work which supported the national tax reforms of the early 2000s that were associated with the introduction of the Goods and Services Tax and the related reforms to Commonwealth-State financial relations which have endured.

The public nomination goes on but that is just a part of the public nomination in terms of the awarding of the Public Service Medal to Mr Schwarz.

Mr Schwarz was at the University of Adelaide at roughly the same time as I was. He graduated in 1973 with a Bachelor of Economics with Honours. I am told, although those of us who knew him in more recent days will find this hard to believe, he was a surfer at uni and remembered by his colleagues as a barefoot hippie during his uni days. He had a passion for most water activities—fishing, kayaking, sailing and surfing in the early days—philosophy, theatre, greyhounds, table tennis, and he was an avid Crows supporter.

His career commenced soon after 1973. He spent three years in the commonwealth Treasury, as many Treasury officers did. He spent a brief period of time in London with *The Banker* magazine and then back in Melbourne with the Commercial Bank. He joined the South Australian Public Service in 1979 as an economist and then had a long and illustrious career holding many positions, including as a manager of financial policy at SAFA and assistant under treasurer, with various responsibilities through a long period of the 1990s and early 2000s. It was during that period when I first became exposed to his significant work and policy contribution.

He worked through to 2014-15 in the Public Service. I recall, it might have been Tom Koutsantonis (the member for West Torrens and then treasurer) indicating to me that there were some farewell drinks for Mr Schwarz at the Kings Head in King William Street, a frequent watering hole for some members of the Public Service and the law. I attended briefly those farewell drinks.

Rob Schwarz then became—I am not sure I know anyone else who has done this—a volunteer policy adviser in the Department of the Premier and Cabinet to the Labor premier. I am told he was unpaid, except they did slip him a car park in the Gawler Place car park evidently, as he came in to do his volunteer policy work for the former government, I think in DPC and for the former premier for a couple of years until ill health in 2017 meant that he was unable to continue.

Rob Schwarz, in his long and illustrious career in Treasury and the Public Service, played a key role in the early nineties in the strategy for the recovery of the state's finances following the State Bank collapse in 1991. He was one of a handful of Treasury officers who helped set up the South Australian Government Financing Authority in the early 1980s under former premier and treasurer John Bannon. He was also responsible, I am told, for designing and assembling the state's inaugural submission to obtain an international credit rating for the state of South Australia.

My earliest knowledge of Rob Schwarz was when I was Treasurer from 1997 through to 2002. He, together with another outstanding public servant, John Hill, were the two intellectual giants within Treasury who helped drive the federal-state finance reforms of that particular era, in particular the introduction of the goods and services tax, which was agreed through the COAG, or COAG equivalent at the time, but also the very many state and federal funding arrangements that materialised as a result of the introduction of the goods and services tax.

In concluding my brief remarks, I want to say that too often we in public service and public office, and those of us in parliament, know and recognise those who rise to the very top of the tree—the chief executive officers, the under treasurers—but frankly, with great respect to the chief executive officers and the under treasurers and indeed the ministers, and I include myself in that, most of the hard work, the intellectual grunt, the achievements are driven by the people at the next level of management beneath those at the very top.

Rob Schwarz was an outstanding example of that. He, as I said, rose to the position of assistant under treasurer, the next level below the under treasurer. He was a manager of SAFA and various other divisions of Treasury through his long career, and he was an intellectual giant. He was an outstanding public servant and, too often, we do not recognise those outstanding public servants who in the end do not become chief executives or under treasurers.

I personally want to pass on my condolences to his wife, Maryanne; two children, Nerissa and Matthew; and grandson, Jack. I hope they recognise that Rob Schwarz was not only a good man but also an outstanding public servant.

Question Time

MINISTER FOR HUMAN SERVICES, SHARES

The Hon. K.J. MAHER (Leader of the Opposition) (14:24): My question is to the Minister for Human Services about functions of government. Does the minister or any member of her immediate family still hold shares or other interests in Sonic Healthcare Limited as revealed by the most recent Register of Members' Interests? If the minister or any of her family members do hold any shares in Sonic Healthcare Limited, does the minister consider the Ministerial Code of Conduct would require the minister to declare such a conflict and recuse herself from any discussion involving Clinpath or any matter to do with private pathology services?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:25): I thank the honourable member for his question. I can advise that I do still hold shares in Sonic Healthcare and I have at all times complied with the Ministerial Code of Conduct.

MINISTER FOR HUMAN SERVICES, SHARES

The Hon. K.J. MAHER (Leader of the Opposition) (14:25): Supplementary arising from the answer where the minister said she has complied with the Ministerial Code of Conduct. Relevantly, what does the Ministerial Code of Conduct provide in relation to declaring shareholdings in relation to actual, potential or apparent conflicts of interest?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:25): I would refer the honourable member to examine the document, which is publicly available.

MINISTER FOR HUMAN SERVICES, SHARES

The Hon. K.J. MAHER (Leader of the Opposition) (14:25): Supplementary arising from the original answer: is the minister aware, specifically or even very broadly, of what part 3.3 of the Ministerial Code of Conduct provides?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:25): I thank the honourable member for his supplementary. I have, during my period as minister, read the code on several occasions. I believe that I have a working understanding of it and have complied with it.

MINISTER FOR HUMAN SERVICES, SHARES

The Hon. K.J. MAHER (Leader of the Opposition) (14:26): Supplementary arising from the original answer: can the minister inform the chamber what her working understanding of the code is in relation to actual, potential or apparent conflicts of interest to do with shareholdings?

The PRESIDENT: It is not necessarily a supplementary question because it did not come from the original answer, but I will allow the minister to answer this before we move on.

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:26): Yes, Mr President, I share your quizzical concern with the honourable member's question. What I understand him to be asking of me is what is my interpretation of the document. I would encourage him, if he wants to understand the document, to perhaps read it several times. If he feels he doesn't have an understanding, then he could perhaps avail himself of some legal advice.

MINISTER FOR HUMAN SERVICES, SHARES

The Hon. K.J. MAHER (Leader of the Opposition) (14:27): Final supplementary arising directly from the original answer—

The PRESIDENT: I will certainly listen to it.

The Hon. K.J. MAHER: —where the minister said she was satisfied that she thinks she has complied with the Ministerial Code of Conduct. My question is: at any time, has the minister recused herself from a discussion or decision regarding private pathology services, whether in cabinet or outside cabinet?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:27): My understanding is that I have complied with the Ministerial Code of Conduct.

HOMELESSNESS SERVICES

The Hon. C.M. SCRIVEN (14:27): I seek leave to make a brief explanation before asking a question of the Minister for Human Services regarding housing.

Leave granted.

The Hon. C.M. SCRIVEN: In the middle of the COVID-19 emergency, which is putting additional pressure on homelessness services, the government provided just a one-year contract extension to those services despite a five-year commonwealth federal funding deal. In another part of the sector, groups like Shelter SA have lost funding as the government rolls their functions into larger organisations. This is happening under the Housing Advice, Advocacy and Engagement tender for which applications closed last week. The process claims to apply codesign principles, early intervention, working between sectors and capturing lived experience.

It is unclear how either of these sector reform activities include or live up to the principles the minister and her agency are claiming as the sector reference group that is central to the codesign process has not even been announced as yet. My questions to the minister are:

1. Why is the minister rushing ahead with complex sector reforms during a major emergency when these have not been designed in line with her own codesign principles as announced on 17 April?

2. Is the funding pool for this tender equivalent to the total of the previous contracts?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:28): I thank the honourable member for her question, much of which was factually incorrect in relation to a number of items. I can advise, as I have been asked on this particular issue before, that there was very broad widespread consultation on the homelessness reforms, I think, over a 12-month period where we consulted across the sector with the specialist homelessness services, whether they be in the youth sector, the domestic violence sector or the perhaps unfortunately termed generic sector, through to

public social housing, development, industry—a range of people who have an interest in housing, whether it is in the crisis end or through to affordable purchase to deliver on a broad strategy.

We have also been informed through the Institute of Global Homelessness. A number of sector representatives and myself attended their conference in Glasgow last year. It is well known that Scotland has engaged in very significant reforms to ensure that they align their resources with where the services are needed. In South Australia we have a sector which operates very much at the crisis end. This is something that we have consistently heard from people. From those people with lived experience we know that the system is hard for them to navigate. Realistically at the end of the day the services are all about the clients. The broad consensus of the sector is that they wish us to continue with this process, so that is why we are proceeding with it.

HOMELESSNESS SERVICES

The Hon. C.M. SCRIVEN (14:30): The minister did not answer the question of whether the funding pool for this tender is equivalent to the total of the previous contracts.

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:31): My understanding is that the envelope remains the same. If that is not correct, then I will bring back further details for the honourable member.

HOMELESSNESS SERVICES

The Hon. C.M. SCRIVEN (14:31): Supplementary: given the sector reference group has not even been announced, how exactly has the minister done any codesign work, that is so vital to the success of the reforms?

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:31): I did refer to a number of elements of how we have arrived at the need for reform. We do tend to be the model consultants in terms of consulting on all of the elements. My understanding is that that reference group is very close to being finalised and should be announced shortly.

HOMELESSNESS SERVICES

The Hon. C.M. SCRIVEN (14:31): Further supplementary: has the Chief Executive of the SA Housing Authority, Mr Michael Buchan, or any SA Housing or DHS employee made any representations to the minister or her staff regarding the cancellation or halt of the tender?

The PRESIDENT: It is a long bow to draw that in as a supplementary question, I would have thought.

The Hon. C.M. SCRIVEN: I did refer to the tender in the original question and in the brief explanation.

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:32): It is a bit of a strange question. I think in effect the honourable member is asking me whether the Chief Executive of the South Australian Housing Authority has lobbied me to extend the tender. I don't wish to be patronising—and I mean this quite genuinely—but the honourable member might not be aware of the way that government works in a practical sense between ministers and agencies—

The Hon. K.J. Maher: Like codes of conduct and so forth and compliance with ministerial standards—

The Hon. J.M.A. LENSINK: I have answered that question—

The PRESIDENT: Order!

The Hon. K.J. Maher interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: I have.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Leader of the Opposition!

The Hon. J.M.A. LENSINK: I have read it.

The Hon. K.J. Maher interjecting:

The PRESIDENT: Leader of the Opposition! Enough. Minister.

The Hon. J.M.A. LENSINK: Yes, so, it is a peculiar supplementary in the sense that that is not really the way that government works—

The Hon. K.J. Maher interjecting:

The PRESIDENT: Oh, my goodness. Minister.

The Hon. J.M.A. LENSINK: —in terms of agency heads lobbying their ministers. They advise; we have discussions; it is—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.M.A. LENSINK: —a collaborative relationship of mutual respect, and we discuss a range of topics in a whole range of areas on a regular basis.

HOMELESSNESS SERVICES

The Hon. C.M. SCRIVEN (14:33): Further supplementary—

The PRESIDENT: Arising from the original answer?

The Hon. C.M. SCRIVEN: To an extent.

The PRESIDENT: No, not to an extent; is it arising from the original answer?

The Hon. C.M. SCRIVEN: I think it is.

The PRESIDENT: Well, I tell you what: have a go, and then we will make an assessment.

The Hon. C.M. SCRIVEN: And we shall defer, of course, as always, to your expertise, Mr President. Was the minister saying in regard to that tender that she referred to in her original answer that Mr Michael Buchan and or any other Housing SA staff or DHS employees have not made representations regarding the halt of the tender?

The PRESIDENT: Minister, you can answer if you wish.

The Hon. J.M.A. LENSINK (Minister for Human Services) (14:34): Only, refer to my previous answer.

INFLUENZA VACCINATIONS

The Hon. E.S. BOURKE (14:34): I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing a question about health.

Leave granted.

The Hon. E.S. BOURKE: The Immunisation Coalition chaired by Dr Rod Pearce AM has written to the minister, the Premier and the Chief Executive of SA Health regarding the uneven distribution of the over 65s flu vaccine. The correspondence says, 'asked for transparency about the actual numbers of vaccines purchased and distributed'. In relation to the uneven distribution of vaccines, the letter expressed 'enormous frustration amongst GPs'. It further said:

> …there is added frustration that GPs are being told that practices can't help each other out with some redistributing of vaccines, where some practices received many more than required, or have some left over.

Finally, regarding suggestions that people aged over 65 years should be happy with the un-adjuvanted vaccine, the letter said:

> The GP members of this group are frustrated and surprised.

My questions to the minister are:

1. Why hasn't the minister allowed transparency regarding the actual number of vaccines, and will the minister commit to this?

2. Has the minister ensured that GPs can help out nearby clinics that, as alleged by the Immunisation Coalition, have been barred by SA Health from redistributing vaccines?

3. What is the minister's response to other concerns raised?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:35): The first point I would like to make in relation to the National Immunisation Program for the aged 65 years and older cohort is that SA Health has distributed enough of the vaccine specifically formulated for that group to vaccinate over 100 per cent of this estimated eligible cohort. Whilst influenza vaccines have been distributed, of course we only have tallies of what is distributed, not what has been administered.

In the context of the reports of individual practices being short, an audit by SA Health of that particular vaccine, the Fluad Quad stock, held by providers was undertaken as of Monday 11 May, that is Monday this week. Seventeen per cent of providers responded, and they had 12,858 doses of Fluad Quad stock on hand. That means there are some providers who have more vaccine than they need and so, as SA Health has recommended, people are encouraged to approach providers who have supplies.

In that context, SA Health has started publishing on its website a list of those providers who still have Fluad Quad in stock and have consented to having their details published online. The printout I have from that website is two pages of facilities right across the metropolitan area. The honourable member seeks the data in terms of the amount of vaccine available. As I said, there are almost 13,000 which providers tell us they have in stock. The contact numbers for providers with available vaccines are on the SA Health website.

INFLUENZA VACCINATIONS

The Hon. E.S. BOURKE (14:38): Supplementary arising: has the Immunisation Coalition been provided directly with the accurate information regarding the number of vaccines for over 65s that have been ordered and distributed?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:38): I don't know the answer to that. I will certainly take that on notice.

INFLUENZA VACCINATIONS

The Hon. E.S. BOURKE (14:38): Supplementary arising from the original answer: does the minister support the provision of generic un-adjuvanted vaccines for over 65s, despite the Immunisation Coalition's concerns with this?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:38): As I said, the department has identified that more than 10,000 vaccines are available. We have 2½ pages of providers who have stocks available. I would encourage people over the age of 65 to seek the Fluad Quad stock from those immunisation providers.

INFLUENZA VACCINATIONS

The Hon. E.S. BOURKE (14:39): Supplementary arising from the original answer.

The PRESIDENT: Final question arising from the original answer.

The Hon. E.S. BOURKE: Thank you, Mr President. Can the minister confirm how many GP practices currently have shortfalls of the adjuvanted vaccines specifically for over 65s?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:39): I have already referred to the audit by SA Health. We had a 17 per cent response rate. I can't speak for the other 83 per cent.

INFLUENZA VACCINATIONS

The Hon. C.M. SCRIVEN (14:39): Supplementary question: can the minister advise why he thinks it is appropriate for patients, particularly those over 65, to have to travel potentially hundreds of kilometres in order to access this vaccine? I draw to the minister's attention the example of a

resident in Millicent who had to go to Naracoorte in order to access that. Why is it appropriate for that to occur?

The PRESIDENT: The Hon. Deputy Leader, you ask a question, you don't provide an explanation.

The Hon. C.M. SCRIVEN: Thank you for your guidance, Mr President.

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:40): The government is continuing to try to equitably distribute vaccines right across the state. There will be shortages in both the metropolitan area and regional areas, and I can assure the honourable member that I have no doubt that shortages in regional areas cause greater inconvenience to regional citizens than metropolitan citizens experience. That is why we are working very hard to make sure that the distributions are fair.

INFLUENZA VACCINATIONS

The Hon. C.M. SCRIVEN (14:40): A further supplementary question: will the minister explain to the chamber why he will not allow redistribution between clinics and why, instead, patients have to go chasing around to different locations in order to access this vaccine?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:41): The opposition is showing yet again its ignorance of the way these things work. Influenza vaccines are very sensitive vaccines; you need to maintain the cold chain. There is significant risk in moving vaccines from facility to facility without the appropriate transport and so we would not do it. Certainly, redistribution of vaccines is an option that was mentioned earlier when there were issues raised in relation to supply and demand, but the fact that the audit is demonstrating that there is supply out there, it's a matter of making sure that, if you like, the demand meets the supply. We believe that's a much more appropriate response than risking damage to the vaccine which would actually make the client's visit futile.

LANDING PAD PROGRAM

The Hon. J.S.L. DAWKINS (14:42): My question is directed to the Minister for Trade and Investment. Will the minister provide an update to the council about the South Australian Landing Pad program?

The Hon. D.W. RIDGWAY (Minister for Trade and Investment) (14:42): I thank the honourable member for his ongoing interest in the Landing Pad program. I am pleased once again to update the council about our Landing Pad program. South Australia's reputation for excellence in defence industries, cybersecurity and machine learning, connectivity and robotics continues to grow with more companies than ever choosing South Australia to grow their businesses.

It's the reputation for excellence that has attracted the latest Landing Pad recipient, Lux Aerobot. Lux is a pioneering space robotics company now operating out of Stone and Chalk at Lot Fourteen. The company builds stratospheric balloons that are released into the atmosphere between 15 kilometres and 45 kilometres, which is too low for larger satellites, too high for aircraft, and an area of the sky that is cleared too rapidly by rockets. These balloon satellites are fitted with cameras that capture high-resolution aerial photos that can be transmitted in real time.

This world-first technology—and I reiterate, world-first technology here in Adelaide—is operating right here in South Australia. The technology has significant implications for several existing sectors such as mining and energy, and agriculture and defence. Lux is already working with South Australian mining companies to build a digital twin of their mining operations. This technology helps head off potential issues before they occur. The company is also working with industry to assist with bushfire monitoring during the warmer months.

Having the national Space Agency and Mission Control Centre located at Lot Fourteen has helped us to highlight South Australia's capabilities within the space sector. As a result, we are seeing more companies like Lux set up in Adelaide, strengthening the economy, creating jobs and collaboration opportunities. Lux said that as a result of the Landing Pad program they have been able to employ three new team members and will look to double the Adelaide team within six months. As members would know, the South Australian Landing Pad offers up to $80,000 to assist new

companies to make their first investment either in Adelaide or South Australia, or even the Asia-Pacific region. I welcome Lux to Lot Fourteen and look forward to seeing their continued success over the coming years.

LANDING PAD PROGRAM

The Hon. K.J. MAHER (Leader of the Opposition) (14:44): Supplementary arising from the answer: is the launch pad program the minister refers to designed to bring companies that are not South Australian-based into South Australia and provide that launching pad for their set-up and expansion here, or is it designed for South Australian companies to expand?

The Hon. D.W. RIDGWAY (Minister for Trade and Investment) (14:44): It is a landing pad, not a launching pad, I will correct the honourable member. The landing pad is available to companies that have been operating for 12 months. Some have been operating interstate, some have been operating in other parts of the world, but the opportunity is to bring them here, to give them a base to test the market in Adelaide, so that is why we are using the landing pad.

LANDING PAD PROGRAM

The Hon. K.J. MAHER (Leader of the Opposition) (14:45): Supplementary arising from the original answer and to clarify: is this program available to companies that were first set up in South Australia, or is it only available to companies that are from interstate or only available to companies that have come from overseas?

The Hon. D.W. RIDGWAY (Minister for Trade and Investment) (14:45): It is my advice that they are from interstate and overseas, but I will certainly check for the honourable member whether any of the companies that may have a small presence and are wanting to expand have used the landing pad as a way to further test the market in South Australia.

LANDING PAD PROGRAM

The Hon. K.J. MAHER (Leader of the Opposition) (14:45): Final supplementary arising from the original answer: is this program available to companies that have gone through incubator or accelerator programs previously in South Australia, or is this for new companies to us or for companies that haven't had either state government or other assistance to establish here?

The Hon. D.W. RIDGWAY (Minister for Trade and Investment) (14:46): The honourable member may like to look at the eligibility criteria that is publicly available. I don't want to delay things here today. I will make a copy of that available to him so he can peruse it.

STADIUM MANAGEMENT AUTHORITY

The Hon. F. PANGALLO (14:46): My question is to the Treasurer. In light of the pandemic, has the government, Treasury and finance received any notice from the Stadium Management Authority, the SANFL and the South Australian Cricket Association seeking a deferment or waiving of financial obligations to the sinking fund at the Adelaide Oval, and also deferring repayments on the $42 million loan to build the hotel at the Adelaide Oval?

The Hon. R.I. LUCAS (Treasurer) (14:47): The government has received a submission and has agreed to it and publicly announced it in relation to the SMA's requirement to contribute, I think, about $3 million a year into the sinking fund, so this is football and cricket's own money, which they are required to put into a special account of their own to maintain the asset as it goes ahead over the coming decades.

So it is not a contribution from the taxpayers to the SMA; it is their money, they are required to put it into an account. They said that because of COVID-19 they are not making any money at the moment because there are no functions, events or games at Adelaide Oval at the moment and would the government agree to defer that particular payment, and we have agreed to defer that payment.

Whilst it wasn't part of the honourable member's question, they also asked whether or not the government would agree to not require them to pay $1 million of their profit into one of the community sport and recreation funds. One of the amendments that the then opposition, I think led by the then member for Davenport, Iain Evans, to which the government agreed, was that of the profitability from Adelaide Oval $1 million a year approximately should go into community sport

facilities and grants. They again said that because they don't have any money to make to put into that fund could they be excused from that, and we agreed to excuse them from that particular payment.

To ensure that community sport didn't lose out, the taxpayers, through a decision of the government, have contributed $1 million into that community sport scheme so that there will be no loss of funding going into community sport as a result of that particular decision. All of that has been publicly announced, so I refer the honourable member to, I suspect, my very little read website, where there is a press release that indicates the detail for those decisions.

In relation to the loan that finances the hotel, there may well have been a submission, but the government has not agreed to anything in relation to that loan arrangement. I will check to see whether or not there was a formal submission seeking assistance in relation to that, or whether it was just something being talked about, but the government hasn't made a decision in relation to providing relief in that particular area.

The member may or may not be excited to hear that evidently the hotel project is proceeding at pace and is, as I understand it, broadly online in terms of the timing and dependent on what happens in the duration of COVID-19 and the ability for international cricket tends to come to Australia later this year to be ready for the big event that was coming later in the year—I forget what it was—

The Hon. D.W. Ridgway: The T20 World Cup.

The Hon. R.I. LUCAS: —the T20 World Cup game, evidently, later this year. That will obviously depend on whether or not international travel is allowed for international cricketers to visit our shores.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. J.E. HANSON (14:50): I seek leave to make a brief explanation before asking the Minister for Health and Wellbeing a question about health.

Leave granted.

The Hon. J.E. HANSON: In April 2018, the Premier said that he was consulting with the clinicians for the new Women's and Children's Hospital, due in 2024. In early 2019, the government received a report from its appointed task force outlining the business case for the new Women's and Children's Hospital. The government said in the budget that it could not provide a full cost for the project and that the time line had been pushed out from 2024 to 2025 or 2026. This is eight years, of course, after they were elected.

The government later said that its final costing and final business case was due at the end of 2019. The government announced in January this year that the business case was delayed and would not be provided until the end of 2020. Then, again today the government has announced that the business case has been delayed again. This time, apparently, there's a pandemic emergency that started two months ago rather than their own repeated delays that I have just outlined, obviously started two years ago. My questions to the minister are:

1. Why didn't consultation occur with clinicians over the 24 months between the election and the coronavirus emergency declaration?

2. When will the new Women's and Children's Hospital start construction and when will the new Women's and Children's Hospital be completed?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:52): The honourable member seems to think that the government can consult with clinicians on all relevant issues from day one. The reality is that's not the case. It was only in April 2020 that the new women's and children's project executive steering committee approved the new women's and children's project, proceeding with a realigned program in response to the constraints arising from COVID-19.

A project team had been established and it will continue to do background work on the preliminary master planning and preliminary concept planning in collaboration with a range of professionals. This phase does involve significant consultation with clinicians, staff, consumers and

key stakeholders. We will do what we can during the pandemic, but it is not surprising that the progress of the project and the progress of the consultation is impacted by the pandemic.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. J.E. HANSON (14:53): Supplementary: how much will the new Women's and Children's Hospital actually cost, when will it be completed and when will it start construction?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:53): The government has put $550 million into the 2019-20 state budget for the new women's and children's planning phase. The design team was appointed in March, so the project is continuing to develop, but until the full business case is completed we won't be in a position to indicate the estimated cost.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. J.E. HANSON (14:54): Supplementary arising from the original answer: why hasn't the government released a task force report and business case received by the government into the project 15 months ago, which would relate to all the questions and answers that have been given, and will the minister now release that report?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:54): I can assure the honourable member he is operating under a misapprehension. The previous reports of the task force don't answer those questions because they were preliminary work to which this process continues.

The Hon. K.J. Maher: What have you got to hide?

The Hon. S.G. WADE: The honourable member challenges me, 'What have you got to hide?' If people want to hide and be embarrassed, I think the Labor Party should hide and be embarrassed. They were the party that wanted to suggest to the children of South Australia that they could have half a hospital left at North Adelaide for an indeterminate period. It is this government, in spite of all the challenges that were left to us by the former government in terms of financial and other challenges, particularly in relation to health services, who were up to the challenge.

With the ongoing, resolute support of Treasurer Lucas, we are committed to this project, unlike those who, like a horse at the first hurdle, balked and said, 'We are going to leave half the hospital at North Adelaide. We don't mind leaving children without medical retrieval. We don't mind separating mothers who have had difficult births from their infant babies. No, we don't care about that, we just need to get a promise for the next election. We will leave the kids at North Adelaide.'

The Hon. J.E. HANSON: Point of order: I asked when they are going to release the report. None of this really goes to that. I just want to know when they are going to release it or if they are going to release it. That is the answer I am after.

The PRESIDENT: I am sure the minister is about to draw to a conclusion. Minister.

The Hon. S.G. WADE: I am not aware of any plans to release any reports shortly.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. J.E. HANSON (14:56): Further supplementary: are any further delays to other major capital works exacerbating the construction of the Women's and Children's Hospital and the crisis that currently faces it?

The Hon. S.G. WADE (Minister for Health and Wellbeing) (14:57): One of the major challenges the Women's and Children's Hospital faces is being left in a facility that the former government had said was going to be rebuilt on a new site years ago—absolutely years ago. If the—

The Hon. K.J. Maher: So the minister said it was going to be rebuilt years ago? You are talking about yourself here, Wadey. Two years on.

The PRESIDENT: The honourable Leader of the Opposition, do you want to answer the Hon. Mr Hanson's question?

The Hon. K.J. Maher interjecting:

The PRESIDENT: The Hon. Mr Hanson has asked a question of the minister—

The Hon. K.J. Maher interjecting:

The PRESIDENT: Sit down! Minister, please conclude your answer, or have you concluded?

The Hon. S.G. WADE: In relation to the honourable member's question about delay and the problems at the Women's and Children's Hospital, the delay started under the former Labor government. If they had stuck with their original commitment to relocate the Women's and Children's Hospital and if they hadn't abandoned that promise and decided they were going to leave the children's hospital stranded in North Adelaide, we would be a lot further down the track. What I can say in relation to the honourable member's question is that this government does appreciate the neglect of your government and that is why we are investing $50 million in sustaining the facilities at the Women's and Children's Hospital in the meantime.

SMALL BUSINESS GRANTS

The Hon. D.G.E. HOOD (14:58): My question is to the Treasurer. Can the Treasurer update the chamber on the number of small businesses that have taken up the state government's $10,000 emergency COVID-19 grant?

The Hon. R.I. LUCAS (Treasurer) (14:58): I am pleased to be able to report to the house that as of 12 o'clock today, the first $35 million in emergency grant relief has now been provided to small businesses and also to some non-government organisations that are eligible for the $10,000 emergency grant relief program. There are approximately 3½ thousand of these $10,000 grants that have now been distributed.

Of the original 21,000 approximately registrations of interest, at this stage, as of 12 o'clock today, around about 11,300 were of those have been deemed to be eligible, or look like they are going to be eligible. Of the original 21,000, a number of organisations and small businesses will have looked at the eligibility criteria and determined that they were not eligible for the grant.

One of the key determinants is they had to be accepted into the commonwealth government's JobKeeper program, and they therefore had to demonstrate to the satisfaction of the Australian Taxation Office that they had lost 30 per cent or more of their turnover to be eligible for JobKeeper, together with other eligibility criteria. That was an essential eligibility criterion together with others for the $10,000 grant, so it is therefore unlikely that we will get, and we never expected to get, the full 21,000 who had registered interest as likely to be eligible. So at this stage, 3½ thousand and $35 million approximately is the answer to the member's question.

SMALL BUSINESS GRANTS

The Hon. C.M. SCRIVEN (15:00): Supplementary: can the Treasurer advise whether small businesses who have received other support through either state or federal government will therefore have the amount of that emergency grant relief reduced by the equivalent number or affected in any other way?

The Hon. R.I. LUCAS (Treasurer) (15:00): Certainly, the eligibility criteria in relation to the state grants doesn't take into account the federal government grants. We don't have, I guess, line of sight other than we know they have to be eligible for JobKeeper for example. So, if they are eligible for JobKeeper, we don't deduct the amount of money they've got from JobKeeper from the $10,000 grant scheme.

SMALL BUSINESS GRANTS

The Hon. C.M. SCRIVEN (15:01): Further supplementary: is there any state government assistance that is granted to those small businesses then in effect taken away from that $10,000 that they would otherwise be eligible for?

The Hon. R.I. LUCAS (Treasurer) (15:01): I would have to check. I'm not sure what other grant schemes the member might be referring to. Certainly, in relation to the government's announced land tax provisions, they haven't yet started. They will be 25 per cent of their 2019-20 land tax payments, and I will just need to check the eligibility criteria on that. I am happy to come back and provide an answer to the member on notice.

SMALL BUSINESS GRANTS

The Hon. K.J. MAHER (Leader of the Opposition) (15:02): Supplementary arising from the original answer: when was the first of these payments made? On what date? I get that there was $35 million paid as of 12 noon today, but when was the first payment made?

The Hon. R.I. LUCAS (Treasurer) (15:02): I would have to check for you. I think there were a small number of grants paid maybe two to three weeks ago perhaps. The bulk of the grants have been paid in the last two weeks so, no, the first grants were probably paid about three weeks ago—a very small number of grants because it was prior to the formal eligibility being established.

I made some decisions in relation to groups that applied for assistance of a larger amount than $10,000. In saying no to that, the work we had done demonstrated they had had more than a 30 per cent reduction in turnover and had been eligible for JobKeeper, so we in the alternative made grants of $10,000 to a small number of businesses. But the bulk of the 3½ thousand have been paid in the last two weeks.

What I should have said is that, because of the large demand, we have at varying stages had to put in up to 20 additional staff into this particular section of RevenueSA to try to ensure that we get the money out as quickly as possible. It was this particular group, I think, to which I referred earlier in response to a question when I indicated that in the early days the existing staff were working until late in the evening and over the weekends to try to get the scheme up and going, get the first grants out, but we have now added up to an additional 20 people there on occasions to assist the manual processing of the grant scheme.

SMALL BUSINESS GRANTS

The Hon. C.M. SCRIVEN (15:04): Further supplementary: how many of the 3,500 recipients are sole traders?

The Hon. R.I. LUCAS (Treasurer) (15:04): None, I suspect, because they are not eligible.

The PRESIDENT: Final supplementary. I want to move on, please.

SMALL BUSINESS GRANTS

The Hon. C.M. SCRIVEN (15:04): Apart from land tax assistance, what assistance then has the state government provided to sole traders?

The PRESIDENT: You can answer it if you want, Treasurer, but it's not really from the original answer.

The Hon. R.I. LUCAS (Treasurer) (15:04): We are a very open, accountable, transparent and very helpful government, Mr President.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: It will depend on—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: There is no specific scheme targeting assistance to sole traders. The government's original intention, as it announced, was that we would try to save as many businesses and as many jobs as we could and we have targeted the bulk of the billion dollars to those companies that employ people, which is what the other state governments have done, both Liberal and Labor. There was a requirement for eligibility for the state grant schemes that you actually employ people and we would love to provide assistance to everybody but we are using taxpayers' money.

There is $190 million estimated to go in $10,000 grants and we have targeted that assistance to those businesses and organisations that employ people. In a world where there was unlimited money and we could just give the money to everybody, we could give $10,000 grants to sole traders

as well, but Labor and Liberal governments interstate with similar schemes have not done so; we are not doing so either.

CORONAVIRUS RESTRICTIONS

The Hon. T.A. FRANKS (15:05): I seek leave to make a brief explanation before addressing a question on the way that the government is complying with the COVID restrictions to the Leader of the Government.

Leave granted.

The Hon. T.A. FRANKS: It will come as no surprise to anyone in this room or, indeed, hardly anyone in this state, that we currently have COVID-19 restrictions. These, of course, cover public gatherings, and according to the road map currently, as we have now passed 11 May, we have a one per four square metres policy per person, or a 10 maximum number on gatherings. How is the Marshall government complying with this with conducting their business, in particular press conferences and staff meetings and the like?

The Hon. R.I. LUCAS (Treasurer) (15:06): We are endeavouring to comply to the greatest extent that we can. Whenever I see a press conference, I see people respectfully standing it looks like a good equivalent distance to four square metres away. I see the Minister for Health standing at a respectful distance behind either Professor Spurrier or the Premier each day as they alternate their positions. So, in relation to press conferences, that is certainly the case. From the media viewpoint, they have pooled their resources and generally might only have one or two cameras and one or two journalists there and they share their resources. When they don't, they respectfully space themselves out as well.

In terms of cabinet meetings, for example, we have extended the room, I suppose is the best way, for the Hon. Mr Maher who was previously in cabinet and the Hon. Mr Wortley. The cabinet room has been extended and so there is a much bigger area and ministers are spread around a particular table. So, to the extent that that's possible, ministers and staff and others are working their way in our offices. I can only speak for my own office. There are cubicles and areas where most of the staff are, again, respectfully placed.

Most of the meetings in recent times have been conducted through Microsoft Teams or Zoom or Webex or some similar device. Most of the meetings you have with interstate people and even local people these days are being done in that particular way. There are some who still continue to come in and have face-to-face meetings, but, again, to the extent that that can occur there is appropriate distancing being observed. If there is a particular issue that the member has in mind, I'm happy for her to ask by way of supplementary and seek advice on it.

CORONAVIRUS RESTRICTIONS

The Hon. T.A. FRANKS (15:09): Supplementary: where a press conference has exceeded 10 people, what measures are taken to reduce that number to keep it at a 10 maximum? Are those measures the absence of media or the absence of the talking heads of the Marshall government?

The Hon. R.I. LUCAS (Treasurer) (15:09): I suspect it's probably a matter of both, but as I outlined—not that I am doing daily press conferences; the Minister for Health is and the Premier is. But at the press conferences I do more often than not there is just the one journalist, or sometimes two, with a camera person, and they are pooling and sharing film, and other journalists fire in their questions.

At the most recent press conference I had, the journalist who was there was not particularly interested in a particular issue that another journalist was, so she asked the question on behalf of that journalist, and the footage or the film was shared with that particular news outlet. Again, if there is a particular issue or concern the honourable member has about a particular press conference, rather than dancing around the tulips on this particular issue, the member might like to highlight it, and I will take advice on it.

CORONAVIRUS RESTRICTIONS

The Hon. T.A. FRANKS (15:10): Supplementary: why were there more than 10 people at the Premier's press conference at lunchtime today, including three ministers from the Marshall government?

The Hon. R.I. LUCAS (Treasurer) (15:10): I will immediately investigate that and take the issue up with the Premier and urgently bring back a response to the member.

TRANSPORT SUBSIDY SCHEME

The Hon. I. PNEVMATIKOS (15:11): I seek leave to make a brief explanation before asking a question of the Minister for Human Services regarding the SA taxi subsidy scheme.

Leave granted.

The Hon. I. PNEVMATIKOS: In March 2019, the Minister for Human Services stated in this place in relation to the SA taxi subsidy scheme:

> There's been numerous exchanges of letters between the federal minister and myself.

Freedom of information documents obtained by the opposition from her office, the Minister for Transport's office and the federal NDIS minister's office reveal that there have been no letters exchanged between her office and the federal minister since she became minister. My questions to the minister are the following: has the minister misled the parliament; will she make a personal explanation; and what has she actually done to advocate for people living with disabilities in South Australia to the commonwealth?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:12): I thank the honourable member for her question. The answer to her question is that there are numerous letters between myself and whichever minister is responsible for the NDIA, which the Hon. Stuart Robert has been since the May election last year. Usually in those letters there are a range of issues. Some are quite technical, that relate to regulations and the like and other decisions that might be made at the Disability Reform Council level—agreements with rule changes and the like.

The nature of other communications we have is that there are communications which will contain a number of issues in those. I think I tabled a letter co-signed by the Hon. Stephan Knoll last year which we sent to the NDIA, so we have had exchanges. That might have been during the caretaker period, which might have been what I was specifically referring to to the honourable member in that during the caretaker period we exchanged letters with the NDIA in preference to the minister on this specific topic.

There are also other means by which I communicate with minister Robert—clearly by telephone call and a range of other areas. We have very regular Disability Reform Council meetings, and I can assure honourable members that this issue has been raised by South Australia on very regular occasions, probably more than other jurisdictions.

The current status of the transport issue is, as I think I have previously reported, that the NDIA was undertaking a review of transport. It might have actually been the October Disability Reform Council meeting that it was agreed nationally that there would be a review of the transport scheme given that I think the commonwealth had heard that a number of transport users had not received adequate funding in their transport plans.

So there is a series of different levels at which recipients—or participants, as they are referred to—could have that included in their plan as well as in other components of their plan. My understanding is that those reviews are in place and that my department, the Department of Planning, Transport and Infrastructure and the NDIA are all engaged with overseeing that review so that individual participants are beginning to see that funding flow through into their plans in an increased manner.

TRANSPORT SUBSIDY SCHEME

The Hon. I. PNEVMATIKOS (15:15): Supplementary: if there are letters that were not released during the FOI process, will the minister now table them?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:15): My understanding is that we have complied with the FOI process. Sometimes applicants don't actually know what questions to ask, and I suspect that that is what has taken place in this place. They are welcome to lodge further FOIs.

NATIONAL VOLUNTEER WEEK

The Hon. J.S. LEE (15:15): My question is to the Minister for Human Services about volunteers, noting that National Volunteer Week commences next week on Monday 18 May. Can the minister please provide an update to the council on how the Marshall Liberal government is helping to support and mobilise volunteers, particularly in response to the search and demand for the services of community organisations as a result of COVID-19?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:16): I thank the honourable member for her interest in this area, as she is very active, engaging with a range of community organisations where volunteers are incredibly important. There is a range of things that the government does on an annual basis to recognise volunteers. Unfortunately, our volunteer event, which is usually done in conjunction with the Cabaret Festival and the Festival Centre, has had to be cancelled because it is a very large gathering and we had to take the sad decision that we weren't able to do that this year. It is an event that is very popular with our volunteers and I think is a real treat that everybody looks forward to, to recognise and celebrate our volunteers.

We have, of course, continued to award a range of volunteer certificates to people. The Premier and myself personally sign those all individually, and those will be going out in recognition of that. A number of organisations have been asked to participate in the Colour Your Community Red program, #ColourYourCommunityRed. Everyone is invited to show their recognition for volunteers by putting a red ribbon or something similar on their letterbox or in some public manner so that we can have a public acknowledgement of volunteers.

We know that South Australia has a very strong volunteering heritage and that more than 900,000 South Australians volunteer each year in all age categories. This year, in response to the COVID pandemic, particularly in some organisations where they have more elderly volunteers, some of those people were self-isolating. Certainly, in the early days when the pandemic was upon us I think a lot of individuals were quite concerned and so would have self-isolated, and organisations ceased their activities.

What we have done in response to that is provide additional support to Volunteering SA to coordinate any people who came into volunteering as a result of having more time on their hands and who have been able to step into that space. We are very grateful to Volunteering SA and NT for taking on that leadership role and assisting organisations to match up with people who were willing to participate as volunteers.

We also, I think, should pay tribute to the volunteers who have continued to be active in a range of areas. We say thanks and show appreciation for those who work, whether they are at Fred's Van or the Hutt Street Centre or a range of organisations, to assist those organisations on a daily basis. Volunteers continue to be a very important part of South Australia's community.

ABORIGINAL CHILDREN AND YOUNG PEOPLE IN CARE

The Hon. C. BONAROS (15:19): I seek leave to make a brief explanation before asking the Minister for Human Services a question about Aboriginal children and young people in care.

Leave granted.

The Hon. C. BONAROS: The latest annual report highlighting the state of Aboriginal children in care and in youth justice was released yesterday by the Office of the Guardian for Children and Young People, Penny Wright. It revealed that, despite Aboriginal people and young people making up only 5 per cent of the state's total population of children and young people, they make up 34.2 per cent of children and young people in care services. Just to break that down further, more than one in three children in care in this state are Indigenous. Worse still is the over-representation of Aboriginal youths in detention.

In 2018-19, Aboriginal children and young people made up a daily average of 60.7 per cent of all young people in detention in SA, despite Aboriginal children being detained at the lowest rates since 2014-15. Disturbingly, Aboriginal children and young people are 32 times more likely to be in detention than non-Aboriginal children and young people in South Australia. If members haven't done so, I urge them to read this sobering report. My questions to the minister are:

1. Are you concerned at the revelations in the Guardian for Children and Young People's Annual Report?

2. What is the government doing to tackle the totally unacceptable and disproportionate number of Aboriginal children and young people in care?

3. Do you agree the significant overlap of Aboriginal children and young people across these two systems requires strong and decisive policy decisions that address both intergenerational trauma and entrenched disadvantage?

The Hon. J.M.A. LENSINK (Minister for Human Services) (15:21): I thank the honourable member for her question. I would have to say, yes, I agree with all of the concerns that are expressed both through the report and in the content of her question. In relation to this particular report that has been released, it does highlight the continuing over-representation of Aboriginal children and young people in detention in South Australia—it is unacceptably high. If we look at some of the silver lining, we are pleased to note that in 2018-19 the rate of detention-based youth justice services for Aboriginal children and young people was lower than the national average and has declined to its lowest rate in five years. This is a significant achievement and a trend which we are continuing to work through.

The Department of Human Services continues to address the over-representation of Aboriginal young people as an ongoing area of focus, in particular partnering with other agencies to support Aboriginal young people to connect to culture and community and to have meaningful pathways into education and employment. The Department of Human Services also works closely with the Department for Child Protection to support Aboriginal young people who are dual clients.

In relation to specific matters, the honourable member referred to generational issues. I think I have spoken in this place previously in relation to the child and family services through the Department of Human Services and that we have engaged in a detailed codesign process with the sector and as we are reforming those services into the future the tenders going forward—which may have been released; I think they are actually open—we made a very specific decision through those consultations that we would actually ring-fence some 30 per cent of that funding to be provided to Aboriginal community-controlled organisations.

We also expect to fairly shortly release a youth justice action plan that has been under the working title of 'Young People Connected. Communities Protected.', which has been through extensive consultation and focuses on six service design themes: Aboriginal cultural connection; connected services; young people's wellbeing; reconnection with community; workforce stability and investment; and business intelligence, which refers to evidence-based programs and data.

In addition to that, I think it is important to note that there are some community-based programs that the government has continued to invest in, including Tiraapendi Wodli, which is a community service. We have two pilots that are operating: one in the north, which is a pilot with Anglicare that I think has a fairly significant Aboriginal component, and in the west that would be just in the process of commencing with Kornar Winmil Yunti (KWY). So there is a very strong focus on these exact issues to which the honourable member is referring, and it is a very strong desire that these trends will continue downwards into the future.

REPLIES TO QUESTIONS

The Hon. R.I. LUCAS (Treasurer) (15:25): I seek leave to provide answers to two questions from question time.

Leave granted.

The Hon. R.I. LUCAS: In the interests of transparency and accountability, I undertook to the Hon. Ms Franks to seek urgent advice in relation to some aspects of her question. I advise that

it is likely (and I will take further advice on this) that that would be construed as a worksite and therefore the No. 10 wouldn't apply to a worksite, which is where a place of work is being conducted, a press conference. The fact that the police commissioner and Professor Spurrier were part of that grouping probably gives some weight to the fact that it is unlikely to be ruled any differently, but nevertheless if it does then I will provide further information. That is the initial advice I have received in relation to that.

The Hon. Ms Scriven asked a question about government grants as well. I refer the honourable member to the RevenueSA website, where it makes it clear that if the business has received any South Australian government grants provided to address COVID-19 related business impacts, the value of these payments will be deducted from the $10,000 grant. I am not aware of any that have been, but I am prepared to seek some information to see whether or not that has occurred for any of the $35 million in grants that have been paid out.

Bills

COVID-19 EMERGENCY RESPONSE (FURTHER MEASURES) AMENDMENT BILL

Committee Stage

In committee.

Clause 1.

The CHAIR: There are eight clauses and a schedule. The first indicated amendment is at clause 4. It was my understanding that, with leave of the council, we were going to canvas a number of specific issues at clause 1.

The Hon. R.I. LUCAS: I was seeking to discourage that, but I was acknowledging the fact that it is likely we would canvas a number of issues at clause 1. I was going to encourage members, rather than canvas it at clause 1 and then repeat the measure during the clauses, to minimise the extent of that. Of course, if at clause 1 there are particular issues that members want to raise, they can.

The only issue I raise is that I am well versed with back-up support in relation to the commercial leases issue, but when we get into areas where I have less expertise—child protection, planning and others—I will need to get the appropriate officer to come in to provide advice and answers to me.

I need to indicate to the Hon. Ms Franks that the Minister for Health was in a position this morning to respond to questions during the committee stage, but that he is on a pair this afternoon because of his duties. So I do have prepared answers that he has approved, authorised and made available to me in an endeavour to provide answers to the honourable member's questions, and we will have somebody with appropriate expertise to try to provide back-up responses to any supplementary questions the member might have.

The Hon. M.C. PARNELL: I might just kick off, if I can, with an issue that is within the minister's field of expertise and relates to commercial tenancies and something the minister said in his summing-up. He mentioned that his understanding was that there were no states and territories that were going to go along with the national cabinet mandatory code of conduct in relation to binding that mediation. I became curious as to whether that was the case. I do accept what the minister said, that it does seem to be a tautology: it is either mediation or it's binding, but how can it be binding mediation? I have gone back to the source document, and under the heading of 'Binding Mediation' this is what the national cabinet's code of conduct says:

> Where landlords and tenants cannot reach agreement on leasing arrangements (as a direct result of the COVID-19 pandemic), the matter should be referred and subjected (by either party) to applicable state or territory retail/commercial leasing dispute resolution processes for binding mediation, including Small Business Commissioners/Champions/Ombudsmen where applicable.

My understanding of that is that South Australia, according to what the minister said, is actually going along with that because the applicable state or territory dispute resolution process in this state is not one of those vehicles that was suggested but is in fact the court system, such as the Magistrates

Court. I am not sure that what the minister said was correct because I think in this state we do not give the Small Business Commissioner that power to make binding determinations as we do a court.

I do not want to split hairs with it, but it also struck me that perhaps part of this confusion is in relation to two similar concepts: binding mediation versus mandatory mediation. We do have in South Australia mandatory mediation. I refer to regulations that this government passed last year following an election promise that, when there was a dispute between a mining company and a landholder, the Small Business Commissioner was going to be given, what we understood at the time, the ability to try to sort that out.

What turned out to be something that the farming community was expecting to just be a voluntary process and the Small Business Commissioner would be primarily there to help them, has transpired into mandatory mediation: you must attend, you must pay $195 a day, you can be prosecuted if you do not attend, and you must pay a share of any expert reports that are commissioned. I think that is a classic example of mandatory mediation.

So if you are a farmer and you decide that you do not want a mining company coming onto your land and you exercise your right under the exempt land provisions, what would happen is you would ultimately be taken to the Small Business Commissioner by the mining company and you are forced to fork out money on a daily basis to have your dispute heard. And if it cannot be resolved, then the Small Business Commissioner does not have that say; it does have to go to court for the final resolution. It is absolutely mandatory mediation even if not binding. I just throw that into mix because I was not 100 per cent sure that what the Treasurer said was correct, but I think I might be just splitting hairs. Certainly, the point is well made that the final forum for resolving these disputes will continue to be the courts.

The Hon. R.I. LUCAS: Given the hour, I am not going to prolong the debate. I agree with the honourable member's characterisation towards the end; that is, we are familiar with mandatory mediation, that you have to go through a mediation process. The whole concept of binding mediation makes no sense to me as a non-lawyer. Mediation is mediation. You might be required to have mediation but, in the end, the mediator, the Small Business Commissioner, does not have the power to make a final decision between two conflicting parties.

The ordinary person's or a reasonable person's reading of the binding mediation section, which is in bold print—binding mediation, in the national code—is, 'binding mediation, including Small Business Commissioners/Champions/Ombudsmen'. The champions, as I understand it, in some states are the equivalent of our small business commissioners, etc. They are there to try to mediate disputes. But ultimately where we have all ended up is there is that sort of mediator equivalent, the Small Business Commissioner or the champion, but then in the end they go somewhere for a final decision.

We are going to the Magistrates Court, some of the other jurisdictions are going to the equivalent of the Magistrates Court and some are going to our equivalent of SACAT. We thought about SACAT but, in the end, they are going to be resolving all the residential disputes etc. Unlike other jurisdictions, so I am advised, their CATs have had experience in the commercial leasing area, whereas our SACAT at this stage has not had considerable experience in the commercial leasing area. They have been in the residential leasing area.

I think we are splitting hairs to a degree. There is agreement, ultimately, that the process we are adopting is the one that everyone else is, which is a mediation by somebody who is a worthy person, like a small business commissioner, and then someone has to make a final decision when that can't be resolved amicably, etc.

The Hon. E.S. BOURKE: I am just seeking some further clarification regarding the provision and the appointment of the three deputy chief public health officers. Before I do, I want to make it very clear that no-one is disputing the incredible work they have been doing, their credibility or qualifications for having these positions.

I have had the pleasure of having a closer look at the Public Health Act recently and it was brought to my attention that there was no provision within that act to allow for a deputy chief public health officer, let alone three, but there was provision to have an acting chief public health officer. I was just wondering why there is no provision in the bill before us today for that appointment? As you

often say, Treasurer, I am not a lawyer and perhaps I have just overlooked this provision, but if you can advise if there is a provision, how the appointment was made and if they are ongoing appointments.

The Hon. R.I. LUCAS: Let me take that on advisement. We do not have someone from Health or in relation to the appointment process in the cavalcade of expertise that I have behind me. Before the expiration of the committee stage this afternoon we may be able to find an explanation for you. I have a vague recollection of it being outlined to me as to how the process was conducted, but I am not going to rely on that vague recollection. If I can get some more information during the committee stage, I will seek the indulgence of the chair and put the answer on the record for you.

The Hon. T.A. FRANKS: There are a couple of things I raised in my second reading contribution that I am still waiting for answers to. If we could start with the Biosecurity Act, I understand there is a prepared statement. Then I will move to the other questions that remain unanswered.

The Hon. R.I. LUCAS: I have a prepared statement that has been given to me to read, entitled 'Biosecurity determination: Davenport Community':

The Davenport Community Council on behalf of the Davenport Community agreed to become a designated community under the biosecurity determination, which commenced on 26 March 2020.

Davenport council members undertook a community survey on 4 May 2020, which indicated a strong view from those households surveyed to ease the biosecurity determination restrictions.

Given the wider relaxation of restrictions in the general community and the limited community transmissions, the community now believe that the risk to Davenport residents is low.

On 11 May 2020—

which is just earlier this week—

Davenport Community Council indicated to state government their request to be removed from the biosecurity determination.

On 13 May 2020—

which was yesterday—

the state government notified the commonwealth of Davenport Community's request to be removed from the biosecurity determination as a designated area.

The required amendment to the biosecurity determination to enable Davenport Community to be removed needs to be signed by minister Hunt. We understand this is expected next week. When signed off by minister Hunt, he will notify the state government of the amendment's date of commencement.

The Hon. T.A. FRANKS: Thank you. I cannot imagine that you will have this particular piece of information with you right now, but if, on notice, in regard to the 4 May survey of the Davenport Community, it could be indicated who authorised that survey, what questions it contained, how many community members it was both given to, in what form it was given to them and how many participated in that survey. I am also interested in what role the department played in that or whether it was purely a council survey, but I am assuming you do not have the answers to that right now.

The other questions that I asked in the second reading were in regard to the removal of children and police powers in 25A under schedule 2, from memory. My questions were: why are these powers needed? Who has been consulted? I specifically asked, having been told that the Commissioner for Children and Young People and the guardian had been consulted, if we could be provided with that in written form. I understand from the briefing on Tuesday when I raised if the ALRM had been consulted that that was to be undertaken, so could that also be provided?

The Hon. R.I. LUCAS: I can provide some limited information but, again, if there is any further information required, I might need to seek your indulgence to provide it later in the committee stage. The initial advice I have available here is that the ALRM were consulted but, in relation to the other bodies, we are not aware of any response from them. That is the adviser I have here with me at the moment. If there is anything different to that, before the expiration of the committee stage this afternoon, I will place on the record any different advice that I might get on the issue.

The Hon. T.A. FRANKS: I thank the Treasurer for that response. On Tuesday morning, in the crossbench briefing on this bill, we were advised that the Commissioner for Children and Young People and the guardian had been asked for their response to this piece of legislation. Over the lunch break, my staff contacted the guardian's office. They were unaware of such a request for a response to the bill. I understand that my staff spoke to their staff, and their computers were down to add to the complexity of this, so perhaps there is a document somewhere but so far, at our end, we have not been able to trace it down.

I do wonder why then we were told on Tuesday morning that there had been a consultation with that particular body, as well as the Commissioner for Children and Young People, and that is why I asked for those pieces of advice to be presented for the parliament and members here to consider during this debate. In terms of the ALRM, on what date were they consulted? Have they provided anything in writing and can that be provided to the council, if so?

The Hon. R.I. LUCAS: I am advised the best recollection is it was early Tuesday but, as indicated earlier, we have not received to our knowledge any response at this stage. In relation to the earlier questions, again, I will see whether the government officers are able to find some record of the date of the email and the timing of the email that was claimed to have been sent to the guardian and the various other individuals or bodies that the member has referred to. There should be some record of when the email was sent, if that is the position the government has adopted. But at this stage, as I said, we are not aware of any response yet. If the guardian's staff are saying they do not believe they have received a request for a submission, perhaps that is not surprising. We will endeavour to find whatever information we can and share it with the member.

The Hon. T.A. FRANKS: Just the final question, although I am not sure you will be able to provide it right now, with that particular issue I am happy to wait until we get to that relevant clause now, but could we have a list of the bodies that were consulted? I understand that the Law Society was consulted and, as a result, we all have some advice now from the Law Society because they were given enough time to prepare some responses, although not on the entirety of the bill, I understand. Could that be clarified, too, as to whether they received all of the various provisions we are looking at or only the commercial leases section, but also any other bodies such as the Property Council or so on? Who was consulted, so we can see who was consulted, and more importantly who was not consulted?

The Hon. R.I. LUCAS: Just to clarify, I am advised that what was sent to various bodies, I assume like the Law Society and maybe the guardian and the others, was the actual copy of the bill. It was not a consultation prior to the development of the bill. We just need to be clear. I think it would probably be clear if we were not sending something until Tuesday it is likely to have been the bill. That is what was sent to various bodies and that is why we would have got a response from the Law Society, but at this stage my advisers are not aware of a response from the other bodies or individuals to which it has been sent.

The Hon. T.A. FRANKS: I have a letter from the Law Society dated 8 May with regard to the mandatory code of conduct and the commercial leasing principles, so I take it there was something sent to them prior to the bill being prepared?

The Hon. R.I. LUCAS: Can I clarify that? There are two letters. I think there is one dated 8 May where what they were raising is, 'Hey, there are a lot of issues in relation to commercial leasing. Are you implementing the mandatory national code?' and they were referring to the COVID (1) bill where we did have some broad provisions. That was the letter of 8 May. I think there is a subsequent letter from the Law Society on 11 May, or it might be the 12th or something.

After they got the bill, they updated their advice. The first letter was basically saying, 'Hey, you need to do something and we think you should implement the national code and what you did in COVID (1) is not sufficient,' and we recognised that. Those who were following that debate know that I indicated at that particular stage that we were going to have to come back with the details of the national code because the national code was released either on the day we debated the bill or the day afterwards or something.

We had already drafted the bill, etc., and it was then that the national code was released on 7 April or something, I think it was, and so we were not in a position to either implement the national

code or not at that particular stage. I indicated we were going to have to come back and do something subsequently. I think the first letter, the 8 May letter, if that is the date, was in relation to, 'What are you doing?' and, 'You should get on and do something,' and then there was a subsequent letter after they got a copy of the bill.

The Hon. T.A. FRANKS: I will just express my gratitude to the Treasurer for clarifying all of that. I appreciate it.

The Hon. C. BONAROS: Just to clarify, does the same advice apply in relation to the correspondence that we have received from the Property Council? I note that today I have in front of me three separate pieces of correspondence from the Property Council dating back to 16 April and then one dated yesterday and one dated today. Can I take it from your response that the same would apply in relation to their consultation on the bill?

The Hon. R.I. LUCAS: I think, to be fair to the Property Council, they were more actively engaged earlier than the Law Society at the national level. Their national body had been negotiating and discussing with the commonwealth government and other state and territory governments about the national code, with the Property Council trying to explain how unworkable from their viewpoint they believed the national code would be and in particular the proportionality principle. I do not know the dates. I think you said 16 April; that would have been after the national code was released.

They have been very active at the national level and also at the various state and territory levels in saying, 'Hey, we think there are problems with the national code,' and equally, in various states, saying, 'Hey, you should get on with it and do something but don't do the national code, do something different.' I am not sure of the other dates of the letters to which the honourable member is referring, but they have been active all the way through the process.

Any letters in April would have been way before we were in a position to indicate what our position was going to be. We were talking to various people, or listening at that stage, I should say, because we were getting very strongly pointed views from various organisations at the national and the state level as to what we should or should not do in relation to the national code.

Clause passed.

Clauses 2 and 3 passed.

Clause 4.

The CHAIR: There are two amendments to this clause in the name of the Hon. K.J. Maher. Would you like to speak to your amendments, the Hon. Mr Maher?

The Hon. K.J. MAHER: Yes, and, Chair, I will seek your guidance. I am happy to move the amendment standing in my name, but I had a couple of questions on the clause generally, if I am capable of doing that before I speak to the substance of my amendments.

The CHAIR: Sure. Move, but you can still speak to—

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

Amendment No 1 [Maher–1]—

Page 5, after line 18 [clause 4, inserted section 7]—After subsection (2) insert:

(2a) Any rent relief ordered by a court under regulations made under this section, should, as far as practicable and in the absence of the circumstances set out in subsection (2b), be proportionate to the reduction in turnover of the business of the lessee during the COVID-19 pandemic as compared with the turnover of the business of the lessee during a period before the COVID-19 pandemic as determined by the court.

(2b) Subsection (2a) does not apply—

(a) in circumstances where the parties to a commercial lease agree otherwise; or

(b) if a court determines that exceptional circumstances exist in relation to either party to the commercial lease such that an order to that effect should not be made, in which case the court must consider any other circumstances or matters prescribed by the regulations in relation to an order for rent relief.

I indicate that if the first amendment standing in my name fails, I will not be proceeding with the second one. The second one enters a definition that is included in the proposed regulations into the act, and if the first amendment fails it has no work to do and will be unnecessary. So I indicate that at the start.

I may have missed it in the contribution the Treasurer has made on this already, but I wonder if the Treasurer could inform the chamber of when the national code was first released—I think there was a statement from the Prime Minister on 30 March—and whether the statement from the Prime Minister on 30 March was essentially the forerunner to the release of the national code?

The Hon. R.I. LUCAS: It was formally released on 7 April. The statement on 30 March I think was that as they came out of the national cabinet for the first time he foreshadowed in broad terms what he and the national cabinet had agreed on. Again, I don't want to waste time this afternoon. The board of treasurers and CFFR, which includes the federal Treasurer, had had a long series of discussions about what commercial leasing arrangements should look like. That advice went through, but ultimately the Prime Minister and the national cabinet made decisions which were different to the advice that had originally been given. They were broadly announced by way of press release on 30 March, but the actual document was released on 7 April, so that is the date that it was formally released.

The Hon. K.J. MAHER: I thank the Treasurer for his explanation. It goes in part to answering the next question. Notwithstanding that treasurers of jurisdictions may have had concerns, did, at the time—in the lead-up to 30 March and 7 April—South Australia have the concerns that have now been expressed with the national code?

The Hon. R.I. LUCAS: I am not a member of the national cabinet. I can say that I certainly did, but I was not part of the national cabinet process. Can I say that I think the national cabinet process has worked remarkably well, so I mean no criticism of the national cabinet process, but in relation to this, I just was not part of the discussion or the debate. The Prime Minister had very strong views, so we were led to believe from those who had spoken to his office and other federal representatives about this whole issue.

Ultimately, it is what it is, or it was what it was. The decision came out and each of the jurisdictions have been left with, in essence, making sense of binding mediation, as to what that means, and various other provisions. I am not going to repeat what I said prior to the lunch break. This is our best endeavours. We think the essential elements are there, but there are significant differences that we are proposing.

As I said, no other jurisdiction has implemented the whole of the code word for word. The only other jurisdiction that indicated very early that they were going to said so publicly, but in the end did not do so when they took advice and introduced their own regulations in that particular Eastern States parliament.

The Hon. K.J. MAHER: The Treasurer has made some mention of other states. Do other states have legislation before their parliaments or do they have regulations laid or passed in terms of the national code and how they intend to give effect to it?

The Hon. R.I. LUCAS: Yes, with the exception, as I understand it, of two states: Western Australia and Queensland. They are still going out to consultation, or they are still in consultation, in terms of how they are going to implement all the detail, but my understanding and advice is that all the other jurisdictions, to some extent or another, have made decisions in terms of who is going to make the final decision.

What we are proposing, which is a broad power in an act and then all the hard work, grunt work, being done by regulations, is consistent with New South Wales and is consistent with Victoria. Certainly, it is consistent with those. As I said, two other jurisdictions, Western Australia and Queensland, are still working their way through the process.

Tasmania is a bit of an amalgam of both legislative change and regulations. Their difference was they actually legislated before anybody else did in relation to leases generally, and even prior to the national cabinet decision, to a much greater extent than everybody, but they are now going back with another bill and it has passed, evidently, in the last week or so in their jurisdiction. We are

consistent with New South Wales and Victoria, and to a significant degree with Tasmania, in terms of the structure that we are proposing.

The Hon. K.J. MAHER: Is the Treasurer indicating that other jurisdictions have given effect to the national code by way of legislation or regulation?

The Hon. R.I. LUCAS: It varies. As I said, none of them have implemented the national code. New South Wales uses the words 'give effect to'. I think somebody else talks about 'have regard to'. Without nominating the treasurer, one other treasurer did say to me that what they were proposing was to 'pick up the vibe' of the national code. I do not think that is going to appear in that particular treasurer's legislation or regulation.

The Western Australian and Queensland treasurers both said to me—not just me; to all the treasurers—'whilst we haven't finally decided on what it is, it is correct to say' because I put the question directly to them, 'Will you be implementing the national code word for word?' and they said no. They will be having regard to it or giving effect to it, as the rest of us are.

It varies again between what we are doing, which is mainly in the regulations, which is New South Wales, Victoria and us and, significantly, Tasmania. We do not know about Western Australia and Queensland at this stage. Certainly, on past practice with Western Australia it is likely that they would do a regulatory change. It is likely, based on what they have done, that Western Australia and Queensland will use the regulatory power, as we are, but we will have to wait and see in their case.

The Hon. K.J. MAHER: I know there has been some discussion from a number of members about binding mediation. I think there are forms of alternative dispute resolution where there is voluntary mediation and if an agreement cannot be reached voluntarily by the parties in some form of dispute resolution the mediator then switches to neutral and becomes an arbitrator and can make decisions. I do not know, but I suspect maybe that is what was being referred to.

Was there consideration given to something more than the Small Business Commissioner making recommendations, but something less than recourse to the Magistrates Court, any sort of arbitration or tribunal to make this easier than parties having to go full blown to court?

The Hon. R.I. LUCAS: The honest answer is we had a look at a whole variety of options, but there was only one other option that we considered. We did not want to create a new body, tribunal or agency, we wanted to use what existed. The only alternative we considered was SACAT, which I think I indicated in response to an earlier question; that is, instead of referring it to the Magistrates Court, we refer it to SACAT, but for the reasons I have outlined already and which I will repeat very quickly, SACAT in South Australia has not had experience in the commercial leasing area, unlike some of the other CATs, so I am advised.

Their expertise is in residential leasing. They have picked up the responsibilities of the old residential tenancies tribunal, for example. We were going to give them what might not be an insignificant number of residential tenancy leasing issues to resolve. If all of a sudden we gave SACAT all of the residential tenancy leasing issues to be resolved and the commercial ones, we thought it was overload.

Some of the other states did go down the path of the Small Business Commissioner equivalent or the Magistrates Court. We have decided that was the preferable course so that we do not overload SACAT with all of the leasing issues at the one time.

The Hon. K.J. MAHER: Which follows on nicely to the next question: is there any expectation of even roughly the number of matters that may flow from this, and what resourcing is being put into the Magistrates Court? Are additional or auxiliary magistrates being contemplated to be appointed for this purpose?

The Hon. R.I. LUCAS: We have started thinking about all of this and in the first instance the additional resourcing is for the Small Business Commissioner because he and his office are going to be the first port of call. We have had discussions with the Small Business Commissioner and he has already organised for an additional four staff from the Ombudsman's office to come in. I have offered the Small Business Commissioner some people from Treasury with financial expertise, should they

wish it. He has also appointed some additional mediators; he has increased his mediation panel from nine to 13 in expectation of volume increase.

He has increased the number of mediators; we have increased the number of support staff from the Ombudsman's office; we have offered additional staff from Treasury if it is required or AGD if needed, to provide assistance. He has organised additional office space from the Office of the Industry Advocate. I think they share an office building, so he has extra office space. In the first instance we are providing additional resources there. We will have a look also in relation to the Magistrates Court and if there is a requirement to supplement resources, in discussions with the Attorney-General, we will make sure whatever extra resourcing we require is provided to the Magistrates Court as well.

The Hon. K.J. MAHER: I guess that comes to a part of the reason for the opposition amendment. We are concerned that there might be a large influx—well, there will be an increased number of cases for the Magistrates Court to hear. We think the principle of proportionality that is one of the cornerstones of the national code will help to provide some guidance. As it currently stands under the proposed regulations, if a matter finds its way to the court I think there are six or seven things that the court must have regard to and, of course, any other matters the court thinks fit.

However, we think that if there is something that was good enough for the national cabinet—that is, all the premiers and the Prime Minister think should have primacy and be the cornerstone of a national code being proportionality—that gives some guidance not just to the court, importantly to the court, but also to the Small Business Commissioner that may help with the caseload. To have something that can be understood and not something that—our amendment does not say 'must', and it does put in the clause as far as practicable to make it clear that it might not always be the case that we have to follow the cornerstone of the national code being proportionality but, as far as practical, should look at the principle of proportionality to give that guidance.

That should be more helpful than a list of six or seven things and any other thing the court thinks fit; whereas the danger as it currently stands under what has been proposed under the regulations, is that each time one of these finds their way to the Magistrates Court, both parties will have to lawyer-up and end up in an expensive process, as is any other case in the Magistrates Court that is being run. There might be possibly a trial hearing evidence whereas if there was one thing like the cornerstone of the national mandatory code that was in the legislation, it would provide a bit more certainty. It would provide a guide and would give the parties some idea of what it is that they might expect or what they can take in as a starting point.

The Hon. R.I. LUCAS: I will not repeat all of the argument I gave this morning but the government is strongly opposed to the amendment, and I think the member is aware of that. This is a significant issue for us. There are a number of other amendments that are being moved that the government is either sanguine about or prepared to openly embrace but this is a critical amendment from the government's viewpoint in relation to this.

There are a couple of points I would make, on my advice, and that is that the member says there is a range of other issues that the mediator and the court could ultimately take into account. We think they are very important because some of those issues that they have to take into account are the financial capacity of the tenant and the landlord.

So, as I outlined this morning, you may well have a situation where a rigid adherence or an encouragement to adhere to the proportionality rule may well lead to the bankruptcy of either the landlord or the tenant. What we are saying is, in relation to the mediation and then ultimately the decision, in addition to what is a fair and reasonable cop in terms of who pays what in relation to the lack of rent being able to be paid in all of this process, the mediator and the Magistrate's Court ultimately has to take into account not an issue of strict proportionality but the reasonableness of what has to be decided, but also take into account the financial capacity of both the lessee and lessor in relation to the circumstances. There are other factors they have to take into account in the consideration, but they are two important other issues that need to be taken into account.

In relation to lawyering up, I am advised that it depends on the extent of the dispute. If the disputes are less than $12,000 in value I am told parties are not entitled to legal representation,

except in special circumstances in the Magistrate's Court. If it is above $12,000 in terms of what is in dispute, then clearly there may well be lawyers involved.

The only other issue to which I did not refer this morning and I should have is that clearly the government has made a significant contribution in terms of trying to help resolve these disputes. We have provided—or the taxpayers have—$50 million of suggested relief in terms of land tax to encourage the settlement of disputes. That has to be on the basis that, if the landlord is getting less rent, then there is the capacity for up to 25 per cent of the 2019-20 land tax bill to be, in essence, waived as a partial compensation for the landlord in relation to the settlement of the particular dispute.

The taxpayers of South Australia are making a not insignificant contribution to trying to settle some of these disputes as an encouragement, that the landlord cannot just pocket the money themselves. It is part of the rent relief that has to be provided to the tenant in relation to the settlement of the dispute.

The Hon. K.J. MAHER: I thank the Treasurer for his comments. I do not think we are that far away from what we are talking about in terms of how this should operate. The Labor amendment is not to be strictly enforced; it is very deliberately crafted to say 'should', and it also says 'as far as practicable', indicating that strict adherence to proportionality is not what this amendment does. The court under this section should, as far as practicable, but also, in a further attempt, if there are circumstances like the Treasurer is talking about, where a strict adherence to proportionality could send one of the parties bankrupt, it provides two more out clauses. It allows parties to agree otherwise, and many people who enter into commercial arrangements would be aware that, if they send the other party bankrupt, then it is not in their own financial interests to do so a lot of the time.

If a landlord wants a strict adherence to proportionality that would send a tenant bankrupt in the current time, many landlords would be aware that they would find it very hard to get new tenants. It is not in their financial interests to do that, and that is why it allows parties to a commercial lease agreement to agree otherwise. Secondly, if it does come to court, a court can determine that exceptional circumstances exist, and again, in the example the Treasurer gave, one of the parties facing bankruptcy may well be an exceptional circumstance.

If a party went bankrupt, then the lease would end up having no effect, so that is why we have not had a strict adherence to proportionality. It is very deliberately drafted as 'should, as far as practicable, have regard to proportionality', but also allowing parties in a commercial lease to agree otherwise, and also allowing for the court to determine those exceptional circumstances.

I might also say that this applies only in something ordered by a court—the Small Business Commissioner in the first instance. We would very much hope that as many as possible can be resolved by the Small Business Commissioner, who is not bound by these amendments, but it gives some guidance when parties are mediating before the Small Business Commissioner. They have an idea of what it is a court may take into account in terms of 'should, as far as practicable, having regard to proportionality' that may help with that clarity and certainty that might make it easier to mediate.

I want to make it clear that we think it is a good idea that the Small Business Commissioner mediates. We think it is a good idea to have the Magistrates Court involved. We just think that applying what is the cornerstone of the national cabinet mandatory code of conduct makes sense, but not strictly adhering to it. Not allowing for ways that it has to be in every circumstance strictly applied makes sense.

I have indicated to the Treasurer that if this amendment is supported in this chamber and in between the houses during the course of today or there are further compelling arguments or reasons why it should change, we are happy to have that debate and, if necessary, when it comes back here if it is not accepted by the other chamber, change our minds. We want to make sure this works. Our motivation here is to try to create some certainty.

At the risk of being on a unity ticket with the Liberal Prime Minister and the Labor South Australian opposition, as the Treasurer characterised it earlier, we think it makes sense. This is what the national cabinet agreed to as the principles that ought to be followed. We think, particularly in the certainty that it might create, it may help settle disputes at that mediation level more rapidly.

The Hon. R.I. LUCAS: I just want members to be aware that I cannot accept the characterisation that the government and opposition are not too far apart on this particular issue. On the issue of the Small Business Commissioner and the Magistrates Court, that is fine. But the government is very firmly of the view that the principle, which is inherent in this and also in the national code—and (2a) of this amendment says, 'any rent relief ordered by a court…is proportionate to the reduction in turnover.' That is, rent relief is proportionate to the reduction in turnover, so that if you have had a 50 per cent reduction in turnover there should be a 50 per cent reduction in the rent.

As I outlined at length this morning, there are any number of examples from landlords which indicate that a 50 per cent reduction in turnover, depending on the way you have a structured and financed, leads to much more than a 50 per cent reduction in the net income of the particular landlord because of their finance costs, because of a whole range of other issues. The various examples I quoted from individual landlords and the Property Council before lunch indicated that in many cases the 25 per cent reduction in turnover was leading to more than a 50 per cent reduction in net income. A 50 per cent reduction in turnover was leading to a more than 100 per cent reduction in net income.

The proportionality, which is being talked about, of rent relief and turnover is just missing the point that the net income of people, because of the way that is structured, is not related in any way to the turnover—there is a relation, but it is not a proportionate relationship to their turnover. It is just, from the government's viewpoint, wrong in principle to say the relief that we are talking about should be proportionate to that and then it is only in exceptional circumstances that you can move away from that particular principle. We are saying that is wrong in principle, so I do not accept the characterisation that the government and the opposition on that aspect of these amendments is not far apart at all.

As I said, for some of the other amendments that other members are moving we are sanguine or, indeed, openly embracing and supportive, but this particular one the government cannot accept. The government's position remains, as I said, that we believe this legislation needs to be passed this week so that we can gazette the regulations tomorrow so that, as perfect or imperfect as any set of regulations in this particular space are going to be, the Small Business Commissioner can get on with his job and then ultimately the Magistrates Court can get on with their job with a clear set of instructions from this parliament, from the government, as to how they should go about the task.

The Hon. M.C. PARNELL: As I think we have all realised from the very start, this entire exercise is about resolving a wicked dilemma. The pie is smaller. There is pain to be had and it is about how the pain is shared. It is difficult to work out what is fair. You can imagine any number of scenarios: the multibillionaire property owner whose personal wealth exceeds that of some small nations and all their tenants have shiny trousers and they are really struggling, hand to mouth. Should those tenants maybe pay no rent for a period because the landlord can afford it? It is always difficult to work out what the formula is.

I take the point of the honourable Leader of the Opposition that this only has work to do when agreement cannot be reached. That is the first point to make. The second point to make—the member did not make it, but I think we do need to—is that if you have a principle in the act, then it will actually set the parameters for negotiation. If negotiations are going off the rails, then both parties will know, 'Hang on, the starting point here is 50 per cent reduction in turnover equals 50 per cent reduction in rent unless there are other factors that come into it,' so it does affect the negotiations.

I also take what the Hon. Kyam Maher said, that in the circumstances proposed by the Treasurer, if one of the parties is about to go bankrupt as a result of the application of a fifty-fifty clause, if you like, that is an exceptional circumstance that the court would be obliged to take into account. Then we get to the practical aspect: it is a quarter past four and we do not sit for another three weeks. The Greens' position is that we are happy to come back tonight if necessary, but we think that this measure deserves to be considered a bit more. If the Liberal and Labor parties want to negotiate and finetune this over a dinner break, then let them do so.

I also acknowledge that the Property Council has written to us in the last few minutes and they have said pretty much what the Treasurer said: worst-case scenario is a 479 per cent reduction in landlords' net income, and that is if the tenants are paying no rent at all—a 100 per cent discount—but we have to overlay on that that the circumstances of the different players will be different. I think

giving the court a starting point makes some sense, as long as we also give them the latitude to deviate from it where the circumstances require. The Greens will support this amendment.

The Hon. C. BONAROS: I take the points that have been made by the Leader of the Government and the opposition on this and I have to agree with what the Hon. Mark Parnell has just said about the importance of this clause. I do have a question, though. In relation to the regulations, the fact that the court can consider any other matter that it thinks fit already does not rule out its ability to take into account the proportionality principle, does it? That is a question for the Treasurer.

The Hon. M.C. Parnell: So they could do it anyway.

The Hon. C. BONAROS: They could do it anyway.

The Hon. R.I. LUCAS: What is the question?

The Hon. C. BONAROS: The regulations already provide that the court can take into consideration any other matter it thinks fit. The court could turn its attention to the code itself and look at the provisions that apply in the code about proportionality, and they are that:

> Landlords must offer tenants proportionate reductions in rent payable in the form of waivers and deferrals of up to 100% of the amount, on a case-by-case basis, based on the reduction in the tenant's trade during the COVID-19 pandemic period and a subsequent reasonable recovery period.

There is nothing already preventing the courts under the government's bill from taking into account what the Leader of the Opposition calls the cornerstone of the code of conduct. Can the Treasurer confirm that that is his understanding, or the government's understanding, as well?

The Hon. R.I. LUCAS: There is another step prior to that, of course, there is the Small Business Commissioner, but the court can take into account various issues. There is a reference in the government's drafting to turnover, but under any other matter the court can look at whatever issues it wishes in trying to determine a fair outcome.

We do not think they should be, in our very strong view, directed towards giving pre-eminence or prominence to the issue of proportionality, that is that turnover and rent relief, etc. are in essence pre-eminent or have any greater significance than an issue that the court might like to take into account because, for the examples that have been given by individual landlords, the net income impacts as a result of turnover can be wildly different depending on the financial structuring of the landlord's financial circumstances.

So the answer to the question is, yes, the court can determine what it wishes. The issue here is, as the honourable member would know, are we going to point them in a particular direction to give greater significance to a particular issue or not? This proposed amendment provides:

> Any rent relief ordered by a court under regulations made under this section, should, as far as practicable and in the absence of the circumstances set out in subsection (2b), be proportionate to the reduction in turnover…

So it is saying, as far as is practicable, what you should be driving towards is acknowledging that rent relief and turnover have a direct relationship and that it should be proportionate in terms of what you do. Then there is the get-out-of-gaol card which says that in exceptional circumstances you do not have to do that.

What we are saying is that, short of exceptional circumstances, there are literally hundreds of different examples where we believe both the Small Business Commissioner and the court, ultimately, should be able to listen to the arguments and make a reasonable judgement in the interests of everybody in terms of settling the dispute. The government's strong position is that the government's bill does that. We think both the national code and this support to a significant degree of the principle in the national code is wrong in principle and is not one we should support.

The Hon. C. BONAROS: That is a huge statement from the Leader of the Government. I am going to refer to the correspondence we have received from the Property Council this afternoon, which I am taking into consideration on this issue. I point out for the record their concerns about proportionality. Again, as the Leader of the Opposition has pointed out, this is the cornerstone of the national code of conduct:

Given proportionality will have a perverse impact on many landlords—including SME landlords—this is not an amendment that we could recommend supporting.

As we have advised the State Government in recent times, the proportionality argument is fundamentally flawed. A percentage fall in rent for a landlord represents a far greater percentage drop in the landlord's net profit and cash flow.

They then go on to indicate, for instance, a 25 per cent discount to rent will result in a 58 per cent reduction in the landlord's net income; 50 per cent, 117 per cent; 75 per cent, a 175 per cent reduction; 100 per cent discount, a 234 per cent reduction. That is obviously something we are quite concerned about.

To be frank, I am not convinced either way at this point in time. I do have some sympathy for what the Leader of the Opposition has proposed, given what the national code of conduct has in it. At this point, whilst I am extremely sympathetic to the arguments that the Treasurer has made, my preference would be that we come back to this issue. If that means supporting this amendment right now and returning to this clause during the course of the event, that is something we will be open to because I think it requires far more consideration than we are actually giving it right now based on the rationale from both the government and the opposition.

The Hon. R.I. LUCAS: Ultimately, that is a judgement call for the member, but the potential outcome of that is we will not have a resolution for the Small Business Commissioner and the Magistrates Court.

The Hon. C. BONAROS: Where are we going now?

The Hon. R.I. LUCAS: We will keep sitting, but the government's position is not changing. All I am saying is we cannot support the principle and, in the end, if the majority in the chamber insists on this particular issue, then there will be no resolution in relation to the commercial leasing issue, and that would be a tragedy for commercial tenants in the community.

The majority in the chamber is entitled to do whatever it wishes, but the majority needs to understand that the government's position on this particular issue is resolute. As I said, in relation to some of the other amendments, we are either sanguine and/or openly embracing some of the other amendments, so it is not as if the government is refusing all of the amendments in relation to this. I think the honourable leader indicated there was an amendment moved in the House of Assembly by the opposition, which was picked up in whole or in part and incorporated in the bill, so the government is not adopting a position that we are not prepared to accept any amendments to the bill.

But this is such an important principle in relation to this particular issue. The government is prepared to sit tonight. I do not have a problem with sitting tonight or sitting tomorrow if we have to, but that would only be useful if it was going to actually lead to a resolution of the issue. On this particular issue, as I said, unlike some of the others, we have a very, very strong view that it is just wrong in principle. It misunderstands completely what actually goes on in terms of commercial leasing. The notion that turnover and rent relief can sort of be proportionate and that in some way the impact on a landlord's net income or net profitability or cash flow is impacted in the same proportionate fashion is just not the case in the real world.

I accept the fact that these issues have only been exposed to other members in recent hours or days, but the government has had this argument from everybody for a couple of weeks. It is one of the reasons why we have been seeking to come to some sort of conclusion in relation to this issue. In the end, there is no perfect, simple solution to it all. This is the best, we believe, that can be offered to the commercial leasing community, both landlords and tenants. We think it is a reasonable compromise.

We accept the fact that people can have validly based arguments for other systems, etc. as indeed the national cabinet did, but it is not the government's view that this is the way to resolve the situation fairly and reasonably in South Australia. To that end, every other state and territory—every other state and territory, Labor and Liberal—has come to the same broad conclusion. This is not the Liberal government in South Australia standing out like a lone pebble on a beach. Every other state and territory government, Labor and Liberal, has come to the same broad conclusion, that is, the broad process we have outlined today.

The committee divided on the amendment:

Ayes................10
Noes 7
Majority 3

AYES

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

NOES

Centofanti, N.J.	Dawkins, J.S.L.	Hood, D.G.E.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I. (teller)
Ridgway, D.W.		

PAIRS

Hunter, I.K.	Wade, S.G.	Pangallo, F.
Darley, J.A.		

Amendment thus carried.

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

Amendment No 2 [Maher–1]—

Page 7, after line 2 [clause 4, inserted section 7(7)]—After the definition of *relevant Act* insert:

rent relief means any form of relief in respect of the liability or obligation of a lessee under a commercial lease to pay rent (including waiver or deferral of rent).

As I indicated at the start of debate on this clause and my speaking on the amendment, this amendment is subsequent on the passage of the previous amendment. It inserts the term 'rent relief', which is used in this amendment, into the act. It is exactly the same and taken from the regulations but is needed because it now refers to it in the act. So I move this amendment that gives effect to what was previously passed.

The Hon. R.I. LUCAS: The government opposes the amendment, but we accept that it is consequential, as part of the package.

Amendment carried; clause as amended passed.

Clause 5.

The Hon. C. BONAROS: I just want to check with the Leader of the Government: I raised during my second reading contribution that there were changes to regulations that were made as a result of other pieces of legislation under the previous COVID measures bills that were moved. Is it the intention that this bill will also potentially impact other bills that do not fall within this bill and may result in regulations made being made under those other pieces of legislation?

The Hon. R.I. LUCAS: I can only give broad advice, and that is that any regulations that are issued under this bill can only be regulations authorised under the parent act. As I understand from a brief discussion with the honourable member about an earlier issue—I think the government's argument might have been that amendments were issued under other acts—all we can do with this is there is a parent act (the COVID act or whatever it is called) and this bill is going to amend that. We can issue regulations underneath this, which is authorised by this, but my advice is that we do not have any wider power to issue regulations under other acts.

The Hon. K.J. MAHER: This was, I think, the main amendment that the Treasurer was referring to as having opposition amendments in the other place being taken into account as the bill was passed. In addition to the safeguards in terms of reporting that now are incorporated in this piece of legislation, what additional safeguards is the government putting into place to ensure the safety of vulnerable people who have limited capacity to use technology or who have communication barriers, for whom remote inspections or visits may be difficult or unsuitable?

The Hon. R.I. LUCAS: I am not in a position to give any information as to what additional actions the government might be taking along the lines the member is suggesting. The minister or ministers involved may well have actions that are involved, but the legislation just does what the legislation does. I am not in a position to provide advice to the member during the committee stage on what other policy actions the government is taking.

The Hon. K.J. MAHER: I think in the other place the Attorney-General noted that one of the reasons for this measure was to reduce the frequency of staff of the Chief Psychiatrist entering and exiting hospitals. Is that an important consideration, and are there any other measures that the government is taking to reduce the incidence of people entering and exiting hospitals?

The Hon. R.I. LUCAS: In the briefing notes I have I think it is consistent with what the member has just said: the rationale for facilitating visits of the Chief Psychiatrist by audiovisual or other electronic means is that there is a potential infection control risk for services of the Chief Psychiatrist. Inspectors move from one hospital to the other. There is a concern about the health of inspectors, but the issue relates more to ensuring that inspectors do not become a vector. To move between hospitals and clinics routinely would be inconsistent with procedures put in place during the COVID emergency for clinical staff. For example, CALHN has asked staff who work across two hospitals to only work at one. I do not know whether that assists the member at all.

The Hon. K.J. MAHER: I thank the Treasurer for his response. Do I take it from that that it is the view of the government or the government's health advisers that if you do not need to, if there is not a necessity for you to be in a hospital, it is best avoided at this time as you may be a vector for this disease? Limiting non-essential and unnecessary is a desirable aim, as we are trying to do here with the staff of the Chief Psychiatrist if it is possible.

The Hon. R.I. LUCAS: I can only share the information I have which, as I have outlined, relates to the approach of the Chief Psychiatrist's work, and it also quotes the CALHN health network in terms of what they have asked staff to do. I do not know whether I can generalise it any more broadly than the advice that I have received. Not being a public health expert I am cautious about giving public health advice other than what I have been provided.

The Hon. K.J. MAHER: I thank the Treasurer for that. Is the Treasurer aware, for instance, if the Minister for Health has been entering or exiting hospitals, and what has the necessity for that been, and could he be a vector for bringing disease into hospitals if he does not have the necessity to be there?

The Hon. R.I. LUCAS: I guess the issue in relation to not only the Minister for Health but Professor Spurrier, the Chief Executive and, indeed, others, is that everyone will need to be mindful that they take whatever action is required by the Chief Public Health Officer and her offsiders in relation to undertaking the necessary work they have to do. The Minister for Health is the Minister for Health and he has to run a massive health system and he also has to help organise a once-in-a-lifetime pandemic. He clearly has to have access to various worksites. I am sure that he is mindful of the inference behind the honourable member's question, and I am sure he would not do anything that would place anyone at risk.

Clause passed.

Clause 6 passed.

Clause 7.

The Hon. K.J. MAHER: This clause is one where I think there was some difficulty in completely understanding it during briefings. I wonder if the Treasurer can explain what the intention of this clause is and what the effect will be: what areas will this clause affect?

The Hon. R.I. LUCAS: I am advised that examples of when clause 7 might apply—that is, extensions of time beyond the expiry of the act, regulations due to expire later this year—their extension could be extended beyond the operation of the act. Provisions which require the preparation and submission of annual returns; provisions which require annual general meetings; provisions which require other kinds of financial statements and appointments of statutory officers are examples of where clause 7 might be applied.

The Hon. K.J. MAHER: I think this was a matter that was agitated when the original bill went through a few weeks ago, but in terms of the appointment of statutory officers, for the sake of clarity can I confirm that this only allows, and the regulation only helps enable, the statutory officers to be reappointed. The bill itself and this regulation do not allow for the appointment of a different person as that statutory officer. Am I correct in remembering that six months is the term of appointment?

The Hon. R.I. LUCAS: I am advised that is correct.

The Hon. K.J. MAHER: So, in effect, this regulation will give effect to allow a statutory officer appointed during the declared emergency to continue on for whatever is the balance of that six months after the end of the declared emergency; is that right?

The Hon. R.I. LUCAS: I am not sure whether this answers the honourable member's question, but if, for example, an extension happened tomorrow it would extend for up to six months, which would be beyond what we are expecting to be the end, hopefully, of the emergency we are currently enduring.

The Hon. K.J. MAHER: In relation to the issue of annual reports, other reports, audit activities, is there a limit on the extension that can be given for those? Does the same six months that applies to statutory officers apply to reports? For example, can permission be given, notwithstanding that it is legislatively required elsewhere, for reports or audits to be postponed for three years? Would there be anything to stop that, and do these regulations then have force for those three years?

The Hon. R.I. LUCAS: I am advised that under the audit requirements it can only be extended to 9 October. My advice is that the longest period the audit could be delayed is 9 October, not three years.

The Hon. K.J. MAHER: My final question is, and I appreciate the answers: where did the need for this change come from? Did a particular part of government see a problem with it, or who agitated for or requested this particular change?

The Hon. R.I. LUCAS: Of that audit?

The Hon. K.J. MAHER: Clause 7.

The Hon. R.I. LUCAS: We had a similar debate in relation to the audit and financial issues earlier, where I think there was a discussion that involved Treasury and some consultation with audit staff and others, but in relation to clause 7 I think the best understanding is that it was just part of the general discussion with Attorney-General's officers, legal officers, maybe Crown Law, maybe parliamentary counsel—lawyers one and all, I suspect—who may have had a view in relation to this, but I do not know that there was any particular driver. Probably the view was that it was an important part of the drafting.

Clause passed.

Clause 8.

The Hon. M.C. PARNELL: By way of housekeeping, and to assist the chamber, my discussions with other parties are that, of the seven amendments I have to clause 8, my understanding is that all of them are accepted by the government except No. 3. Could we double-check that? I am not going to speak to them all in great detail because I did that in my second reading, so if we can just ascertain that from the government.

The way I see it, my amendments Nos 1, 2 and 4 relate to amendments to the Development Act that go to the issue of keeping the councils involved in the section 49 process. The one that I

understood the Minister for Planning does not agree with is my amendment No. 3. I was hoping to keep the threshold for engagement to $4 million, but the government's intention is to move it to $10 million, and I understood the government wanted to stick with that. My question to the government is: do I have it correct that amendments Nos 1 through to 7 are all being supported except for No. 3?

The Hon. R.I. LUCAS: Yes, that is right but we are opposing Nos 8 and 9—that is on the schedule, that is right.

The Hon. M.C. PARNELL: I thank the minister for the supplementary because I had crosses next to those as well. I am not going to go back through a lot of detail again but, as I have said, the amendments to the Development Act relate to keeping the councils in the process. It reduces the consultation period for the local council from two months down to 15 days, which equates to the public consultation period, so therefore no time is lost. It is a very sensible amendment, a very sensible government to support the amendment. I am guided by the committee. I have four amendments until we get to my colleague the Hon. Tammy Franks' amendment. I move:

Amendment No 1 [Parnell–1]—

Page 11, lines 5 and 6 [clause 8(2), inserted clause B1(a)]—Delete paragraph (a)

Amendment No 2 [Parnell–1]—

Page 11, lines 7 and 8 [clause 8(2), inserted clause B1(b)]—Delete paragraph (b) and substitute:

(b) section 49(6)—delete 'two months' and substitute '15 business days'

The Hon. K.J. MAHER: We certainly will be supporting those two amendments. We think the government is sensible to be supporting the Hon. Mark Parnell's amendments. We had a concern that a requirement to remove any consultation was going to be detrimental and not give people any opportunity whatsoever. This seems to be a sensible amendment to bring the council part of it in line with the community consultation part from two months to 15 days.

The other thing we point out is that we thought it was over-reach from the government to try to get rid of the consultation altogether. What we have seen, even in question time this week, is delays in starting projects that are part of the stimulus package and them not having anything to do with council or community consultation. We heard from the health minister that there were 11 or 12 hospital upgrades to generators and sterilisation facilities and that, despite being announced in early March, tenders were not going to be called for in all cases until June or July, so there was a three or four-month hold-up. By the health minister's own admission, these were tenders for under half a million dollars that he thought only had to be developed and go through processes within his own department.

The fact is that tenders that the health minister thought only had to be developed in the health department and not other parts of government were taking three or four months to develop. And who knows how long before the tenders come back? Some of these so-called shovel-ready projects were not going to be completed until sometime way into 2021. This really was not justified, removing the public's or the council's right to have some input in these areas, when many of these projects are seeing significant delays already, when the whole of the process to date is in the hands of the government.

The Hon. R.I. LUCAS: I will put on the record that the government supports the amendment. As I indicated earlier, the government is trying to be reasonable in terms of its attitude to amendments to the legislation. The effect of this amendment is to reinstate the time to consult with councils on Crown developments in the Development Act. The provision was drafted by the government. It will reduce the burden on the planning process to create a more seamless and streamlined process which will stimulate economic development during the COVID-19 pandemic. This amendment will require consultation with councils to occur, but together with amendment No. 2 in the honourable member's name it will reduce that period from two months to 15 business days, which is essentially three weeks. The government is therefore prepared to support the amendment.

The Hon. C. BONAROS: I indicate for the record that we will be supporting the amendments. I am glad that we have been able to come to a reasonable outcome on this issue.

Amendments carried.

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

Amendment No 3 [Parnell–1]—

Page 11, lines 9 and 10 [clause 8(2), inserted clause B1(c)]—Delete paragraph (c)

I understand it does not have government or opposition support, but I do want it on the record that I moved it.

The Hon. R.I. LUCAS: I put on the record my advice that the government clearly will oppose it. The effect of this amendment is to prevent the threshold being increased from $4 million to $10 million where SCAP must publicly advertise Crown developments and invite interested persons to make written submissions within a period of at least 15 business days.

The bill as drafted will raise the threshold for Crown development under the Development Act to $10 million during the COVID-19 pandemic. The provision as drafted will again reduce the burden on the planning process to create a more seamless and streamlined process that will stimulate economic development during the COVID-19 pandemic. The increase will also provide consistency in the Development Act and the Planning, Development and Infrastructure Act with respect to Crown development.

It is also worth noting that all development where expenditure is $4 million or more will require to be considered by the Public Works Committee and will therefore be subject to more than adequate scrutiny. The government opposes the amendment.

The Hon. K.J. MAHER: Just for clarity, if I can get the mover of the amendment to maybe explain a bit further what specifically he is concerned is going to be lost if his amendment is not carried.

The Hon. M.C. PARNELL: There is a glimmer of hope being held out. If the opposition is actually thinking of supporting this, then I will agitate it a little bit more vigorously. The issue is you have these government projects called Crown developments, but they are not just government projects; they are also private projects that are sponsored by government agencies. I used the example earlier of power stations and dredging and things like that done by private companies hanging on the skirts of the government to take advantage of their fast-track process.

The threshold below which these projects do not have to be advertised for public comment is currently $4 million, and that reflects the same threshold that we have for the Public Works Committee, for example. If that threshold is increased to $10 million, then, by definition, there are a whole lot more projects, the ones that fall between $4 million and $10 million, that will not be available for public comment. You basically will have no right to have any say on it. It will not be advertised and you probably will not even know that the application is even being considered. Unless you are one of those people who trawls through the agendas and the minutes of the State Commission Assessment Panel you just will not know that these projects are out there.

I think it does make sense to keep the threshold at $4 million. I know the government says that the Public Works Committee already provides certain scrutiny for those projects that fall between $4 million and $10 million. I am not on that committee, but my understanding is that that is a fairly opaque process, as well. It is not as if the Public Works Committee is out there on a daily basis saying to members of the public, 'This parliamentary committee is about to inquire into this government project. Do you want to have a say?' It does not do that; in fact, I have very little idea what is on the agenda of the Public Works Committee unless I ask.

I think it does make sense to keep the threshold at $4 million for the purposes of these applications and not raise it to $10 million because otherwise those projects will fall between the gaps. If that has convinced the opposition to support it, then I will be very pleased.

The Hon. K.J. MAHER: I thank the honourable member for giving more clarity. I think the way the debate is being conducted is by necessity very difficult in that amendments have been foreshadowed and some filed only today or yesterday. I just want to triple-check with the government, and I think it is worth doing that as we go through these, that this particular part will only apply during

the declared emergency and once it is over it goes back down to the $4 million. I am pretty sure that is what the Treasurer said before. Can I get that confirmed?

The Hon. R.I. LUCAS: I understand the answer to that question is yes, but evidently there is already a provision in the new Planning and Development Act, so whenever the Planning and Development Act comes in there is a $10 million provision already in that.

The Hon. K.J. MAHER: I thank the Treasurer for making that further clarification at the risk of unnecessarily holding out false hope to the Hon. Mark Parnell. With the Treasurer having reminded me of that, that is the part that I think we find some comfort in: that this will be changing in the not-too-distant future. On the basis of that, on this occasion, we will not be supporting the Hon. Mark Parnell's amendment that this apply just for the duration of this emergency, knowing that under the PDIA it raises to $10 million in the not-too-distant future in any event.

The Hon. C. BONAROS: I indicate that we will be supporting the amendment.

Amendment negatived.

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

Amendment No 4 [Parnell–1]—

Page 11, lines 11 to 13 [clause 8(2), inserted clause B1(d) to (f)]—Delete paragraphs (d) to (f) (inclusive)

This is effectively consequential to [Parnell-1] 1 and [Parnell-1] 2 which have already passed.

Amendment carried.

The Hon. M.C. PARNELL: To give my colleague a few moments to discover that her amendment has been reached perhaps a little earlier than she thought, on behalf of the Hon. Tammy Franks I move:

Amendment No 1 [Franks–1]—

Page 11, lines 14 to 31 [clause 8(3)]—Delete subclause (3)

This amendment deletes the provision relating to the removal of children. I am sure my colleague can explain it much better than I can. I will resume my seat.

The CHAIR: The Hon. Ms Franks, the Hon. Mr Parnell has moved your amendment on your behalf, but I will give you the call.

The Hon. T.A. FRANKS: Thank you, Chair. Speaking to the amendment which has now been moved which is to delete this subclause, this goes to the quite extraordinary powers as it appears that have been requested by police for the removal of children under 18 to return them to various places, and I note using reasonable force. In the briefing on Tuesday, this was said to have been consulted on with the Commissioner for Children and Young People, with the guardian, and requested by the police. I asked in the second reading contribution why this was necessary. So far the answer we have is because the police want it.

I note I have just had my office on the phone to the commissioner. She was informed and first learnt of this bill on Tuesday. She was sent, after close of business on Monday, the generic email for the commissioner: 'FYI, here is the bill.' She was certainly not consulted. They have just raised a concern that this increases above and beyond the powers under this section for children under 18 the introduction of the use of force. My question to the government is: why is the use of force necessary for children if it is not necessary for adults?

The Hon. R.I. LUCAS: The advice I have is that this is an enforcement activity or response. Reasonable force may range from simply requesting a youth to accompany police, which they often will do, to someone who actively resists and is then required to be physically removed to a place of safety. Police have to assess reasonable force every day, including when dealing with young people. This is an operational principle and the legal concept is very familiar to police and all the work that they perform.

I do not know that I can offer any other explanation than that, and that is to ensure that whatever the particular required response is hopefully it is conducted on the basis of a firm request and someone complies. Ultimately, if they do not, then 'reasonable force' is not an unfamiliar phrase

in discussions we have had in previous pieces of legislation and I suspect is not unfamiliar to the police in terms of what that allows them to do.

The Hon. T.A. FRANKS: I understand that it is not an unfamiliar term in regard to the police. The difference is: why are we introducing this and amending a piece of legislation when in fact just a couple of weeks ago we applied these emergency management powers to all people? Why is there a necessary change to specifically talk about children? Why has the language of 'reasonable force' been used, and why was it claimed in the other place, under questioning of the Attorney-General, that this had actually been consulted on with the Commissioner for Children and Young People and indeed the Guardian for Children and Young People when it clearly had not, according to both of those bodies?

The Hon. R.I. LUCAS: In relation to the consultation, I think we have been through this before. What happened was the bill was sent to the guardian and the commissioner and various others on Monday and/or Tuesday. I think in some cases it went on Monday and in some cases it went Tuesday. As I understand it, and as I am advised, we still have not received a response from them.

The Hon. T.A. FRANKS: They were not asked what their opinion was. They were just given an 'FYI, here is the bill,' not asked for feedback.

The Hon. R.I. LUCAS: I think we have had that discussion before. The bill was sent to them. We conceded that there had not been consultation with the guardian and the commissioner prior to the drafting of the bill. I am not sure we can provide any greater clarity to the member in relation to that particular issue.

In relation to why 'reasonable force', the advice I have in broad terms is that, in the interests of safety, if it is decided that they need to be able to move a young person who is not complying with the direction in relation to social distancing or that sort of safety issue, the police need the authority or the power to be able to move that young person to a safer place whether that is a home or residence or wherever it might be.

My advice is this is clarifying that the police do have the power. There is evidently some argument that they might have had the power anyway, but this is clarifying that they do have the power so that, in the interests of public health and safety, if there is a young person who is not observing a direction in relation to public health issues, they can be directed or, in the end, with reasonable force moved to a safer place whether it be a home or a residence or quarantine, for example.

Maybe—I am working on the fly here—they are required to be quarantined or isolated and they are refusing to comply with a direction. The police have the power to say to that young person, 'Hey, move on. You have to go back to your hotel or your residence and comply with this direction or order,' or 'You have to observe social distancing rules.' In the end, if they just say, 'I am not going to do it,' the police are able to use reasonable force to ensure that happens. I do not think that is an unreasonable provision, if a young person is defiantly thumbing their nose at a police officer, saying, 'I am not going to comply with your direction' in relation to a public health issue or social distancing or being isolated or quarantined.

The Hon. T.A. FRANKS: So in the last month, we passed legislation that applied to all persons. Now here we are amending it to apply to children. We are including now the discussion of force. What has happened in the past month to warrant this new tweak to our emergency management powers under these directions? I note that when I asked the question, 'Has SAPOL used powers to remove children to ensure compliance with the emergency directions under the existing legislation?' the answer that I got from the Attorney-General's office was, 'SAPOL are unable to provide data on this as it is not likely that they have used other authorities in this sense.'

So why has this amendment been brought before this bill with fewer than two days to take a look at it, with no consultation, just an, 'FYI, here is the bill. By the way, we have already started the debate,' to the Commissioner for Children and Young People and to the Guardian for Children and Young People, no consultation with the ALRM prior to it being raised by the crossbench, no consultation with the Youth Affairs Council of South Australia that vehemently oppose this, no

rationale given for its necessity and no explicable reason why we have to pass it today? If this is something that the government can justify, they can bring it back in the next sitting week as a standalone consulted-upon bill.

The Hon. R.I. LUCAS: I am sure the member is entirely able to and will prosecute her particular view—it is just not the view the government shares. I have outlined, on behalf of the government, the reasons why and that is a view that needed to be clarified that if a young person just refuses to comply with a lawful direction in relation to social distancing or an issue of quarantine or isolation and thumbs his or her nose at a police officer, the police wanted to be able to clarify that they have the power to enforce that particular direction in the interests of public safety.

In the end, in most instances, a request should ensure that is the case but if, ultimately, a young person just says, 'I am not going to comply,' then the government's view, as reflected in the legislation, is that they should have the power to use reasonable force to ensure that that occurs. The honourable member does not like that and she is moving her amendment and is perfectly entitled to do it. The government will be opposing the honourable member's amendment.

The Hon. T.A. FRANKS: I will not labour the point too much more on this. I think it is quite extraordinary that it has been brought before us with literally hours and almost zero consultation and reflection upon the implications of this and certainly few answers given as to why it is necessary, noting that it has not been necessary according to SAPOL so far, so what the difference is between now and last week we have yet to learn.

I do thank the Treasurer for being quite transparent about the lack of consultation on this clause. My other concern is, I was just on the phone to the member for Hurtle Vale who indicated that under questioning by the opposition in the other place they were assured that this had been consulted on. So an FYI of the bill with no real request for feedback on Monday night is not consultation, in my view, and it is not respect for both the parliament or indeed the people of South Australia.

For the Commissioner for Children and Young People to immediately raise her concern that there seems to be a change in language around 'force' that applies specifically to children that does not necessarily apply elsewhere certainly should raised alarm bells. I would hope that members will support the deletion of this subclause right now and that the government is able to bring it back in a properly consulted and considered form in the next sitting week, should they so desire.

The Hon. K.J. MAHER: I thank the honourable member for her amendment, and they are points well made in terms of considering legislation with so little time to properly scrutinise and understand the nature and effect of this. I am not the lead minister for this particular area, and the opposition, like we did in the lower house, will be supporting the government on these amendments.

The Hon. C. BONAROS: I note the concerns that have been raised by the Hon. Tammy Franks and the advice that has been received from the government in relation to this provision. I note that this particular provision came at the request of SAPOL. We have been provided with the rationale for that. Whilst I have some sympathy for why it ought not to be supported, I am reminded of the fact that at the moment we have given SAPOL, and particularly the State Coordinator, exceptional powers in exceptional circumstances to make exceptional decisions on behalf of all of our community and that in some instances may extend to minors in the circumstances that they have set out.

I do not think it is as much an issue now as it was when the pandemic first broke out, but it is particularly in relation to those circumstances where they are exercising extreme caution at the moment in terms of using their powers to remove minors from certain social settings and gatherings. Given that we have given SAPOL and the State Coordinator these exceptional powers and that they have asked for some certainty in relation to the operation of their powers, we will not oppose this amendment. We will support the government.

The ACTING CHAIR (Hon. D.G.E. Hood): You are opposing the amendment, just to be clear?

The Hon. C. BONAROS: I am opposing the amendment, and I am supporting the government's position.

The committee divided on the amendment:

Ayes................2
Noes................14
Majority............12

AYES

Franks, T.A. (teller)	Parnell, M.C.

NOES

Bonaros, C.	Bourke, E.S.	Centofanti, N.J.
Dawkins, J.S.L.	Hanson, J.E.	Hood, D.G.E.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I. (teller)
Maher, K.J.	Ngo, T.T.	Pnevmatikos, I.
Ridgway, D.W.	Wortley, R.P.	

Amendment thus negatived.

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

Amendment No 5 [Parnell–1]—

Page 14, lines 8 and 9 [clause 8(7), inserted clause 3A(a)]—Delete paragraph (a)

Amendment No 6 [Parnell–1]—

Page 14, lines 10 and 11 [clause 8(7), inserted clause 3A(b)]—Delete paragraph (b) and substitute:

(b) section 131(8)—delete '4 weeks' and substitute '15 business days'

Amendment No 7 [Parnell–1]—

Page 14, lines 12 and 13 [clause 8(7), inserted clause 3A(c) and (d)]—Delete paragraphs (c) and (d)

These are amendments similar to the ones that we accepted before, the only difference being that they relate to the Planning, Development and Infrastructure Act rather than the Development Act, but I am confident they have the support of the chamber so I will not speak to them.

The Hon. R.I. LUCAS: The government supports these amendments.

The CHAIR: The Hon. Leader of the Opposition would you like to confirm your support?

The Hon. K.J. MAHER: I confirm that I support these amendments.

The Hon. C. BONAROS: I confirm SA-Best supports these amendments.

Amendments carried; clause as amended passed.

Schedule 1.

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

Amendment No 8 [Parnell–1]—

Page 14, lines 15 to 19 [Schedule 1, Part 1]—Delete Part 1

I explained in my second reading speech that this was one of the non-temporary amendments being included in this bill. I explained in my second reading speech why I believe noncomplying development should still require the concurrence of the local council. I do understand that the government is not supporting this amendment, neither is the opposition, so I will not be dividing on it, but I do want to move it because I want *Hansard* to record that I did so.

The Hon. R.I. LUCAS: The government opposes the amendment. The effect of this amendment is to prevent removal of the concurrence process for noncomplying developments under the Development Act. Currently section 35(3) of the Development Act generally provides that when a development is noncomplying under the relevant development plan and where the relevant authority is the SCAP, development plan consent must not be granted unless the minister and, if the

development is to be undertaken in the area of a council, that council concur in the granting of consent.

In any other case involving noncomplying development generally where the relevant authority is a council, then the SCAP must provide concurrence or, in certain circumstances under the regulations, a regional development assessment panel must concur in the granting of consent. The concurrence requirement is a dual assessment process that goes against common law principles that decision should be final and certain. This process does not exist under the Planning, Development and Infrastructure Act 2016 which is scheduled to come into operation later in this calendar year.

The government's changes will balance the need for efficiency in the process and ensure the appropriate level of scrutiny is in place for these types of development applications. The government opposes the amendment.

The Hon. K.J. MAHER: Just for the sake of absolute clarity I might get the Treasurer and/or the Hon. Mark Parnell, mover of the amendment, to indicate: these provisions are due to come into effect later this year under the PDIA, are they not? Is that correct?

The Hon. R.I. LUCAS: Yes.

The Hon. M.C. PARNELL: The honourable member is correct: eventually, when another act comes into operation, the requirement for concurrence is disappearing. I do not support that either. It is consistent for me I think to try to keep this wonderful regime going for a little bit longer but I do appreciate that the writing has been on the wall for some time and that come September, October, November—whenever the new act comes into operation—this provision will have died a natural death.

The Hon. K.J. MAHER: I thank the Hon. Mark Parnell for his contribution. He characterised the opposition's view correctly; we will not be supporting his amendment.

The Hon. C. BONAROS: I indicate that, for the precise reasons the Hon. Mark Parnell just outlined, we will be supporting the amendment.

Amendment negatived.

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

Amendment No 1 [Scriven–1]—

Page 14, line 29 [Schedule 1, clause 2, inserted subsection (2a)(b)]—Delete '1 January 2021' and substitute '30 September 2020'

First, I have some questions for the government in terms of who it consulted with in regard to the change it is proposing for apprentices and trainees to have their suspensions potentially extended until January next year.

The Hon. R.I. LUCAS: I am advised the Training and Skills Commission consulted with delegates exercising powers under the act, the Office of the Training Advocate and the South Australian Employment Tribunal.

The Hon. C.M. SCRIVEN: Can I confirm then that there was no consultation or discussions with any employee organisations, no unions, no-one actually representing the interests of apprentices and trainees?

The Hon. R.I. LUCAS: No; they are not listed on that list, so they were therefore not consulted.

The Hon. C.M. SCRIVEN: In moving this amendment, the effect of it would be to change the date that would be available for the suspension of the traineeships and apprenticeships to coincide with the end of the emergency declaration, so 30 September. It is the opposition's view that all of the legislation we are dealing with as COVID emergency legislation has that end date of 30 September and this should be no exception. There has been no good reason presented as to why it should be in January.

If the emergency extends, if it becomes clear that we do need to have further opportunities to suspend these contracts of training, there is nothing stopping the government coming back and moving for that change to happen, but so far we have not seen any particular reason as to why it should be January. My next question to the Treasurer would be: can he provide any information as to why that should be?

The Hon. R.I. LUCAS: I put on the record the government's reasons for opposing the amendment, which I think answers the honourable member's question. The effect of this amendment is that the powers conferred on the South Australian Employment Tribunal under this act will be inconsistent with the Training and Skills Commission COVID-19 related reasons for a suspension contained within its current guidelines for determining the approval of the suspension of the training contract.

The opposition's amendment will result in uncertainty and inconsistency for apprentices, trainees and employers, and may result in high numbers of requests for termination rather than suspension or other actions designed to maintain training contracts. The opposition's amendment will mean that apprentices, trainees and employers who mutually agree to a suspension as a result of COVID-19 related reasons, and have no need to apply to SAET, will be able to negotiate a period up to and including 1 January 2021, while those who apply to SAET to determine the matter on their behalf will only have access to a suspension period of up to and including 30 September 2020.

To date, the overwhelming majority of requests for suspension as a result of COVID-19 have not required the involvement of SAET. If a longer term suspension that takes account of the specific COVID-19 related circumstances cannot be resolved, this may result in the employer applying instead for termination, which is not a desirable outcome.

COVID-19 has had a substantial impact on the capacity of parties to a training contract to meet their obligations to provide and undertake work, training or supervision. In some cases, these conditions would likely persist beyond 30 September 2020, as the full economic impact of the pandemic is realised. The commission amended its guidelines on 24 March 2020 to allow employers, apprentices and trainees to apply to the commission to suspend their training contract for a period up to and including 1 January 2021 for a COVID-19 related reason.

The amended guidelines give employers, apprentices and trainees greater flexibility to deal with a significant downturn in work related to the pandemic. The guidelines require the parties to maintain contact about resumption of the training contract as soon as the parties can meet their obligations to provide and undertake work, training and appropriate supervision. This enables apprentices and trainees to remain connected to the apprenticeship system in South Australia and avoids the need for a training contract to be terminated where one or other of the parties cannot meet their obligations to each other for a period. It is for those reasons the government is opposing the amendment.

The Hon. C.M. SCRIVEN: Thank you for that explanation, which essentially says that the Training and Skills Commission implemented a guideline and therefore the Training and Skills Commission has asked that it be adopted in legislation because they have implemented it, which seems somewhat of a circular argument without giving a particularly tangible and good reason as to why it should be beyond the period of the emergency declaration. Could the Treasurer advise how many apprentices and trainees have been asked to agree to a suspension due to COVID-19?

The Hon. R.I. LUCAS: I am just advised that commissioner McMahon from the South Australian Employment Tribunal has actually requested this particular amendment. I am sure the honourable member or, if she is not, some of her colleagues will be familiar with commissioner McMahon.

Members interjecting:

The Hon. R.I. LUCAS: Never heard of him? No. He is certainly well known to some of your parliamentary colleagues, Mr Chairman. All this is not something that an evil conservative Liberal government has thought up just to cause mayhem amongst apprentices and trainees. It is something obviously to which the minister and the government have agreed. Commissioner McMahon, I am advised, has requested this particular change as being a sensible and reasonable request.

As was outlined in the explanation I put on the record, the potential is that in the alternative we may well see terminations of contracts of training rather than mere suspensions, none of them entirely palatable. It is the government's view, and obviously commissioner McMahon's and some other people's view, that a suspension is better than a termination.

The Hon. C.M. SCRIVEN: As far as I am aware, in the answers that came back to questions, it was not mentioned that commissioner McMahon had requested it. The question, I think from the briefing, which was what was the purpose, did not mention that, so that is a little bit curious in itself.

The Hon. R.I. Lucas: I just thought that might have been significant for you and for some of your colleagues.

The Hon. C.M. SCRIVEN: Thank you, Treasurer. The question I asked, though, prior to your giving that response was: how many apprentices and trainees have been asked to agree to a suspension due COVID-19 so far?

The Hon. R.I. LUCAS: There have been 998 requests for COVID-19 related suspensions since the guidelines were amended on 24 March. Of those, 868 have been approved. Of those, 287 requests are for a date beyond 30 September, so for various dates from October, November, through to 1 January 2021. The largest number of those—221—are for a request for a suspension until 1 January 2021.

To another question that someone must have asked at some stage on how many requests for COVID-19 suspension were not agreed by both parties and have been forwarded to SAET for resolution—

The Hon. C.M. SCRIVEN: Sorry, Treasurer, I cannot hear you. You are speaking a bit too fast.

The Hon. R.I. LUCAS: How many requests for COVID-19 suspension were not agreed by both parties and have been forwarded to SAET for resolution? None for a date of 1 January 2021 and less than 10 in total. That was the information provided by SAET on 13 May.

The Hon. C.M. SCRIVEN: The issue that we have here and one of the reasons for moving the amendment is that there are a number of provisions in place from the federal government, such as the JobKeeper allowance, which will end at the end of September. That has been reiterated several times this week by the federal government.

Potentially, by suspending for such a lengthy period of time as this would allow, we could well be faced with a situation where we have apprentices and trainees who have been suspended for a lengthy period of time and who may not be able to access assistance through the federal government. The JobKeeper, of course, is one thing that might have its implications, but the government has also provided information that it was not able to provide when this was debated on Tuesday night in the other place, alleging that apprentices and trainees will be eligible for a JobSeeker payment while they are on suspension. I would ask the government where it got that information and how confident it is that it is accurate.

The reason I ask that question is that in one of my previous roles, I actually worked for Centrelink for many years. In terms of being willing and available to work, there are quite stringent rules about being willing to look for full-time work and willing to take full-time work, part-time work, casual work or permanent work. My question is in regard to someone who has had their apprenticeship or traineeship suspended. Why does the government have confidence that they will be eligible for the JobSeeker payment?

The Hon. R.I. LUCAS: I am advised that the advice was sought from commonwealth officers and that was the information that was shared with the House of Assembly. Whoever answered the question in the other place was relying on advice that was provided to state government officers by commonwealth government officers. I can place no greater weight on it than that. We have shared information in another place evidently gathered from commonwealth government officers.

The Hon. C.M. SCRIVEN: The response from minister Pisoni in the other place was that that was nothing to do with them, so that was not the advice that was provided in the House of

Assembly. My understanding from the emails is that has since been requested and we have an email in a general sense saying that, yes, we think that people will be eligible for JobSeeker.

I would perhaps place on the record my concern that that information is not necessarily what will occur for apprentices and trainees if they turn up to Centrelink and they have to say that they are looking for full-time work, part-time work or casual work and they are available and so on. The other thing is the reality of how many employers are going to want to take someone on who says to them, 'Come January, I am going to be going back to my traineeship or my apprenticeship.'

It is clear there is going to be double-digit unemployment. There have been a number of reputable forecasts saying that we are going to have double-digit unemployment before the end of the year. So it is naive at best to suggest that young people, apprentices and trainees will be able to go to an employer and say, 'Yes, I want to come and work for you, but I will be leaving again in January.'

The Hon. C. Bonaros interjecting:

The Hon. C.M. SCRIVEN: They are quite likely not to actually be eligible, therefore, for JobSeeker and would miss out on any kind of support whatsoever. The Hon. Ms Bonaros said that maybe they want two of them. That is certainly quite possible, whether that is in everyone's view of what would be appropriate is obviously going to be up to each individual concerned.

The Hon. C. Bonaros: Are you suggesting that is inappropriate?

The Hon. C.M. SCRIVEN: I will leave that for people to say. If someone says, 'Where do you think you are going to be in one year's time?' and the young person is forced to lie, that would not be an appropriate thing for them.

The Hon. C. Bonaros: I do not think that is a lie. You keep your options open.

The Hon. C.M. SCRIVEN: The reality is that there are so many ifs, buts and maybes that it is not giving certainty to the young person—they are mainly young people—who might be an apprentice or trainee. There is not a good reason to extend this well beyond the period of the emergency declaration. We do not know where we are going to be in September in terms of this.

From a health perspective, we have had very positive results in South Australia and, again, I place on the record our congratulations to our health staff, to Dr Nicola Spurrier and others who have been involved in our health response. But in terms of ensuring that young people have certainty, there is no reason to extend this to January at this stage. There is no reason why suspensions could not be until the end of September, and then if we need to come back at that time—after all, we are sitting in June, July and September. The government could then come back and say, 'We think this is required,' and we could move to it then.

But in order to allay the concerns, a number of organisations' unions have approached us and expressed serious concerns about this potentially being misused. If there is no potential for that, there is nothing to stop us coming back in any of those sitting times in June, July or September—by September, most likely, we will know where we are at—and then we can apply for this to be extended, or the government can apply for it to be extended.

At this stage, there is no benefit to placing the employees and trainees at the risk of potentially being without any economic support whatsoever by extending up to 30 September, having suspension until 30 September. That means there is not an ending of the contract of training and, therefore, it would be appropriate to keep it consistent with the other legislation that we have been doing in this regard.

The Hon. C. BONAROS: I want to place on the record some additional stats that were provided by the minister in this instance. I am not sure if the Leader of the Government referred to them. In the advice we received, which was exactly the same, it had a further paragraph stating:

> It should be noted that 287 covid-19 related cases have been mediated by all parties with the training advocate.
>
> Dates of suspension, mutually agreed so far
>
> Til Oct 2020—45

Til Nov 2020—6

Til Dec 2020—15

Til Jan 2020—221

That is out of a total of 287 related cases. I am not sure if the Leader of the Government referred to those but I think that is important because it does reflect that the vast majority of those cases have already been mutually agreed and suspended until the period that we are actually talking about.

We have all argued for consistency with the September date quite strongly and, for my part, I have asked for the same for regulations that have been implemented outside the scope of the COVID emergency bills themselves because they have had indirect application to the COVID bills. But I do not accept the premise of the opposition's argument. I think in this instance if there is to be an exception, then this is it. This is because in this particular instance it makes perfect sense that we create consistency between the commission's guideline—and I note that the commissioner has made the request for this amendment—and the SAET outcomes.

This could lead to some perverse outcomes, depending on what dates you are due to appear before SAET, not being able to meet the September date. So the consistency that we are creating here between the guideline and the SAET dates makes much more sense than the consistency that we have argued for in terms of the September date. So if there is going to be one exception then I would say this is it.

In response to the Hon. Clare Scriven's response about seeking alternative employment, I do not think in these circumstances it is unreasonable whatsoever for anybody to be seeking to get other employment, if that is what they are seeking to do, if they go to the local wherever it is and seek some casual or part-time employment in the interim. It is not lying or being less than honest to take on work on an interim basis until you can return to your previous position. I do not think there is anything dishonest or unreasonable about that whatsoever, especially given the very exceptional circumstances that we are dealing with.

I have given great consideration to the proposal, but I think in this instance the consistency between the guidelines, the commissioner's request for this amendment and the SAET outcomes make much more sense than any inconsistency we would have with the September date that we have all argued for so strongly in all other aspects of this legislation. Obviously, for those reasons we are supporting the government's position.

The Hon. T.A. FRANKS: For the record, we will be supporting the opposition's amendment.

Amendment negatived; schedule passed.

Progress reported; committee to sit again.

STATUTES AMENDMENT (FREE MENSTRUAL HYGIENE PRODUCTS PILOT PROGRAM) BILL

Second Reading

Adjourned debate on second reading.

(Continued from 7 April 2020.)

The Hon. T.A. FRANKS (17:49): I rise today on behalf the Greens to support this bill. It would allow for a trial of dispensing machines providing free menstrual hygiene products in South Australian government schools. It is an excellent initiative and I hope that at the end of this trial we will see it becoming common practice across South Australian schools. I remember last year when we all spoke on a similar motion in this chamber and the support for student access to menstrual hygiene products at the time. Sadly, I reflect, as my colleague the Hon. Connie Bonaros has in her speech, that we have not actually seen action on this issue since then. I would therefore like to thank both the Hon. Connie Bonaros and the Hon. Irene Pnevmatikos for bringing this bill before the parliament.

Students in our state are missing out on school, on excursions, on sport and physical education due to period poverty, with a simple solution of supplying free sanitary items in our schools. We can remove this barrier to education that our students currently face. Many girls and women have

experienced a situation where they were caught off guard without sanitary products on hand. When this happens in a school, or when a girl, for example, first starts menstruating, the current expectation is that they will leave the bathroom and happily walk to the office (however far away that may be) without the appropriate protection. They are then expected to ask for a pad or a tampon in front of whoever may be there at the time, be it other students, parents, teachers, office staff, delivery people, gardeners and so on.

For a young girl or a girl living in poverty this would be extraordinarily hard, not only having to deal with the stigma that our society already puts on menstruation but her potential embarrassment from gossiping, and the double stigma of those who live in poverty itself rather than just period poverty. No student should have to spend time at school or at home worrying about how they are going to manage their period. Much like toilet paper, it should be considered a necessity for hygiene, and we have just seen how important toilet paper became to many South Australians.

These products should be provided to students free of charge so that should they need them they have these menstrual hygiene products so that their education is not impaired and indeed their ability to function in the school environment is not compromised. We should not be embarrassed about menstruation; however, I am sure that even those of us who do not mind talking about this even in this chamber now would remember in younger years that awkwardness that comes with it. We must recognise that for some girls this can be extraordinarily embarrassing to discuss or draw attention to and being faced with period poverty only adds to these feelings.

It is vital then that pads and tampons are accessible and available at no cost to everyone who needs them. I will also put in a plug for menstrual cups—and I did not mean to make a pun but there is always the danger with these speeches that that will happen. If anyone is caught by surprise by their period—and that can happen—these menstrual products need not be hidden away in first-aid kits; indeed, such an approach is woefully inadequate and without privacy for those students. Let's not forget that for a student to be able to ask school staff for access to menstrual hygiene products, they need to know that they are available to them in the first place, so this bill is an excellent solution and I look forward to the trial in this form being rolled out.

Menstruation has been and is still a cause of disenfranchisement, stigma and depression for girls and women in countries across the world. Indeed, when I worked for the YWCA and Amnesty International, there were many stories of particularly some villages where women are ostracised in either their own homes or indeed from their own villages, and that permeates through many, many cultures, including our own. Menstruation can have negative impacts on women's and girls' mental health due to that stigma and can be the cause of embarrassment, fear and anxiety. These are not factors conducive to a good education or full participation in our lives.

To add to this, the stress of not knowing how they or their parents will be able to afford what can be very expensive—needlessly so—sanitary products is one thing that we should not be further burdening them with. Last year, we saw the Victorian government lead the charge and become the first state in Australia to roll out the supply of free pads and tampons in schools. I hope South Australia will do the same. With that, I commend the bill to the chamber.

The Hon. E.S. BOURKE (17:54): I rise to echo many of the words that the Hon. Tammy Franks has mentioned today, but also I feel very strongly about this issue. However, to speak on this issue is important on many levels. As a student in a country school, I would have gone to great lengths to avoid any such discussion with a teacher. This was an issue rarely spoken about in my school. Even growing up in a household of three older sisters, it was never really something that was spoken about in the open. I remember in middle school the girls even had a name for it, because they were too embarrassed to say the word.

At school, some of the boys would wonder why girls would disappear into the school toilets with their backpacks and would ask many questions about it. Then there were the times when you would mysteriously have to sit on the sidelines during swimming lessons. You would hand your teacher a note that simply said you were not able to swim today and there were no further questions asked. I am sure these are very familiar stories to every female in this chamber.

For those still unsure, of course I am speaking about menstruation and periods. Unfortunately, many girls and women still feel they need to hide this very normal part of themselves.

The words 'menstruation' and 'period' are words that do not flow (excuse the pun) as easily as they should, and this is exactly why this bill is needed.

For me, as I mentioned earlier, there are many sides of this bill that make it so important. There is the financial and practical side: providing free pads and tampons in schools would quite simply help end period poverty. A recent report from the Commissioner for Children and Young People, titled Leave No One Behind, revealed the ways in which period poverty is a real thing. It highlighted how many students struggle with the anxiety and stress associated with managing their period at school and how it would often prevent them from focusing on their studies or, worse, make them miss school altogether.

This is not a welfare issue. It does not matter which postcode you come from, when you get your period there is always a possibility that you will be caught at school unprepared and ultimately embarrassed. Instead, this is a state issue. That is why we have put forward a co-sponsored bill with the Hon. Connie Bonaros from SA-Best to help eliminate this unnecessary stress and pressure that is placed on young girls. It takes away the embarrassment of being a young woman and having to go and ask a teacher, admin staff or counsellor for a pad or a tampon while at school. Just imagine how it would feel to be a young girl having to do that on a regular basis, whether because you have been unexpectedly caught out or if your family is just unable to provide these essential items.

Both these scenarios cause immense stress and embarrassment and unfortunately, due to the taboo nature of periods in general, many students miss out on what is most important to them in the classroom: the ability to concentrate and learn. Importantly, the bill provides the space and choice for individual schools to distribute sanitary items how they see fit, whether this is in a toilet block, in a classroom or in a common area like a library. No matter where the items are stored, the bill ensures they can be obtained by students without supervision from teachers and school staff, giving students independence and privacy over their own bodies whilst also removing unnecessary stress and anxiety.

We have seen how COVID-19 is antidiscriminatory in the way it has wrought economic havoc on all corners of the community. For many, money is tight. Many in our communities have joined Centrelink lines for the very first time, and this is something that is not going to change overnight. Many are also struggling to get even the bare essentials, and that includes pads and tampons. This was made abundantly clear when I joined many of my colleagues at the Foodbank to help package supply packs. As a result of COVID-19, Foodbank lost countless volunteers overnight. Both the Hon. Irene Pnevmatikos and SA Labor leader, the member for Croydon, Peter Malinauskas boxed up food and sanitary items in packages for many in our community, many who had never required such support before.

Now it is more important than ever that we not only have these discussions but change how we tackle economic and social challenges in our community. By providing pads and tampon products in our schools, we can help reduce the financial stress that these essential items place on families, families which now more than ever are doing it tough. Periods are a fact of life, and sanitary items are a necessity, not a luxury, and it is time that we start treating them this way. Following a similar program implemented by Victoria, the only other state in the country with a policy like this, the nationwide campaign is calling for an end to tampon tax. This bill will add to the growing and much-needed movement to help normalise and remove financial stress associated with menstruation.

While the material and financial benefits to students from this bill are important, I also believe this program has the potential to help change the stigma around periods in general. I wish to congratulate my colleagues and fellow members of this chamber the Hon. Irene Pnevmatikos and the Hon. Connie Bonaros for the amount of work and heart they have put into this bill.

I understand that the state government has also very recently taken steps to introduce a pilot program; however, there seems to be little very little detail available, and many in the industry, including the Commissioner for Children and Young People, seem to have little detail regarding this program. I hope this has not been a rushed decision to play politics with an important social issue like this. Instead, I hope it is the start of a movement and change that my daughters and many other young girls will see the benefits of, where they will be able to go to school to learn and have one less thing to worry about. Let's stop cramping their style and help remove another unnecessary barrier and source of stress and anxiety for young girls.

The Hon. J.M.A. LENSINK (Minister for Human Services) (18:01): I rise to place on the record some comments in relation to this bill and in so doing would like to acknowledge organisations such as Share the Dignity and Essentials 4 Women that play a role in this space and in assisting, generally speaking in our community, a lot of people who need to access these products, particularly through our homelessness services.

The government certainly recognises that there is a significant group of girls and young women throughout our community for whom these issues are very, very genuine. I note that since the election of the Marshall Liberal government, along with our colleagues in the federal Liberal government—indeed, I recall the Treasurer making comments in this place about this—jurisdictions have acted to remove the GST from tampons and pads, making these essential items cheaper and more affordable for all families. I am sure we all welcome that move. Nevertheless, for girls and young women in a range of different circumstances, this still can be an issue, and this was referenced in the report last year by the Commission for Children and Young People, Helen Connolly.

Because our schools work hard to support their students across the board to achieve their best, many schools have for many years made their own local arrangements to provide sanitary products to students. Some do so with the support of local service organisations, charities and businesses, and some do it through the volunteer efforts of their own students. It is disappointing that these arrangements were described in speeches introducing this bill as 'woefully inadequate', 'ad hoc' and 'appalling', and I hope that honourable members would reflect upon the efforts of school communities and the charities and organisations that have been assisting them already.

I understand that the purpose of the legislation is to highlight an important issue, and we all want to ensure that any example of disadvantage for any young person is addressed, but given the negative way in which the current situation has been described, it is appropriate to place on the record the thanks of the government to all those local organisations, charities and businesses and school leaders and staff who have worked hard to do their best to support South Australian girls and young women whose own families or circumstances are such that they do not or cannot provide these essential products.

If it is opposition members who want to use the negative terminology, I would like to point out that the arrangements being described are similar to those there have been during the 16 years of Labor government, when products themselves had a 10 per cent tax applied to them, so the issue was potentially even more acute.

The fact is that there are a range of positive endeavours made across South Australia to support girls and young women under this government and including in this area. As the proponents of the bill are aware, a trial for female students attending disadvantaged government schools to access sanitary products has commenced in 15 selected secondary and primary schools. Selection of the trial schools was based on having a mix of secondary schools, area schools and some primary schools that have an index of disadvantaged category 1 or 2. Schools were informed of their decision in term 1.

The trial has been well received by all principals who will take part. Schools have the flexibility to source products according to their local context, and use existing community partnerships and approaches already in place in these schools. The method of distribution is being determined by schools according to the needs of their students. This may include a service run by the students themselves or a discrete self-access set-up. These are just two examples of offerings by schools prior to the trial.

I note that the bill being debated today proposes a pilot where the minister is required to determine the ways in which products are to be dispensed to students. We believe that the ingenuity and local initiative allowed through our trial is preferable, and will enable insights into a broader range of approaches, ultimately to be shared and applied to the broad range of local contexts that make up our 500 public schools throughout South Australia.

Information collection by schools has begun, which will guide the development of a policy position on access to sanitary products in schools. This information includes: the number of females using the school-provided product; any rise in usage as a result of the trial; the method of distribution

and how it was designed; the impact on female student attendance, engagement, health and wellbeing; and, any cost to the school to supplement this provision.

During the trial input will be sought from primary and secondary students, families and staff as well as principal associations. Student opinion in particular will inform the design and distribution methods, alongside the availability of appropriate product in the school. It is not anticipated that every young woman will need or want these products, and the department does not seek to replace the role of families to supply them.

The Commissioner for Children and Young People is currently conducting a survey on this issue, as well as a range of other matters, I understand, at the same time, and I am advised that she has agreed to share those aspects of the results and feedback from this survey that are relevant to the issue, with the department to assist in its assessment of the trial alongside the critical feedback from schools. Initially this was intended to be a trial through term 2, although at the suggestion of the Children's Commissioner the minister advises me that he has requested that the department extend the trial throughout term 3 as well. Advice from participating schools, along with feedback and data from the Children's Commissioner's survey, will inform policy considerations from there.

In relation to most policy issues, if an outcome can be achieved quickly without legislation, we would argue that legislation is unnecessary. In this case I would argue that the flexible time being undertaken by the government will be more informative than a rigid pilot as described in this bill, and has the further benefit that it is taking place immediately rather than six months after the passage of the bill.

In relation to the provisions in this bill compelling the Children's Commissioner to undertake a review six months after the pilot proscribed in the bill, I draw members' attention to sections 15 and 16 of the Children and Young People (Oversight and Advocacy Bodies) Act 2016, which clearly allows the commissioner to undertake a review without this bill, and gives her significant powers to do so. The department is eager to incorporate the commissioner's work into the existing trial and, should the commissioner wish to undertake a further review into the issue, into the trial, into any subsequent policy formulation or any other relevant matter, then the commissioner has significant resources and significant legislative powers to do so without the bill.

The Hon. C. BONAROS (18:08): Can I start by once again thanking, first, my co-sponsor of this bill, the Hon. Irene Pnevmatikos, for her tireless efforts on this issue, and those other members of the opposition who have also worked tirelessly to promote what we have called a multi-partisan approach to this most important issue, a multi-partisan approach which this government has failed to acknowledge.

If ever there was an example of extending the olive branch to the government and saying, 'Let's work together on an issue. We are all on the same page, let's work together on an issue that everyone is happy with, that we can sign off in this place, hold our heads high and say that we've met the recommendations of the commissioner based on the report that was prepared on ending period poverty, that we have met the requests of the 1,800-odd respondents to the survey that was put out, including students, parents and teachers, that we are taking period poverty seriously and that we are going to make a stand in this place altogether,' then this would have been it, but of course we do not have that.

My problem here is not with the Minister for Human Services. My problem here is with the Minister for Education, and I will tell you why. Not only have we extended the olive branch to the Minister for Education, we have made several attempts to have this discussion with him. We have made several attempts since last year to have this discussion with him personally, and they have been declined. At no point has he come to us and said, 'Let's sit down and work out something that everybody can agree to.'

Instead, in the most recent and last-ditch attempt to try to get an outcome on this bill, the minister remembered to tell us that he had instigated a pilot program. He did not tell us about that, he did not make any public announcements about that, and he did not even notify the commissioner, who prepared a report which still has not had a response from the government because COVID-19 broke out. 'So we had a pandemic, and there was no publicity on that. We had a pandemic, and we didn't notify you guys of it. We had a pandemic, and we didn't get to forward the report to the

commissioner. We had a pandemic, and we did not seek a response from the commissioner about the pilot program that we have instigated.'

We have had every opportunity since last year to thrash this out with the minister, and he has politely declined on every single occasion. During the week before this bill comes for debate, not at his request but at the request of the Hon. Irene Pnevmatikos and my request, he has kindly thought to fill us in on the pilot program that he has instigated. The details of that program as he has related them to us as of last week is that 15 class I and class II schools were given a $10,000 grant to come up with a scheme, a pilot scheme, that may work for them, and if at the end of that scheme those funds were not necessary for that pilot they can go back into the school's general revenue.

My question to the minister automatically was: what if we did the same with toilet paper? What if we said, 'Well, here's your yearly allocation of money for toilet paper.' Would we be considering putting those funds towards other areas that the school may consider more appropriate? The answer is no, we would not. The whole point of the commissioner's report was to drive home to this government that we need to end period poverty and that we need to treat this the way that we treat every other essential item in schools.

Toilet paper is not up for discussion, soap is not up for discussion, hand sanitiser is not up for discussion, access to toilet blocks is not up for discussion, but when it comes to sanitary products that is up for discussion and we need to work out whether or not that is really necessary. That flies in the face of everything the commissioner has said about ending period poverty. That is what the minister has done in this instance.

He has completely ignored the olive branch that has been extended to him, he has completely ignored the call of the commissioner and he has come up with a scheme that says, 'Well, you know what? We'll just leave it to schools to decide.' We know, when it comes to mobile phones, that what schools have been asking for, pleading for, is, 'Just set the rules and let us work within those rules. If you are going to have a rule about mobile phones, make it consistent across schools. If you are going to have a rule about sanitary products, make it consistent across schools so we all know what the parameters are.'

The minister says, 'We don't like to implement unnecessary legislation.' This is not unnecessary legislation; this is extremely important legislation. Again, the commissioner has completed a report, provided it to the government and it has gone unanswered. The commissioner has made it clear that we need to be doing everything we can to end period poverty in our schools, and that means ensuring that sanitary products are provided across our schools just like toilet paper and any other essential item in our schools.

I will say it again: just imagine the furore if a young boy had to go to the front office and say, 'Mrs Smith, Mr Jones, I need some toilet paper.' It would be unacceptable. But in the case of young girls who do not have access to sanitary products at home, who cannot afford them for whatever reason, they are forced under the current system to go to the front office and ask for a sanitary product or, worse still, they do not get to go to school at all. They miss out on daily activities and they fall behind their peers because they have their period. It is as simple as that. That is what the commissioner has said we should be striving to stamp out in this jurisdiction and that is precisely what this bill intended to do.

If ever I have seen a case of a lost opportunity for all of this parliament to come together, make a stand and say, 'We will be legislating something for the good of all students in South Australia,' then this is it. The government, and the minister in particular, has given up that opportunity. The feedback—and this is important—from the commissioner since we found out about the trial is this: he did not tell her that he had instigated a pilot. The same person who instigated the report into period poverty and provided that to the government was not told that we were instigating a pilot program across schools.

The commissioner also said that the current pilot program does not go for long enough. Term 2 is almost over and she is suggesting that we need more time—six months—which is what the bill provides for. Six months would be an adequate time frame to work out an appropriate pilot program, but of course we have left it until term 2, again without consulting with the commissioner. She has also said that the program does not enable an appropriate independent evaluation, which,

under the bill, would be undertaken by the commissioner. The commissioner herself has said that this pilot program does not enable an appropriate evaluation program.

Everything that the commissioner has said has been ignored and minister Gardner has put in place a pilot program that he, and apparently he alone, considers appropriate. That is what he has done, so congratulations to him. Congratulations to him for letting down every young girl who attends school or is unable to attend school because they have their period and they cannot afford a sanitary product. That is what the minister has done by putting in place this so-called pilot.

It also ignores the fact that the commissioner again has a SurveyMonkey on at the moment, which has been going for about 10 days or so. So far, 1,700 young girls aged predominantly between 12 and 18 years old have responded to that and said that they support having sanitary products provided at their school as an essential item and that they support the education department and the government providing those products and ensuring that they are available to students in schools. We have ignored all of that and said, 'Well, we are just going to press ahead with this program', which is actually going to expire very shortly. We will be no better off in terms of having done anything that the commissioner has asked us to do.

I am very confident that this bill will pass today and I absolutely implore the minister to take on board not my comments, not the Hon. Irene Pnevmatikos' comments, not any other member's comments, but the comments of the commissioner—the commissioner who he failed to consult with before he instigated this program, the commissioner who we consulted with. We only heard from the minister after we had spoken to him and asked him the question, 'Does the commissioner know that you have actually instigated this pilot?' Her response was categorically, 'No, I don't.'

I will not keep harping on about it but, given that this bill is likely to progress today—and I can see you nodding, Mr President—I am once again, in a last ditch effort, extending the olive branch to the government and imploring the government to work with the crossbench and the opposition and come up with a solution that we can all hold our heads high about and say, 'This is what we are going to do to ensure that period poverty is ended in our schools in accordance with the recommendations of the commissioner'—not with us, but with the commissioner.

With those words, I thank those members who have made a contribution today. I am disappointed with the government's response. I am not surprised, given my discussions with the minister; I am disappointed. Once again, I thank the Hon. Irene Pnevmatikos and the other members of the opposition who have worked with us on this issue. This is not about acknowledgement; this is about getting a good result for our students in schools.

Bill read second time.

COVID-19 EMERGENCY RESPONSE (FURTHER MEASURES) AMENDMENT BILL

Committee Stage

In committee (resumed on motion).

Title passed.

Sitting extended beyond 18:30 on motion of Hon. R.I. Lucas.

Bill recommitted.

Clause 4.

The Hon. R.I. LUCAS: I will move a motion and then explain what it is that I am attempting to do, but obviously I am in the hands of the majority of the committee. I move:

> That new subclauses (2a) and (2b) of clause 4, page 5, after line 18, which were inserted be deleted and that new definition 'rent relief' clause 4, page 7, after line 2, also be deleted.

If I can just explain what I am asking the committee to do. I am asking the committee to reconsider the amendments that were moved and passed earlier this afternoon. As the government outlined earlier, these particular amendments were unacceptable to the government, and we have made it quite clear that, from the government's viewpoint, we could not accept the bill in this particular form. I will not go through the details again, which are on the public record in relation to the principle of

proportionality which is inherent in the new subsection (2a). The government's position is on the public record both this morning and this afternoon. It is that principle that we just cannot accept.

What I have outlined to various members is that the government's position very strongly is that the parliament has a chance now to either affirm its position in relation to that and, in doing so, there will be no legislative provisions for the next three weeks until we reconvene on 3 June. We think that would be a worse set of circumstances than anything else that we could contemplate, that is, that there would be no riding instructions for the Small Business Commissioner and the Magistrates Court, as outlined by the government, to try to resolve the number of lease disagreements between landlords and tenants.

The government accepts that there is no perfect solution to this. That is why the government, as all other governments have, has moved away from the strict proportionality principle that the national cabinet outlined in the national code. We accept that there is no perfect system but we believe that this system is the best possible chance. But what we do say strongly to the committee is that they do have a chance to affirm, but they need to do so in the full knowledge that the government's position is that we cannot accept this particular principle. We believe that very many landlords out there in the community will be strongly opposed to this particular principle, and will be strongly opposed should it eventually be a part of the parliament-endorsed package. We are asking members to reconsider this particular amendment, and are doing so on the basis that the only alternative was, in essence, not to have any guidelines for the next three weeks until we can return to parliament on 3 June in an endeavour to resolve the situation.

It is not ideal; I accept that. It is not ideal that we are legislating on Thursday evening either. We accept that; however, this particular circumstance is complex. As I said, the Western Australian and Queensland governments have still not resolved how they are going to implement their versions of the national code. All we know is that they are not going to implement the national code word for word as it was originally outlined.

With that, we ask members not to continue to insist on the amendments that were moved earlier, which move to support the deletion, as I have moved this evening, in the interests of setting something down for impacted landlords and tenants over the coming weeks.

The Hon. K.J. MAHER: We are opposed to deleting the work previously done by this chamber. We think the amendment strikes the right balance between very big commercial landlords and sometimes very small commercial renters. What is uncontested throughout this debate is that the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19, which I think were released on 7 April and flagged about 30 March in a press conference by the Prime Minister, give primary consideration to this idea of proportionality. It is leasing principle No. 3 in particular that does that. It suggests that:

> 3. Landlords must offer tenants proportionate [rent] reductions in rent payable in the form of waivers and deferrals…based on the reduction in the tenant’s trade during the COVID-19 pandemic…

I think it is uncontested that the problem, as the government sees it, is that they do not want to give force to the national code of conduct in the way it is contemplated. This is because the South Australian government does not think that the idea of proportionality should have primacy and it is not the most important criterion to take into account.

We have a difference of view between the federal government and the code of conduct that does this and the South Australian government that thinks you should not have that as the most important part of it. That part is contested. What I think there is some contest on is what other states are doing. I am sure the Treasurer will correct me if he thinks I am misinterpreting what I am saying, but I think what the Treasurer was leading us to believe in this chamber is that all other jurisdiction have trouble with the national code and none of them like this idea of proportionality being the principle concern that should be looked at.

The Treasurer wanted us to believe that in two states—Western Australia and Queensland—it is so difficult to do this that they have not even implemented the code in any legislative or regulatory form. I had not had a good look at what other states were doing. The only one I have had a minor skim over the past hour or so is the Retail and Other Commercial Leases (COVID-19) Regulation

2020 under the Retail Leases Act of New South Wales. I cannot speak to what other states are doing, but I will read out regulation No. 7:

> 7 Obligation to renegotiate rent and other terms of commercial leases before prescribed action

This is obviously the step before, which gives an indication as to what would be the equivalent of the Small Business Commissioner, in terms of 'before prescribed action' is taken. Subparagraph (4) provides:

> (4) The parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to—
>
> (a) the economic impacts of the COVID-19 pandemic, and
>
> (b) the leasing principles set out in the National Code of Conduct.

Part (a) is entirely reasonable; that makes sense. It is uncontested that the national code of conduct give primacy to the idea of proportionality; however, there is an explanatory note in the regulations, and I will read that out:

> Note. See leasing principles No. 3-5, 7-10 and 12 in the National Code of Conduct.
>
> In particular, leasing principle No. 3 in the National Code of Conduct requires landlords to offer rent reductions, in the form of waivers or deferrals of rent, proportionate to lessees' reductions in turnover.

This is the exact language that we are using in our amendment. It is good enough for the biggest state in Australia to directly reference what was termed the mandatory national code of conduct. They do not just say, 'The principles there should apply.' They go further to talk about in particular leasing principle No. 3, the one that we all agree is the cornerstone of the national code of conduct; that is, proportionality. When we look further at what a tribunal or a court considers under the New South Wales regulations, this is what it says:

> The Tribunal and any court, when considering whether to make a decision or order relating to any of the following, is to have regard to the leasing principles set out in the National Code of Conduct—

Again, everybody nodded their heads and we all agreed that the main principle in the national code of conduct is that of proportionality in leasing principle No. 3. In the New South Wales regulations, that applies to the recovery of possession of premises, the termination of a lease or the exercise or enforcement of another right. The New South Wales regulations go on to talk about amending the Conveyancing Act. Again, it says that, if the parties are to renegotiate commercial leases, the parties have regard to:

> (a) the economic impacts of the COVID-19 pandemic, and
>
> (b) the leasing principles set out in the National Code of Conduct.

It goes on to repeat:

> Note. See leasing principles No. 3-5, 7-10 and 12 in the National Code of Conduct.
>
> In particular, leasing principle No. 3 in the National Code of Conduct requires landlords to offer rent reductions, in the form of waivers or deferrals of rent, proportionate to lessees' reductions in turnover.

Again, it is the same language we use in our amendment. I am sure that if I have any part of this wrong the Treasurer will correct me, but it appears very clear from reading the New South Wales regulations in just in the last hour that it is not the case that all other jurisdictions have decided that what the national cabinet came to agree on and put out on 7 April as the national code is unworthy of being supported and that this idea of proportionality causes all sorts of difficulties.

I would invite the Treasurer to tell me what I have misunderstood from the New South Wales regulations, which in fact has this idea of proportionality from leasing principle No. 3 in the national code as its primary function, as we are seeking to do here. I just do not accept the Treasurer's threat that they will not implement any of this. If this amendment remains and the government does not implement it, it is on the government that people will miss out: it is not on any of us. It is not on crossbenchers, who are seeking to make a law better and to look after small commercial tenants. It is not on any of us who are doing that. It is on the government for doing that, and they will be the ones who are to blame for the intransigence of not passing this bill.

The Hon. M.C. PARNELL: When it comes to a situation of intransigence, what we have to consider is what we risk losing. If the government is true to their word and this council insists on keeping the proportionality clause in the bill, then the government is effectively saying that they will take no further action on this bill. They will send the lower house home and we will come back in three weeks and debate it. The question we then have to look at is: how important is this provision? Another way of looking at it is: how important are the things that we might either lose or delay for three weeks?

There are some things in this bill where it would be disappointing not to get them in train now. I do not think any of them are the end of the world, but it would be disappointing. There are some things in here that we did not like anyway but, in a spirit of cooperation, we let the government have them with a few minor tweaks. If we are looking at the totality of the COVID impact on society, one of the biggest areas has to be the shops, the owners of the premises where they operate, the small factories—the range of commercial and residential tenants.

It is a huge issue, so this is one that we need to get right. It is interesting that we now have this additional information from the Leader of the Opposition that, despite assurances that no other state would have a bar of proportionality, New South Wales has written it into their regulations in the same way that the Legislative Council has said, 'We will support proportionality.'

As I said earlier, there is pain to be shared and it will need to be shared fairly. If you were to take as a group the group in total of landlords, there will be a whole range of big and small, and in a group of tenants, a range of big and small, but I can tell you that most of the tenants are going to be less wealthy than most of the landlords. Whilst no one size fits all, the idea of proportionality as accepted by the national cabinet and accepted by New South Wales seems to be a reasonable starting point with the loopholes and the exemptions that we have written into those provisions. So the Greens see no reason to change the position that we took an hour or so ago and we will continue to support the inclusion of this amendment in the bill.

The Hon. C. BONAROS: I think we have just highlighted the problem with rushing into discussions and recommittals. During the interim period when we last debated this bill, an hour or whatever it was ago, I have been having discussions with the Leader of the Government and the Leader of the Opposition. I do not for one minute doubt the Treasurer's insistence on this provision, but of course we sit down and we are handed a document from the opposition that now shows that proportionality does exist in another jurisdiction, and that does not seem to be consistent with the advice that we have received so far.

We are in a bit of a bind because the advice that we are receiving is not consistent. Whilst I do not doubt the Treasurer's insistence on his position, I am not convinced, on the basis that we have just received advice that New South Wales has the very provisions that we are saying that we cannot afford to have here when an hour or so ago we were told that those provisions do not exist elsewhere. I have to agree with the Hon. Mark Parnell that we cannot afford to get this wrong. If that means that we have to sit here a bit longer and keep going on this provision to try to come up with something that everyone can agree to then I am afraid that that is what we are going to have to do.

I would at least like a response from the Treasurer in relation to the provisions that have just been pointed out by the Leader of the Opposition and whether we knew of their existence and how it is that we have advised members that there is no such provision in any other jurisdiction and now found out that there are such provisions in New South Wales.

Again, I am going to remind members that there are two easy fixes here: we proceed with the bill now and then a set of regulations comes in that are going to be subject to a disallowance motion, so you still end up in the same mess. The alternative is also that the courts, irrespective of what the Leader of the Opposition says, can still take into consideration proportionality even under the government's proposal or the proposal that is being put by the opposition.

So I do not think we have reached any outcome in the time that has been made available, but I would like the Treasurer to clarify the information that has just been provided by the Leader of the Opposition in relation to New South Wales and his understanding of those provisions in the regulations.

I make the point again: we have a set of regulations here that now can be the subject of a disallowance motion, and if the opposition is not willing to budge then I am sure that is what we are going to see. If the government is not going to budge, then I do not know what we are going to see. But I do not think that we can declare this issue resolved right now until we have some more answers specifically in relation to the New South Wales example that has just been provided and in relation to resolving this issue, which is going to be a lot more problematic than what we anticipated.

The Hon. R.I. LUCAS: I will respond to the issue in relation to New South Wales. The regulations in New South Wales say that, during a process of renegotiation, they shall have regard to the issue of proportionality, or leasing principle No. 3 in the national code. What we are being asked here is quite different. What that is saying is: as you are negotiating, freely entering negotiations between two parties, you have regard to the leasing principles.

They have carefully chosen words from the New South Wales government. They could have said 'implement the national code', as I think the Leader of the Opposition urged me to do in a letter a few weeks ago. However, it says, 'As the two parties are negotiating, they should have regard to'. What we are being asked to support here are guidelines for the final decision-maker at the Magistrates Court, in terms of determining the issue of dispute between the landlord and the tenant.

In determining the issue finally, the issue of proportionality is the issue that is pre-eminent. The Leader of the Opposition is quite frank about it: he said that it is given greater prominence, or pre-eminence, than the government believes it should have, and that is correct. We do not support that as being the main issue, for the reasons we have outlined. The notion that a 50 per cent loss in turnover, and a 50 per cent loss of rent, means a 50 per cent loss in net income for a landlord is nonsense. In many respects, it can be 100 per cent, or it could be much more than that, depending on how they are structured financially.

I think that most people, in the discussions I have had with people who are accepting, know that the landlord's argument that the notion that there is strict proportionality from turnover to rent relief to the net income or profitability of a landlord does not make sense at all. No-one is accepting that particular argument. The landlords are accurate in terms of what it is.

The New South Wales regulatory code says that as you are negotiating you should have regard to it, and the lawyers in this chamber know that 'regard' means that you have to take into consideration but ultimately do not have to be bound by it. There is no obligation, there is no compulsion and there is no enforceability. What we are talking about here, in essence, is trying to guide the final decision-maker at the Magistrates Court, and that is a principle that the landlords are up in arms about.

As I said earlier today, I reject the notion that in most cases it is a big, ugly landlord and a little, defenceless tenant. In some cases, you have big, ugly tenants and a smaller, defenceless landlord. If you have Solomon Lew as a tenant on one side, saying, 'I'm not going to pay any rent for the next six months,' and you are a mum-and-dad investor with a suburban shopping centre with six shops and you happen to have one of his outlets in it, you as the landlord are very much the weaker party in that negotiation. So there are bad eggs on both sides of the equation, both on the landlord's side and on the tenant's side.

The government's position in relation to this is quite clear: we either affirm or we do not, and we send it down to the House of Assembly and they can then decide whether or not they are going to support or not support whatever the bill is that is before the house. However, I can make it clear that the government's position is that if this amendment is in there we cannot support this amendment. So the choice that members are making tonight is, in essence, to say that we sadly are not going to be in a position to give guidelines to the Small Business Commissioner, and ultimately the Magistrates Court, in terms of trying to settle these things until the parliament sits again. That would be an even worse set of circumstances for everybody than what people are concerned about in relation to the issues of it.

I have heard nobody at the moment arguing, other than saying that it was in the national code, that what the government is putting is not a reasonable proposition. We are saying that the Small Business Commissioner, and ultimately the Magistrates Court, should listen to the arguments, decide the relative merits of the lessor and the lessee and then make a judgement. Yes, as the Hon.

Connie Bonaros has indicated, it is possible for the Magistrates Court, under the 'any other matters' provision, to give consideration to the national code, or indeed anything that the Magistrates Court might wish. However, there are other issues that the court has to take into consideration, namely, the financial positions of the lessor and the lessee, and some other issues as well.

I would urge members to rethink this particular provision. I think that our positions are all pretty well-known now, in terms of the particular amendment. We can test the committee's view again as to whether or not they are now prepared to support a deletion of these two particular provisions.

The CHAIR: Do you want to stand up, so I know what you want to do, or do you want to sit there and have me read your mind?

The Hon. K.J. MAHER: I am actually going to be helpful. I am going to move an amendment.

The Hon. I. PNEVMATIKOS: I need to seek some clarity here. If the issue is in terms of negotiations where factors like proportionality are a consideration, one would expect when it goes before an arbitrator or a decision-maker, they would have regard to the various criteria that the parties used in attempting to negotiate this process. For the sake of consistency, I would have thought that the proportionality argument, amongst other arguments, needs to travel throughout the process from the negotiation stage through to the arbitration and decision-making stage otherwise an arbitrator or a decision-maker is making a decision in a vacuum.

The Hon. K.J. MAHER: This may take a bit of toing and froing but I am going to suggest that we amend the bill as it currently stands, which was amended earlier today. Subsection (2a) in clause 4 currently reads:

> (2a) Any rent relief ordered by a court under regulations made under this section, should, as far as practicable and in the absence of the circumstances set out in subsection (2b), be proportionate to the reduction in turnover of the business…

There is more after that. I am going to move an amendment to suggest that any rent relief ordered by a court under regulations made under this section is to have regard to the leasing principles set out in the national code of conduct. I think that takes into account what the Treasurer mentioned before—'having regard to'—which he seemed very enamoured with as a term that lawyers use. I think that gives faith to having regard to the national code of conduct which has proportionality as its primacy. Therefore, I will move to delete all words in clause 4, subsection (2a) after the word 'section' and replace with 'is to have regard to the leasing principles set out in the national code of conduct'.

Progress reported; committee to sit again.

STATUTES AMENDMENT (FREE MENSTRUAL HYGIENE PRODUCTS PILOT PROGRAM) BILL

Committee Stage

In committee.

Clause 1.

The Hon. I. PNEVMATIKOS: It is extremely disappointing that it is abundantly clear the government will not be supporting this bill. Independent stakeholders, teachers, students, the Commissioner for Children and Young People and organisations working in the area, such as Essentials 4 Women, Foodbank and Share the Dignity, have all been calling for more action in this area. It is incredible that, after the Hon. Connie Bonaros and I introduced this bill, the government decided at the 11th hour that it would introduce its own trial—or pilot, as preferred by the Minister for Education.

This trial is unbeknownst to the public and certainly, until recently, unbeknownst to the commissioner and this parliament. The trial is so covert that, even when talking to the minister, he could not say which schools were going to be in this pilot. All that we were informed, after asking the minister, was that 15 category 1 and 2 schools would be involved. The schools have been left to their own devices, with some financial assistance, in terms of how they will implement a program of pads and tampons in the respective schools. It is a very ad hoc arrangement, which is one of the issues

that is vital to this bill. That has been one of the problems to date. Things have been ad hoc. Things have been organised in a disorderly and disorganised fashion.

The 15 schools have been left to their own devices in terms of supplying the products and how they will distribute them. There is the possibility that in some schools there will be private NGO support and private businesses supporting these programs, and each school may devise a different program. It would be useful to know if the government has offered schools any sort of fact sheets or communication to teachers, parents or students in the school community about this pilot.

Although it is assumed that category 1 and 2 schools will benefit from the program the most, we have heard stories of instances where girls cannot access pads and tampons in schools such as Marryatville, a category 7 school. This is the highest ranking a school can have. Do you think that this pilot is a fair trial? It is not; it cannot be. With no independent body like the commissioner overseeing the trial the government is doing, we assume that the results go back to the education department. There is no transparency and there is no accountability. It is a bit like asking students to mark their own homework and make their own assessment.

The intention in drafting this bill and promulgating this bill was the desire that all parties agree on the bill. It was hoped that we could all work together to achieve a win for girls and young women in this state. When this bill was raised last year—I will reiterate this—both the Hon. Connie Bonaros and I asked to meet with the minister, and that request was ignored. We have made repeated requests for that meeting and we were only able to meet to discuss with the minister a few days ago.

The minister made the point that he does not think it is necessary to support a bill and create legislation where policy can deliver the same outcome. That is all well and good if you have good policy, but if you have policy that is ad hoc, with no systems in place, with no safeguards, with no proper and thorough consultation, you do not have good policy.

This bill provides an opportunity for all parties to work together towards achieving a good outcome for young girls and young women in this state who need the help. It becomes particularly pertinent now because we have experienced two lots of catastrophes: the bushfires and also COVID-19. There are a lot of families and family units that are experiencing considerable hardship at this point in time. If ever there was a time to work together to produce an outcome that meets the needs of vulnerable people in our community, this bill is that example.

Clause passed.

Remaining clauses (2 to 5) and title passed.

Bill reported without amendment.

Third Reading

The Hon. C. BONAROS (19:04): I move:

That this bill be now read a third time.

Bill read a third time and passed.

RADIATION PROTECTION AND CONTROL BILL

Second Reading

The Hon. J.M.A. LENSINK (Minister for Human Services) (19:06): I move:

That this bill be now read a second time.

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

Leave granted.

Radioactive substances are widely used and handled across a number of industries including industrial processing, mining and petroleum operations, medical and health care, and research and educational facilities.

South Australia is one of only two jurisdictions in Australia where uranium mining takes place and uranium is an essential contributor to the state economy. It is therefore essential that modern and effective legislation covers both mining and all other aspects of radiation use.

In South Australia, the *Radiation Protection and Control Act 1982* regulates activities involving radiation sources and provides for the protection of people and the environment from the harmful effects of radiation. This includes providing for the licensing of certain activities, and registration of certain items and premises which involve radiation sources. Parties that are regulated under the legislation include hospitals, dentists, veterinarians, soil analysis companies, mining companies, radiographers, radiologists, and ports.

Administrative Amendments

Despite the importance of this legislation, it has not undergone substantial revision since its commencement in 1982. As a result, many of the standard administrative and enforcement provisions are outdated. The new Act, proposed in this Bill, will modernise radiation protection regulation in South Australia and will implement a progressive risk-based approach that builds on and improves the current system.

It will reduce administrative burdens on small business through the streamlining of licensing from the existing seven separate licence categories down to two licence categories, a radiation use licence and a radiation management licence. In addition, registrations of equipment will be able to be included on radiation management licences, providing a single document for businesses to manage their regulatory obligations whereas the current system requires individual registration of equipment separate from licensing.

The Act currently contains no expiable offences and has no head power to prescribe expiation fees for enforcement in the Regulations. As a result, enforcement of the Act and Regulations cannot take place without prosecution through the courts. This is an inefficient method for less serious offences under the Act as it is time consuming and expensive. Further, it does not provide an effective deterrent for recalcitrant licence holders who act in the knowledge that no expiation fees can be applied to them. Under the current provisions such an offender must instead be notified when a breach may result in court proceedings and provide them with an opportunity to correct their behaviour. If the prosecution does not proceed to court, the offender incurs no penalty and none of the costs incurred by the Environment Protection Authority in undertaking enforcement actions are recovered. The Bill includes expiations for a number of offences and also allows for further expiable offences to be established via regulation.

The Bill also provides for order making powers that can be utilised to obtain compliance without the need for more costly court proceedings. Court proceedings are appropriate for significant offences and for applying a punishment as a deterrent to others but achieving compliance on minor issues is much more straightforward with the use of orders.

The review of administrative decisions in the current Act is upon application to the Supreme Court. Thankfully we have come a long way since 1982 and now have a less burdensome and much more appropriate avenue for review of administrative decisions through the South Australian Civil and Administrative Tribunal. The Bill allocates jurisdiction for administrative appeals to the South Australian Civil and Administrative Tribunal.

Offences for causing radiation harm or serious radiation harm

The Act currently contains a series of specific offences set largely within the licensing and registration requirements, and relating to unauthorised use or handling. These offences are necessary; however they are more administrative in nature and are not linked to the harm or risk of harm that a breach of the Act might present. Inclusion of harm in regulatory schemes where there is a risk of harm to human health or the environment is necessary to provide a suitable deterrent. The application of harm provisions to the environment is reflected in the National Directory's objective of radiation protection legislation that 'legislation must include the objective of protecting the health and safety of people and the environment'. Of the Australian states and territories only South Australia and Western Australia do not currently have harm elements within radiation protection legislation.

The penalty framework proposed in the Bill draws on the approach taken in the *Work Health and Safety Act 2013*, and the *Environment Protection Act 1993*. Part 5 of the Bill provides new offences relating to causing radiation harm, with clause 50 relating to causing serious radiation harm, and clause 51 relating to causing radiation harm. Radiation harm offences will provide a significant penalty in circumstances where an individual, a group of persons or the environment is harmed or likely to be harmed by exposure to quantities of radiation beyond those lawfully permitted by the remainder of the Bill. These provisions do not apply to matters where the harm is considered trivial.

The maximum penalty for recklessly or intentionally causing serious radiation harm of $5 million for a body corporate and $1 million or 15 years imprisonment for a natural person is the highest penalty that can be imposed by a sentencing court and must reflect the worst possible offence that could occur. In practise it is extremely rare that the Court imposes the maximum penalty and higher penalties are reserved for the most serious, repeated and aggravated contraventions.

The maximum penalties for the radiation harm offences have been set with consideration to the nature of the legislation, the particular offences they relate to and the precedent set by other comparable legislation. Of particular relevance, Sections 8 and 9 of the *Nuclear Waste Storage Facility (Prohibition) Act 2000* have a similar maximum penalty to the offence of recklessly or intentionally causing serious radiation harm, being $5m for a body corporate for the offences of construction or operation of nuclear waste storage facility and importation or transportation of nuclear waste for delivery to nuclear waste storage facility where the potential consequences, in the worst case scenario, are comparable.

National Commitments

In addition, national commitments have been made through the Australian Health Ministers Conference and the Council of Australian Governments to implement a uniform national framework for radiation protection.

To this end, the South Australian Government is committed to amending the Act to implement the National Directory for Radiation Protection that Australian Health Ministers agreed to implement in 2004. The National Directory aims to provide nationally agreed and uniform requirements for the protection of people and the environment that meet international best practice and ensure the safety of radiation use. These relate to radiation protection principles, management requirements for radiation sources and provisions for the future adoption of documents forming part of the National Directory.

In 2006, the Council of Australian Governments also agreed to a National Chemical, Biological, Radiological and Nuclear Security Strategy to provide a framework to strengthen and enhance Australia's existing arrangements. This included the establishment of a national regulatory scheme for the storage, possession, use and transport of certain radiological materials to minimise the risk of such materials being misused.

A significant component of carrying out the Council of Australian Government's decision is implementation of the Code of Practice for the Security of Radioactive Sources. The Security Code, as it is known, sets out the various security measures which must be undertaken to maintain the security of sealed radiation sources. These security requirements have been developed based on the likelihood of unauthorised access and the consequences of malicious use.

This Bill is vital to ensuring the ongoing security of our radioactive sources and modernising the regulatory framework in order to minimise the risk to the health and safety of our community.

I commend the bill to members.

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

These clauses are formal.

3—Interpretation

This clause sets out definitions and contains other interpretation provisions.

4—Interaction with other Acts and laws

This clause provides that the measure is in addition to other Acts and laws and does not limit or derogate from any other Act or law, or from any civil remedy at law or in equity.

Part 2—Objects and principles

5—Objects of Act

This clause sets out the objects of the measure.

6—Radiation protection principle

This clause defines the *radiation protection principle*, which is referred to in the objects clause.

7—Principles of ecologically sustainable development

This clause defines the *principles of ecologically sustainable development* (also referred to in the objects clause) by reference to the *Environment Protection Act 1993*.

Part 3—Administration

Division 1—Radiation Protection Committee

8—Radiation Protection Committee

This clause provides for the continuation of the Radiation Protection Committee established by the *Radiation Protection and Control Act 1982*. It provides for a maximum of 9 members appointed by the Governor on the nomination of the Minister and requires the Minister to seek to ensure, when nominating persons for appointment, that the members of the Committee collectively have certain specified qualifications, knowledge, expertise and experience.

9—Terms and conditions of office

This clause provides for members of the Committee to be appointed for terms not exceeding 3 years, provides for the appointment of deputy members and specifies the circumstances in which a member may be removed from office or in which the office of a member becomes vacant.

10—Functions

This clause sets out the functions of the Committee.

11—Validity of acts

This clause provides that an act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

12—Proceedings

This clause makes provision for the proceedings of the Committee.

13—Sub-committees

This clause empowers the Minister to establish sub-committees of the Committee.

14—Application of Public Sector (Honesty and Accountability) Act

This clause provides for the *Public Sector (Honesty and Accountability) Act 1995* to apply to a member of a sub-committee of the Committee as if the sub-committee were an advisory body and the Minister responsible for the administration of this measure were the relevant Minister.

15—Provision of services

This clause empowers the Minister to appoint an officer of the public service of the State to be the secretary to the Committee and for the Department responsible for assisting the Minister to provide the Committee with administrative assistance and facilities for the performance of its functions.

Division 2—Miscellaneous

16—Delegation

This clause empowers the Minister to delegate functions and powers.

17—Annual report

This clause requires the Department, in annual report to the Minister under section 12 of the *Public Sector Act 2009*, to incorporate a report on the administration of this measure during the financial year to which the report relates and include in it prescribed information.

Part 4—Radiation protection and control

Division 1—Activities requiring radiation management licence

18—Testing for developmental purposes

This clause makes it an offence for a person to carry out developmental testing operations involving or in relation to mining or mineral processing where a prescribed radioactive material is present unless the operations are authorised by a radiation management licence granted by the Minister. The maximum penalty is $500,000 in the case of a body corporate or $100,000 or imprisonment for 10 years in the case of a natural person. Applications for a licence may be referred to the Radiation Protection Committee for its advice.

19—Mining or mineral processing

This clause makes it an offence for a person to carry out operations for or in relation to mining or mineral processing where a prescribed radioactive material is present or will be produced unless the operations are authorised by a radiation management licence granted by the Minister. The maximum penalty is $500,000 in the case of a body corporate or $100,000 or imprisonment for 10 years in the case of a natural person. Applications for a licence may be referred to the Radiation Protection Committee for its advice.

20—Construction, establishment, control etc of radiation facility

This clause makes it an offence for a person to prepare a site for, or construct, establish, control, operate, manage, decommission, dispose of or abandon, a radiation facility unless authorised to do so by a radiation management licence granted by the Minister. The maximum penalty is $500,000 in the case of a body corporate or $100,000 or imprisonment for 10 years in the case of a natural person. Applications for a licence may be referred to the Radiation Protection Committee for its advice.

21—Transport of radioactive material

This clause makes it an offence transport radioactive material unless authorised to do so by a radiation management licence granted by the Minister. The maximum penalty is $500,000 in the case of a body corporate or $100,000 in the case of a natural person. It also makes it an offence for a person to operate a vehicle transporting radioactive material unless the carrier of the radioactive material is authorised to transport the material by a radiation management licence granted by the Minister. The maximum penalty is $50, 000.

22—Possession of radiation source

This clause makes it an offence for a person to be in possession of a radiation source unless authorised to do so by a radiation management licence granted by the Minister. The maximum penalty is $500,000 in the case of a body corporate or $100,000 in the case of a natural person.

Division 2—Activities requiring radiation use licence

23—Use or handling of radioactive material

This clause makes it an offence for a natural person to use or handle radioactive material unless authorised to do so by a radiation use licence granted by the Minister. The maximum penalty is $50,000. The clause provides that if the owner of radioactive material causes, suffers or permits the radioactive material to be used or handled by a person who is required to hold, but does not hold, a radiation use licence authorising the person to use or handle the radioactive material, the owner is guilty of an offence. The maximum penalty is $250, 000 in the case of a body corporate or $50,000 in the case of a natural person.

24—Operation of radiation apparatus

This clause makes it an offence for a natural person to operate ionising radiation apparatus, or non-ionising radiation apparatus of a prescribed class, unless authorised to do so by a radiation use licence granted by the Minister. The maximum penalty is $50,000. The clause provides that if the owner of a radiation apparatus causes, suffers or permits the radiation apparatus to be operated by a person who is required to hold, but does not hold, a radiation use licence authorising the person to operate the radiation apparatus, the owner is guilty of an offence. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person.

Division 3—Premises and radiation apparatus and sources requiring registration

25—Premises in which unsealed radioactive materials are handled or kept

This clause requires premises in which an unsealed radioactive material is kept or handled must be registered by the Minister in the name of the occupier of the premises. If the premises are not so registered, the occupier is guilty of an offence. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person. The clause also makes it an offence for a person to keep or handle, or cause, suffer or permit another person to keep or handle, an unsealed radioactive material in premises that are not registered as required. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person.

The clause provides that the Minister may, by notice given in the prescribed manner to the occupier of premises that are the subject of an application for registration, restrict or prohibit the keeping or handling of an unsealed radioactive material in the premises subject to such conditions as the Minister thinks fit. A person must not keep or handle, or cause, suffer or permit another person to keep or handle, an unsealed radioactive material in premises in contravention of such a notice. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person

26—Sealed radioactive sources

This clause requires a sealed radioactive source must be registered by the Minister in the name of the owner of the source. If the source is not so registered, its owner is guilty of an offence. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person. The clause also makes it an offence for a person to use or handle, or cause, suffer or permit another person to use or handle, a sealed radioactive source that is not registered as required, or to keep in storage, or cause, suffer or permit to be kept in storage, a sealed radioactive source that is not registered as required. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person.

The clause provides that the Minister may, by notice given in the prescribed manner to the owner of a sealed radioactive source that is the subject of an application for registration, restrict or prohibit the use of the source subject to such conditions as the Minister thinks fit. A person must not use, or cause, suffer or permit another person to use, a sealed radioactive source in contravention of such a notice. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person.

27—Radiation apparatus

This clause requires ionising radiation apparatus, and non-ionising radiation apparatus of a prescribed class, to be registered by the Minister in the name of the owner of the apparatus. If such radiation apparatus is not registered as required, the owner of the apparatus is guilty of an offence. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person. The clause also makes it an offence for a person to use, or cause, suffer or permit another person to use, radiation apparatus that is not registered as required. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person.

The clause provides that the Minister may, by notice given in the prescribed manner to the owner of radiation apparatus that is the subject of an application for registration, restrict or prohibit the use of the apparatus subject to such conditions as the Minister thinks fit. A person must not use, or cause, suffer or permit another person to use, radiation apparatus in contravention of a notice. The maximum penalty is $250,000 in the case of a body corporate or $50,000 in the case of a natural person.

Division 4—Prohibited activities

28—Operations for enrichment or conversion of uranium

This clause makes it an offence for a person to carry on an operation for the conversion or enrichment of uranium. The maximum penalty is $1,000,000 in the case of a body corporate or $200,000 or imprisonment for 20 years in the case of a natural person. The clause will expire on a date to be fixed by proclamation but such a proclamation must not be made unless the Governor is satisfied that proper provision has been made for the control of operations for the conversion or enrichment of uranium.

29—Abandonment of radiation sources

This clause makes it an offence for a person to abandon a radiation source without reasonable excuse. The maximum penalty is $500,000 in the case of a body corporate or $100,000 in the case of a natural person. The clause provides that bankruptcy or the liquidation of a company is not a reasonable excuse for a person to abandon a radiation source.

Division 5—Accreditation of third party service providers

30—Accreditation process

This clause provides for the accreditation of persons and empowers the Minister to establish various classes of accreditation.

31—Authority conferred by accreditation

This clause provides that an accreditation may authorise the person named in the accreditation to do any 1 or more of the following (subject to, and in accordance with, the terms and conditions of the accreditation):

(a) conduct tests on radiation sources;

(b) undertake activities to assess compliance with this measure or any requirements prescribed by the regulations;

(c) issue certificates of compliance or certificates of competency in relation to matters regulated under this measure;

(d) conduct courses of training leading to qualifications to hold a licence or registration under this measure;

(e) carry out such other activities as may be determined or approved by the Minister.

32—Reliance on professional advice

This clause provides that the Minister may, in the exercise of a function under this measure, rely on a certificate issued by a person who holds an accreditation under this Division.

33—Offences

This clause makes an offence for a person who is not an accredited person under this Division must not hold themself out as, or pretend to be, the holder of an accreditation under this Division. The maximum penalty is $50,000. A person must not alter or permit to be altered any information or statement in a certificate issued by an accredited person for the purposes of this measure unless the alteration is authorised in writing by the accredited person who issued the certificate, or the alteration is made in prescribed circumstances. The maximum penalty is $50,000. A person must not, in issuing a certificate of compliance or a certificate of competency for the purposes of this measure, make or cause to be made a statement that is false or misleading in a material particular. The maximum penalty is $50,000.

Division 6—General provisions relating to accreditations and authorisations

34—Application for accreditation or authorisation

This clause makes provision in relation to applications for accreditations and authorisations (licences and registration) under the measure. It requires an applicant to be a fit and proper person and empowers the Minister to require an applicant to undergo an identity check or security background check or both. The clause sets out the circumstances in which the Minister may refuse to grant an accreditation or authorisation.

35—Annual fee

This clause provides for an annual fee to be payable in respect of each year of the term of an accreditation or authorisation and empowers the Minister to charge a penalty amount for late payment of annual fees.

36—Conditions of accreditation or authorisation

This clause empowers the Minister to impose, vary and revoke, conditions on accreditations and authorisations. The clause makes it an offence for the holder of an accreditation or authorisation to contravene a condition. The maximum penalty if the condition is a major condition is $500,000 in the case of a body corporate, or

$100,000 or imprisonment for 10 years or both in the case of a natural person. A major condition is a condition, or condition of a class, designated by the Minister as a major condition. The maximum penalty if the condition is a minor condition (i.e. not a major condition) is $50,000 in the case of a body corporate or $10,000 in the case of a natural person. An alleged breach of a minor condition is expiable by a fee of $5,000 in the case of a body corporate or $1,000 in the case of a natural person.

37—Minister may require financial assurance to secure compliance with conditions of authorisation

This clause empowers the Minister to impose a condition on an authorisation requiring the holder of the authorisation to lodge with the Minister a financial assurance, the discharge of which is conditional on specified conditions of the authorisation being complied with. The financial assurance may take the form of a bond, specified pecuniary sum, policy of insurance, letter of credit or a form of financial assurance approved by the Minister, and the Minister may require it to be supported by a bank guarantee or other security. The Minister may only require a financial assurance if satisfied that it is justified in view of the nature of the authorisation and the degree of harm to the environment or to the health or safety of people that could result if the conditions of the authorisation for which the financial assurance is to be required are not complied with.

The amount of a bond or pecuniary sum that the Minister may require as a financial assurance must not exceed an amount that, in the opinion of the Minister, represents the total of the likely costs and expenses that might be incurred by a person in complying with the conditions of the authorisation for which the financial assurance is required. the Minister may refuse to issue an authorisation or approve the transfer of an authorisation if the applicant or transferee is not willing to accept an authorisation subject to a condition requiring the lodgement of a financial assurance. If a condition requiring a financial assurance in the form of a bond or pecuniary sum is not complied with, the Minister may determine that the whole or part of the amount of the bond or pecuniary sum is forfeited to the Crown, and may apply an amount so forfeited in payment for or towards any costs, expenses, loss or damage that may be incurred or suffered by the Crown as a result of the conditions of the authorisation not being complied with.

38—Duration of accreditation or authorisation and renewal

This clause provides for an accreditation or authorisation to have a minimum term of 12 months and a maximum term of 5 years. An accreditation or authorisation may be renewed for such a term.

39—Issue of single authorisation

This clause provides that if a person engages in multiple activities or carries out multiple operations that require a licence, the Minister may, on application by the person for the issue or renewal of a licence for any of those activities or operations, grant the person a single licence authorising all activities and operations for which the person requires a licence.

40—Transfer of authorisations

This clause provides for the transfer of authorisations with the approval of the Minister. A transferee is required to be a fit and proper person and the Minister is empowered to refuse to approve a transfer in certain specified circumstances.

41—Surrender of accreditations and authorisations

This clause allows the holder of an accreditation or authorisation to surrender it to the Minister. Surrender of a radiation management licence requires the approval of the Minister. An approval may be subject to the fulfilment of conditions imposed to protect the health or safety of people or to protect or restore the environment.

42—Suspension and cancellation of accreditations and authorisations

This clause empowers the Minister to suspend or cancel an accreditation or authorisation.

43—Review of decisions

This clause gives a person aggrieved by a reviewable decision of the Minister the right to apply to the South Australian Civil and Administrative Tribunal for a review of the decision. A reviewable decision is a decision to refuse to grant an accreditation or authorisation, to impose a condition on an accreditation or authorisation, to vary a condition imposed on an accreditation or authorisation, to suspend or cancel an accreditation or authorisation, to give a direction in relation to a suspension or cancellation, or a decision of a prescribed class.

44—Obligation of holders of accreditations and authorisations to notify Minister of certain matters

This clause requires the holder of an accreditation or authorisation to give the Minister notice if the holder fails a security background check or prescribed circumstances arise. The maximum penalty for failure to comply is $10,000. In addition, the holder of a radiation use licence authorising the holder to operate radiation apparatus or to use or handle a radioactive material must give the Minister notice if they are a health practitioner and their authority to provide health services is suspended or cancelled, or conditions are placed on their authority limiting their right to provide health services. In the case of a person (other than a health practitioner) who operates radiation apparatus, or uses or handles a radioactive material, in the course of their professional practice, they must give notice to the Minister if their authority under an Act or law regulating their right to practice is suspended or cancelled, or conditions are placed on their limiting their right to practice. The maximum penalty for a failure to comply is $10,000.

45—Death, bankruptcy etc of holder of authorisation

This clause provides that if a person who holds an authorisation dies, the personal representative of the deceased, or some other person approved by the Minister on application, will be taken to hold that authorisation (on the same conditions as were applicable to the deceased) as from the date of the death until the expiration of the prescribed period. If a person who holds an authorisation becomes bankrupt or insolvent, the official receiver will be taken to hold that authorisation (on the same conditions as were applicable to the person who previously held the authorisation) as from the date on which the person became bankrupt or insolvent until the expiration of the prescribed period. If a body corporate that holds an authorisation is being wound up or is under administration, receivership or official management, a person vested by law with power to administer the affairs of the body corporate will be taken to hold the authorisation (on the same conditions as were applicable to the body corporate) as from the date on which the person was appointed to administer the affairs of the body corporate until the expiration of the prescribed period. The prescribed period is 6 months or such longer period as the Minister may fix.

Division 7—Miscellaneous

46—Power to deal with dangerous situations

This clause provides that if the Minister considers that a dangerous situation or potentially dangerous situation exists involving radiation apparatus or radioactive material—

(a) the person responsible for the dangerous situation or potentially dangerous situation or a person affected by it may be directed to take, or refrain from taking, specified action; or

(b) the radiation apparatus or radioactive material giving rise to the dangerous situation or potentially dangerous situation or anything contaminated or affected by the apparatus or material may be seized, removed, disposed of, treated or otherwise dealt with; or

(c) any other direction may be given, or action taken,

to avoid, remove or alleviate the dangerous situation or potentially dangerous situation.

If the Minister considers that a dangerous situation or potentially dangerous situation exists involving radiation apparatus or radioactive material at a particular place, a person may be directed to leave the place and not re-enter it until the dangerous situation or potentially dangerous situation has ceased to exist.

Such directions may be given by the Minister or, with the prior approval of the Minister, by an authorised officer, a police officer or a person appointed by the Minister.

The clause makes it an offence for a person to hinder or obstruct a person exercising a power, or complying with a direction, or to contravene or fail to comply with a direction. The maximum penalty is $50 000 or imprisonment for 5 years or both.

If a person fails to comply with a direction given under this section, the Minister may take action, or cause action to be taken, to avoid, remove or alleviate the dangerous situation or potentially dangerous situation. Costs or expenses incurred by the Minister in doing so can be recovered by the Minister. If the dangerous situation in respect of which the action was taken resulted from an act done, or omission made, by a person in contravention of this measure, the Minister may recover those costs or expenses from that person by order of the court made in proceedings for the recovery of a penalty in respect of the act or omission, or by separate action in a court of competent jurisdiction.

47—Power to protect security enhanced radioactive sources and high risk radioactive sources and material

This clause makes it an offence for a person who has not undergone a security background check to obtain or access, attempt to obtain or access, or deal in any way with a security enhanced radioactive source, a high risk radioactive source or high risk radioactive material. The maximum penalty is $50,000 or imprisonment for 10 years. If the Minister has reason to believe that a person may pose a threat to the security of such a radioactive source or material by reason of having failed to pass a security background check, the Minister may give the person a direction that they must not obtain or access or attempt to obtain or access, or deal in any way with, such a radioactive source or material and a direction a direction placing such other restrictions on the person's activities involving such radioactive sources and material as the Minister considers necessary to maintain the security of such sources and material. The maximum penalty for contravening a direction is $50,000 or imprisonment for 10 years.

48—Emergency authorisations

This clause empowers the Minister or an authorised officer to grant a person authorising an act or omission that might otherwise constitute a contravention of this measure if satisfied that circumstances of urgency exist such that it is not practicable for the person to obtain an exemption and the authorisation of the act or omission is justified by the need to protect life, the environment or property.

49—Limits of exposure to ionising radiation not to be more stringent than limits fixed under certain codes etc

This clause provides that despite any other provision of this measure, no limit of exposure to ionising radiation may be fixed by the regulations or a condition of an authorisation imposed under this measure in relation to an operation for mining or mineral processing that is more stringent than the most stringent of all the limits, or less stringent

than the least stringent of all the limits, for the time being fixed in the codes, standards and recommendations applied, approved or published under the *Australian Radiation Protection and Nuclear Safety Act 1998* of the Commonwealth or any other Act or law of the Commonwealth or by the National Health and Medical Research Council, the International Commission on Radiological Protection or the International Atomic Energy Agency.

Part 5—General offences

50—Causing serious radiation harm

Subclause (1) provides that a person who causes serious radiation harm intentionally or recklessly and with the knowledge that harm to the health or safety of a person or harm to the environment will or might result is guilty of an offence. The maximum penalty is $5,000,000 in the case of a body corporate, or $1,000 000 or imprisonment for 15 years or both in the case of a natural person. Subclause (2) provides that a person who causes serious radiation harm is guilty of an offence. The maximum penalty is $2,500,000 in the case of a body corporate, or $500,000 or imprisonment for 10 years or both in the case of a natural person.

If in proceedings for an offence against subclause (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subclause (2), the court may find the defendant guilty of the latter offence. A person *causes serious radiation harm* if the person commits an act involving a radiation source that harms, or is likely to harm, presently or in the future, the health or safety of a person or the environment, and the harm or likely harm is of a high impact or on a wide scale. Subclauses (1) and (2) do not apply in relation to an act done in good faith, in accordance with this measure and without negligence.

51—Causing radiation harm

Subclause (1) provides that a person who causes radiation harm intentionally or recklessly and with the knowledge that harm to the health or safety of a person or harm to the environment will or might result is guilty of an offence. The maximum penalty is $1,000,000 in the case of a body corporate, or $200,000 or imprisonment for 5 years or both in the case of a natural person. Subclause (2) provides that a person who causes radiation harm is guilty of an offence. The maximum penalty is $500,000 in the case of a body corporate, or $100,000 or imprisonment for 2 years or both in the case of a natural person.

If in proceedings for an offence against subclause (1) the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against subclause (2), the court may find the defendant guilty of the latter offence. A person *causes radiation harm* if the person commits an act involving a radiation source that harms, or is likely to harm, presently or in the future, the health or safety of a person or the environment, and the harm or likely harm is not trivial but is not of a high impact or on a wide scale. Subclauses (1) and (2) do not apply in relation to an act done in good faith, in accordance with this measure and without negligence

52—Alternative finding

This clause provides that if in proceedings for an offence against clause 50, the court is not satisfied that the defendant is guilty of the offence charged but is satisfied that the defendant is guilty of an offence against clause 51, the court may find the defendant guilty of the latter offence.

Part 6—General duty of care

53—General duty of care

Subclause (1) provides that a person must, in dealing with a radiation source, take all reasonable and practicable measures to ensure that—

(a) the exposure of people to ionising radiation from the radiation source is kept as low as is reasonably achievable; and

(b) the risk of exposure of people and the environment to dangerous or potentially dangerous radiation from the radiation source is minimised; and

(c) the radiation source is protected from misuse that may result in harm to people or the environment.

Subclause (2) provides that a person must, in complying with the duty created by subclause (1), have regard to the radiation protection principle and the principles of ecologically sustainable development.

Subclause (3) provides that a person who breaches the duty created by subclause (1) is not, on account of the breach alone, guilty of an offence but compliance with the duty may be enforced by the issuing of a radiation protection order under Part 7 and a reparation order or reparation authorisation may be issued under that Part in respect of the breach of the duty.

Part 7—Enforcement

Division 1—Civil remedies

Subdivision 1—Orders made by Minister

54—Radiation protection orders

This clause empowers the Minister to issue radiation protection orders to secure compliance with the general duty of care (clause 53), a condition of an accreditation or authorisation, or any other requirement imposed by or under the measure. A radiation protection order can require a person to discontinue, or not commence, a specified activity indefinitely, for a specified time or until further notice by the Minister and require a person to take specified action within a specified time. Emergency radiation protection orders may be issued by an authorised officer. A person may appeal to the ERD Court against a radiation protection order.

55—Radiation protection cessation orders

This clause empowers the Minister to issue radiation protection cessation orders to prevent or minimise harm to the environment or deal with stockpiled or abandoned radioactive material that may result from activities or operations regulated by this measure after the activities or operations have ceased. A radiation protection cessation may impose any requirement of a kind that could be imposed as a condition of an authorisation that is reasonably required for the purpose for which the order is issued (including a requirement of a kind that could be imposed in a radiation protection order issued under clause 54). A person may appeal to the ERD Court against an order. However, radiation protection cessation orders cannot be issued in relation to activities or operations that cease before the commencement of this clause.

56—Action on non-compliance with radiation protection order

This clause provides that if the requirements of a radiation protection order or radiation protection cessation order are not complied with, any action required by the order can be taken by the Minister or on behalf of the Minister by an authorised officer or other person authorised by the Minister for the purpose. Reasonable costs and expenses incurred by the Minister in taking action can be recovered by the Minister as a debt from the person who failed to comply with the order and amounts recoverable by the Minister incur interest at the prescribed rate if not paid within a certain period of time. Until paid, any amounts recoverable are a charge in favour of the Minister on any land owned by the person.

57—Reparation orders

This clause empowers the Minister to issue a reparation order if satisfied that a person has caused harm to people or the environment by breaching the general duty of care, contravening a condition of an accreditation or authorisation, or contravening the measure. Such an order can require the person to take specified action within a specified period to make good any resulting damage to people or the environment, or to make a payment or payments into an approved account to enable action to be taken to address any harm to people or the environment, or both. Emergency reparation orders may be issued by authorised officers. A person may appeal to the ERD Court against an order.

58—Action on non-compliance with reparation order

This clause provides that if the requirements of a reparation order, any action required by the order can be taken by the Minister or on behalf of the Minister by an authorised officer or other person authorised by the Minister for the purpose. Reasonable costs and expenses incurred by the Minister in taking action can be recovered by the Minister as a debt from the person who failed to comply with the order and amounts recoverable by the Minister incur interest at the prescribed rate if not paid within a certain period of time. Until paid, any amounts recoverable are a charge in favour of the Minister on any land owned by the person.

59—Variation or revocation of orders

This clause empowers the Minister to vary or revoke radiation protection orders, radiation protection cessation orders and reparation order.

60—Offences

This clause makes it an offence for a person to whom radiation protection order, radiation protection cessation order or reparation order is issued to fail to comply with the order. The maximum penalty is $100,000. The offence is expiable by a fee of $3,000. The clause also makes it an offence for a person to hinder or obstruct a person complying with a radiation protection 20 order, radiation protection cessation order or reparation order. The maximum penalty is $100,000.

61—Reparation authorisations

This clause empowers the Minister to issue a reparation authorisation if satisfied that a person has caused harm to people or the environment by breaching the general duty of care, contravening a condition of an accreditation or authorisation, or contravening the measure. Such an authorisation allows authorised officers or other persons authorised by the Minister for the purpose may take specified action on the Minister's behalf to make good any harm to people or the environment. A reparation authorisation may include authorisation for action to be taken to prevent or mitigate further harm to people or the environment. The reasonable costs and expenses incurred by the Minister in taking action under a reparation authorisation may be recovered by the Minister as a debt from the person who caused the relevant harm. Amounts recoverable by the Minister incur interest at the prescribed rate if not paid within a certain

period of time. Until paid, any amounts recoverable are a charge in favour of the Minister on any land owned by the person.

62—Related matter

This clause provides that a person cannot claim compensation from the Minister or the Crown, an authorised officer or a person acting under the authority of the Minister or an authorised officer in respect of a requirement imposed under this Part or on account of any act or omission undertaken or made in the exercise (or purported exercise) of a power under this Part.

63—Registration of orders or authorisations by Registrar-General

This clause provides for the registration of orders and authorisations by the Registrar-General if they are issued in relation to an activity carried out on land, or if they require a person to take action on or in relation to land.

64—Effect of charge

This clause provides that a charge imposed on land under this Part has priority over any prior charge on the land (whether or not registered) that operates in favour of a person who is an associate of the owner of the land, and any other charge on the land other than a charge registered prior to registration under this Division of the relevant order or authorisation in relation to the land.

Subdivision 2—Orders made by ERD Court

65—Orders made by ERD Court

This clause sets out the orders that the ERD Court is empowered to make.

Division 2—Civil penalties

66—Civil penalties

This clause provides for civil penalties. If the Minister is satisfied that a person has committed an offence by contravening a provision of this measure, the Minister may, as an alternative to criminal proceedings, recover, by negotiation or by application to the ERD Court, an amount as a civil penalty in respect of the contravention.

Division 3—Authorised officers

67—Appointment of authorised officers

This clause provides for the appointment of authorised officers.

68—Identity cards

This clause requires an authorised officer to be issued with an identity card which must, at the request of a person in relation to whom the authorised officer intends to exercise any powers under this measure, produce for the inspection of the person.

69—Powers of authorised officers

This clause sets out the powers of authorised officers in connection with the administration or enforcement of the measure.

70—Provisions relating to warrants

This clause empowers magistrates to issue warrants in respect of places or vehicles authorising authorised officers, with such assistants as authorised officers consider necessary, to use reasonable force to break into or open any part of, or anything in or on, the place or vehicle.

71—Provisions relating to seizure

This clause makes provision in relation to things seized by authorised officers under a seizure order. It provides for forfeiture of seized things where a person is convicted or found guilty of an offence. If proceedings for an offence are not instituted within the prescribed time or the person is found not guilty, the person from whom the thing was seized, or any person with legal title to it, is entitled to recover from the Minister the thing itself, or if it has been damaged or destroyed, compensation of an amount equal to its market value at the time of its seizure. If the thing is the subject of a seizure order the order is discharged.

72—Offences against authorised officers and other persons engaged in administration of Act

This clause provides that a person is guilty of an offence if the person—

(a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this measure; or

(b) fails to comply with a notice given by an authorised officer under section 71; or

(c) fails to answer a question put by an authorised officer to the best of the person's knowledge, information or belief; or

(d) produces a document or record that the person knows, or ought to know, is false or misleading in a material particular; or

(e) being the person in charge of a place or vehicle subject to an inspection and having been required to provide reasonable assistance to facilitate the inspection, refuses or fails to provide such assistance; or

(f) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this measure; or

(g) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or

(h) falsely represents, by words or conduct, that the person is an authorised officer,

The clause also makes it an offence for a person to assault an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this measure. In both cases the maximum penalty is $20,000.

Division 4—Power to require or obtain information

73—Information discovery orders

This clause empowers the Minister to issue information discovery orders to obtain information reasonably required by the Minister for the administration or enforcement of this measure. A person to whom such an order is issued must comply with the order. The maximum penalty is $50,000.

74—Obtaining of information on non-compliance with order or condition of accreditation or authorisation

This clause empowers the Minister to take such action as is reasonably necessary to obtain information if a person fails to provide it as required by an information discovery order or a condition of an accreditation or authorisation. The reasonable costs and expenses incurred by the Minister in taking action may be recovered by the Minister as a debt from the person whose failure gave rise to the action.

Division 5—Miscellaneous

75—Recovery of economic benefit

This clause provides that if in any proceedings under this measure, a court finds that a person has contravened this measure, the court may, in addition to any penalty that it may impose, order the person to pay to the Minister an amount not exceeding the court's estimation of the amount of economic benefit acquired by the person, or accrued or accruing to the person, as a result of the contravention.

Part 8—Miscellaneous

76—Exemptions

This clause empowers the Minister to grant exemptions from compliance with specified provisions of this measure. A person who has the benefit of an exemption and who contravenes a condition of the exemption is guilty of an offence. The maximum penalty if the contravention of the provision in relation to which an exemption was granted is a minor indictable offence is, in the case of a body corporate $250,000 or in the case of a natural person $50,000 or imprisonment for 5 years or both. If the contravention is not a minor indictable offence the maximum penalty is $100,000 in the case of a body corporate or $20 000 in the case of a natural person.

77—Register of accreditations, authorisations, exemptions and permits

This clause requires the Minister to keep a register of accreditations, authorisations, exemptions and permits, which must be kept available for inspection by any person. A person may obtain a copy of part of the register. However, the Minister may restrict access to the register if the Minister considers it necessary to prevent a threat to the security of radioactive material, to protect the health or safety of the public or for any prescribed reason.

78—Adoption of documents forming part of National Directory

This clause empowers the Minister to adopt a document (such as a standard, guidance note or code of practice) forming part of the National Directory or to vary or revoke such an adoption. A document so adopted must be kept available for inspection by any person without fee. The *National Directory* is the *National Directory for Radiation Protection* published by the Australian Radiation Protection and Nuclear Safety Agency of the Commonwealth, as published or in force from time to time, and includes any code, standard, guideline, rule, specification or other document adopted by or incorporated in the National Directory for Radiation Protection, whether as published or in force on a particular date, or as published or in force from time to time.

79—Confidentiality

This clause prohibits a person engaged or formerly engaged in the administration of this measure or the *Radiation Protection and Control Act 1982* must not divulge or communicate information obtained (whether by that person or otherwise) in the course of official duties except in accordance with the clause. The maximum penalty is $20,000. The clause does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates. Information that has been disclosed for a particular purpose must not be used for any other purpose by the person to whom the information was disclosed, or any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure. The maximum penalty is $20,000.

80—Offences and ERD Court

This clause provides that offences constituted by this measure (other than major indictable offences) lie within the criminal jurisdiction of the ERD Court.

81—Constitution of ERD Court

This clause makes provision for the constitution of the ERD Court when it is exercising jurisdiction under this measure.

82—Commencement of proceedings

This clause specifies the time limits within which proceedings for an offence against this measure may be commenced.

83—Offences by officers of bodies corporate

This clause provides that if a body corporate contravenes a provision of this measure, a person who is an officer of the body corporate is (subject to the general defence in clause 86), guilty of a contravention of this measure and liable to the same penalty as may be imposed for the principal contravention when committed by a natural person.

84—Vicarious liability

This clause provides that for the purposes of this measure, an act or omission of an employee or agent will be taken to be the act or omission of the employer or principal unless it is proved that the act or omission did not occur in the course of the employment or agency.

85—Continuing offences

This clause provides penalties for continuing offences.

86—General defence

This clause provides that it will be a defence in criminal proceedings in respect of an alleged contravention of this measure (proceedings against a body corporate or a natural person where conduct or a state of mind is imputed to the body or person under this Part and proceedings against an officer of a body corporate under this Part), if it is proved that the alleged contravention did not result from any failure on the defendant's part to take all reasonable and practicable measures to prevent the contravention or contraventions of the same or a similar nature. This defence includes the defence that the act or omission alleged to constitute the contravention was justified by the need to protect life, the environment or property in a situation of emergency and that the defendant was not guilty of any failure to take all reasonable and practicable measures to prevent or deal with such an emergency.

If a body corporate or other employer seeks to establish the defence provided by this clause by proving the establishment of proper workplace systems and procedures designed to prevent a contravention of this measure, that proof must be accompanied by proof—

(a) that proper systems and procedures were also in place by which any such contravention or risk of such contravention of this measure that came to the knowledge of a person at any level in the workforce was required to be reported promptly to the governing body of the body corporate or to the employer, or to a person or group with the right to report to the governing body or to the employer; and

(b) that the governing body of the body corporate or the employer actively and effectively promoted and enforced compliance with this measure and with all such systems and procedures within all relevant areas of the workforce

87—Notice of defence

This clause provides that a person who, in criminal proceedings, intends to rely on the general defence under this Part or any other defence under this measure can only do so if the person gives notice of that intention to the Minister within a certain specified time.

88—Imputation of conduct or state of mind of officer, employee etc

This clause provides that for the purposes of proceedings for an offence against this measure, the conduct and state of mind of an officer, employee or agent of a body corporate acting within the scope of their actual, usual or ostensible authority 20 will be imputed to the body corporate, and the conduct and state of mind of an employee or agent of a natural person acting within the scope of their actual, usual or ostensible authority will be imputed to that person

89—Statutory declarations

This clause empowers the Minister or a prescribed authority to require information provided to the Minister or the authority to be verified by statutory declaration (in which case a person will not be taken to have provided the information as required unless it has been verified in accordance with the requirements of the Minister or prescribed authority).

90—False or misleading statement

This clause makes it an offence for a person to make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided, or record kept, under this measure. The maximum penalty is $50,000.

91—False or misleading report

This clause makes it an offence for a person to make a false or misleading report to the Minister or a person engaged in the administration of this measure, knowing that the report is false or misleading. The report must of a kind that would reasonably call for investigation or action by the Minister or a person engaged in the administration of this measure. if a person is convicted of such an offence, the court must, on application by the Minister, order the convicted person to pay to the Minister the reasonable costs and expenses incurred by or on behalf of the Minister in carrying out an investigation or taking action as a result of the false or misleading report.

92—Self-incrimination

This clause provides that it is not a reasonable excuse for a person to fail to answer a question or to produce, or provide a copy of, a document or information as required under this measure on the ground that to do so might tend to incriminate the person or make the person liable to a penalty. However, if compliance by a natural person with a requirement under this measure might tend to incriminate the person or make the person liable to a penalty, then—

(a) in the case of a person who is required to produce, or provide a copy of, a document or information—the fact of production, or provision of a copy of, the document or the information (as distinct from the contents of the document or the information); or

(b) in any other case—the answer given in compliance with the requirement,

is not admissible in evidence against the person in proceedings for an offence or for the imposition of a penalty (other than proceedings in respect of the making of a false or misleading statement).

93—Evidentiary provisions

This clause contains evidentiary provisions for the purposes of proceedings under the measure.

94—Service

This clause makes provision for the service of documents.

95—Recovery of fees and other amounts due to Minister

This clause provides that a fee or other amount payable under this measure is recoverable by action in a court of competent jurisdiction as a debt due to the Minister

96—Recovery of administrative and technical costs associated with contraventions

This clause provides for the recovery by the Minister of costs and expenses incurred by the Minister in taking samples or in conducting tests, examinations or analyses where a person has contravened this measure and the Minister has taken action to investigate the contravention, issue an order under Part 7 Division 1 or ensure that the person has complied with such an order or with an order made by a court. A person who fails to pay an amount payable to the Minister in accordance with this guilty is guilty of an offence and subject to a maximum penalty of $5,000. The offence is expiable by a fee of $315.

97—Assessment of reasonable costs and expenses

This clause provides that, for the purposes of this measure, the reasonable costs and expenses that have been or would be incurred by the Minister in taking any action are to be assessed by reference to the reasonable costs and expenses that would have been or would be incurred in having the action taken by an independent contractor engaged for that purpose.

98—Regulations and fee notices

This clause empowers the Governor to make regulations. It provides that the regulations can create summary and minor indictable offences and fixed the maximum penalties that may be prescribed. In the case of a minor indictable offence the maximum is $100,000 in the case of a body corporate and $20,000 or imprisonment for 5 years or both in the case of a natural person. In the case of a summary offence the maximum is $50,000 in the case of a body corporate or $10,000 in the case of a body corporate. The regulations may prescribe expiation fees not exceeding $5,000 in the case of a body corporate or $1,000 in the case of a natural person. This clause also empowers the Minister to prescribe fees by fees notice under the *Legislation (Fees) Act 2019*.

99—Review of Act

This clause provides that the Minister must cause a review of the operation of this measure to be conducted and a report on the results of the review to be submitted to the Minister. The first review must be conducted within the period of 12 months after the tenth anniversary of the commencement of this measure and subsequent reviews must be conducted every 10 years. The Minister must, within 12 sitting days after receiving a report of a review, cause copies of the report to be laid before both Houses of Parliament.

Schedule 1—Application of this Act to Roxby Downs Joint Venturers

This Schedule provides that this measure applies in relation to operations of the Joint Venturers under the Olympic Dam and Stuart Shelf Indenture ratified by the *Roxby Downs (Indenture Ratification) Act 1982* subject to the modifications set out in this Schedule.

Schedule 2—Related amendments, repeals and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *Environment Protection Act 1993*

2—Substitution of section 91

This clause substitutes section 91 of the Act so that it mirrors the provisions relating to self-incrimination in clause 92 of this measure.

Part 3—Repeal of *Radiation Protection and Control Act 1982*

3—Repeal of Act

This clause repeals the *Radiation Protection and Control Act 1982*

Part 4—Transitional provisions

4—Radiation Protection Committee

This clause provides that on its commencement all members of the Radiation Protection Committee then in office vacate their respective offices so that fresh appointments may be made to the Committee under this measure.

5—Authorised officers

This clause provides for authorised officers appointed under the repealed Act and holding office immediately before the commencement of this clause to be taken to be authorised officers appointed under this measure, and for their appointments to be subject to the same conditions (if any) as under the repealed Act.

6—Certain licences to continue as radiation management licences

This clause provides for licences under sections 23A, 24, 29A and 33A of the repealed Act in force immediately before the commencement of this clause to be taken to be radiation management licences under this measure subject to the same conditions (if any) as under the repealed Act. It also allows the Minister to fix a common expiry date for 2 or more radiation management licences held by the same person.

7—Certain licences to continue as radiation use licences

This clause provides for licences under sections 28 and 31 of the repealed Act in force immediately before the commencement of this clause to be taken to be radiation use licences under this measure subject to the same conditions (if any) as under the repealed Act. It also allows the Minister to fix a common expiry date for 2 or more radiation use licences held by the same person.

8—Registrations to continue

This clause provides for registrations under section 29, 30 and 32 of the repealed Act in force immediately before the commencement of this clause to be taken to be registrations under this measure subject to the same conditions (if any) as under the repealed Act. It also allows the Minister to fix a common expiry date for 2 or more registrations held by the same person.

9—Accreditations to continue

This clause provides for accreditations under Part 3 Division 3B of the repealed Act in force immediately before the commencement of this clause to be taken to be accreditations under Part 4 Division 5 of this measure subject to the same conditions (if any) as under the repealed Act.

10—Directions relating to dangerous situations to continue

This clause provides for directions given under section 42 of the repealed Act in force immediately before the commencement of this clause to be taken to be directions given under clause 46 of this measure.

11—Exemptions to continue

This clause provides for exemptions under 44 of the repealed Act in force immediately before the commencement of this clause to be taken to be exemptions under clause 76 of this measure subject to the same conditions (if any) as under the repealed Act.

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

RAIL SAFETY NATIONAL LAW (SOUTH AUSTRALIA) (RAIL SAFETY WORK) AMENDMENT BILL

Second Reading

The Hon. D.W. RIDGWAY (Minister for Trade and Investment) (19:09): I move:

That this bill be now read a second time.

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

Leave granted.

The Rail Safety National Law (South Australia) (Rail Safety Work) Amendment Bill 2020 makes changes to the definition of 'Rail Safety Work' so that it is more aligned to the purpose and objects of the law.

The Rail Safety National Law (RSNL) is Australia's rail safety legislation which establishes a co-regulatory system involving a process by which rail safety operators assess the risks associated with their railway operations and then establish a safety management system to manage those risks.

The amendments to the RSNL ensure the definition of 'rail safety work' aligns with the objects of the RSNL, capture only work that could pose a risk to railway operations, current or future, and clearly distinguish between risk from the work and risk to the person performing the work. The amendments also remove risks to workers that are not specific to railway operations and therefore are adequately addressed under WHS laws.

It is intended that changes to the RSNL will reduce the rail safety work assessment burden for industry by removing risks to workers that are not specific to railway operations and therefore are adequately addressed under WHS laws.

On 27 June 2019, officers of the National Transport Commission provided instructions for drafting by the Australasian Parliamentary Counsel's Committee.

The responsible Ministers of the Transport and Infrastructure Council unanimously recommended the making of the proposed legislation at its meeting on 22 November 2019.

As South Australia is the lead legislator for the RSNL, Parliamentary Counsel has drafted the Amendment Bill.

The RSNL amendments are broadly supported by industry, jurisdictions, the Office of the National Rail Safety Regulator (ONRSR), and the Australasian Railway Association (ARR).

Explanation of Clauses

Part 1—Preliminary

1—Short title

2—Commencement

3—Amendment provisions

These clauses are formal.

Part 2—Amendment of *Rail Safety National Law*

4—Amendment of section 4—Interpretation

This amendment inserts the word 'safely' into the definition of *rail infrastructure* to emphasise that rail infrastructure relates to facilities that are necessary to enable a railway to operate safely.

5—Amendment of section 8—Meaning of rail safety work

This clause amends section 8, which sets out the classes of work that are *rail safety work* for the purposes of the Act. The amendments in clauses 5(1) and (2) of the Bill to section 8(1)(d) are consequential on the amendments to paragraph (f) in clause 5(3) of the Bill. These amendments ensure that construction of rolling stock and rail infrastructure are included within the ambit of paragraph (d) (currently referred to in paragraph (f)). The amendments also ensure that work that involves checking that rail infrastructure is working properly before being used is covered by paragraph (d) (also currently referred to in paragraph (f)).

The amendment in clause 5(3) of the Bill substitutes a new paragraph (f). Proposed paragraph (f) limits work on or about rail infrastructure or associated works or equipment to work that places the worker at risk of exposure to moving rolling stock and thus focuses on work involving risks that are peculiar to railway operations.

Debate adjourned on motion of Hon. J.E. Hanson.

COVID-19 EMERGENCY RESPONSE (FURTHER MEASURES) AMENDMENT BILL

In committee (resumed on motion).

Clause 4.

The Hon. K.J. MAHER: This has become slightly messy, and again there is a reason for that. When you introduce a bill on the Tuesday of a sitting week and expect it to pass that week, which we are prepared to do, this is sometimes how it can occur. The Hon. Rob Lucas is taking his medicine for his government doing that, which is good.

I flagged that I was intending to move an amendment before we adjourned this on motion. An amendment has been drafted which, if it is not filed, there is a button being pressed to file it as we speak. I think all relevant parties have a copy of what that amendment looks like, and I will read it out for the benefit of everyone in the chamber. At clause 4, page 5, after line 18, where a new subsection (2a) and (2b) were inserted after subsection (2), I am proposing to delete both subsections (2a) and (2b) of the bill as amended and replace them with subsection (2a) as follows:

(2a) In ordering any rent relief under regulations made under this section, the court is to have regard to the leasing principles set out in the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19.

The other amendment that was passed, which is a consequential amendment that defines rent relief, still remains—I am not proposing to amend that.

As was spoken about earlier tonight, this in effect imports the language from the regulations in New South Wales into the legislation in South Australia. We believe that the principle of proportionality is reasonable. It is one that was agreed to by the national cabinet, which included the Premier of South Australia. We have not heard anywhere that there were objections in the lead-up to 30 March or the 7 April formal putting out of the national code from the Premier, who sits on the national cabinet. There is no suggestion that there was any criticism of the national code. We have since heard criticism of the national code and the idea of proportionality.

The national code endorses, as does the Prime Minister of Australia, that the concept of proportionality strikes the right balance in helping protect, often, small tenants in commercial leases. We think it is important that this is put in the legislation. Given the very strong views stated by the Treasurer, we think it is important that it is put in legislation and not in any way left up to regulation. Quite frankly, the only thing that we as members of this chamber can do about regulation is to disallow the whole lot, to make a scheme that comes into force inoperative. We think that is an entirely suboptimal thing to have to do if we disagree with what the government eventually decides to do in regulation and that this is the only way to be sure we are applying this principle of proportionality that we now learn is in other jurisdictions.

I invite the Treasurer to place on record what he has told the chamber previously about proportionality. We were told in the hours leading up to now that it was a terrible idea, that every jurisdiction in Australia hates it and none were going near it. We now find in the only other regulation we have had a look at, which is New South Wales, it is front and centre of what they are doing. Given

what the Treasurer told the chamber about the view that no other jurisdictions were doing this—which we find to be not entirely correct; in fact, quite the opposite—we think it is absolutely crucial that these principles are put into legislation and not put into regulation.

If these are put into legislation and the government does not bring into force the act or, in particular, this section of the act—I would ask the Treasurer if it is possible to bring into force sections of the act and not others—and if this section of the act or the act in its totality is not brought into force, it is on the government for not giving relief to, often, many small commercial tenants. With that, I move the amendment that has now been filed, as I read out, to delete subsections (2a) and (2b) of clause 4 and replace it with (2a) in the terms that I have read out and in the terms that have now been filed. I move:

Amendment No 1 [Maher–1]—

Page 5, after line 18 [clause 4, inserted section 7]—After subsection (2) insert:

(2a) In ordering any rent relief under regulations made under this section, the court is to have regard to the leasing principles set out in the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19.

Amendment No 2 [Maher–1]—

Page 7, after line 2 [clause 4, inserted section 7(7)]—After the definition of *relevant Act* insert:

rent relief means any form of relief in respect of the liability or obligation of a lessee under a commercial lease to pay rent (including waiver or deferral of rent).

The Hon. R.I. LUCAS: I agree with the Leader of the Opposition that it is a slightly messy process, but let's hope that we can resolve the mess. Mr Chairman, I will seek your guidance in a tick about where we are actually up to in terms of the amendments, because I have actually moved on rescission and I think the leader is now moving an amendment. We are nevertheless opposing the leader's amendment, but in terms of what the process is, I will leave you and your officers to work through how we vote.

I am not going to repeat the arguments. We know the positions and the arguments in relation to this. However, the new issue the Leader of the Opposition has raised is that in the regulations, at the stage of the parties negotiating—not at the stage of the court ultimately making a decision—what are the guidelines that guide landlords and tenants in terms of how they conduct themselves and negotiate in good faith? In New South Wales, as a guideline there—although I do not know that it has actually arrived yet—regulation 7(4), Obligation to renegotiate rent, etc., provides:

The parties are to renegotiate the rent payable under, and other terms of, the commercial lease having regard to—

(a) the economic impacts of the COVID-19 pandemic, and

(b) the leasing principles set out in National Code of Conduct.

That is the reference that the member has referred to in New South Wales; that is, at the stage of negotiation between the lessor and the lessee there are various things they take into account in terms of their negotiation, one of which is having regard to the principles. It is not mandatory, it is not enforceable, but nevertheless it is something they have to have regard to in relation to the issue.

In opposing the Leader of the Opposition's original amendment and his revised amendment that he has just flagged, what I have raised with the leader, which he is not prepared to accept, but I am raising with the Hon. Connie Bonaros, the Hon. Frank Pangallo and others, is that we will move in the spirit of compromise to the same position as the New South Wales government.

In our regulations, which we hope to gazette tomorrow to start the firing pistol in relation to all of this, under the heading of 'Obligation to parties to commercial leases to negotiate in good faith'—and we have provided the draft regulations to members in their briefings earlier this week, which is the same stage that New South Wales have their provision in—it currently reads:

The parties to a commercial lease…must [during the prescribed period] make a genuine attempt to negotiate in good faith the rent payable under, and other terms of, the commercial lease…having regard to—

(a) the economic impacts of the COVID-19 pandemic on the parties to the lease;

That is very similar to the New South Wales (a). Then:

(b) the provisions of the Act and these regulations;

And we are now proposing to add (c), which is similar to the New South Wales one, which says, 'shall have regard to the provisions of the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19 published on 7 April 2020'. I think that is a workable compromise that we think landlords and the government can live with. It meets, in part, the intentions of the opposition and other crossbenchers.

I accept the opposition wants it in legislation because they do not trust the undertaking that I might give on behalf of the government, and that is fair enough. I think it is unfair, but it is fair enough for them to think that. On behalf of the government I give an undertaking, absolutely, to insert in regulation 6 the new paragraph (c), which will read 'the provisions of the National Cabinet Mandatory Code of Conduct—SME Commercial Leasing Principles During COVID-19 published on 7 April 2020'.

At this late hour, I think that is a reasonable compromise. In the event that I renege on my commitment or I am struck dead between now and Executive Council in the morning—heaven forbid—or whatever, and it did not translate, the parliament always has the power to disallow the regulations anyway. I have given a personal assurance to the Hon. Ms Bonaros and the Hon. Mr Pangallo that that will be part of the regulations the government institutes. It is a commitment not just from me but on behalf of the government in relation to it.

With that, I would urge members to oppose the new amendment from the Hon. Mr Maher and also to, I assume—in what order, I am not sure—delete the original amendment that was passed earlier on the basis of the undertaking I have now given on behalf of the government, when we gazette new regulations hopefully tomorrow morning at 9 o'clock or 9.30, to include that new provision I have now placed on the public record.

The Hon. K.J. MAHER: I think I need to respond. The Hon. Rob Lucas is playing it a bit fast and loose with how he is characterising things here. We heard earlier on tonight that no other state is having regard to proportionality: 'Believe me, no one at all. All of us treasurers hate it, and no other state is implementing it.' That is what he had the chamber believe earlier today. That is what he was trying to sell to us earlier today. The only other one that we have had a look at is New South Wales and it was the opposite of what the Treasurer was trying to convince the chamber.

I would ask the Treasurer: does he stand by his comments that every single other jurisdiction that has implemented it does not like the idea of proportionality and is not implementing it, because the only one that we can see flies in the face of what he said? Having been proved wrong on that, the Treasurer is now trying to convince the chamber, 'Alright, you caught me out; New South Wales do it. I might have been playing a bit fast and loose with the truth when I said no-one else is doing it. Fair enough. New South Wales gives regard to leasing principle No. 3—in particular, leasing principle No. 3—but that's only when the parties are negotiating.' That is his new tactic now to try to convince us it only relates to when parties are negotiating that they should have regard to this idea of proportionality and the national principles.

I invite the Treasurer to inform the chamber and particularly the crossbenchers what the effect of regulation No. 9 is, if it is not to give effect to the National Code of Conduct that has proportionality as its primary concern for courts and tribunals. The Hon. Rob Lucas, secondly, wants us to believe, after being found out last time, that the New South Wales regulations only apply this idea of proportionality to negotiations. I would be most grateful if the Treasurer could explain what in fact, then, regulation No. 9 in the New South Wales regulations does.

The Hon. R.I. LUCAS: Gladly. Again, we are only delaying the debate here. Ultimately, it will be a decision for the crossbenchers, because our position is different from the Leader of the Opposition's. The clear difference is that all New South Wales has done is said 'shall have regard to'. There is no enforceability. I am very surprised that, as a lawyer, the Leader of the Opposition does not know the difference between legal wording which says 'shall have regard to' and the legal enforceability of something. The Leader of the Opposition's amendments were, 'Any rent relief ordered by a court should, as far as practicable,' etc., 'be proportionate.' They were the original amendments that were being moved by the Leader of the Opposition.

We can talk about 'fast and loose' and whatever else, but the government's position remains the same; that is, no other jurisdictions, Labor or Liberal, have implemented word for word the mandated national code. I do not think even the Leader of the Opposition is contesting that particular statement. No other jurisdiction is doing that in the way that the national code requires proportionality in terms of the final decisions in relation to whatever 'binding mediation' means; that is, a strict proportionality. New South Wales does not deliver that either. It says 'shall have regard to', which is significantly different to the provisions of the national code.

Another thing I am advised is that the regulation No. 9 the member is talking about in New South Wales has nothing to do with rent relief at all. It talks about recovery of possessions of premises, it talks about terminations of leases and it talks about the exercise or enforcement of another right of a lessor. It has nothing to do with rent relief, contrary to the inference or the impression the Leader of the Opposition was seeking to give to the crossbenchers.

The Hon. K.J. MAHER: I would be keen to see the Treasurer's review of the Tasmanian tenancy legislation passed on 8 May, particularly in relation to whether the Hon. Elise Archer, Attorney-General and Minister for Building and Construction in Tasmania, is correct when she says that the purpose of their system in Tasmania is to give rent reductions and that 'the lessor must provide the lessee of a protected lease a reduction in rent in line with the provisions provided in the code'.

Is he aware of what Tasmania has done, or is he a bit blank and fuzzy about what Tasmania is doing? I would be very keen for the Treasurer to inform the chamber, because that is the only other one. I am just reading it now, but it does seem to reference the national code pretty clearly and strongly. The distinct impression the Treasurer was trying to give us was that other states were not doing do that. It seemed to be two for two that contradict what the Treasurer tried to sell earlier.

The Hon. R.I. LUCAS: We can go around and around. As I have just highlighted, in relation to New South Wales the claims that the Leader of the Opposition made were wrong. He was saying in relation to rent relief, regulation 9 said thou shalt have regard to—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: Yes, you did, in relation to the national code, and it has nothing to do with rent relief contrary to—

The Hon. K.J. Maher interjecting:

The Hon. R.I. LUCAS: The government is not going to convince the Leader of the Opposition in relation to its position, I accept that. The opposition is not going to convince the government in relation to its position. I think our positions are generally known now in terms of this. We have given an undertaking to the parliament, but in particular to the crossbenchers that, consistent with New South Wales, we will amend our regulation 6 along the lines that I have already indicated, which is consistent with the regulation that now exists in New South Wales, that is, to have regard to the provisions of the national code and in particular the leasing principles.

The Hon. C. BONAROS: Can I say for the record, frankly, neither the government or the opposition are going to convince SA-Best. We are looking at this from our perspective and trying to get a resolution here that we think meets the concerns that have been raised by the opposition and the concerns that have been raised by the government. I will reiterate what I said before, that is, I think whichever approach we take the outcome is going to be the same.

Clause 6 of the regulations currently provides the obligations of parties to commercial leases to negotiate in good faith. The Treasurer has just given an undertaking—and I am happy to take him at his word, and he knows that there is a disallowance that will come if he does not follow through with his commitment today—that he is happy to add in there provisions along the lines of what the Hon. Kyam Maher has outlined in his amendment, that is, a new paragraph which says that there will be provisions of the code of conduct SME commercial leasing principles during COVID-19. That is consistent with the changes to the amendment that the Hon. Kyam Maher just moved.

I go back to the point I made earlier this evening, that is, clause 9 of those regulations already enables the court to consider, irrespective of whether the Treasurer likes it or not, the issue of

proportionality. In my reading of it, the clause is broad enough already, that is subclause (8), to include proportionality and I think, on the Leader of the Opposition's own interpretation of subclause (b), the reduction in turnover of the business of the lessee during the prescribed period already covers the issue of proportionality.

Whatever we decide here about using the word explicitly—proportionality or otherwise—the reality remains that if a matter proceeds to court there is nothing preventing the court from taking into account the issue of proportionality. It will do so under subclause (b) when it considers the reduction in turnover of the business of the lessee during the prescribed period, and it can do so under subclause (g), any other matter that the court thinks fit.

In that regard, I am confident that the issue of proportionality can be canvassed by the courts but I will go one step further and say that I think there is some benefit in providing the additional clause earlier than when a matter reaches court by inserting it in clause 6 of the regulations because that is when the parties to a lease are actually negotiating in good faith.

I think, in some respects, the compromise that has been reached by the Treasurer—and I appreciate it has taken a while to get him here—does potentially go a step further than even he anticipated insofar as it will force this matter to be considered before we even get to court. On that basis, I am confident that the Treasurer (a) will stick to the undertaking that he has given, and (b) will ensure that no issue including proportionality is left out of any negotiations. On that basis, we are happy to accept the Treasurer's undertaking and agree to the proposal that he has put to us, which obviously means not supporting the opposition's amendment.

I just have one comment to make in relation to suboptimal regulatory regimes and inoperative schemes. I remind the Leader of the Opposition and indeed the government that we are always in here arguing for clauses to be inserted into legislation as opposed to regulations. We always think that is a better way of making laws. There is nothing good about the way that we are making these laws. I have made that abundantly clear since we started considering these COVID-19 emergency response bills.

The entire substance of this scheme in this instance is contained in regulations. We are only supporting a bill which sets out a very thin framework and the entire substance of what we are agreeing to in this instance is actually being dealt with by regulations. If those regulations are suboptimal, if they are inoperative, if they are problematic, does not stick to the undertaking he has given tonight, then as we know those regulations—the entire scheme—will be subject to a disallowance motion. For those reasons, I am confident that the compromise the Treasurer has proposed—and I will again point out that it has taken us a whole to get here—is a suitable compromise in this instance.

The Hon. T.A. FRANKS: For the record, although this is part of the legislation that is being handled by my colleague the Hon. Mark Parnell, he has given me some instructions, given he is currently on a Zoom conference, that we are still supportive of the Labor amendments to the act in terms of reaching a compromise. I understand that when the Treasurer refers to the crossbench—perhaps he might further differentiate the crossbench on one side to the other.

I am not comforted by promises that issues will be addressed in regulations. I am not comforted by the fact that we will not come back for several weeks. I am not comforted by the fact that we were only given a briefing on this bill on Tuesday. I am not comforted by the fact that, time and time again, things we have in this debate have been found to be half-truths or untrue.

The Hon. K.J. MAHER: I have a very quick question. The Treasurer can correct me if I heard wrong, but did the Treasurer mention that the intention is for an Executive Council meeting to consider regulations tomorrow?

The Hon. R.I. LUCAS: Well, if parliament passes the bill.

The Hon. K.J. MAHER: If parliament passes it. Maybe place on the record the government's intentions about when these regulations will be made and when they will come into force?

The Hon. R.I. LUCAS: We are always subject to the will of this parliament. Subject to the parliament passing a bill today, which we are hopeful of, it is the government's intention to get assent to the act tomorrow and to gazette the regulations. We do want to start the starter's gun, or whatever

it is, on the guidelines for the Small Business Commissioner, who has been patiently yelling down the phone at us, asking what the guidelines are for him to govern the mediations. Then, ultimately, it will be up to the Magistrates Court. Yes, it is the government's intention to gazette regulations tomorrow.

The CHAIR: The first question I am going to put is that previously inserted new subsections (2a) and (2b), as proposed to be struck out by the Treasurer, stand as part of the clause. My understanding is that the opposition and the government would vote no.

Motion carried.

The CHAIR: The next question I am going to put is that new subsection (2a) as proposed to be inserted by the Hon. K.J. Maher be so inserted. If you are supporting the Leader of the Opposition, you will vote aye. If you are not supporting the Leader of the Opposition, you will vote no.

The committee divided on the amendment:

Ayes................7
Noes 8
Majority 1

AYES

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

NOES

Bonaros, C.	Centofanti, N.J.	Hood, D.G.E.
Lee, J.S.	Lensink, J.M.A.	Lucas, R.I. (teller)
Pangallo, F.	Ridgway, D.W.	

PAIRS

Bourke, E.S.	Darley, J.A.	Hunter, I.K.
Wade, S.G.	Scriven, C.M.	Dawkins, J.S.L.

Amendment thus negatived.

The CHAIR: The next question I am going to put is that the definition of 'rent relief' previously inserted by the Hon. K.J. Maher and as proposed to be struck out by the Treasurer stand as part of the clause. If you are voting with the Leader of the Opposition, you will say aye. If you are voting with the government, you will say no. It is consequential.

Amendment negatived; clause as amended passed.

Bill reported with amendment.

Third Reading

The Hon. R.I. LUCAS (Treasurer) (19:45): I move:

That this bill be now read a third time.

The Hon. T.A. FRANKS (19:45): I rise to make a third reading contribution to this bill. During the debate on this bill, as members know, I raised the clause around the removal of children. I asked many times for clarification on the consultation on this and I note that at 6.13pm tonight I received a piece of correspondence that has been addressed to the Attorney from the Law Society's Chief Executive, Stephen Hodder, on behalf of the Law Society. I will not read the entire document, but I

will note that it is dated today and that we received it at 6.13pm because I am sure that that was as fast as they could turn this around.

I will note that, while it refers to their previous response with regard to commercial leases, this makes further comment with respect to the proposed amendments that relate to the removal of children. I note that it states:

> 5. The Society notes that the Amendment Bill contains the following amendment to the Act with respect to the removal of children:
>
> > Without derogating from section 25, an authorised officer may, for the purpose of ensuring compliance with any direction under that section, remove a child from any premises, place, vehicle or vessel to a place of residence of the child or to a hospital or quarantine facility, as the authorised officer thinks fit (and may, in doing so, use force as reasonably necessary).

The society goes on to note:

> …the State Coordinator or an authorised officer may remove, or cause to be removed, to such place as the State Coordinator or authorised officer sees fit, any person or animal, or direct the evacuation or removal of any person or animal.

Furthermore, under the act already, the act gives:

> …the State Coordinator or an authorised officer the power to use such force as is reasonably necessary in the exercise or discharge of a power or function under section 25 of the Emergency Management Act.

The society goes on to state at point 8 of the letter:

> 8. The Society questions the need for the amendment, not just because such powers already exist under the Emergency Management Act, but why these specific (albeit temporary) powers with respect to children are being sought by the State Coordinator.
>
> 9. In particular, the Society questions the need for such provisions, i.e. have police been having to frequently physically remove groups of children and young people away from public areas? If so, is there data that can be provided to justify the need for specific powers to remove children? Or is this a measure that police anticipate they may need to exercise as restrictions start to lift in South Australia?
>
> 10. Overall, insufficient information has been provided with respect to the need for these provisions and the Society has a number of questions around them. For example, as children and young people are a vulnerable group in our society, what safeguards are in place, given that police may use reasonable force to remove? Will subsequent reporting requirements also be put in place—particularly where children are not returned home to their families but taken to hospitals or quarantine facilities? How will an authorised officer determine a child's place of residence? Also, how are these powers likely to impact Aboriginal children or children under the care of the Guardian? Will children who are removed under these powers also be subject to fines/penalties for breach of relevant SAPOL directions relating to public gatherings?

The letter concludes with:

> 11. Given the significant breadth of the current emergency powers in South Australia, the Society questions the need for these specific powers. While it is anticipated that the powers are sought to remove children congregating in large groups and not complying with social distancing requirements (which can already be done under the Emergency Management Act), it is concerning that specific provisions that relate to children, including the use of force to remove them, have been introduced with little information to justify why such measures are necessary and proportionate.

I seek leave to table this letter so that it is at least in the record of the debate on this bill.

Leave granted.

The Hon. T.A. FRANKS: I think it is a travesty of process that we have not been given any reason for these extraordinary powers, that no due diligence has been given to their implications and that groups such as the Law Society have not been heeded or respected in terms of any consultation on these powers.

I think it is beholden on us, as legislators, to take up some of the suggestions that the Law Society has been making. We have approved some extraordinary powers. We do have a COVID oversight committee, but we do not have the reporting regime that New South Wales has on the use of their powers.

Without having those strategic and specific reporting powers, I urge members of this council, and in the other place, to not continue to accept the argument of 'the police want it' as the argument that means that the police get it. I want a puppy for Christmas, but I am not sure that I will get it; and certainly the parliament should not, without good reason, be giving the State Coordinator the Christmas present of being able to use force against children.

Bill read a third time and passed.

EQUAL OPPORTUNITY (PARLIAMENT AND COURTS) AMENDMENT BILL

Introduction and First Reading

Received from the House of Assembly and read a first time.

Parliamentary Committees

SELECT COMMITTEE ON THE EFFECTIVENESS OF THE CURRENT SYSTEM OF PARLIAMENTARY COMMITTEES

The House of Assembly gave leave to Ms F.E. Bedford to attend and give evidence before the Legislative Council Select Committee on the Effectiveness of the Current System of Parliamentary Committees, if she sees fit.

At 19:55 the council adjourned until Tuesday 2 June 2020 at 14:15.